From: Oliver Orjiako
To: Sonja Wiser
Cc: Bart Catching; Jose Alvarez
Subject: FW: Comprehensive Plan Update, 2025
Date: Friday, March 15, 2024 12:14:45 PM
Attachments: Orjiako-Ltr-2025 CP Update-240315.pdf
DiJulio-Ltr-160704.pdf
Commerce-Ltr-160620.pdf
FOCC-Comments-150903.pdf
FOCC SDEIS & CP Comments-150914.pdf
Orjiako-Ltr-160329-Karpinski v. Clark Co.pdf
Orjiako-Ltr-160329-OFM.pdf
Councilor-Ltr-Alt#4-150413.pdf
Thorpe Report.pdf

Good morning Ann:

This is to acknowledge receipt of you comments and request. Your comments will be put in the index of record of the 2025 comp plan update. In addition, today is the cut-off date for site-specific requests. Please, note that the public will continue to submit comments and provide input throughout the planning process until the Clark County Council makes the final decision on comp plan update.

Staff will be compiling the list of all the site-specific request submitted at the end of the day today. The next step is to put the requests in a manner that the public can understand and provide the total lists of requests to you. The list will be provided to local jurisdictions who will consider how any of the request's fits into their planning process. There will be opportunity for you to comment early after you reviewed the list or if any of the requests are included in "alternative" land use scenario proposed by county and local jurisdictions to be studied in the DEIS and future "preferred" plan for the FEIS.

I have copied Mr. Bart Catching who is the project manager on the sit-specific requests. I hope this helpful. Please, let me know if you have any questions. Thank you.

Best,

Oliver

From: Ann Foster <annfoster5093@gmail.com>
Sent: Friday, March 15, 2024 10:52 AM
To: Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>
Subject: Comprehensive Plan Update, 2025

Hello Oliver,

Please refer to the first attachment below: the letter to you, dated March 15, today, from Friends of Clark County. Following that first attachment you will find 8 supporting documents. If you have any questions, please do let me know.

I'm also requesting a response from your team regarding the due date for public comment on Site Specific Requests for the 2025 Update. We realize that there can be no further requests beyond today's date; however, we have asked to receive confirmation from your team that we can submit comment on those requests beyond today's date.

Wishing you well,

Best,
Ann Foster
Friends of Clark County

Friends of Clark County

PLANTING THE SEEDS OF RESPONSIBLE GROWTH

March 15, 2024

Mr. Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

RE: *2025 Comprehensive Plan Update*

Via pdf and e-mail to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

My name is Ann Foster. I am President of the Friends of Clark County (FOCC) Board of Directors. Our members have been reviewing the "Site Specific" requests that are listed on the County website (https://clark.wa.gov/community-planning/2025-update-site-specific-requests and https://clark.wa.gov/community-planning/2025-update-public-comment). During our review, we discovered 88 separate comments from CCCU. Our members have skimmed the submissions and at least some of them appear to be an attempt to assert issues from prior comprehensive plan updates that FOCC believes are legally and factually inaccurate[1]. Since they are under this "comment" page we want to make sure that the documentation that was important in the 2016 Comprehensive Plan. Although it will take some time to distill all the information that CCCU has provided, and determine what, if any of it, deserves a specific response, we want to place the following documents in the record from the 2016 update for the County Council's review:

1. Letter From Department of Commerce to Clark County Dated June 20, 2016[2]

    a. Of note, the DOC listed several specific concerns on pp 2-3 of the letter. Specifically, the 3 DOC concerns were the i) RILB contained "some of the best agricultural land in the County with 99% of the land considered prime farmland" ii) reducing AG 20 to AG 10 zoning and reducing FR 40 to FR 20 and iii) expanding the UGB for Ridgefield, Battle Ground and LaCenter. The Council rejected those concerns.

    b. Subsequently, the Growth Management Hearings Board found that the County's actions each of those three issues were non-compliant with the GMA and issued orders of invalidity. After lengthy appeals, the County removed the RILB from its comprehensive plan in order to be compliant with the Growth Board's ruling in 2019 and negotiated a settlement restoring the AG 20 and FR

[1] CCCU asserted many of these in the prior appeal in 2016. The GMHB rejected all of CCCU's challenges.

[2] We have also attached a letter dated July 4, 2016 that FOCC sent to the acting County civil prosecutor for Growth Management issues (DiJulio) regarding the DOC letter.

40 zones.

c. Even though the GMHB found the expansion of UGB boundaries to be non-compliant with the GMA, and substantially interfered with the Goals of the GMA, the Cities of Ridgefield and La Center annexed those lands into the city limits prior to the Growth Board's opinion. Based upon those annexations, the Court of Appeals found the GMHB no longer had jurisdiction over those lands. So, even though non-compliant, and substantially interfering, with the GMA, those lands are currently within the City limits of Ridgefield and La Center.

d. Finally, the ramifications of passing the reduction in AG and FR minimums led to individuals vesting development rights under the new invalid zones. FOCC knows of at least one 425 acre property that is attempting to proceed under the AG 10 zone by asserting that, despite the GMHB invalidating that Zone, they have vested development rights as to the AG 10 zone and are proposing a 42 lot cluster subdivision on agricultural land[3].

2. Letters from FOCC (signed by David McDonald) dated April 13, 2013, September 3, 2015, September 14, 2015, March 16, 2016 and March 29, 2016 that give a detailed history of the GMA planning in Clark County including the appeals of the County's decisions, and analysis of designation of agricultural lands and an analysis of what was then described as Alternative #4 which FOCC contended was simply site specific spot zoning. It appears that CCCU appears to be attempting once again to wrongly state the importance and significance of the original *"Poyfair"* decision and is also urging the Council to resurrect Alternative #4. The robust number of site specific rezone requests seems to follow the same treacherous path to running afoul of the GMA as Alternative #4 and involve parcels that are designated as resource lands;

3. The "Thorpe" Report

   a. In January 2016, the County's consultant RW Thorpe (hereafter Thorpe) provided the County with an evaluation of is assumptions. Thorpe reported that 4 of the 8 adopted Choice B assumptions were invalid. 2 were partially invalid and 2 were valid. One of the valid Choice B assumptions was the same assumption that had been used for the DSEIS and the original four Alternatives. Thus, 4 of the seven new Choice B assumptions were found invalid.

Please place this letter and all attachments in the record for the current Comprehensive Plan update, as well as in the comment section on the website, for consideration during all of the upcoming hearings on the CP update.

Best,
Ann Foster
Ann Foster
President, Friends of Clark County

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[3] *See* Manor Land Company, Inc. V. Clark County, Clark County Superior Court Case # 23-2-03226-06 (Petitioner's Opening Brief at pp 2-4).

FRIENDS OF CLARK COUNTY
PO BOX 513
VANCOUVER, WASHINGTON 98666
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, 2016[1]. 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.

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).

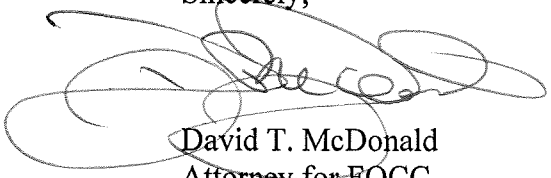
Although this opinion has been shared with the Council by our membership, the opinion carries much greater weight when it comes from the lead agency in the state that administers and oversees the GMA. Based upon the record, and the Department's comments, FOCC suggests that the Council be apprised of 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

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,



David T. McDonald
Attorney for FOCC

STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

June 20, 2016

Mr. Oliver Orjiako
Director of Community Planning
Clark County
1300 Franklin Street
Post Office Box 9810
Vancouver, Washington 98660

RE: Proposed amendments to the comprehensive plan in support of the 2016 Comprehensive Plan update.

Dear Mr. Orjiako:

Thank you for sending Growth Management Services the proposed amendments to Clark County's comprehensive plan and development regulations that we received on April 28, 2016, and processed with Material ID No. 22340.

We especially like the following:

- The plan update seeks to bring in new and recently approved reports – your award winning "*Aging Readiness"*, *Growing Healthier* and Sustainability reports and policies into the comprehensive plan. Incorporating these policies and strategies into your plan will add new and important components to Clark County's planning efforts in the areas of health, aging, physical activity and sustainability.

- The Land Use Element goal focusing on physical activity has several policies focusing on compact, mixed use development with bicycle and pedestrian infrastructure that provides access and connectivity. This document also references the bike and pedestrian plan that focuses on how the built environment impacts health. This focus on promoting active transportation is a prominent factor in the Land Use Element.

- The extensive public process conducted by the county is noteworthy. The plan update website contains lots of materials to help the public understand the decisions in front of the County Board of Councilors. The use of new technology such as "Peak Democracy" allowed staff to reach out for broad and frequent public involvement in the plan update. Your staff has done exceptional

work in your public participation plan to highlight the importance of public participation while also showing innovative public participation techniques and strategies to ensure opportunities for meaningful input.

- The plan goes beyond the Growth Management Act (GMA) requirement for concurrency for transportation services to include other critical public facilities such as water and sanitary sewer. (Capital Facilities Plan, page 2). Table 6.1 clearly shows which public services are subject to concurrency and which are not.

- The plan's intent to promote more compact development patterns which allow for more efficient delivery of services, and promotes a better balance of jobs and housing to minimize the distance people need to travel between home, workplace, and shopping. Capital Facilities Policy 6.10.7 encourages maximum use of existing public facilities and services, new and infill development in the urban area to occur at the maximum densities envisioned by the 20-Year Plan.

- The plan addresses fair housing issues by using "household", rather than "family", as the basic definition for an assemblage of persons in a dwelling unit. Household is a broader term that allows for non-nuclear families, unrelated individuals, domestic partnerships, caregivers and other arrangements.

While your plan advances Growth Management goals and requirements in many important ways, there are a few items, however, that should be addressed before you adopt your plan and development regulation amendments:

- We would especially like to register our concern about your proposal to adopt the rural industrial land bank (RILB) into your comprehensive plan. We expressed some concerns when it was first proposed and those concerns have not been addressed. The subject properties contain some of the best agricultural land in the county, 99 percent of which is considered prime farm land with significant percentage of the land being Class 1 and 3 soils, has excellent access to rail and highway transportation facilities and is within close proximity to local markets. The fact that the current dairy operation does not sell milk locally does not discount the importance of this farm land to the county's future food security. The RILB report stated that the existing dairy operation would like to relocate to Eastern Washington and that the dairy industry is declining. GMA rules clearly state that "the intent of the landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production" (WAC 365-190-050(3)(i). We strongly urge Clark County to consider other sites preferably in the urban growth area for industrial land development and save these 600 acres of prime agricultural land.

- The county is commended for including an objective in the plan to reduce future growth rates in rural areas and resource lands of the county – including specific policies to allocate no more than ten percent of countywide growth to the rural area. However, the plan is proposing to alter some zoning designations in the county's resource lands that would reduce minimum lot area and provide more parcels. This proposal indicates that 2,584 parcels currently zoned Agriculture-20 will be rezoned AG-10; and 2499 parcels currently zoned Forestry 40 will be rezoned FR-20.

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.

- The plan update also proposes to expand the urban growth areas (UGAs) of the cities of Ridgefield, La Center and Battleground to better support residential and employment growth. Ridgefield is asking to de-designate 111 acres of agricultural lands for residential development and La Center is looking to bring in 56 acres of agricultural lands into their UGA for urban development. The Washington State Legislature amended the "Buildable Lands" legislation to require counties subject to the Buildable Lands requirements to complete their Buildable Lands Report (BLR) no later than one year prior to the deadline for review and update of comprehensive plans and development regulations [RCW 36.70A.215(2)(b)]. The reason for this legislative amendment was to ensure that jurisdictions had the needed data for use in their update work. Clark County completed their BLR as required. That report concluded that the county has enough capacity for residential and employment growth for the twenty year planning horizon. (See Table 4 pg. 10) for residential land need. We would like to express our concern specifically on the proposal to de-designate agricultural parcels near Ridgefield and La Center in order to expand their UGAs. Based on the BLR conclusions that the county has enough capacity for growth for the twenty year planning horizon, we do not see any need for any UGA expansion at this time in Clark County.

We have some suggestions for strengthening your plan and development regulation amendments that we encourage you to consider either in these or future amendments:

- The Land Use Element does not include a future land use map as required by the GMA. The document describes the details and components of the future land use plan categories in tables and throughout the text, but does not present a map. The county probably has a future land use map but did not include it in the document sent to Commerce. We recommend you include this essential map before you adopt your update plan.

- Additionally, the capital facilities plan should clearly show where facilities exist, where they are planned, and whether there is adequate capacity for the 20-year population projection. Your capital facilities plan provide inventory of existing services and facilities including their general location, forecast of future needs, a six year capital improvement plan (CIP) and funding sources. However, nowhere in the plan were proposed locations of expanded or new capital facilities addressed. The Capital Facilities Element of your plan should identify all capital facilities/utilities

that are planned to be provided within the twenty year planning period, including their general location and capacity [RCW 36.70A.070(3)].

Congratulations to you and your staff for the good work these amendments represent. If you have any questions or concerns about our comments or any other growth management issues, please contact me at 360.725.3056 or ike.nwankwo@commerce.wa.gov We extend our continued support to Clark County in achieving the goals of growth management.

Sincerely,

Ike Nwankwo
Western Region Manager,
Growth Management Services

IN:lw

cc:

Gordy Euler, Principal Planner, Clark County Community Planning
David Andersen, AICP, Acting Managing Director, Growth Management Services

FRIENDS OF CLARK COUNTY
PO Box 513
Vancouver, WA 98666
friendsofclarkcounty@tds.net

September 3, 2015

Mr. Oliver Orjiako
Community Planning
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

Via pdf and e-mail only—Oliver.Orjiako@clark.wa.gov

Dear Mr. Orjiako:

There have been some public comments, and some documents placed in the public record, regarding Clark County's current agricultural land designations. Some of those comments, and maps, have been alleging that the County has failed to adequately designate agricultural resource lands and, most surprisingly, has relied on the "Poyfair Remand" opinion for that premise.

Before I go in depth into how the County is in compliance with designating Agricultural Resource Lands, and challenging the soils and designations is without merit, I think it is important to note that Judge Poyfair's opinion from Case No. 95-2-05656-7. In case number 95-2-05656-7, CCCU specifically asked Judge Poyfair to make the following finding:

> There is not substantial evidence in the record to support the County's designation of agricultural lands. In particular, there is not substantial evidence to demonstrate how those lands designated satisfy the GMA definitional criteria; that is, that those lands are primarily devoted to agricultural production and are of long term commercial significance for the production of agricultural products. The only explanation provided regarding the designation of agricultural resource lands is contained in a staff report prepared after the RNRAC had completed its work which states "soils was a critical factor". This is not to suggest the County was incapable of analyzing the required statutory criteria: the County undertook a comprehensive

> analysis of resource land designations in urban reserve areas when it was compelled by the Board to re-examine these designations. The County should have undertaken a similar analysis before designating any agricultural resource lands.
>
> Because there is not substantial evidence in the record that satisfies the GMA's definitional criteria, the agricultural resource land designations are invalid.
>
> *CCCU v. WWGMHB*, 96-2-00080-2 Findings of Fact, Conclusions of Law and Order at page 5[1].

Judge Poyfair specifically rejected that Proposed Conclusion of Law and instead affirmed the County's actions with the following ruling: ***"There is substantial evidence in the record to support the County's designation of agricultural resource lands".*** (emphasis supplied). Based upon the plain language of Judge Poyfair's order, he found that the County was in compliance with GMA as to this aspect of the appeal, the County had provided substantial evidence for its agricultural lands designations and Judge Poyfair rejected any finding that the County had not provided substantial evidence to demonstrate that the agricultural lands satisfied the GMA. CCCU did ***not*** appeal this ruling. Therefore, any assertion that has been made, or might be made by any person, that the County did not support its original agricultural lands designations is contrary to the Order drafted by the attorney for CCCU and signed by Judge Poyfair.

These comments recognize that Alternative #4 seeks to reduce the parcel sizes of the Forest Resource lands, the Agricultural Resource lands and the Rural lands. However, these comments are limited to the Agricultural land designations and considerations. These comments also recognize that the reductions in parcel size proposed by Alternative #4 would increase pressure on other larger lots to upzone to smaller parcels.

Clearly, Washington state law, the GMA and Clark County ordinances specifically recognize legally created non-conforming use lots throughout the County and nothing in any of the Alternatives attempts to limit those uses. No one disputes that those landowners in the rural area with legally developable non-conforming use lots should not be allowed to develop. However, although Alternative #4 does not state that it is de-designating resource lands, by upzoning many rural and resource land zones, and recognizing non-conforming lots that are not legally developable (meaning that they are not "legal lots under current Clark County Code), it creates pressure on the resource lands to try and put their lands into non-resource based use.

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[1] A copy of the pertinent page is attached.

According to staff and county counsel, there is no way to determine how many lots Alternative #4 will make legally developable that are, in fact, not legally developable. In fact, recently, Friends of Clark County requested a GIS map all of the lots listed in Alternative #4 that were not currently legally developable. The response was that the data was not available, meaning that no one from the County can assess how many lots that designated as legal buildable lots by Alternative #4 are currently legally buildable lots.

In addition, from some of the public comments, both orally at various public BOCC meetings and in written submissions, some argue that Alternative #4 is justified based upon the fact that the designated resource lands are, in fact, not properly designated. However, after years of litigation, may rulings by the WWGMHB and various courts, the decisions have been consistent that the lands designated under the current plan are properly designated as resource lands, presumed valid and compliant with GMA.[2] Most recently, the Washington Court of Appeal's 2011 decision on the County's 2007 comprehensive plan update concluded that Clark County's current agricultural lands designations are presumed valid.[3]

The underlying legal principle is that the GMA provides that counties must designate "[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1)(a). Importantly, "[T]he intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production." WAC 365-190-060. In addition, the county must adopt development regulations "to assure the conservation of" those agricultural lands designated under RCW 36.70A.170. RCW 36.70A.060(1). *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wash. 2d 488, 498-99, 139 P.3d 1096, 1101 (2006). Therefore, any claims in support of changes to the current designations must not be based on the intent of the landowner for a specific piece of property.

The prevailing definition for agricultural lands is:

> land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), *including land in areas used or capable of being used for production based on land characteristics, and* (c) that has long-term commercial significance for agricultural

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[2] Clark County has already done these designations and been found compliant with the GMA, *CCCU, Inc and Michael Achen and Catherine Achen,,* 96-2-00080-2, Final Order, Poyfair, J.

[3] *Clark Cnty. Washington v. W. Washington Growth Mgmt. Hearings Review Bd.*, 161 Wash. App. 204, 234, 254 P.3d 862, 876 (2011) *vacated in part sub nom. Clark Cnty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wash. 2d 136, 298 P.3d 704 (2013)

> production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development-related factors enumerated in WAC 365–190–050(1) in determining which lands have long-term commercial significance.
>
> *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, *supra* at 502 (emphasis supplied).

Under a previous case, *Manke*, and the *Lewis County* case, both the Growth Board decisions and the court decisions make it almost explicit that where there is a reduction in lot sizes (for example as proposed by Alternative #4) then that heightens the pressure on the area to be used for non-agricultural uses.

The designation of agricultural resource lands is covered by WAC 365-190-060. Under these administrative rules, counties ***must*** approach the effort as a county wide or area wide process and not on a "parcel by parcel" basis. WAC 365-190-060(1). In addition, the legal directives are clear that the county is not to consider economic issues in designating lands:

> Serving the farmer's "non-farm" economic needs is not a logical or permissible consideration in designating agricultural lands under the GMA. That is because it is a goal in and of itself, not a characteristic of farmland to be evaluated in determining whether such land has long-term commercial significance. A farmer's presumed need for "non-farm" income does not necessarily relate to soil, productivity or growing capacity under RCW 36.70A.030(10), nor to proximity to population areas or the possibility of more intense uses of land. It has to do only with the farmer's bottom line.
>
> *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wash. 2d at 505.

The County went through that process prior to the adoption of the 1994 Comprehensive Plan (affirmed by Judge Poyfair's decision) and it appears those designations were affirmed by the County in 2004 and 2007 as shown on the maps. When Clark County designated its lands in accordance with the regulations, it can utilize all classifications of soils from the United States Department of Agriculture Natural Resources (not just Soil Classifications 1 and 2 as has been argued by members of CCCU). Clark County defined its "Prime Agricultural Soils" as Classes I, II & III. *See*

http://www.clark.wa.gov/planning/comp_plan/documents/Figure22-Soil-Agricultural.pdf. [4] The county's designations of soils also shows areas of "Good" and "Fair" soils. If one views a map of the soils with an AG-20 overlay, the County has designated those lands that have class I-III soils as AG-20 parcels. *See* County GIS mapping.

Moreover, once designated, the county must act to conserve those lands through development regulations. WAC 365-190-060(2). Thus, the imposition of development regulations is the county's legally mandated tool for protecting and conserving designated agricultural lands. By law those development regulations cannot prohibit uses that legally existed prior to the designation and must include the following:

1. Regulations that assure that natural resources lands will remain available to be used for commercial production and prevent conversion to a use that removes the land from resource production and prohibit a primary use of agricultural lands that would convert the land to a non-agricultural land purpose. WAC 365-196-815(1)(b);

2. Regulations that endeavor to meld with other regional, state and federal resource management programs applicable to the same lands. WAC 365-196-815(2)(b);

3. Utilize innovative zoning techniques that are designed to assure the conservation of agricultural lands and encourage the agricultural economy while limiting any non-agricultural purpose to lands either with poor soils or not otherwise suitable for agricultural uses. WAC 365-196-815(3); and

4. Those "innovative" techniques could include: a) *limits the density of development*, b) restrictions or prohibitions on nonfarm uses and limitations on accessory uses to those that designed to conserve [5] agricultural lands and any non-agricultural use should be limited to lands with poor soils or otherwise not suitable for agricultural purposes, c)

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[4] The 2007 comprehensive plan maps also show the soils that are available for forests. http://www.clark.wa.gov/planning/comp_plan/documents/Figure21-Soil-Forest.pdf

[5] (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. WAC 365-196-815

Cluster zoning with remainder in Agricultural land, d) Large lot zoning with minimum lot sizes large enough to achieve successful farming practice, e) quarter/quarter zoning that allows for (1) one acre home site per 40 acres f) slide scale zoning[6] and g) TDRs. WAC 365-196-815(3).

FOCC asserts that Alternative #4 violates WAC 395-190-060(2) by allowing for a large scale reduction in large lot zoning with minimum lot sizes that would be large enough to achieve successful farming practices. Also, the more one allows the smaller developable lots in the rural area, the more pressure there is on other landowners with large lots to parcel them out. For example, under Alternative #4 as proposed, the county could have two AG 20 lots sitting side by side. If one of those AG-20 lots is currently divided into 20 non-legally developable one acre parcels, Alternative #4 would recognize those lots and allow 20 homesites. Once that occurs, by law the County would have to allow the adjoining AG 20 parcel to develop 20-one cre lots either under a Comprehensive plan amendment or an assertion of a change in circumstances. The "domino" effect would be real and sustained.

Washington State Supreme Court has held in the Soccer Fields decision that [t]he County was required *to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.*[7] A ten acre minimum lot size and density will not meet this standard. Professor Arthur C. Nelson analyzed agricultural land preservation techniques and concluded that "[m]inimum lot sizing at up to forty-acre densities merely causes rural sprawl-a more insidious form of urban sprawl."[8] Further, Clark County's average farm size has increased from 37 acres in 2007 to 39 acres in 2012, an increase of 5.4 percent.[9] During the same time period, Washington's average farm size increase by 4 percent.[10] The increase in average farm size does not support a reduction in the minimum lot size and density.

In conclusion, the comments that have been provided by proponents of Alternative #4 regarding agricultural lands seem to be a misplaced attempt at de-

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[6] I believe a good example of this would be the zoning in our Rural Centers.

[7] *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000) emphasis in original.

[8] Arthur Nelson, *Preserving Prime Farmland in the Face of Urbanization: Lessons from Oregon* 58 JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 467, 471 (1992). The Journal of the American Planning Association is a peer-reviewed journal.

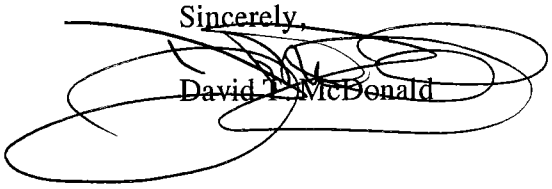
[9] United States Department of Agriculture, National Agricultural Statistics Service, *2012 Census of Agriculture Washington State and County Data Volume 1* • Geographic Area Series • Part 47 AC-12-A-47 Chapter 2: County Level Data, Table 8. Farms, Land in Farms, Value of Land and Buildings, and Land Use: 2012 and 2007 p. 271 (May 2014) accessed on Aug. 2, 2015 at: http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_2_County_Level/Washington/wav1.pdf.

[10] *Id.*

designation. These lands are designated and presumed valid. There is a specific process for de-designation that is not being undertaken. Therefore, the comments regarding soils and resource lands that appear to undermine the designations should not, and cannot be used as grounds for justifying reductions in the minimum lot sizes and, given that Clark County used the minimum lots sizes as one of the regulatory tools under WAC 365-196-815(3) to protect those resource lands, by embracing Alternative #4, the County is acting in contravention of the mandate to protect these previously designated, GMA compliant and presumptively valid agricultural lands.

Please submit these comments under both the DSEIS and the record on the Comprehensive Plan update to the extent that the records are different.

Sincerely,



David T. McDonald

is no substantial evidence in the record to support the designation of agri-forest lands as resource lands under the GMA.

Additionally, the failure to solicit meaningful public input for the agri-forest resource lands violated the public participation provisions of the GMA requiring early and continuous public participation in the development and adoption of comprehensive plans.

5. Agricultural Resource Lands. There is ~~not~~ substantial evidence in the record to support the County's designation of agricultural resource lands. ~~In particular, there is not substantial evidence to demonstrate how those lands designated satisfy the GMA definitional criteria~~, that is, that those lands are primarily devoted to agricultural production and are of long-term commercial significance for the production of agricultural products. The only explanation provided regarding the designation of agricultural resource lands is contained in a staff report prepared after the RNRAC had completed its work which states, "soils was a critical factor." This is not to suggest the County was incapable of analyzing the required statutory criteria: the County undertook a comprehensive analysis of resource land designations in urban reserve areas when it was compelled by the Board to re-examine these designations. The County should have undertaken a similar analysis before designating any agricultural resource lands.

~~Because there is not substantial evidence in the record that satisfies the GMA's definitional criteria, the agricultural resource land designations are invalid.~~

6. Comprehensive Plan EIS. The Comprehensive Plan EIS issued by the County violates the State Environmental Policy Act ("SEPA"), RCW Ch. 43.21C. The agri-forest resource land designations were disclosed subsequent to the publication of the final Plan EIS and were not disclosed or discussed in any way in the EIS alternatives. The removal of rural activity centers also was not addressed in the EIS. The County did not require additional environmental review and did not solicit additional public comments. The County failed to comply with SEPA's requirement for additional environmental review when a proposal changes substantially from the one addressed in the initial EIS. The Board's decision to uphold the adequacy of the

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September 14, 2015

Board of County Councilors
Planning Commission Members
% Mr. Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

Via pdf and e-mail to Oliver.Orjiako@clark.wa.gov and via hand delivery

Mr. Orjiako:

This letter is to respond to the letter in the record from Carol Levanen dated August 4, 2015 and the e-mail from Carol Levanen dated August 31, 2015 and correct the inaccuracies in her two submissions. I am submitting these comments on behalf of Friends of Clark County.

Both of Ms. Levanen's submissions wrongfully suggest that the County failed to comply with the rulings in Case 96-2-00080-2[1]. The majority of the contents of

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[1] In her August 31, 2015 e-mail she states the following:

"This WWGM Hearings Board Remand demonstrates that all of Judge Poyfair's orders were not followed. Instead, the Board isolated the remand to just Agri-Forest and Rural Centers and ignored action on the other orders handed down by the Superior Court. 'They' timed this remand decision to happen just after the Court of Appeals decision of 1999, counting on CCCU's attorney not being available to protest the remand action. CCCU believes that the Clark County 1994 Comprehensive Land use Plan was the most corrupt process of any in the state except perhaps Seattle. The Plan in place today, is the same plan that was adopted in the rural and resource land in 1994. It has never been changed and after over twenty years, legitimate changes must be made."

In her letter dated August 4, 2015 she makes three assertions: 1) Clark County is not in compliance with Judge Poyfair's ruling because it never did a SEPA analysis of the Agri-Forest Lands, 2) The County never complied with "the Court orders or the Order of Remand".."No progress reports can be found and the Hearing Board only conducted a few compliance hearings for agri-forest and rural centers. 'They' failed to assure the County complied with *all* of the court orders which also included items 3) Statutory Mandate, (4) Agri-Forest Lands (6) Comprehensive Plan EIS, and (7) Rural Land Densities. This resulted in the 36,000 acres of Agri-Forest Land and the rural centers never having an EIS to support changes that did occur

these two documents is simply not supported by the record and/or totally misrepresents or obfuscates the reality of Judge Poyfair's decision and the other related legal actions.

The simple truth is that Ms. Levanen and Ms. Rasmussen, who herald themselves as the preservers of rural life despite many farmers and foresters who object to their positions, more than achieved their goals in 1990s to reduce lot sizes in the rural zone, eliminate the Agri-Forest zone, implement Rural Centers and reduce development regulations that would have provided more protective regulations of the environment.

In order to understand the claims that Ms. Levanen is wrongfully asserting, one must go back and follow the record from the filing of the first appeals that challenged the County's 1994 Comprehensive Plan to the last Compliance Order issued by the WWGMHB in 2006.

History of the *Achen* Appeal and *Poyfair* Remand

In 1994, after work by multiple task forces, input from thousands of citizens, scores of public hearings and intermediary and interlocutory legal actions, our County adopted our first Comprehensive Plan. A myriad of parties appealed the Comprehensive Plan to the WWGMHB. While the appeals were being litigated, Clark County executed a stipulation in WWGMHB Case No. 94-2-0014 stating that the County failed to enact interim development regulations designed to designate and protect critical areas and natural resource lands. Instead, the County relied on various combinations of existing non-GMA ordinances and zoning, which it admitted failed to meet the identification, designation or protection requirements of state law. Therefore, the County agreed to go back to the public process on their development regulations.

In September 1995, The WWGMHB issued a Final Decision and Order (FDO) in the case commonly known as *Achen et al* case of which CCCU was a Petitioner. There were 16 separate motions filed on reconsideration and the WWGMHB subsequently ruled on each of those and issued an Order on Reconsideration on December 6, 1999. Several appeals were taken from the WWGMHB FDO. However many issues of non-compliance found by the WWGMHB were not appealed and those issues were remanded to the County for compliance.

The appeals from the WWGMHB FDO and Order on Reconsideration were assigned to Clark County Superior Court Judge Poyfair. Judge Poyfair subsequently issued an opinion that reversed the WWGMHB Final Decision and Order (FDO) on several grounds and held the following: 1) The Agri-Forest designation violated GMA; 2) the County's failure to solicit meaningful public input for the Agri-Forest designation violated the public participation provisions of the GMA requiring early and continuous public participation in the development and adoption of the comprehensive plans; 3) The county failed to ensure a variety of densities in the rural area because it removed the

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later"; and 3) Some claim that some writings (no citations to the articles are provided so it is impossible to know which articles to which she refers) misconstrue the 1999 Court of Appeals opinion regarding the use of OFM numbers. (One appeal was take from Judge Poyfair's rulings and that was an appeal by CCNRC challenging the portion of Judge Poyfair's ruling regarding the county's assertion that they were mandated to use the OFM number in determining rural population allocation).

designation of rural centers from its Community Framework Plan; 4) determined the rural population allocation based upon the use of the selected OFM number and 5) the EIS was inadequate because it failed to include the Agri-Forest designation in its analysis.

Judge Poyfair also issued an Order on Reconsideration denying various motions for reconsideration and clarification and affirming the Findings of Fact, Conclusions of Law and Order issued on April 4, 1997 with one exception, which dealt with the issue of variety of rural densities. He found that the eradication of the centers violated the planning goal of requiring a variety of rural densities and reaffirmed that the WWGMHB erred by mandating that the County use OFM projections for allocation of rural population. *See* Order on Reconsideration (June 5, 1997)[2].

One piece of Judge Poyfair's ruling that CCCU continues to ignore, and most important to the current process, is that Judge Poyfair found there ***was substantial evidence in the record to support the County's designation of agricultural resource lands***. CCCU did ***not*** appeal that portion of the Poyfair decision and it remains valid to this day.

Procedurally, Judge Poyfair remanded the case to the WWGMHB who, in turn, issued a Remand Order in August 1997 that remanded all the issues from the Poyfair decision to the County. The Remand Order stated:

> Therefore, it is ordered that Clark County is not in compliance with the Growth Management Act as to those matters set forth in the separate appeals and the matter is remanded to Clark County to achieve compliance consistent with earlier orders of the Board *as modified by the Superior Court orders referenced above which are incorporated herein.* Because of the unusual scope and complexity of the issues, under the provisions of Chapter 429, Laws of 1997, Section 14(3)(b), compliance shall be achieved by March 2, 1998. The County shall submit a report on the progress it is making toward compliance by December 15, 1997.
>
> *See WWGMHB* #95-2-0067 dated August 11, 1997 (emphasis supplied).

This remand is known as the "Poyfair Remand". As can be seen by the language of the Order, the WWGMHB remanded all issues in Judge Poyfair's ruling to the County, including the issue subsequently appealed by CCNRC. After the remand, Clark County went back to work on all of the issues ordered to be remanded to the County.

While the Poyfair Remand was being dealt with at the County level, CCNRC appealed one issue--whether or not the County was ***required*** to use the OFM number in determining a cap on rural population allocations. The appellate court ruled that, although GMA did not ***require*** the county to use OFM's projections as a cap on non-urban

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[2] Both the April 4, 1997 Findings of Fact, Conclusions of Law and Order and the June 5, 1997 Order on Reconsideration were drafted and submitted by CCCU's attorney.

growth, it ***could*** use the OFM projection number if doing so would otherwise meet the goals of the Act. Specifically, the court stated:

> Without so holding, we assume that the GMA *permits* a county to use OFM's population projections when planning for lands outside its urban growth areas.
>
> *Clark Cnty. Natural Res. Council v. Clark Cnty. Citizens United, Inc.*, 94 Wash. App. 670, 676, 972 P.2d 941, 944 (1999)(emphasis in the original)

Thus, as set forth by Judge Poyfair, GMA allows for the County to use a variety of tools for population allocation, including the OFM numbers. but does not mandate that those tools be utilized. The Court of Appeals issued its opinion on March 12, 1999. CCNRC filed a petition for review with the Washington Supreme Court but that Petition for Review was denied in November 1999.[3]

In addition, while the matter was pending in front of Judge Poyfair (his hearing was held on October 16, 1996), other actions were being taken on the *Achen* case. The County was attempting to comply with the portions of the WWGMHB's original FDO and Order on Reconsideration where the County was found to be non-compliant with the GMA but those findings of noncompliance ***were not appealed and were not in front of Judge Poyfair.*** Thus the process had now become bifurcated with some of the non-compliance issues being appealed to the Superior Court (Poyfair) and some of the issues being remanded to the County.

On October 1, 1996, the WWGMHB issued a Compliance Order and Order of Invalidity regarding multiple issues that had been remanded to the County pursuant to the original FDO and Order on Reconsideration ***that were not a part of the appeal in front of Judge Poyfair***. In that October 1, 1996 Compliance Order and Order of Invalidity, the WWGMHB found the County non-compliant on a number of issues that had been remanded. One such issue involved growth in the rural area. The WWGMHB found that the work on the population allocation, and zoning and designations, in the rural areas regarding rural, resource lands and urban reserve areas to be invalid. *See* http://www.gmhb.wa.gov/LoadDocument.aspx?did=866 (Compliance Order and Order of Invalidity dated October 1, 1996). This Order covered multiple areas of the County's Comprehensive Plan.[4] Some of those Findings and Conclusions of this new October 1,

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[3] The correct legal citation for the Court of Appeals' decision in *Clark County Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wash.App. 670, 677, 972 P.2d 941, ***review denied***, 139 Wash.2d 1002, 989 P.2d 1136 (1999)

[4] 1. Include all property of the Ridgefield municipal boundaries within the UGA;

2. Eliminate the new "redesignated" UGA of the City of Camas and redesignate the area between Camas and Vancouver;

1996 Compliance Order and Order of Invalidity were appealed to the Clark County Superior Court and the appeals were assigned to Judge Nichols (Nichols I). CCCU participated in these appeals.

While the appeals were pending before Judge Nichols, the WWGMHB held another compliance hearing in October 1997 on issues where the county had been found to have been non-compliant with the GMA but which had not been appealed from the WWGHB and assigned to Judge Nichols[5]. So, now the original FDO and Order on

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3. Adopt appropriate criteria to determine if and/or when UGA boundaries need to be moved;

4. Determine the proper designation of "non-prime" industrial lands outside the Vancouver UGA;

5. Eliminate all non-prime industrial designations within the urban reserve area;
6. Adopt development regulations to prohibit the conversion of prime industrial land to

other uses;

7. Clarify or eliminate the "no net loss" industrial policy concerning both "prime" and "non-prime" industrial lands;

8. Eliminate any and all resource lands from the urban reserve area and place appropriate resource designations on the properties;

9. Adopt and implement a public participation process that complies with the Act for the commercial code;

10. Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of non-conforming lot sizes, as well as other techniques to reduce the impact of parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas;

11. Increase the minimum lot sizes of rural areas located north of the "rural resource line";

12. Adopt effective implementing DRs for existing stormwater pollution.

13. Analyze and make appropriate changes to the capital facilities element taking into consideration the incorporated plans, the completed Vancouver capital facilities element and the increase population projection.

In order to comply with the Act, Ridgefield must take appropriate action to correctly designate and analyze all property within its boundaries.

[5]So, as a result of the *Achen et al* appeal to the WWGMHB, some issues were appealed (Poyfair) and some were remanded for the County to come into compliance. At a subsequent Compliance hearing on the issues that had not been appealed (Poyfair) but had been remanded to the County, there was another split and some of those findings by the WWGMHB were appealed (Nichols) while others were found to be compliant and others were remanded to the County for further work to come into compliance. Once Poyfair ruled, CCNRC appealed one aspect of his ruling (OFM numbers) but the *entire* decision was remanded to the WWGMHB and, in turn, to the County to obtain compliance. Once Nichols ruled, the Board held a hearing and re-issued a new Compliance Order and Order of Invalidity but there does not appear to be any further compliance orders or hearings on the Nichols appeal. In March of 2009, the Board held a compliance hearing on the Poyfair remand that CCCU filed a motion to dismiss that claiming that

Reconsideration were now trifurcated: 1) Some issues were in front of Judge Poyfair; 2) Some issues were in front of Judge Nichols and 3) Some of the original issues that had been remanded to the County, but not appealed, were still being handled by Compliance hearings in front of the WWGMHB.

After the October 1997 Compliance hearing, the WWGMHB issued a Compliance Order on December 17, 1997. The various parties stipulated to the following issues to be a part of the October 1997 hearing:

CCNRC should have filed a new petition rather than have a compliance hearing on whether the County had complied with the Poyfair remand. Finally, in 2006, the WWGMHB issued a final Order in the *Achen et al* case that stated the following:

> THIS Matter comes before the Board upon its order to show cause why compliance should not be found on the remaining issues in this case. The Board issued an Order to Show Cause Re: Compliance, on May 8, 2006, providing that the parties must respond no later than May 22, 2006 or the case would be dismissed. No response was received from any party.
>
> Although compliance was shown on some issues, compliance for several remaining issues in this case has never been found in a Board order. This case has been open for a number of years without action by any party. However, on September 7, 2004, Clark County adopted a revised comprehensive plan. Several aspects of this revised comprehensive plan were challenged in a Petition for Review and eventually found compliant. See *Building Association of Clark County, et al., v. Clark County*, WWGMHB Case No. 04-2-0038c (Amended Final Decision and Order, November 23, 2005). The unchallenged portions of the revised comprehensive plan are presumed valid and deemed compliant. RCW 36.70A.320(1).Therefore, with the adoption of a revised comprehensive plan and the issuance of the November 23, 2005, Amended Decision and Order in *Building Association of Clark County, et al., v. Clark County*, WWGMHB Case No. 04-2-0038c, the Board determines that any compliance issues remaining in this case have most likely been resolved.
>
> For that reason, the Board issued its show cause order of May 8, 2006. With the absence of any response by any party, the Board concludes that compliance should be found and this case closed.
>
> **ORDER**
>
> Based on the foregoing, COMPLIANCE on the remaining issues in this case is found and the case is CLOSED.

> As some of the remand issues from our original compliance order of October 1, 1996, as modified by an order on reconsideration dated November 20, 1996, are presently on appeal to Superior Court[6], a stipulated order was entered limiting the issues for this hearing. Various petitioners sent letters, dated July 29, 1997, and August 26, 1997, that expressed satisfaction with Clark County's compliance which further narrowed the scope of this hearing. The issues that were presented for the hearing on October 9, 1997, involved the size of the Camas urban growth area (UGA), UGA movement in general, resource lands (RL) that had been included in urban reserve areas (URA) instead of being designated, the capital facility plan (CFP), and stormwater. Briefing and oral argument were held contemporaneously with the compliance case of *Clark County Natural Resources et al., v. Clark County*, et al., #96-2-0017, (CCNRC II)[7].

Judge Nichols eventually ruled that the WWGMB had improperly placed the burden of showing compliance upon the local government and remanded the case to assign the burden of proof to the petitioners to show lack of compliance and that the Order of Invalidity had to be reconsidered. He also found that Clark County's appeal of issues determined in the original FDO of September 20, 1995, was untimely. *See Clark*

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[6] The Nichols' appeal.

[7] That order was issued December 2, 1997 and held that: In this case, the WWGMHB held that "Clark County is not in compliance with the Act with regard to designation and protection of critical aquifer recharge areas. The existing protections are not consistent with Clark County's CP and or CFP. In order to comply with the Act, Clark County must adequately identify critical aquifer recharge areas and adopt development regulations that protect those identified areas. Clark County is not in compliance with the Act with regard to geological hazard area designations and has not adopted development regulations to protect those areas. In order to comply with the Act, Clark County must designate geological hazardous areas and adopt appropriate development regulations for their protection. Clark County is not in compliance with the Act because of its failure to designate fish and wildlife habitat conservation areas of local importance, its failure to establish a "review trigger" area surrounding priority habitat and species areas, its failure to apply development regulations to all priority habitat and species areas involved in conversion of forest lands to pasture lands, the exemption of subsection 2(a)(c) and (d) application to all priority habitat and species areas and its failure to provide adequate buffers for Type 1 through 5 waterways including Type 5 waterways in rural areas and its failure to provide a specific measuring standard for establishment of those buffer areas. In order to comply with the Act the County must make the appropriate FWH designations and adopt DRs that protect FWH."

County v. Western Washington Growth Management Hearings Board, Superior Court Case No.96-2-05498-8 Dated December 31, 1997[8](Nichols I).

On February 5, 1998, the WWGMHB issued a new Compliance Order and Order of Invalidity in response to Judge Nichols' ruling using Judge Nichols' burden allocation. In that Compliance Order and Order of Invalidity, the WWGMHB held that the County was out of compliance on the following four issues:

> 1. Policies and development regulations (DRs) relating to future adjustments to UGAs (if different issue than the December 17, 1997, order) are not in compliance;
>
> 2. Policies and DRs to eliminate non-prime industrial designations in urban reserve areas as set forth in the November 22, 1996, order on reconsideration are not in compliance;
>
> 3. Failure to increase of the minimum density in rural areas north of the east fork of the Lewis River to an appropriate size that is greater than 5 acres[9] is in violation of the GMA;
>
> 4. Failure to develop policies and DRs designed to buffer resource lands and limit encroaching development in rural and resource areas is not in compliance.

In addition, the Order also reaffirmed the Order of Invalidity as to CCC 18.302, 18.303, 18.305, and those sections of Ordinance 1996-05-01 relating to resource lands and rural lands as they substantially interfered with goals 1, 8, 9, and 10 of the Act[10]. The WWGHMB affirmed that decision in an Order on Reconsideration issued April 30, 1998.

Clark County took an appeal from that February 5, 1998 Order and April 30, 1998 Order on Reconsideration (and, again, CCCU participated in that appeal). The case was again assigned to Judge Nichols (Nichols II). *Clark County v. Western Washington Growth Management Hearings Board*, Superior Court Case No. 98-2-02032-0. On August 20, 1999, the Court issued a "Partial Judgment" solely as to the Order of Invalidity and stated that the Partial Judgment "overturned and overruled" the WWGMHB's Order of Invalidity that was part of the February 5, 1998 and April 8, 1999 WWGMHB Orders. The "Partial Judgment" was based on an Opinion by Judge Nichols dated July 1, 1999 that held that the County had discretion under GMA to use a 5 acre minimum rural lot size (1 unit per minimum 5 acres). The "partial judgment" was entered, the Order of Invalidity lifted as to

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[8] Judge Nichols also issued a letter opinion on December 10, 1997, which formed the basis for the Remand Order dated December 31, 1997.

[9] As set forth below, the original FEIS recommended 10-15 acre minimums in the rural zones.

[10] I have no records of what happened after this Order. There is not any further opinions that I have found addressing the issues that were subject of Judge Nichols' ruling.

all of the issues on the appeal and the 5 acre minimum lot size in the rural area remained intact, and remains to this day. No parties took further action on this appeal.

While the CCNRC appeal of the OFM issue from the Poyfair's ruling was pending in the Court of Appeals, and the other cases were pending in front of Judge Nichols, the County went to work to achieve compliance with Judge Poyfair's Order[8]. As a result of the Poyfair Remand, the County engaged in an extensive public participation process as to both the Rural Activity Centers issue (which had been stripped from the original CP) and the Agri-Forest designation issue. These two components of the Remand involved 38,000 acres of land in the rural area that were eventually ***upzoned*** in order to obtain the variety of rural densities required by the Poyfair rulings.

The WWGMHB held a compliance hearing on the Poyfair Remand on March 10, 1999[11], two days ***before*** the Court of Appeals issued its decision in the CCNRC appeal of Judge Poyfair's order regarding the use of the OFM number. CCCU filed a motion to dismiss the compliance proceeding on March 2, 1999 challenging the jurisdiction of the WWGMHB to hear CCNRC allegations that the County was still non-compliant because it had eliminated the Agri-Forest Zone and created the Rural Centers.

In order to meet the public participation component that Judge Poyfair said was lacking in the original process, the County convened two separate Task Forces, one to evaluate the Agri-Forest[12] designation and one to evaluate the Rural Centers designation. These task forces were made up of a variety of individuals and met multiple times. Both task forces wrestled with the myriad of issues involved. Ultimately, the Task Forces provided reports (majority reports and minority reports) to the Planning Commission and the Board of County Commissioners.

Most importantly, the Findings of the Agri-Forest Task Force were as follows:

- "Generally recognized and maintained consistency with immediately surrounding lot sizes, referred to as "what is" in task force deliberations.

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[11] This writer does not know why the hearing was held in March 1998 instead of March 1997 but as set forth in the body of the May 11, 1999 Compliance Order, the delay was attributed to the Petitioners *Achen et al.*

[12] The County appointed a 13-member task force composed of a variety of stakeholders with interest in this issue. The public participation process involved 17 different task force meetings at which public comment was solicited and received, four separate open house meetings resulting in written comment, two separate direct mailings to all property owners within the 35,000 acres, newsletters, press releases, ads and use of the County website. After the task force issued its final report to the planning commission (PC), the PC held a public hearing and issued a recommendation to the BOCC. The BOCC then held two public hearings on May 19, 1998, and May 28, 1998, and held four separate deliberative open meeting sessions. The public participation in this record was shown to be not only "early and continuous" but also extensive. The County should be justifiably proud of the manner in which it conducted this public participation process.

- Recognized pre-GMA designations, and limit (sic) associated down zoning.
- Generally utilize larger lot designations in the northern portions of the County than in the southern portion.
- Predominantly applied transitional designations, typically Rural 10, to properties which form a transition from resource designations to rural designations.
- Predominantly apply a Rural 10 designate (sic) to parcels adjacent to urban growth boundaries, in recognition that CTED documents suggest 10 acres as the minimum parcel size which can be easily converted to future urban use
- Avoid isolated small areas of spot zoning.
- Consider on site uses, topography, and natural conditions.
- Avoid future land division on remainder lots from previous cluster developments."

See WWGMHB Compliance Order "Poyfair Remand" dated May 11, 1999.

The above Findings were based on what was available to the Task Force members including the following:

> The task force had been supplied with a series of maps (Ex. 235-247) and other materials noted in Ex. 84. The maps showed parcel size, agricultural or forest soil suitability, current and pre-GMA zoning designations, current use taxation status, aerial photographs, pending plat or segregation requests, recent lot creation status, habitat areas, wetlands, steep slopes and utility lines. Ex.80 demonstrated that the task force also considered post-1990 parcels, land values under alternative uses and eco-system importance. Ex. 80 set forth the criteria (statutory, WAC, BOCC and task force,) that were considered by the individual members. Included was a staff report dated May 4, 1998 (Ex. 12), which pointed out that prior to GMA approximately 80% of the 35,000 acres had been designated in non-resource classifications. ***None of the approximately 7,000 acres of pre- GMA resource designation (35,000 x 20%) survived to become GMA-RL-designated areas.***

See WWGMHB Compliance Order "Poyfair Remand" dated May 11, 1999.

At this point, I want to point out that in the present case, CCCU is complaining that the process undertaken above never happened. Rural property owners and stakeholders had a big seat at the table and were provided a plethora of documents, maps, and information that were used to make the final decision. Rural stakeholders were not cut out of the process and there was considerable consideration of the nature of the

rural area both pre, and post, the passage of the GMA in 1990. As can be seen from the above, the current claims by CCCU are simply unsupportable. One prime example is that 7,000[13] acres that had been designated as resource land ***prior*** to the passage of GMA was now being excluded from resource designation based upon objections and or analysis that was conducted by rural property stakeholders. Moreover, as detailed below, CCCU did not challenge the County's determinations on these issues. In fact, as will be seen, CCCU was in accord with the final determination of the BOCC after it completed its work in late May 1998.

Prior to the March 10, 1999 Compliance Hearing on the Poyfair Remand, not only did CCCU not make ***any*** claim that the County was not in compliance with Judge Poyfair's order, CCCU's filed a motion to dismiss that sought ***to prevent the WWGHB from reviewing the County's decisions to eliminate the Agri-Forest Zone and to create the Rural Centers***.[14] CCCU placed nothing in the record at the Compliance Hearing, either in pleadings or at the hearing, that the County was not in compliance with Poyfair's Order, much less the GMA[15]. Yet, CCCU acted affirmatively to prevent the County's actions in response to the Poyfair Remand to be reviewed by the WWGMHB for compliance.

Also, and despite Ms. Levanen's protestations to the contrary, CCCU was not hamstrung at all in litigating any matter and had plenty of opportunity to pursue the matter as evidenced by the fact that CCCU appealed a portion of this Compliance Order to Clark County Superior Court. *See CCCU v. WWGMHB*, Clark County Superior Court Case No. (99-2-02394-7)(Bennett Appeal). During this appeal, CCCU asked Judge Bennett for an Order requiring that the County to comply with the *City of Redmond*'s decision. *See* Clark County Superior Court Case # 99-2-02394-7 dated August 9, 1999 (filed August 27,1999). Again, during this appeal, CCCU never claimed that the County failed to comply with Poyfair's Order in any respect. To be clear, CCCU was present

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[13] If one takes the 36,000 acres out of the Agri-Forest zone, that allowed for approximately 7,200 rural 5 acre minimum residential lots.

[14] As evidenced by CCCU's actions and the language in the Compliance Order, CCCU was pleased with these two determinations by the County, were distrustful of the WWGMHB and did not want the WWGMHB to review out of a concern that they might not find the County's actions in compliance with the GMA. CCCU participated in this compliance hearing and did not raise any issues that alleged the County had not complied with Judge Poyfair's Order. Given the dissent, there was some basis to believe the WWGMHB might have found non-compliance. *See* Dissent by William Neilsen.

[15] In fact the Compliance Order specifically states:

> "As a result of the remand, the County engaged in an extensive public participation process as to both the rural activity centers issue and the agri-forest designation issue. There was no challenge to those processes. Petitioners Clark County Natural Resource Council, et al., (CCNRC) directed their challenges to the substantive outcome of both issues. Original petitioners N. Lackamas and ***CCCU supported the County's actions***. Participant Lewis River Land Company, LLC (LRLC) also supported the County's actions in designating its property other than RL. Those 4 groups will hereafter generally be referred to as respondents." (emphasis supplied)

with legal counsel in all four Clark County Superior Court Appeals, as well as the Poyfair Remand Compliance hearing, but never did CCCU ever request the WWGMHB to find that the County was not in compliance with the Poyfair Remand. They cannot now credibly claim the contrary.

The May 11, 1999 Order was the second to last Order on any request, by any party, to find that the County had, or had not, complied with any WWGMHB Order on the original *Achen et al* appeals. The last Compliance hearing that the parties had a right to participate in was in 2000 regarding the transportation component. Only CCNRC and the County participated in that hearing.

On May 8, 2006, 2 years after the County issued its new 2004 Comprehensive Plan, the WWGMHB issued an Order to Show Cause Re: Compliance in *Achen*. Specifically, the OSC had a provision that the parties must respond no later than May 22, 2006 or the case would be dismissed. No response was received from any party including CCCU. The WWGMHB issued an ***Order Finding Compliance and Closing Case***.[16] Therefore, the County is legally compliant with the Poyfair Remand.

Ms. Levanen's Claims/E-mail

The County is also factually compliant with the "Poyfair Remand". Ms. Levanen asserts that because the Compliance hearing in March 1999 only addressed the

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[16] The Order stated:

> Although compliance was shown on some issues, compliance for several remaining issues in this case has never been found in a Board order. This case has been open for a number of years without action by any party. However, on September 7, 2004, Clark County adopted a revised comprehensive plan. Several aspects of this revised comprehensive plan were challenged in a Petition for Review and eventually found compliant. See *Building Association of Clark County, et al., v. Clark County*, WWGMHB Case No. 04-2-0038c (Amended Final Decision and Order, November 23, 2005). The unchallenged portions of the revised comprehensive plan are presumed valid and deemed compliant. RCW 36.70A.320(1).Therefore, with the adoption of a revised comprehensive plan and the issuance of the November 23, 2005, Amended Decision and Order in *Building Association of Clark County, et al., v. Clark County*, WWGMHB Case No. 04-2-0038c, the Board determines that any compliance issues remaining in this case have most likely been resolved.
>
> For that reason, the Board issued its show cause order of May 8, 2006. With the absence of any response by any party, the Board concludes that compliance should be found and this case closed.
>
> **ORDER**
>
> Based on the foregoing, ***COMPLIANCE on the remaining issues in this case is found*** and the case is CLOSED (emphasis supplied).

Agri-Forest and Rural Centers issues, it failed to address whether the County was now in compliance with all portions of the issues remanded to the County as part of the Poyfair Remand. Nothing could be farther from the truth.

The foundation of Poyfair's Orders was that because the county added in the Agri-Forest designation and excised the rural centers at the 11th hour of the process, it skewed the rural designations and failed to comply with the GMA. By going back and meticulously and painstakingly going through a very contentious process, for all intents and purposes, the County eliminated the Agri-Forest Zone and created larger Rural Centers than had been initially contemplated.

Ms. Levanen says that because the other issues were not addressed by the WWGMHB, they are presumed non-compliant. Her claim is legally false and ignores the fact the CCCU did ***not*** want the WWGMHB to review the County's compliance because it was in favor of CCCU. If CCCU felt that the County was non-compliant at that time, instead of trying to prevent the WWGMHB from determining compliance, CCCU could have easily, as they were doing in multiple appeals, ***they could have raised all of those issues at that time.*** CCCU cannot now claim no compliance after forfeiting the rights to request the WWGMHB to find non-compliance and attempting to stymie the WWGMHB from hearing the compliance issues that were raised by CCNRC.

The basic principle is that the burden is on the party claiming non-compliance to show the County is non-compliant. *See* Order date December 31, 1997 (Nichols I) and Compliance Order and Order of Invalidity dated February 5, 1997 (holding that Superior Court held that burden is on party asserting non-compliance to prove County is non-compliant-precursor to Nichols II). However, once a finding of Invalidity has been made by the WWGMHB, the burden is on the party challenging Invalidity to prove that Invalidity is not appropriate.

Therefore, all CCCU had to do was to assert and prove that the County was not in compliance with Poyfair's Order at any Compliance hearing (and the March 10, 1999 would have been the logical one because all parties were present and the WWGMHB was trying to determine if the Comp Plan was now in compliance with the GMA by striking the Agri-Forest Designation and creating the Rural Activity Centers). As stated, the elimination of the Agri-Forest designation, and creation of the Rural Centers, were two of the main components of the Poyfair Order. Judge Poyfair's Order states "The eradication of the centers (rural centers) violates the planning goal requiring a variety of residential densities." So, the County put the Rural Centers back in, and expanded the boundaries of those Centers. The County's position in front of the WWGMHB was that the removal of the Agri-Forest designation along with creation of the Rural Centers brought them into compliance with Judge Poyfair's Order and CCCU agreed implicitly and explicitly.

Ms. Levanen also claims that the County is out of compliance with the Poyfair Remand regarding SEPA. She is again, factually and legally incorrect. Although, it is not clear if the County did a supplemental FEIS on Remand, there was no need for the County to conduct such a review because the FEIS was *only* found to be

inadequate because the analysis: 1) failed to include an analysis of the Agri-Forest designation and 2) failed to address the exclusion of the Rural Centers. Once the County eliminated the Agri-Forest designation, and put the rural centers back into the Comprehensive Plan, there was no longer a SEPA violation. Moreover, the County's Comprehensive Plan has had to comply with SEPA since the Remand in 2004 and 2007. There have been no challenges to the SEPA analysis of which I am aware and therefore, it has complied with SEPA.

Ms. Levanen states that "'They'[17] timed the Compliance decision to happen just after the Court of Appeals decision of 1999, counting on CCCU's attorney not being available to protest the remand action". This statement is not only factually incorrect, the record shows the opposite occurred and CCCU and their attorneys participated fully in all of the proceedings.

No one outside the Court of Appeals knows when the Court is going to release its opinions. Therefore, the WWGMHB would not have known when the Court of Appeals was going to release its opinion in the CCNRC appeal of Judge Poyfair's Conclusion of Law. Even if the WWGMHB had that knowledge, it is irrelevant because the Compliance Hearing occurred on March 10, 1999, two days ***before*** the Court of Appeals released its opinion. Moreover, any claim that the CCCU attorney's ability to act was compromised in anyway is unsupportable given that CCCU's attorney filed the motion to dismiss on March 2, 1999, 8 days ***before*** the Compliance Hearing and 10 days ***before*** the Court of Appeals issued its decision. In addition, CCCU's attorney appealed the Order from the March 10, 1999 Compliance Order.

Therefore, Ms. Levanen's claim that the timing of the Compliance hearing was compromised by the issuance of the Court of Appeals' opinion is totally unsupportable since CCCU filed motions to dismiss the compliance hearing, and participated in the compliance hearing, ***before*** the Court of Appeals rendered its decision.

Ms. Levanen states that, "The Plan in place today, is the same plan that was adopted in the rural and resource land in 1994. It has never been changed and after over twenty years, legitimate changes must be made." This is patently false. The 1994 plan had 35,000 acres of Agri-Forest land designated. After the Poyfair Remand, all but 3,500 acres of that land was removed from Resource Land[18]. The 1994 plan eliminated Rural Centers, which were reinstated as part of the Poyfair remand and are now part of the current Comprehensive Plan that has been found compliant.

There are now a variety of rural densities in the Comprehensive Plan as evidenced by 3000 acres in the Rural Centers and the elimination of the Agri-Forest

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[17] This writer believes that she is referring to the WWGMHB.

[18] The WWGMHB decision which disallowed the 3500 acres was appealed to the Superior Court by CCCU whose attorney filed a Motion For Judgment on the pleadings (Bennett Appeal) that the Court granted and then remanded to the Growth Board to consider in light of the Supreme Court case in *Redmond*. This writer is still unclear if the 3500 acres remained in resource land designation or reverted to 5 acre rural designation.

Resource lands. Moreover, in 2007, thousands of acres of resource land was de-designated and put into the Urban Growth Areas and/or annexed into city boundaries. New development regulations changed the way that the County dealt with timber lands[19] and, in some cases, allowed conversion of those lands to non-resource development. All of these changes, among others, have occurred over the 21 years since the original passage of the 1994 plan.

Finally, any claim that the voices of the rural residents have not been heeded since the inception of the GMA process is factually unsupportable. The County originally planned for 10-15 acre rural minimum lot sizes (not for resource lands but for just the rural zone). If one goes back and looks at the original FEIS[20] that Ms. Levanen mightly claims should have been redone, it is apparent that the rural people eventually convinced the county and the courts to reduce those minimums to the 5-acre minimum that the County ultimately imposed that minimum lot requirement[21].

The County staff had originally recommended either 10 or 15-acre minimum rural residential lot sizes north of the Resource Line (East Fork Lewis River) but that was ultimately rejected. In addition, the original Wetlands Ordinance was

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[19] The County convened a Forest Conversion Task Force that consisted of myself, three local tree farmers, a representative of DNR and a representative of WDFW and that Task Force developed a comprehensive set of regulations for protection and conversion of forest lands.

[20] The Final EIS for the County's Growth Management plans focuses its attention on Alternatives B and C. Alternative B provided for 10 acre minimum lot sizes north of the East Fork of the Lewis River, and Alternative C provided for 15 acre minimum lot sizes north of the East Fork of the Lewis River. *See*, FEIS at II-11, 15. In support of the 15 acre rural lot size, the FEIS states at II-16 "minimum lot sizes in rural areas (15 acres) and for resources land would be larger and reflect the recommendation of the Washington State Department of Natural Resources (DNR)) and DCTED for minimum lot sizes in resource lands.

The FEIS also included an Alternative A, which was a continuation of the County's existing policies, including 5 acre lots. However, the FEIS concluded that continuation of the County's then current Rural Land Use Policies would not be consistent with the County's Community Framework Plan, nor the intent of the GMA. As the FEIS indicates at II-8 under Alternative A the policies of the adopted Comprehensive Plans would remain in effect. "This alternative may not meet the intent of the CFP (Community Framework Plan), and would be difficult to reconcile with the intents of the GMA to concentrate urban development in cities".

The FEIS goes on to note the virtues of large rural lot sizes north of the East Fork of the Lewis River. As it states at III-9:

> Alternative B would protect rural and resource lands from urban types of development. Areas outside of designated UGAs would not receive urban levels of service. Lots in rural areas would be a minimum of five acres in size in the southwestern portion of the County, and 10 acres north of the East Fork of the Lewis River and east of 182nd Street. This would allow residents to keep animals and engage in small-scale farming and resource-based industries such as commercial forestry, Christmas tree operations, dairying, berry farming, orchards, and mining.. Supporting commercial and public uses would be concentrate d in designated Villages or Hamlets. Rural lands would also serve as buffers between resource lands and urban areas.

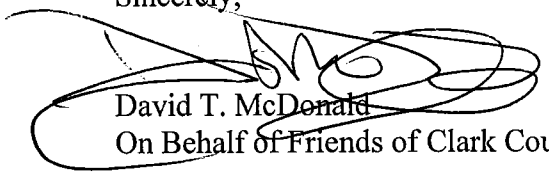
[21] Although the WWGMHB found the 5 acre rural zone non-compliant and issued an Order of Invalidity, Judge Nichols reversed that Order (Nichols II).

dramatically changed after an outcry from organized groups from the rural area led by Chuck Cushman. Moreover, there were many rural stakeholders on the Task Forces[22] that were appointed as part of the Poyfair Remand and those voices spoke in the various reports that were issued.

Public hearings went long into the night and, in an effort to have more rural stakeholders present at those hearings, some public hearings were held at LaCenter High School rather than in downtown Vancouver. Certainly, there were many, many issues with the development of the original plan. Citizens, the County, the WWGMHB and the Courts were all trying to interpret what the real requirements of the GMA were, and how to comply. In addition, as the County was going through its processes, amendments were being made to the GMA in the legislature and after almost 6 years, the 1994 plan was compliant with all of the directives of the courts and with the tacit or explicit assent of all the parties.

Thank you for allowing me to comment on the history of the County's actions and the claims being made by CCCU. Please submit these comments to the record on both the Comprehensive Plan update and the DSEIS. I hope staff, the Planning Commission Members and the Board of County Councilors find this to be of assistance as they weigh the issues in front of them.

Sincerely,



David T. McDonald
On Behalf of Friends of Clark County

[22] Lonnie Moss, one of the founders of CCCU was also a member of the County Planning Commission during the remand period.

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March 29, 2016

Mr. Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street
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Vancouver, Washington 98660

RE: *Karpinski v. Clark County*

Via pdf and e-mail to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

In her March 22, 2016 testimony before the Councilors, CCCU representative Carol Levanen referenced a Final Decision and Order (FDO) from the Western Washington Growth Hearings Board (the FDO can be found here http://www.gmhb.wa.gov/LoadDocument.aspx?did=146). I found it odd that CCCU would rely on that decision because it held that the county placed too heavy reliance on economic development over preservation of agricultural lands of long term commercial significance (ALLTCS). I went back and read the FDO along with the court opinions and the final FDO on Remand. I agree with Ms. Levanen that it is an important case but not for the reasons she may believe. The FDO that she quoted from in her public testimony found that the County's de-designation process for ALLTCS was flawed, and the GHB invalidated the county ordinances that de-designated over 2500 acres of agricultural lands. At bottom, the hearings board and the court chastised the county for failing to protect ALLTCS.

First, this case, like many, has a long history (*see* case details here http://www.gmhb.wa.gov/CaseDetail.aspx?cid=92). The case was originally appealed to the WWGMHB (GMHB) and on May 14, 2008, the GMHB issued the Final Decision and Order (FDO) that Ms. Levanen appeared to reference in her Tuesday comments. The Final FDO On Remand was issued on March 11, 2014.

Second, throughout the entire process, the GMHB and the Courts recognized the importance of designating agricultural lands of long term significance and emphasized that extra scrutiny should be applied to any matrix or formula used to de-designate ALLTCS. In its original FDO the GMHB noted:

> The pressure to convert these lands (ALLTCS), especially in areas impacted by population growth and development, is even more prevalent today. The Board recognizes that the counties and cities of Washington face a multitude of difficult and demanding challenges when determining how their communities will grow. But, these challenges must be addressed within the mandates of the GMA so as to serve the "public's interest in the conservation and the wise use of our lands. ***Washington's limited, irreplaceable agricultural lands are at the forefront of this mandate, with cities and counties discretionary planning choices confined so as to prevent the further demise of the State's ability to provide food for its citizens***.
>
> FDO dated May 14, 2008 at page 33 (emphasis supplied).

After recognizing that the county had adopted a de-designation process "To assist them in their de-designation process the County developed a principle/values statement that put economic development as its primary goal to increase the tax bases of the county, city, and school districts", the GMHB chastised the County for giving equal weight to the economic development Goal in its de-designation formula. The GHB (and subsequently the courts) rejected giving equal weight to the economic development goal and held the following:

> Neither the economic development goal nor the recreational goal direct action as the agricultural conservation goal does. Nor does the economic development goal have any corresponding requirements. Also, the economic development goal stresses that growth should be encouraged in areas "experiencing insufficient economic development growth, all within the capacities of the state's natural resources, public services, and public facilities.
>
> ***Therefore, in using its discretion to balance the agricultural and economic development goals, the County's economic development goals cannot outweigh "the duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry"***
>
> FDO at 36-37 (emphasis supplied)

The GMHB found that "the Supreme Court held that the GMA creates a mandate to designate agricultural lands because the Act includes goals with directive

language and specific requirements. ***The Board finds that the GMA economic development goal cannot supersede the agricultural mandate defined by the Supreme Court."*** FDO at page 2 (emphasis supplied).

Then after the case had gone through the courts, the GMHB relied on the Court of Appeals opinion and the held the following:

> Moreover, the County's overtly heavy reliance on economic factors when deciding whether land has long-term agricultural commercial significance runs afoul of several of the GMA's planning goals – namely, the County's duty to "designate and conserve agricultural lands." *Soccer Fields*, 142 Wn.2d at 558 (analyzing the GMA's "[n]atural resource industries" planning goal – RCW 36.70A.020(8)). In addition, the County's emphasis on economic factors violates RCW 36.70A.020(5), which requires counties to "[e]ncourage economic development . . . *within the capacities of the state's natural resources*, public services, and public facilities" (emphasis added).
>
> Final Decision and Order on Remand Dated March 11, 2014 at page 33.

The GMHB also should be noted that one Councilor has repeatedly stated that if land lies "fallow" then it is not meeting the requirements of the GMA. The FDO completely rejects that idea by stating:

> Petitioners point out, and the Report confirms, that farm income is a measure of owner intent. The Board agrees and recognizes that an owner of a farm that has prime soils or has been historically farmed may have a myriad of reasons for not producing a significant income. Using farm income as a measure of whether agricultural land is primarily devoted to agricultural products speaks to owner intent rather than whether the land is "used or capable of being used for production based on land characteristics". This prong speaks to land characteristics" not economic function. Farm income is not a measure that meets the second prong of the Supreme Court test. While landowner intent can be considered, according to the Supreme Court, as described supra, this factor is not determinative when designating agricultural land.
>
> FDO on Remand at page 47.

Therefore, if a landowner has land that is "used or capable of being used for production based on land characteristics" but does not use/is not using it to generate income, the failure to generate income (i.e. allows the land to lie fallow) the GMA still requires that it protected as agricultural land. The "protection/conservation" thread continues throughout the opinion and the FDO concluded as to another parcel that "de-designating agricultural land to increase the tax base of a city, does not address the needs of the agricultural industry, and ignores the conservation mandate established by the Supreme Court" and "the de-designation of this area...does not comply with RCW 36.70A.170(1) and RCW 36.70A.020 (8)". FDO at p 51.

The end result of *Karpinski v. Clark County* cited by Ms. Levanen is that 1) once lands are designated as agricultural lands, they are to be protected and need to go through an intensive de-designation process before being removed from the agricultural land inventory, 2) population growth is to be centered in urban areas that can more effectively and efficiently provide capital services and not in rural areas and resource lands and 3) when allocating population growth, protection of agricultural lands of LTCS is paramount and not superseded by consideration of economic factors.

Also, there is no evidence that allowing for lower minimum lot sizes in the rural area is necessary or will promote affordable housing as that term has been defined under the GMA and other statutory schemes. *See* MRSC links above.

I hope the Councilors find this of assistance. As always, I am happy to provide any follow-up should anyone have any question regarding the facts and legal analysis set forth in our comments.

Sincerely,

David T. McDonald
Attorney for Friends of Clark County

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March 28, 2016

Dr. Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street
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Vancouver, Washington 98660

Via pdf and e-mail to Oliver.Orjiako@clark.wa.gov

Dear Dr. Orjiako:

Please accept these additional comments from FOCC for the Comprehensive Plan update record. On March 24, 2016, the Columbian ran an article on the 2014 Census population growth numbers. The article by Columbian Reporter Patty Hastings stated that our county's population increased by 6,489 between 2014 and 2015.

Although the Census site did not set forth population growth allocations per area within the County, the Washington OFM website does contain a chart showing the allocation of growth. OFM shows that population within the cities grew by a total of 4,825 people in 2014 (BG-570, Camas-330, LaCenter-300, Ridgefield-365, Vancouver-3,000 and Washougal-260, Yacolt-0). These numbers[1] do not count growth within the cities' respective UGAs, which are still considered to be in unincorporated Clark County.

If the cities' population grew by 4,825, then rest of the population growth (1,664) occurred in unincorporated Clark County including within the cities' UGAs. Thus 75% of the population growth is within city limits and the remaining 25% occurred within the large urbanized UGAs and the remainder portion of the county (assumedly rural and resource designated lands). It is difficult to apportion the 25% (1,644) between unincorporated UGAs and the remainder of the unincorporated areas of the county as there are no statistics. However, per the cities' plans and consistent with GMA and growth patterns, the lion's share of the population growth would most likely fall within

[1] The OFM released these numbers on April 1, 2015, over a year before the current release of the Census report, which mirrors the OFM's release.

all of unincorporated UGAs[2]. One indicator of what percentage of the 6489 would be within urbanized areas is finding by the Thorpe report that population growth between 89/11 split[3]. Therefore, the split would be 5840 increase in urbanized areas and 649 in the rural area.

Thus the numbers support the Plans adopted by the Cities as well and the main premise of GMA that growth occur in urbanized areas. Representatives of the cities have consistently testified that they have sufficient capacity within their urban growth areas to absorb and accommodate the growth over the next 20 years. It should also be noted that Councilor Madore's Alternative #4 (and what was adopted in November in 2015 and then repealed by the current council) did not add any capacity to the cities but dealt solely with rural growth issues. Finally, the Thorpe report concluded that "all four alternatives project significantly more lots than what is needed to accommodate growth".

Before dissecting the Councilor's recent FB post regarding the Census report, it is important to recognize three specific principles and laws that guide GMA planning. The first is that GMA requires that the County use the OFM numbers that are provided. The county used those numbers (*See* Policy Paper #s 1 and 2[4]). The second is that the law requires the County to complete its "Buildable Lands" evaluation at least one year prior to the deadline for submitting its plan to the state. *See* RCW 36.70A.215(2)(b)[5]. The Buildable Lands analysis includes the growth rate and population projections. Third, the GMA anticipates that 20 year plans need to be reviewed every 8 years to allow jurisdictions to make adjustments in growth rate and population forecasts if necessary. Therefore, five years from now when the county begins its process for the next update, it can change the growth rate and the population

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[2] It may be possible for staff to review building permits or other information to determine what portion of the 25% would most likely have occurred in the UGAs and which portion would have most likely occurred in the "non-urbanized" area of the County.

[3] According to the Thorpe Report, "the population growth has actually increased at the 89/11 level, which means that the rural population is steadily decreasing in terms of its annual growth percentage. Therefore, the county would actually need to accommodate fewer future residents in rural areas. Thus, it appears that all four alternatives project significantly more lots than what is needed to accommodate growth".

[4] The documents are posted on the county website here- https://www.clark.wa.gov/community-planning/process-and-documents

[5] "(b) Provide for evaluation of the data collected under (a) of this subsection as provided in subsection (3) of this section. ***The evaluation shall be completed no later than one year prior to the deadline for review and, if necessary, update of comprehensive plans and development regulations as required by RCW 36.70A.130***. The county and its cities may establish in the countywide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation" (emphasis supplied).

forecast based upon the new OFM numbers produced at that time should the jurisdictions determine that to be necessary.

Therefore, using these Policy Papers #1 and #2 (along with the concomitant presentations which are also posted here https://www.clark.wa.gov/community-planning/process-and-documents), staff gave all Councilors complete information regarding the legal OFM numbers that the County is required to consider using in their update. So, when the BOCC selected the OFM numbers and growth rates for the current CP update in 2013-2014, those rates were 1) based upon the Councilors having a full and fair briefing by staff, 2) consistent with meeting state law deadlines, 3) consistent with OFM numbers that were provided and 4) in line with the population trends from at least the time that the legislature passed the GMA.

Even Councilor Madore recognized the accuracy of the numbers being used by the County when he posted the following on his FB page in ***June 2014***:

> **David Madore**
> June 24, 2014 ·
> Planning for aggressive jobs growth:
> Clark County is one step closer in our transformation from a bedroom community of Portland to a thriving self-sufficient business hub where our quality of life includes great jobs right here at home.
> **Today's Comp Plan hearing included a variety of local leaders who share a vision that will provide significantly more land for businesses and enough land for future homes. These plans will serve as the basis for our road improvements and specify on our maps where we will provide for jobs, homes, parks, schools, and more.**
> **Each of our seven Clark County cities are working together with our county as a united community planning how we will grow. As commissioners, we've committed to maximize our support of our county cities and reassured them that we will not shrink their Urban Growth Boundaries, the lines that divide urban from rural areas.**
> We are working to grant the maximum flexibility to each city so they can each determine what is best for their domain. The Growth Management Act requires us to complete this major task by June 30, 2016.
> The process in our state is "bottom up" in contrast to Oregon's "top down" approach. That means that our state will not dictate the plans for our community. Rather, our

> community has the freedom to inform the state of the plans we want as our self-defined destiny.
> We have reason to be thankful for the citizen-friendly process. The principles, values, and steps can be viewed here:
> http://clark.wa.gov/thegrid/documents/PH01_Presentation.pdf
> Our future is in our hands and it is looking very bright. I welcome your feedback. (emphasis supplied

In addition, the BOCC, revisited the issue in October 2014 and again approved adopted growth rate and population forecast.--https://www.clark.wa.gov/sites/default/files/2014-1022_BOCC_WS_Alternatives.pdf. In April, 2015, when Councilor Madore was the Chair, the Council again by a unanimous vote approved the current growth rate and population forecast in Resolution # 2015-4-05 at the end of a hearing that lasted over 5 and ½ hours--https://www.clark.wa.gov/sites/all/files/the-grid/2015-04-05.pdf. Therefore, since 2013, the councilors, including when Councilor Madore sat as Chair, have repeatedly reviewed and approved the population growth rates and forecasts that exist in our current local preferred alternative that is currently being considered for a FSEIS.

Based upon the above facts and law, Councilor Madore's new "opinions" expressed in his most recent FB post are either invalid (like his Planning Assumptions for his last incarnation of alternative #4) or misrepresent the facts and the law in a number of ways.

First he states:

> The US Census facts confirm that the 20-year plan pushed by Clark County Planning staff is woefully inadequate and fails to comply with the Growth Management Act's requirement to provide sufficient land for the foreseeable growth (and he cites the census table to support that fact).
>
> http://www.census.gov/quickfacts/table/PST045215/53011

Contrary to Councilor Madore's assertions the County is in compliance as 1) the County used the OFM provided numbers as required by law nd 2) the County met the legally required deadline of completing its analysis at least one year prior to its deadline to file its plan with the state. The census confirms that we grew at less than 1.6% per year between 2010 and 2015 resulting in a population of 459,495 (over 120,000 under than 20 year projection). However, nothing in the census numbers confirms that our plan is "inadequate", much less "woefully inadequate" or out of compliance with GMA. In addition, if one wants to view long term trends in growth in the County, Clark County's

average growth rate from 2000-2014 was only 1.01%, which is below the estimated growth rate in our current plan. If we had used that number, then we our plan overestimates growth.

Second, he states that:

> Matters were made worse when Alternative 4 was repealed under the false claim that the "do nothing" plan of Alternative 1 was sufficient to meet the needs of the rural community.

Alternative 1 is not the "do nothing" alternative. It provides for everything required by the GMA and reflects the actions needed to be taken to accommodate growth, actions needed to guide our capital facilities plans and projects to accommodate 20 years of growth and satisfies the 13 planning goals of the GMA and has already been upheld by the Growth Board and the Courts. The record is filled with evidence that there is more than sufficient land area allocated for growth under Alternative #1 including meeting the needs of the rural area. Alternative #1 allows for quite a bit of growth in our county while staying true to the major premise of GMA, which is that urban areas absorb the lion's share of the population growth while preserving resource lands and maintaining rural character.

Third, he states:

> Unless the gross error is corrected, Clark County will continue to be plagued with the same chronic land shortage that reduces the quality of life with ever higher prices for ever shrinking lot sizes.

The underlying premises of this statement are not supported by facts. There is no "error" much less "gross error" to be corrected. Neither the census #s, nor the 2012 or current OFM numbers, support an assertion that our current plan has any error whatsoever [6]. As stated above, the average growth rate for Clark County from 2000-2014 was 1.01%. The current rate is in excess of that 14 year average. Another false premise is that Clark County has been "plagued" with "chronic land shortages" in the past. The census numbers cited by the Councilor lend no support to his claim of land shortages. In fact *all* of the cities have repeatedly testified that they believe that they have sufficient land inventory to handle all the population growth that they anticipate in their UGAs within the next 20 years. The work by the Cities supports the anti-thesis of the

[6] FOCC has presented, and will continue to present, hard evidence in the record that shows that the impact by allowing the decreases in parcel sizes under 2.b-2.d are not sustainable and violate the GMA by allowing for too much parcelization of resource lands.

Councilor's claims that there is any land shortage, much less a chronic one.

Finally, Councilor Madore states that the new census numbers will result in the scarcity of useful land and violate one of the "key goals" of the GMA-affordable housing[7]. Affordable housing is one of the 13 planning goals that are part of the GMA planning process but there is nothing in the Census reports, or the Cities' various plans that show that they have a land scarcity, otherwise the cities would have requested expanding the urban growth boundaries. In addition, affordable housing is not necessarily tied to land supply but rather how development regulations are put in place to encourage the construction of affordable housing. The MRSC website has many thoughtful ideas regarding the implementation of affordable housing policies and regulations (none of which appear to be championed by the councilor). *See* http://mrsc.org/Home/Stay-Informed/MRSC-Insight/March-2016/It-s-Time-to-Implement-Your-Affordable-Housing-Pol.aspx; http://mrsc.org/Home/Explore-Topics/Planning/Specific-Planning-Subjects,-Plan-Elements/Housing/Affordable-Housing-Ordinances-Flexible-Provisions.aspx; http://mrsc.org/Home/Explore-Topics/Planning/Specific-Planning-Subjects,-Plan-Elements/Housing/Washington-State-Statutes-Administrative-Codes-Hou.aspx.

The legislature passed " 'in response to public concerns about rapid population growth and increasing development pressures in the state, especially in the Puget Sound region.' " *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wash.2d 543, 546, 14 P.3d 133 (2000) (quoting Alan D. Copsey, *Including Best Available Science in the Designation and Protection of Critical Areas Under the Growth Management Act,* 23 SEATTLE U.L.REV. 97, 97 (1999)). The Act was intended to control growth after decades of lax and optional land use regulations and the legislature's stated intent was to combat "***uncoordinated and unplanned growth***." RCW 36.70A.010.[8] "In seeking to address the problem of growth management in our state, the

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[7] (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

[8] "One of the primary purposes of the Act is to direct new growth into IUGAs or UGAs. The Legislature has determined by adoption of the GMA that directing growth to urban areas provides for better use of resource lands and more efficient uses of taxpayer dollars. A county must size an IUGA large enough to accommodate the growth that will be directed into it. A recognition of growth that has already taken place will prevent undue oversizing of the IUGAs. Likewise a recognition of the growth that will occur outside IUGAs (due to preexisting lots in rural areas) should not encourage growth in those areas but merely recognize its existence. The GMA requires counties to adopt policies, DRs and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. The more a county utilizes these techniques to funnel growth into urban areas, the more discretion is afforded under the Act in sizing IUGAs or UGAs." *C.U.S.T.E.R. v. Whatcom County,* WWGMHB #96-2- 0008,

Legislature ***paid particular attention to agricultural lands***." *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, at 555(emphasis supplied). Finally, the explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that *conserve* agricultural lands and *maintain* and *enhance* the agricultural industry. *Id* at 561(emphasis in original).

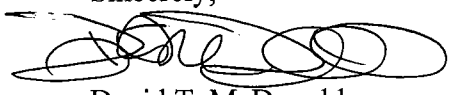
In addition, the WWGMHB has stated the following in one appeal from our county:

> There is no doubt that the GMA sees agricultural lands and the industry that relies on them as something special given the duty set forth to *designate* agricultural land and *conserve* such land in order to *maintain* and *enhance* the agricultural industry. The purpose of this legislative mandate was articulated by the Supreme Court a decade ago when it held: The GMA sought to control and regulate growth, and specifically emphasized the protection of natural resource lands, including agricultural land. The Legislature hoped to preserve agricultural land near our urban centers so that freshly grown food would be readily available to urban residents and the next generation could see food production and be disabused of the notion that food grows on supermarket shelves. Final Decision and Order in *Karpinski v. Clark County*, Case No 07-2-0027 at page 33 *quoting Redmond v. Central Puget Sound Growth Management Hearings Board,* 136 Wn. 2d 38, 57-58 (1998).

The end result is that population growth is to be centered in urban areas that can more effectively and efficiently provide capital services, and not in rural areas and resource lands. Secondarily when allocating population growth, protection of agricultural lands of LTCS is paramount and not superseded by consideration of economic factors. Finally, there is no evidence that allowing for lower minimum lot sizes in the rural area is necessary much less will promote affordable housing as that term has been defined under the GMA and other statutory schemes. *See* MRSC links above for same.

We hope to continue to provide factually and legally correct and supportable submissions for this record and also hope that our submissions aide the decision makers as they debate these issues.

Sincerely,



David T. McDonald
On Behalf of Friends of Clark County

FRIENDS OF CLARK COUNTY
PO Box 513
Vancouver, WA 98666
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Dear Councilors:

Please accept my comments on the proposed Comprehensive Plan update as the legal representative of Friends of Clark County and in my individual capacity. I am a 30 year resident of rural Clark County having lived the past 25 years in the same home in unincorporated Clark County in the Fairgrounds area. I became active in Growth Management issues in the County prior to the passage of the Growth Management Act in 1990 when I worked in support of the County's Habitek project in the Vancouver Lake Lowlands. During the past twenty five years I have served in multiple volunteer capacities involving growth issues in Clark County including as a member of the Boundary Review Board of Clark County, including a term as Chair; a member of multiple task forces addressing growth related issues including: the Rural Centers Task Force, the Vacant Buildable Lands Committee, the Forest Conversion Task Force, the Agricultural Task Force and, early on, the Technical Advisory Committee.

In addition I helped draft legislation on growth issues including the first Sensitive Lands Ordinance for the City of Ridgefield. I have also been lead and/or co-counsel representing a number of different groups and individuals on land use issues including litigation in conjunction with, as well as opposing, our County's land use policies. I have litigated cases in front of the WWGMHB and the local Superior Court in support of, and in opposition to, our County's land use policies. Finally, as a private citizen, I have testified more times than I can remember on land use policies as legislation and as applied to site specific projects, in front of Clark County Hearings Examiners, the Clark County Planning Commission, the Clark County Board of County Commissioners and the equivalent legislative bodies in the City of Ridgefield.

I have seen a lot of misinformation, and disinformation, regarding what has been dubbed the "Poyfair Remand" and, therefore, my initial comments are a summary of the history of the GMA in this county with a focus on providing the current councilors with a legal and factual history regarding Judge Poyfair's decision, the subsequent actions by the County on Remand and the final finding of compliance. Any statements that the County is not in compliance with Judge Poyfair's ruling are, at best, inaccurate.

It is with the foregoing background that I provide you with the following comments.

History of GMA Clark County

The legislature enacted the GMA in 1990 and 1991 largely " 'in response to public concerns about rapid population growth and increasing development pressures in the state, especially in the Puget Sound region.' " *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.,* 142 Wash.2d 543, 546, 14 P.3d 133 (2000) (quoting Alan D. Copsey, *Including Best Available Science in the Designation and Protection of*

Critical Areas Under the Growth Management Act, 23 SEATTLE U.L.REV. 97, 97 (1999)). I 547 qualified for the ballot but, before the election, the state legislature enacted the GMA. After decades of lax and optional land use regulations, the legislature's stated intent was to combat "***uncoordinated and unplanned growth***." RCW 36.70A.010.[1]

"In seeking to address the problem of growth management in our state, the Legislature ***paid particular attention to agricultural lands***." *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, at 555(emphasis supplied). Most importantly when determining the populations, and attendant zoning in the rural and resource lands areas, any innovative techniques used to create a variety of rural densities must be "consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry". *Id at 560.* The explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that *conserve* agricultural lands and *maintain* and *enhance* the agricultural industry. *Id at 561*(emphasis in original).

After the passage of the Growth Management Act, and prior to the County adopting its own plan, many attempted to circumvent the provisions of the Act. For example, in 1993, according to a County staff report drafted by then Planning Director Craig Greenleaf, the dawn of the GMA triggered an onslaught of property divisions not before seen in the County. Planning Director Greenleaf determined that "the rapid pace of development in Clark County which would undermine the goals of the Growth Management Act in the absence of emergency moratoria has continued at ever increasing rates". By October 1993, the Planning Division received an average of 135 permit applications per month, an increase of 17% from 1992. Subdivision applications increased over 1992 by 27%. Cluster subdivision applications averaged 6 per year between 1980 and 1989. The rate more than doubled to 13.3 per year.

According to this same staff report, areas that would have qualified for designation as natural resource lands were particularly hard hit. A comparison of the number of lots created for the months of May and June for the years 1992 to 1994 shows that while fewer than 40 new lots were created in 1992, that number had risen to over 270 for the same two month period by the year 1994.

Specifically, Planning Director Greenleaf stated:

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[1] "One of the primary purposes of the Act is to direct new growth into IUGAs or UGAs. The Legislature has determined by adoption of the GMA that directing growth to urban areas provides for better use of resource lands and more efficient uses of taxpayer dollars. A county must size an IUGA large enough to accommodate the growth that will be directed into it. A recognition of growth that has already taken place will prevent undue oversizing of the IUGAs. Likewise a recognition of the growth that will occur outside IUGAs (due to preexisting lots in rural areas) should not encourage growth in those areas but merely recognize its existence. The GMA requires counties to adopt policies, DRs and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. The more a county utilizes these techniques to funnel growth into urban areas, the more discretion is afforded under the Act in sizing IUGAs or UGAs." *C.U.S.T.E.R. v. Whatcom County,* WWGMHB #96-2- 0008,

> There has clearly been a significant increase in [large lot] segregation in recent years in response to potential changes in county code. The County Assessor's Office has few records from prior to 1989. In 1989 there were 117 segregation requests. In 1990, the year of the initial Growth Management legislation, the number of requests jumped to 789. In the month of April, 1993, during which the emergency ordinance was announced, there were requests for the segregation of 407 parcels, which represents an 800% increase from March of 1993, and is more than were received during the entire 1992 calendar year. From January 1990 to the inaction of the emergency ordinance on April 19, 1993, requests for the segregation of a total of 2,473 parcels have been received. *At an estimated 5 acres per parcel, this corresponds to 12,365 acres, or over 19 square miles. The 2,473 parcels represent about 2,000 or more students added to local school districts.* (Emphasis supplied).

As part of the GMA process, several focus groups were formed to address various issues. One such group was the Rural and Natural Resource Lands Focus Group which was divided into an agricultural group, a forest group and a mineral group. Those groups then made recommendations to the county staff, which in turn made recommendations to the Planning Commission and the BOCC. On October 13, 1994, Craig Greenleaf issued a staff report to the Planning Commissioners. In that report he concluded that:

> In the work of the Forest Focus group, the delineation of the Rural Resource line was developed to recognize the difference in character of the two areas. Less parcelization has occurred in the area north of the East Fork and aerial photos also illustrated that much of the parcelization shown on the map did not actually have buildings constructed. Based upon this work and the need to support the population projections forecast for the rural areas, staff recommends a minimum lot size of five acres south and west of the Rural resource line *and 10 acres* north and east of the Rural Resource line.
>
> In that report, Mr. Greenleaf proposed a matrix of alternatives including the use of Purchase of Development Rights, Transfer of Development rights and Conservation Easements to prevent further unmitigated building upon rural lands beyond the need for the 20 year

> population projection. The Planning Commission agreed with the staff report and

Finally, in that document, Mr. Greenleaf stated that: "Cluster developments and rural Planned Unit Developments allow for significant increases in rural development densities, which *deplete and undermine agricultural and forest resource activities, and result in incompatibilities with existing rural uses.* (Emphasis supplied).[2]

In 1994, after work by multiple task forces, scores of public hearings and intermediary lawsuits, our county adopted our first comprehensive plan. The plan was appealed by a myriad of parties and became known as the *Achen* appeal. The WWGMHB issued a Final Decision and Order (FDO) and there were 16 separate motions on reconsideration on which the WWGMHB ruled, many involved rulings with respect to whether the plans of the various cities were in compliance.

In 1995, while the matter was being appealed to the WWGMHB, Clark County executed a stipulation in WWGMHB Case No. 94-2-0014 stating that the County failed to enact interim development regulations designed to designate and protect critical areas and natural resource lands. Instead, the County relied on various combinations of existing non-GMA ordinances and zoning, which it admitted failed to meet the identification, designation or protection requirements of state law.

However, several appeals were taken from the WWGMHB FDO. Clark County Superior Court Judge Poyfair heard one such appeal. Judge Poyfair's opinion reversed the WWGMHB Final Decision and Order (FDO) on several grounds and held the following: 1) The agri-forest designation violated GMA; 2) Failure to solicit meaningful public input for the ag-forest designation violated the public participation provisions of the GMA requiring early and continuous public participation in the development and adoption of the comprehensive plans; 3) The county failed to ensure a variety of densities in the rural area because it removed the designation of rural centers from its Community Framework Plan and set 5 acre minimum lot sizes based upon the OFM numbers. Most importantly, Judge Poyfair found there was substantial evidence in the record to support the County's designation of agricultural resource lands. CCCU did ***not*** appeal that decision. On remand to the WWGMHB, the Board issued a Remand Order remanded the matter to the county. Order on Remand[3]. *See WWGMHB* #95-2-0067

After Judge Poyfair's ruling, an appeal was taken to the Washington State Court of Appeals on the sole issue of whether or not the County was ***required*** to use the

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[2] In April 1993, the County finally issued an emergency moratorium, but it was specifically limited to cluster subdivisions and planned unit developments in the rural areas. It specifically did not address the continuing parcelization and development of other rural areas, including as yet undesignated and unprotected critical areas and natural resource lands.

[3] http://www.gmhb.wa.gov/LoadDocument.aspx?did=869

OFM number in determining a cap on rural population allocations. The appellate court ruled that, although GMA did not ***require*** the county to use OFM's projections as a cap on non-urban growth, it ***could*** use the OFM projection number if doing so would otherwise met the goals of the Act. Specifically, the court stated:

> Without so holding, we assume that the GMA *permits* a county to use OFM's population projections when planning for lands outside its urban growth areas.
>
> *Clark Cnty. Natural Res. Council v. Clark Cnty. Citizens United, Inc.*, 94 Wash. App. 670, 676, 972 P.2d 941, 944 (1999)(emphasis in the original)

While the matter was pending in front of Judge Poyfair (his hearing was held on October 16, 1996), other actions were being taken on the *Achen* case because the County was attempting to take actions in response to the original *Achen* opinion by the WWGMHB that were not appealed to Judge Poyfair. On October 1, 1996, the WWGMHB issued a Compliance Order and Order of Invalidity regarding multiple issues. The WWGMHB found the County non-compliant on a number of issues. One such issued involved growth in the rural area. The WWGMHB found that the work on the population allocation, and zoning and designations, in the rural areas regarding rural, resource lands and urban reserve areas to be invalid[4].

While the matter was pending in the Court of Appeals on the sole issue of the use of the OFM number, Clark County went back to work to comply with Judge Poyfair's order[5]. As a result of the remand, the County engaged in an extensive public participation process as to both the rural activity centers issue and the agri-forest designation issue (Poyfair had ruled that the county had been non-compliant as to the public participation element in the development of the agri-forest zone and the elimination of the rural centers from the Community Framework Plan). There were no challenges to those processes. The County appointed a Rural Centers Task Force (upon

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[4] Clark County has adopted a maximum population projection, maximum market factor; maximum vacant lands analysis and maximum urban growth areas. It must be consistent with that process by minimizing rural growth and doing anything and everything available to direct new growth into the urban growth areas. The rural growth protection of 25,071 does not provide for any new lots and only a 95% build-out of existing lots. Given the evidence contained in this record particularly the neglect of Clark County to take action from 1991 through 1994 for rural and resource lands, the current failure to take effective steps to conserve resource lands once they were designated and prevent the kind of sprawl in rural areas that the Act is designed to prohibit, the present rural zoning code DRs adopted at the time of the CP and as part of Ordinance #1996- 05-01 substantially interfere with the goals of the Act and are found to be invalid under the test provided in RCW 36.70A.300. Specifically CCC 18.302, 18.303 and those sections of Ordinance #1996-05-01 relating to resource lands, rural lands and urban reserve areas are declared to be invalid. Those sections substantially interfere with goals 1, 8, 9 and 10." The county had allowed for a 5-acre minimum in the rural area, as opposed to a 10-acre minimum. The County and CCCU appealed the Order of Invalidity in part and Judge Nichols reversed the WWGMHB as to the validity of the 5-acre minimum in the rural area. Judge Nichols held that the county's five-acre minimum for the rural area complied with the Act. Thus the current zoning of one dwelling unit per five acres is GMA compliant. The proposed reductions by Alternative #4 would be in contravention of that compliance.

[5] http://www.gmhb.wa.gov/LoadDocument.aspx?did=869).

which I served) to review the original Rural Activity Centers that had been deleted from the Community Framework Plan ***and*** do so in light of the new 1997 amendments to RCW 36.70A.070(5). It is important to note that the County undertook this process *while Judge Poyfair's opinion was being appealed to the Washington Court of Appeals.*

The RCTF made recommendations that substantially expanded the boundaries of the designated Rural Centers (Amboy, Brush Prairie, Chelatchie Prairie, Hockinson, MeadowGlade—Farghar Lake was added later). For example, in the 2004 plan, Amboy had 400 acres in land use, Brush Prairie had 327 acres, Chelatchie Prairie had 523, Dollars Corners had 329 acres, Hockinson had 264 acres and MeadowGlade had 1308 acres. The county ultimately adopted the Rural Centers majority report asserting that the designation of the rural centers represented the use of innovative techniques within the rural element to create a variety of densities without diminishing the rural character. Thus, these rural centers acted in the way projected by GMA, to have some higher densities concentrically moving to the edge of the less dense five acre rural element and, if abutting to resource lands, permitting a buffer to those lands.

The task force started in December 1997 and ended in March 1998. The Task Force issued a majority report, a minority report and an alternative report. The Planning Commission recommended adoption of the minority report but the Board adopted the majority report (which had a 75% consensus). As to the remand on the agri-forest zone, the public participation process was robust:

> The BOCC began its work regarding the 35,000 acres by appointing a 13-member task force composed of a variety of stakeholders with interest in this issue. The public participation process involved 17 different task force meetings at which public comment was solicited and received, four separate open house meetings resulting in written comment, two separate direct mailings to all property owners within the 35,000 acres, newsletters, press releases, ads and use of the County website. After the task force issued its final report to the planning commission (PC), the PC held a public hearing and issued a recommendation to the BOCC. The BOCC then held two public hearings on May 19, 1998, and May 28, 1998, and held four separate deliberative open meeting sessions. The public participation in this record was shown to be not only "early and continuous" but also extensive. The County should be justifiably proud of the manner in which it conducted this public participation process.
>
> *See WWGMHB* #95-2-0067 Compliance Order ***(May 1999)***[6]

The WWGMHB found that the county was compliant with its designation of all but 3,500 of the 35,000 acres it designated on Remand. NO party took exception to, or appealed, that 1999 Compliance Order on Poyfair's Remand. Therefore, the

[6] http://www.gmhb.wa.gov/LoadDocument.aspx?did=871

actions taken by the County are deemed valid. The Poyfair Remand formally ended in 2006 when the WWGMHB sent out notice to all parties requesting objections to the whether or not the County had complied with Judge Poyfair's remand. No party replied and the WWGMHB held that "Based upon the foregoing, COMPLIANCE on the remaining issues in this case is found and the case is CLOSED" (upper case in original).[7]

The RCTF spent hundreds of hours reviewing the various rural centers in the county, setting boundaries for those centers and focusing on concentrically increasing lot sizes from the "hub" of the rural centers out to their defined boundaries. The entire purpose was to allow a variety of densities as a part of the rural element. None of those decisions has ever been challenged. By 1999, the second comprehensive plan effort was launched. The state Office of Financial Management (OFM) projected a 20-year Clark County population increase to between 453,280 and 571,061 people. As adopted, the county's 2004 plan assumed an annual growth rate of 1.69 percent, resulting in a projected mid-range population forecast of 517,741 (according to the current US census, Clark County's 2014 population is 451,008 which is lower than the low end of the 1997 projection). Urban growth areas were expanded by 6,124 acres, or 9.57 square miles.

Fourteen appeals challenging the 2004 plan were filed with the hearings board. The appeals focused, in part, on a last-minute reduction in the assumed growth rate, moving it from 1.83 percent to 1.69 percent. There was no challenge to the rural element by the parties to the matter in front of the WWGMHB. The hearings board upheld the county's plan on the issues raised. The court noted that:

In 2005, a new Board found the growth rate assumed in the 2004 plan was unrealistically low based on historic trends, and agreed to reopen the plan. Relying on county assurances for an increased local process, the city of Battle Ground and development petitioners withdrew their appeals. On Nov. 23, 2005, the hearings board issued its amended Final Decision and Order in the case of *Building Association of Clark County v. Clark County*, WWGMHG No. 04-2-0038c. The decision upheld the 2004 plan.

In the final findings of fact, the WWGMHB found the following:

> "The County's development regulations to conserve agricultural lands and prevent interference from incompatible uses are unchallenged and therefore deemed compliant... A property owner who wishes to change the designation of commercially significant agricultural land that also has an Urban Reserve or Industrial Urban Reserve overlay, must still meet the criteria for designation and zoning map changes outlined in CCC 40.50.010. Any

[7] http://www.gmhb.wa.gov/LoadDocument.aspx?did=263

> owner of commercially significant agricultural land would be obliged to do the same.... The limitations in county code at CCC. 40.50.010 deter the conversion of adjacent lands designated agricultural lands within the current twenty-year planning horizon" Decision at 48-49.

In June 2005, the Board of County Commissioners launched a two-year update process that culminated in adoption of a 2007 Comprehensive Plan amendment. The plan assumed a 2.2 percent growth rate for the first six years and a 2.0 percent growth rate for the remainder of the 20-year plan. Those assumptions resulted in a population forecast of 584,310, and urban growth areas were expanded by 12,023 acres.

The 2007 plan was appealed. The appellants were, in order, Karpinski, Clark County Natural Resources Council, and Futurewise, They were arguing that the county had erroneously moved 4,351 acres from agricultural designation to a non-resource designation, and included those lands within urban growth areas. As a result of the appeals process, the rezoning of about 1,500 acres was ruled invalid (1/3), and those lands were removed from urban growth areas and again designated as agricultural lands. All 1,500 acres had been zoned for employment lands. After approximately 7 years of litigation, the final order on compliance was issued by the WWGMHB on September 4, 2014.

Rural and Resource Land Element of CP

The Washington Supreme Court has emphasized that any county's actions, although entitled to some deference, are constricted by the goals and requirements of the GMA. *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wash. 2d 543, 561, 14 P.3d 133, 142 (2000)("Local governments have broad discretion in developing [comprehensive plans] and [development regulations] tailored to local circumstances." *Diehl,* 94 Wash.App. at 651, 972 P.2d 543. Local discretion is bounded, however, by the goals and requirements of the GMA).

The statute provides for specific planning goals that are applicable to the allocation of population to the rural and resource land zones:

> (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
>
> (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

> (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.
>
> (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
>
> (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
>
> (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
>
> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
>
> RCW 36.70A.020

In 1997, the Washington State Legislature amended the Growth Management Act in Senate Bill 6094. One aspect of the amendments concerned the Rural Element. Under §7(5), the purpose of the Rural Element is to limit areas of "more intensive rural development" as follows:

1. Rural development may consist of infill, development or re-development of "existing commercial, industrial, residential or mixed use areas;

2. Limited small scale recreation and/or tourist uses "principally designed to serve the existing and projected rural population" which may be served by public services which "shall be limited to those necessary to serve the recreation or tourist" and shall not be allowed to expand "low density sprawl";

3. Limited **intensification** of development of non-residential uses and business, which, although not designed to serve the existing and projected rural populations, do provide job opportunities for rural residents;

4. A county shall adopt measures to minimize and contain the existing areas for intensive rural development as appropriate.

Therefore:

A. Lands should not extend beyond the logical outer boundary of the existing area or use and thereby allow a new pattern of low-density sprawl.

B. Existing areas should be clearly identifiable and contained within a logical boundary delineated predominately by the built environment.

C. The county shall establish the logical outer boundary of an area of more intensive rural development considering the following factors:

i. The need to preserve the character of existing natural neighborhoods and communities;

ii. Physical boundaries such as bodies of water, streets and highways and land forms and contours;

iii. Prevention of abnormally irregular boundaries; and

iv. The ability to provide public facilities and public services in a manner that *does not permit low density sprawl.*

The continuing purpose of the "Rural Element" factor in the Growth Management Act is to:

1. Preserve open space, the natural landscape and vegetation over the built environment;
2. Foster traditional rural lifestyles and rural-based economies;

3. Provide visual landscapes traditionally found in rural areas;

4. Only encourage land uses, which are compatible with the use of the land by wildlife and for fish and wild habitat;

5. Land uses which reduce the inappropriate conversion of undeveloped land into sprawling low-density development;

6. Land uses should not require the extension of urban governmental services; and

7. Land uses which are consistent with protection of natural surface water flows and ground water and surface water recharge and discharge areas.

Importantly, Rural character in the GMA has a visual element. Rural character is defined as patterns of land use where natural landscapes and vegetation predominate over the built environment and where traditional visual landscapes are provided. RCW 36.70A.030(15)(a) and (c). The rural element of a county plan must contain measures governing development that "assure visual compatibility" with surrounding rural areas. RCW 36.70A.070(5)(c)(ii). The visual element goes to densities as the increase in the number of residences, and the attendant development to those residences, affects the visual character of the rural area.

CURRENT PROCESS

Alternative # 4 constitutes site-specific, spot zoning created by circumventing the usual and customary public participation process system to satisfy the demands of a limited single interest non-diverse group of citizens with a specific and limited agenda. The Alternative was created with complete disregard of the County's planning process and without any input from the Department charged with updating the County's Comprehensive Plan. The site-specific zoning changes ignore, and violate, the statutorily mandated criteria for designating rural and resource lands. It fails to follow the mandates of the Washington Supreme Court and ignores years of development of the County's own Comprehensive Plan and development regulations. It does not represent an "update" but rather is a tidal change by removing any Growth Management Act policies, processes and criteria for determining zoning for the rural and resource lands of the County.

There are those within the single interest group that has dominated the development of the Alternative #4 that are making inaccurate statements regarding the *Poyfair* opinion and the history of Growth Management in this County. It is important to note the individuals who identified themselves with the rural area to Councilor Madore, and specifically identify themselves with CCCU, were prominent figures on all of the task forces appointed by the County. Not only were they active participants but also they succeeded over many objections to obtaining higher densities than had originally bee proposed along with development regulations that allowed for increased uses and the development and implementation of the Rural Centers. The few individuals in this single interest group may claim that they are still waiting for the County to comply with the original Remand but, as set forth in detail above, Judge Poyfair's order was fully complied with over 15 years ago, confirmed, and the case finally closed in 2006. The agri-forest designation was eliminated and the rural centers were returned to the plan were authorized.

Alternative #4 violates the edicts of the GMA and the County's own resolutions that have been enacted as part of this process in the following ways:

1. The development, and consideration of, this alternative violates the Public Participation element of the GMA and violates the County's adopted Public Participation resolution that the county passed in January 2014 (2014-01-10) and therefore should not be considered and should not be considered as an alternative in the SEPA process that had been ongoing until halted in January of this year.

2. The development of Alternative #4 violates the county's own resolution (2014-06-17) in that it considers changes to the Comprehensive Plan that violate the county's adoption of the OFM number, the 90/10 split on allocation of population between the Urban Growth Areas and the rural and resource land areas;

3. The development of Alternative #4 violates the County's policies on the rural area, fails to protect rural and resource lands and fails to protect the rural character as defined by state statute;

4. The inclusion of Alternative #4 should be excluded from the SEPA process as it violates the Board's Principle and Value to minimize the conversion of farmland in the rural area; and

5. Alternative #4 does not represent the actual "legal buildable" lots on the site specific zoning changes proposed in the Alternative.

Public Participation Element Violated

The first issue is whether the development of Alternative #4 meets the "public participation" component of the Growth Management Act. The answer is no, it does not meet either the letter or the spirit of that provision.

RCW 36.70A.130(2)(a) provides:

> Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year . . . .

RCW 36.70A.140 provides:

> Each county and city that is required or chooses to plan

> under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

In this case, the county adopted a public process model in Resolution #2014-01-10 and adopted the Clark County Public Participation Plan and Preliminary Scoping Schedule (Public Participation Plan or PPP). The PPP first recognized the purpose of GMA is to ensure "***early*** and continuous public participation" and requires that "local programs clearly identify schedules and procedures for public participation in the periodic update process" with a goal to "ensure broad participation by identifying key interest groups, soliciting input from the public and "***insuring that no single group or interest dominates the process***" (emphasis supplied).

The document also states that the county will coordinate with the cities on countywide planning issues and "will coordinate meetings to discuss issues and seek consensus with each municipality before taking final action".

In this case, Councilor Madore specifically excluded Planning Staff, including the planning director Oliver Orjiako and Gordy Euler, from participating in the development of the plan. Rather, according to e-mails discovered through a PRA request, the alternative was initially being developed between a few individuals who identify with one single issue special interest group and Peter Silliman (who has no background in planning of which I am aware and who did not work with any member of the planning department). Those e-mails show that Councilor Madore was being sent e-mails regarding this process to both his business (US digital) and county e-mail address but none of them appear to have been forwarded to staff, much less made known to staff.

This clandestine and exclusive method of developing a proposal that has widespread impact on every citizen of this county is exactly what the GMA is designed to prevent. There is no explanation for this action except that Councilor Madore deliberately excluded any individual from staff or the public that might have provided a different perspective than his own. This is purely and simply a result oriented Alternative completely void of complete, open and transparent public process. Therefore, what now appears to be Councilor Madore's preferred alternative for the SEPA process violates both the statutory provisions of the GMA and flies in the face of the County's own resolution passed in January 2014 (2014-01-10).

The lack of public process in the development of Alternative #4 pales in comparison with how the county has traditionally developed Comprehensive Plan Amendments (see history of public participation above). For example, in the 2004 review process, the county the County appointed a steering committee of elected officials from all Clark County cities and a technical advisory committee that included the planning staff of the local jurisdictions and the staff from special districts to develop the assumptions that Clark County would use to size its UGAs. These committees met regularly from 2000-2004 to examine data and make recommendations to the County Commissioners on various aspects of the comprehensive plan including assumptions on which to base the size of the urban growth areas (UGAs). The minutes of the Steering Committee show that a wide range of opinion and analysis based on studies done by diverse groups was gathered and evaluated.

GMA and the county's own resolution require *"early"* participation by the public. As can be seen by the vetting of the other three Alternatives, they went through a much greater public process including but not limited to the following:

a) Vetted at Open Houses in August;

b) A City/County coordination meeting in September;

c) A scoping hearing before PC;

d) A second Councilor WS;

e) A second City County coordination meeting;

f) Review of Alternatives by PC in October;

g) BOCC WS on three alternatives on 10/22;

h) OH on 10/29-10/30;

i) Planning commission meeting on alternatives; and

j) A third City county coordination meeting.

Even before the August Open houses, all members of the public were able to meet with staff and view the alternatives in their development stages. Plus the county had issued a number of policy issue papers.

NONE of that was followed in the behind the scenes development of Alternative #4. Moreover, this Alternative has no analysis by staff so that at the 2 open houses where it was touted, staff could not answer the questions of the public because staff had no had in the development of the alternative.

Therefore, Alternative #4 cannot be submitted for the SEPA process because it has not even gone through the required public process as set forth in GMA and the county's own resolutions.

Alternative #4 Violates The County's Own Resolution (2014-06-17) In That It Considers Changes To The Comprehensive Plan That Violate The County's Adoption Of The OFM Number, The 90/10 Split On Allocation Of Population Between The Urban Growth Areas And The Rural And Resource Land Areas

Resolutions promulgated by this Board adopt two important numbers regarding population totals and allocations (2014-01-9 and 2014-06-17). At bottom, the County resolutions adopted a population figure of 562,000 people with 90% of the increases to occur within the current UGAs and 10% to non-urban. Alternative #4 would violate the Board's own resolutions and Principles and values determinations by increasing the number of lots to over 17,0000 (almost 8000 more than under two of the three alternatives), which would have the impact of increasing the total population at a minimum of 21,280 in the county forecast, all of which to occur in the rural area. Even assuming that the county could not increase its OFM number, in order to keep the 90/10 split, the County would have to select a population increase for the entire county of 191,000 people which dwarfs the high OFM number. Such an increase in the rural area is not only unsustainable but it is in violation of two of the County's resolutions and disregards GMA standards for planning.

Moreover, the county is on a deadline, ***and a schedule imposed by this Board and the mandates of GMA***. Even assuming that the County was to change its numbers, it would have to do so by starting the entire process over including notices of hearings. Engaging in that reckless conduct would no doubt result in this County being out of compliance with the GMA as it would not be able to make the June 2016 deadline.

In addition, adding this document to the SEPA process now increases the cost of the SEPA process by 50%. According to staff, the original allocation for consultants on the SEPA process was $100,000. By adding this ONE ill conceived alternative to the process at this date is going to cost the County another approximately $50,000 ***all to satisfy the site specific zoning requests of a single, special interest group of individuals whose primary goal is to eliminate GMA planning.***

Such reckless disregard for the ordinances already passed, as well as the ongoing planning process to date, not to mention the additional costs, and justify the council rejecting this Alternative #4 as being part of this year's Comprehensive Plan update.

The Development Of Alternative #4 Violates The County's Policies[8] On The Rural Area, Fails To Protect Rural And Resource Lands And Fails To Protect The Rural Character As Defined By State Statute

[8] No single attribute describes the rural landscape. Instead combinations of characteristics that are found in rural settings impart the sense of what we commonly describe as rural. These factors are cumulative in nature and the more of these factors that are present influence feelings of whether a particular area is rural. In many cases these characteristics are subjective and frequently not all of them are found in each area. When describing rural conditions the public will often describe these areas in terms of a certain lifestyle. The factors listed below are those that usually describe "rural character."

- The presence of large lots;
- Limited public services present (water, sewer, police, fire, roads, etc.);
- Different expectations of levels of services provided;
- Small scale resource activity;
- Undeveloped nature of the landscape;
- Wildlife and natural conditions predominate; • closer relationship between nature and residents;
- Personal open space;
- A sense of separation from intense human activity;
- A sense of self-sufficiency; and • rural commercial supporting rural area population.

Planning for rural lands in Clark County is important for the following reasons:

- To maintain a rural character;
- To recognize their location at the urban fringe, where they are susceptible to sprawl development which can overwhelm the existing character, infrastructure and way of life;
- To serve as transition areas between urban and resource uses because urban and resource uses are dependent on each other, but are not always compatible;
- To provide services and goods that support resource activities;
- To supply nearby urban residents with locally harvested resource products which are fresh and often less costly;
- To allow the efficient provision of public facilities and services by clearly delineating between urban and rural uses so that growth is directed to more compact urban centers;
- To add an important dimension to the quality of life through the existence of rural lands, open space and natural or critical areas;
- To provide for the planned future expansion of urban uses, if necessary or needed, in the rural lands that border designated urban areas; and,
- To protect and enhance streams and riparian habitat necessary for sustaining healthy populations of salmonids.

I have set forth the broad requirements of GMA above. Recently, several Washington Supreme Court cases have re-emphasized that Counties cannot simply ignore the mandates of the act in setting zoning regulations in the rural areas. The Washington Supreme Court has been clear that the rural element must contain protective measures for rural areas to prevent site-specific rezones that circumvent the GMA. *Kittitas County v. EWGMHB*, 172 Wash.2d 144 (2011). The *Kittitas* case the County setting a 3-acre minimum zone complied with GMA. In rejecting the overall rural 3-acre minimum lot size, the Supreme Court held after lengthy analysis stated:

> We hold that the Board properly interpreted and applied the law in finding that the County has failed to comply with the GMA's requirements to develop a written record explaining its rural element, include provisions in the Plan that protect rural areas, provide for a variety of rural densities in the Plan, protect agricultural land, and protect water resources.
>
> *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wash. 2d 144, 181, 256 P.3d 1193, 1211 (2011)

Alternative #4 suffers from many of the same infirmities that caused the Washington Supreme Court to reject the County's plan, including its 3-acre minimum densities. Below are some of the descriptions that apply to what should be considered in addressing whether an action does, or does not, protect rural character and resource lands. Nothing in the record developed by Councilor Madore in his backroom work with GIS suggests any broad based public input as to any site-specific zone change much less how each and every one of his changes will enhance the rural character, much less protect resource lands. On the other end of the spectrum, Kitsap County's CP on the rural element a maximum density of one dwelling unit for five acres.[9]

The Rural and Natural Resource Element is an integral part of the county's 20-Year Plan. This element concentrates on how future land use needs within rural and resource lands will be met, and the methodology used to designate resource lands. This element emphasizes how rural and resource lands should be used in the future, supporting the ongoing and future resource activities (farming, forestry and mineral extraction) and encouraging such activities on a smaller scale in the rural non-resource lands. Together, this element in concert with the rest of the 20-Year Plan supports the long-range vision for Clark County.

[9] "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan.....That provide visual landscapes that are traditionally found in rural areas and communities"

i. Kitsap County has a maximum density in the rural area of one dwelling unit per five acres. This zoning allows for large amounts of undeveloped land and for the protection of critical areas and rural character. Additionally, Kitsap County, through the Parks, Recreation, and Open Space Plan and through goals and policies outlined in Chapter Ten "Parks" of the Comprehensive Plan, has a mission to

This abject failure to vet this Alternative with the public, and to insert it at this late stage of the proceedings where the County is already deep into the SEPA process that started last summer (see the County's Timeline for scope of work adopted as part of its resolution 2014-01-10), is unfair to the majority of the citizens in this County.

Thus, Alternative #4 fails to comply with the rural element requirement of GMA and the current policies and elements of the Comprehensive Plan. Although anecdotal local circumstances can be considered in determining that changes to the minimum 5 acre lot sizes (and here Alternative 4 allows for substantially higher densities of 1 and 2.5 acre parcels), the Alternative totally fails to provide any details as to how the densities were arrived at (other than by a false claim that they accurately reflect what is "on the ground" a claim that cannot be verified by staff or legal counsel—see discussion below) existing.

Alternative #4 Does Not Represent The Actual "Legal Buildable" Lots On The Site Specific Zoning Changes Proposed In The Alternative.

Given the history of lot segregations in this county, there are many parcels that have been segregated that are not legal, buildable lots. At this juncture, if one assumes that Councilor Madore's map is accurate, neither he, nor staff, nor legal counsel can state which, if any, of the lots he has designated for zone change are legal, buildable lots. As set forth above, there was a land rush of segregations of lots in the non-urban areas of the county during the development of the original County Plan. It is unknown if any of those lots became legal buildable lots. According to my understanding it could take anywhere from 30 minutes to 30 hours to determine whether any lot identified by Councilor Madore for up zoning would meet what he states are the reality of what is on the ground.

More importantly, it is unclear if this broad ranging Alternative that has tentacles that stretch into the majority, if not all, of the current comprehensive plan policies and development code regulations can legally be considered in the SEPA process as an SEIS.

Since there is no analysis, or consensus, as to whether Councilor Madore's theory that his Alternative actually reflects the actual reality on the ground, there is no justification for it.

Conclusion

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preserve parks and other visual landscapes for future generations. It was awarded the 2011 Governor's Smart Communities Award for "Year of the Rural".

The law says the following:

> The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

This planning process is not about a denial of private property rights. This planning process is about maintaining and updating legal valid county wide planning policies in compliance with state law that have been developed over years with the input of thousands of citizens, elected officials and county staff personnel and which keep our county in compliance with the worthy goals of a state wide law.

This is about public participation in a process that has been required by state law and acknowledged by this Board by several different resolutions. This is about honoring those lawful and statutorily mandated obligations. This is about respecting state law and the work that has been done by so many over so long a period of time.

Councilor Madore is simplifies the matter in a way that obfuscates the importance of countywide planning pursuant to the Act when he said the following on his public Facebook page:

> "Some say that no citizen should have private property rights, that the "greater good" is served by requiring citizens to live in high density transit oriented inner cities and that rural properties should be left to nature, that government should buy up private property rights to prohibit any further rural development"

Although some "may" say what he states, although I have not heard any citizen ever say "no citizen should have private property rights", in fact the opposite is true. The protection of private property rights is woven into every GMA policy and statutory provision. No one has the right to do whatever they wish with their property, not even a single select group of like-minded individuals who happen to have Councilor Madore's ear. Zoning regulations go back to the early 1900s and have been repeatedly and constantly upheld. The constitution has a takings clause. If the actions taken by this

county over the past twenty-five years had constituted a "takings", then those individuals would be compensated.

One of the primary purposes of the Act is to direct new growth into IUGAs or UGAs. The natural consequence of implementing that purpose is that growth will occur at higher densities within well-designated urban growth boundaries. Such planning may result in higher density transit orient inner cities and rural areas are to be more natural. Such a result is consistent with the purpose and mandates of the law. The Legislature has determined by adoption of the GMA that directing growth to urban areas provides for better use of resource lands and more efficient uses of taxpayer dollars. This primary purpose is a statutorily mandated and, even though some may not like it, as our legal representatives, you must implement it.

Sincerely,

David T. McDonald

David T. McDonald
Ridgefield, Washington
Attorney for Friends of Clark County

GIS Rural Vacant Buildable Lands Model Assumptions

for Clark County 2016 Comprehensive Plan Update

Executive Summary:

Clark County and its Board of County Councilors are tasked with selecting a preferred alternative whereby the County Comprehensive Plan Update is based on calculations and projections for future planning and land use purposes. While it is important to determine land capacity in order to accommodate future population growth, it is also important to keep within the guidelines of Washington's Growth Management Act (GMA). Washington State GMA requires a separate section in the Comprehensive Plan for the rural area and indicates that urban and rural areas have different development behaviors. Therefore, it can be reasonably assumed that applying urban area assumptions to rural areas is invalid.

Research for this assumptions critique includes close and careful examination of Clark County's Code and development regulations as well as compliance with state regulations found in the Washington Administrative Code (WAC) and the Revised Code of Washington (RCW). In addition to county and state code, comparable county codes, comprehensive plans, and buildable lands reports were examined for similar assumptions. Several considerations include; common place assumptions, applicability to urban and rural land use, and planning commission recommendations.

Several comparable counties throughout the State of Washington were researched to determine what reasonable planning assumptions are widely used. The chosen counties were King, Pierce, Thurston, Spokane, and Whatcom Counties. These counties were selected because of their population, geographic, and economic similarities to Clark County.

As part of the review of these assumptions, consideration was given to background data and documents provided by Clark County. These documents, to our knowledge, are not adopted regulations or policies, but assist in creating the assumptions used in the Rural Vacant Buildable Lands Model.

Assumption Findings - Overview
Valid: Assumptions 1 and 2
Partially Valid: Assumption 5 and 8
Invalid: Assumptions 3, 4, 6, and 7

Research of all documents referenced above concludes that two of the eight assumptions are valid, four assumptions are invalid, and two assumptions are partially valid. Assumptions one and two are overall valid. Assumptions three, four, six, and seven are overall invalid. Assumption three is invalid as there is not a way to determine on a case by case basis, which environmentally constrained lots will be able to develop. Thus it is not possible to assume which lots from this group are reasonably probable to develop, or not develop. Assumptions four, and seven are not valid as these assumptions were previously applied to urban parcels and simply carried over to apply to rural parcels. Rural and urban parcels develop at different rates and require additional analysis to determine appropriate percentage deductions. Assumption five was found to be partially invalid since all legal nonconforming lots are developable parcels. A new policy decision would need to be made and implementing regulations put in place to determine which percentage is appropriate to apply to nonconforming lots.

Assumption six is similar to assumption five, however the assumption is found to be invalid as it is not specified if the assumption refers to legal or illegal non-conforming lots. If the assumption refers to legal nonconforming lots than it is invalid as all legal nonconforming lots are eligible for development. If the assumption refers to illegal nonconforming lots, the assumption is invalid because illegal nonconforming lots are prohibited from development unless they are brought into compliance. Finally, assumption eight is determined to be valid on its face, however, a zero percent deduction for rural infrastructure is not reasonably probable and a percentage lower than 27.7% needs to be calculated based on available data and applied as a deduction to the rural land capacity. The necessary deduction should fall between 0% and 27.7%.

In addition to the eight assumptions consideration was also given to the average household size (persons per household) and urban/rural population split. The average household size and population split are two additional exploratory measures used to determine the validity of each assumption. The use of the average household size ratio determines the necessary housing units needed for the projected population growth over the next 20-year period. In conjunction with the average household size, the urban/rural population split determined the projected population increase outside of the urban growth areas (UGA).

Assumption 1:

Assumption: These rural VBLM assumptions should be used not to reflect what is possible, but to reasonably plan what is likely. Parcels that cannot reasonably be expected to develop should not be counted as likely to develop. Cluster development remainder parcels that are known to be prohibited from further development should not be counted as parcels likely to develop.

R.W. Thorpe & Associates, Inc. Finding - VALID: State WACs, RCWs and GMA deem remainder parcels as permanently protected undevelopable areas save for a few exceptions so these areas should not be counted as likely to develop.

Effect: The validation of this assumption removes these parcels of land from the rural available inventory for future development.

Response: Clark County allows for a reduction in remainder lot size through an application process but this can only be done in limited cases under certain guidelines. The GMA guidelines stipulate that following cluster development, there is no further division of parcels until the area is included within the boundary of an urban area. Further, the remainder lots are considered permanently protected. This is also the case according to state Code under the WACs and RCWs as well as under the King Co. Comprehensive Plan

Clark Co. Code 40.240.370 F: In the GMA, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an urban area. The local government shall ensure permanent protection for open areas created by cluster development. No parcel in a cluster development may be smaller than one (1) acre in a five (5) acre Residential or ten (10) acre Residential designation or two (2) acres in a Small-Scale Agriculture or Small Woodland designation.

Clark Co. Code 40.240.370 H: In the GMA, at least seventy-five percent (75%) of land subject to a cluster development shall be permanently protected as undeveloped land.

Clark Co. Code 40.210.020 C 2 a-d One can submit an application for a reduction in remainder lot size. "Remainder lots cannot be further subdivided below 70% of the total developable area of the original parent parcel constituting the cluster subdivision" or "reduced by a total of more than one acre." Therefore, in limited cases, remainder parcels can be further subdivided and developed provided it is not more than one acre.

Clark Co. Code 40.210.020 D Beyond an application for a reduction in remainder lot size though, the remainder parcel must be devoted to "open space, resource or other authorized use." According to **40.210.020 D3c2a** "the remainder parcel can only be used as open space or for agricultural or forestry uses.

WAC: Rural Element WAC 365-196-425: 5(b) Rural clusters. One common form of innovative zoning technique is the rural cluster. A rural cluster can create smaller individual lots than would normally

be allowed in exchange for open space that preserves a significant portion of the original parcel. WAC 365-196-425: 5(b) (I) when calculating the density of development for zoning purposes, counties should calculate density based on the number of dwelling units over the entire development parcel, rather than the size of the individual lots created. WAC 365-196-425: 5(b) (ii) the open space portion of the original parcel should be held by an easement, parcel or tract for open space or resource use. This should be held in perpetuity, without an expiration date. WAC 365-196-425: 6(a)(i) (6) Limited areas of more intense rural development. The act allows counties to plan for isolated pockets of more intense development in the rural area. These are referred to in the act as limited areas of more intense rural development or LAMIRDs. (a) LAMIRDs serve the following purposes: (i) to recognize existing areas of more intense rural development and to minimize and contain these areas to prevent low density sprawl

Whatcom: Whatcom County Code states that "20.32.315 Reserve area.
(1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC 20.97.344 that is protected in perpetuity so long as it is not within an urban growth area. The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC 20.32.253. (2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, storm-water ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for on-site agricultural uses permitted in WCC 20.32.054. Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC 20.32.253. (Ord. 2013-028 § 2 Exh. B, 2013)."

Pierce: Pierce Co. Code 19.30.040 B calls for reduction of undeveloped land into sprawling, low-density development giving support to the permanence of remainder lands on cluster developments not being developed in the future. According to **19A.40.020 D** discusses the clustering development in rural areas as a means to preserve and encourage buffers and open space.

Spokane: According to a 2009 report to the Spokane Planning Commission in 2002, Spokane County adopted rural residential clustering provisions stipulating, open space set aside as a result of rural clustering is intended to be used for "small scale agriculture, forestry, habitat or future urbanization." Additionally, it notes that "In some cases, the open space/remainder parcel may include a single residential use." Therefore, this counters most other county and state code which seems to deem all remainder parcels as permanently protected. This document also notes in the Topic 4 section that in for parcels that are "encumbered with wetlands, steep slopes or other physical conditions" that stifle development potential, code can be revised to allow the number of building sites to be increased through an allowance of smaller lots clustered together in the remaining buildable land.

Thurston: According to Thurston County Development Code "**(c)**lustering of residences is encouraged, in conformance with chapter 20.30A, Planned Rural Residential Development, except that such residential lots shall be a minimum of one acre in size and no larger than five acres." Rural development clustering requires that an owner of a rural lot set aside the remainder of the parcel as a resource lot. This lot would no longer be developable until such time as it is annexed by a city or brought to within the UGA.

King: King Co. Comprehensive R-334 C: "Clustered development is offset with a permanent resource land tract preserved for forestry or agriculture" and "under no circumstances shall the tract be reserved for future development"

King: King Co. Comprehensive Plan R-318: The permanence of preservation tracts is also consistent with land developed within Rural Forest Focus Areas which stipulates that they shall be no more than one dwelling unit per 20 acres and the preservation tract is deemed as "permanent."

Assumption 2:

Assumption: Parcels located in areas far from any infrastructure with long term commercial forestry operations likely to continue should not be counted as likely to develop. These assumptions are not used to authorize or to prohibit the development of individual parcels. Rather, these assumptions, should only be used for tallying parcel totals for general planning information

R.W. Thorpe & Associates, Inc. Finding - VALID: Though some development may happen in limited cases, lands that are deemed to have long term commercial forestry operations should not count as likely to develop.

Effect: The validation of this assumption removes these parcels of land from the rural available lands inventory for future development.

Response: It is difficult to accurately determine active forest lands vs. land designated as forest land but likely to be developed as it may be in transition or in the process of being re-designated so as to be developed. While it is possible that removing all forest lands from the "likely to develop" tally may leave a portion of property that would actually be land that is likely to develop, these situations appear to be limited and therefore not enough to deem overall as likely to develop. Further, if we are to just included active forest lands deemed for long term commercial forestry operations, these lands would have even more limited to non-existent development potential. Thus, in terms of forest lands that actually have "long term commercial forestry operations" these lands as stated in the assumption should be excluded from land that is likely to be developed.

Clark: Clark Co. Code 40.240.120 includes several uses that are allowed outright without review. These uses however don't include new development or structures. They include "repair, maintenance and operation of existing structures". However, other uses may be allowed with review. Therefore, current Clark County code, doesn't appear to allow significant development on forest lands but might in limited cases with certain permits. These permitted cases would not, however, be on forest lands with long term commercial operations.

Clark Co. Comprehensive Plan (Rural Lands) "Natural resource activities such as farming and forestry are allowed and encouraged to occur as small scale activities in conjunction with the residential uses in the area." This implies that residential and forestry uses are meant to work and grow together. According to **1.2.2,** Land within the UGA shall not contain areas designated for long-term agriculture or forestry resource use. Therefore, any forestry lands that fall within the UGA as opposed to rural areas would be counted as "likely to develop." As of 2007 there were 158,068 acres of forest lands.

WAC: There are situations where a land owner can re-designate their forest land as a developable parcel according to **WAC 458-30-700.** According to the **WAC 458-40-540,** the term "forest land" is synonymous with timberland and means all land in any contiguous ownership of twenty or more acres which is primarily devoted to commercial forestry.

Whatcom: Whatcom County Code 20.43.650 sets a development standard for commercial forestry (CF) districts which follows the guidelines of the general commercial (GC) district. This prohibits the development of permanent residential units for single family purposes. It does however, allow for semi-permanent residential units such as mobile homes.

Pierce: Pierce Co. Code 19A.40.030 B "Minimize conversion of agriculture and forestry land by providing cluster development and buffer strips between these designated lands and residential developments." Implication from this is that that they do allow development on forest lands but in a limited "cluster" style capacity. Also, this allowance for limited development would not include lands deemed for long term commercial forestry operations.

Spokane: Spokane County Code Chapter 14.616 Resource Lands: The county code states that residential development on these properties is discouraged. While it is not barred, it is discouraged and it is unlikely that these parcels will develop while commercial forestry is still in operation for the foreseeable future. Furthermore, a plot of land can be rezoned from forestry to another type of land but one qualification that a landowner would need to prove is as follows; "The applicant must present clear and convincing evidence that the property is not conducive to long-term commercial forestry and does not substantially meet the forest lands designation criteria as adopted in the Comprehensive Plan." "The Forest Lands zone consists of higher elevation forests devoted to commercial wood production. Non-resource-related uses are discouraged. Residential density is 1 unit per 20 acres in order to minimize conflicts with forestry operations. Activities generally include the growing and harvesting of timber, forest products and associated management activities, such as road and trail construction, slash burning and thinning in accordance with the Washington State Forest Practices."

King: King Co. Comprehensive Plan R-318: Land developed within Rural Forest Focus Areas shall be no more than one dwelling unit per 20 acres and the preservation tract is deemed as "permanent." **King Co. Comprehensive Plan R-202** Calls for the "integration of housing with traditional rural areas such as forestry, farming and keeping of livestock…" However, consistent with what has been found with other counties and state code any ability of further development on forest lands does not include active forest lands.

Assumption 3:

Assumption: Rural parcels that have less than 1 acre of environmentally unconstrained land sufficient area for septic systems and well clearances should not be counted as likely to develop.

R.W. Thorpe & Associates, Inc. Finding - INVALID: In some cases, county health regulations, state code, and recent technology make it permissible to develop environmentally constrained lots of less than 1 acre of suitable land.

Effect: The finding of this assumption as invalid includes environmentally constrained lots in the rural available lands inventory.

Response: The ability to request waivers when property size is not adequate to host on-site septic systems coupled with Large On-site Sewage Systems (LOSS) serving multiple residential units, make these lots possible to develop. Waivers are considered on a site by site basis by state and county health inspectors. There is not a way to provide a blanket approach that would be applicable to all parcels of land. Furthermore, health inspectors can increase the necessary well and septic system set-backs per **(WAC 246-272A-0210)** and **(Clark County Code 24.17.120)** as they see fit on a site by site basis. This could potentially make lots which have more than 1 acre of environmentally unconstrained land undevelopable and would need to be factored into the equation for this assumption.

Clark: The Clark County Code determines minimum lot sizes through two methods (**Clark County Code 24.17.230**). Method one allows for the county health inspector to require a lot size larger than the standard assumed 1 acre if it is determined that nitrogen is a concern either through planning activities as described in **Clark County Code 24.17.60** or another process. **Clark County Code 24.17.120** dictates that only professional engineers, designers, and public health officials may perform soil and site evaluations. Unless the health inspector determines the viability of each parcel of land prior to the finalized comprehensive plan, it is not possible to determine what lots can, and cannot be developed at this time. The Clark County 2015 Buildable Lands Report indicates that 43% of all residential development occurred on environmentally constrained land, which means that there are a considerable amount of actions that can make development on constrained land possible and also likely.

WAC (246-272A-0210): The horizontal separation between an OSS dispersal component and an individual water well, individual spring, or surface water that is not a public water source can be reduced to a minimum of seventy-five feet, by the local health officer, and be described as a conforming system upon signed approval by the health officer if the applicant demonstrates:
(a) Adequate protective site-specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquitards separating potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; or
(b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in **WAC 246-272A-0230** Table VI; or (c) Evidence of protective conditions involving both (a) and (b) of this subsection.

Whatcom: WCC 24.05.210 states that 5. Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met: a) The lot is registered as a legal lot of record created prior to the effective date of the ordinance codified in this chapter; b) The lot is outside an area identified by the local plan developed under **WCC 24.05.050** where minimum land area has been listed as a design parameter necessary for public health protection; and c) The proposed system meets all requirements of this chapter other than minimum land area. Again permission to build an onsite sewer system in Whatcom County would be determined on a site-by-site basis.

Thurston: Thurston County Code 24.50.060 explains that "The approval authority may authorize use of additional area to the minimum extent necessary in a critical area buffer to accommodate an onsite sewage disposal system or well, consistent with other requirements of this title, only if there is no alternative. "This is a site-by-site approval based on planning recommendations and health inspector's approval.

King: KCC 21A.24.316 stipulates that development is prohibited "(o) n lots smaller than one acre, an on-site septic system, unless: a. the system is approved by the Washington state Department of Health and has been listed by the Washington State Department of Health as meeting treatment standard N as provided in **WAC chapter 426-172A***; or b. the Seattle-King County department of public health determines that the systems required under subsection A.13.a. of this section will not function on the site." While this is similar to Assumption 3, the KCC states that this section pertains to the development in areas which contain critical aquafers. No such designation was made about critical aquafers in Assumption 3 and thus, the assumption is overly broad. When applying this KCC to Assumption 3, King County makes a similar assumption based on prohibited develop, but as was indicated in the above section, the State can approve development on a site-by-site basis.

Assumption 4:

Assumption: History shows that about 30% of dividable parcels with homes and 10% of vacant parcels do not develop further. So those deductions have been applied to urban planning totals for years. These same deductions should be applied to rural planning totals as well.

R.W. Thorpe & Associates, Inc. Finding - INVALID: The 30% and 10% "Never to Convert" assumption would not be applicable to rural parcels as rural lands develop at different rates when compared to those located within the UGA.

Effect: The finding of this assumption as invalid would include corresponding existing parcels in the rural available land inventory.

Response: It would be inconsistent to treat urban areas the same as rural. Assuming that rural areas will develop at the same rate as urban areas appears to be a false assumption. It is likely that rural areas would develop at a much slower rate than urban areas, but again that depends on several factors. The 30% "Never to Convert" assumption is suggested as a guideline in the Washington State Buildable Land Program Guidelines from June 2000. Other counties throughout Washington have used this calculation as well. However, it should be remembered that these calculations are pertaining to properties with an existing residence that are located within the UGA. Since rural properties would likely develop at a different rate, it is unlikely that this assumption would be applicable.

Clark: The Clark County VBLM assumes a 30% "Never to Convert" deduction for under-utilized lots in urban areas. This conclusion was reached through research of recent historical trends. Using building permit data, the county is able to track the percentage of lots that are developed or redeveloped. The historical data did not, however extend to rural building permits, therefore, it is not likely that one could assume the same "Never to Convert" percentage for urban and rural land since their development patterns behave differently. Similar to the 30% factor considered for under-utilized lots the Clark County VBLM assumes a 10% "Never to Convert" deduction for vacant lots in urban areas. This conclusion was reached through research of recent historical trends. Using building permit data, the county is able to track the percentage of lots that are developed or redeveloped. The historical data did not, however extend to rural building permits, therefore, it is not likely that one could assume the same "Never to Convert" percentage for urban and rural land since their development patterns behave differently.

WAC: The Washington State Buildable Lands program introduced a book of guidelines in June 2000 which utilizes several methodologies for calculating buildable lands within a jurisdiction

RCW 36.70a.070 (5) (b) states that "Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character." Applying the same assumptions used for

urban land use would not be in compliance with the requirements by state code as these assumptions are not consistent with rural character.

Whatcom: The Whatcom County Land Capacity Analysis explains a methodology for calculating vacant and under-utilized lands throughout the county's various UGAs. Again, there is not precedent for calculating a percentage of vacant and under-developed land conversion outside of the UGA. It can be assumed that vacant and underdeveloped parcels in the rural areas of the county will develop at different levels.

Spokane: The Spokane County Regional Land Quantity analysis contains a methodology to measure the quantity of land that is available for development with in the 20 projection used in the county comprehensive plan. Page 7 of the 2011 report indicates that a 30% reduction was made to account for lands that are not likely to develop over the 20-year time frame. The methodology was developed through utilization of the step-by-step Land Quantity Analysis methodology developed by the Washington State Department of Commerce.

Assumption 5:

Assumption: As long as county code allows, lots that are up to 10% smaller than the minimum lots size should be considered as conforming lots and counted as parcels likely to develop.

R.W. Thorpe & Associates, Inc. Finding – PARTIALLY INVALID: **All** nonconforming lots that are found to be legally created shall be considered likely to develop, not just those that meet a lot area percentage threshold. A county policy change would be required to recognize a nonconforming lot as conforming.

Effect: The finding of this assumption as partially invalid means that the County Council would need to adopt regulations which elects to consider non-conforming lots that are up to 10% smaller than the minimum lot size as conforming lots. A new policy would remove lots that are less than 90% of the minimum lot size requirement from the rural available land inventory.

Response: Conforming and non-conforming lots are able to be developed based on input from the public and planning department. The 10% smaller requirement would need to be instituted as code by the county council, updated, and included in the final Comprehensive Plan Update. There is currently no provision in the Clark County code that calls for treating nonconforming lots that are up to 10% smaller than the minimum lot size to be considered conforming.

Clark: Clark County code allows for non-conforming lots to be developed per **(CCC 40.530.010).** A legal lot of record that was consistent with the zoning laws at the time of its creation, these lots are eligible for building permits. Furthermore, an illegal nonconforming lot could be eligible for a building permit, should it be brought into regulation prior to permit application. While this assumption maybe accurate on its face, it would require an update of the Clark County code to allow lots up to 10% smaller than the minimum to be considered a conforming lot.

WAC: State law does not regulate nonconforming lots, therefore it is left to the local jurisdiction's discretion to determine if theses lots can be considered for development. Clark County does not currently have a policy in-place that recognizes nonconforming lots which are up to 10% smaller than minimum lot size. A new policy would need to be publicly reviewed and voted on by the County Council before it can be included in the Comprehensive Plan.

Whatcom: 20.83.060 Lots of record. Except as modified by **WCC 20.83.070**, legal parcels or lots of record that do not meet the minimum area or width requirements of the zone district may be developed with permitted, accessory and conditional uses provided: (1) That all other district standards are met; and (2) The lots or parcels were created pursuant to applicable state and local subdivision regulations in place at the time of lot segregation. (Ord. 2000-013 § 1, 2000; Ord. 87-12, 1987; Ord. 87-11, 1987; Ord. 82-78, 1982).

Spokane: The Spokane County Comp. Plan RL.5.5 explains "Isolated non-residential uses in rural areas, which are located outside of rural activity centers or limited development areas, may be

designated as conforming uses and allowed to expand or change use provided the uses were legally established on or before July 1, 1993, are consistent with rural character, and detrimental impacts to the rural area will not be increased or intensified." Lots which were established before July 1993 are considered legal non-confirming lots and they are eligible for development and expansion.

Thurston: TCC 24.50.060 allows provisions for legally created nonconforming lots to be developed. There are several stipulations that place restrictions on how much of the lot is eligible for development, but it is still considered a legal lot and is likely to develop.

King: The King County 2014 BLR uses a methodology which incorporates "However, the analysis did recognize that vacant parcels below the minimum lot size could be allowed one housing unit; on parcels more than twice the minimum, the lot size factor was applied.

Assumption 6:

Assumption: Due to some exceptions from the norm, 10% of nonconforming parcels with at least 1 acre of unconstrained area will likely develop.

R.W. Thorpe & Associates, Inc. Finding - INVALID: There is no public data that supports this assumption. However, if historical data is consistent, the state code allows for the county to make these decisions at their discretion. Although, this would likely not be applicable to rural parcels, as rural and urban parcels develop at different rates.

Effect: The finding of this assumption as invalid would include corresponding properties in the rural available lands inventory.

Response: In order for this assumption to be validated, it is necessary to provide some type of data in support. First, a nonconforming lot is either a lot that does not conform to current zoning standards. There are two different types of nonconforming lots. The first type is a legal nonconforming lot which was a legal lot of record that was created prior the zoning change. So while the lot was incompliance at the time is was created, it is no longer in compliance, but is still grandfathered in and considered legal. An illegal nonconforming lot is a lot that was created after the current zoning was implemented and is not in compliance with current zoning regulations. All legal nonconforming lots are able to be developed provided they adhere to all other development regulations and standards, therefore it is reasonable to assume this assumption is invalid if it is referring to legal- nonconforming. If the assumption is in reference to illegal nonconforming lots, regardless of size, the assumption is likely invalid as these lots are prohibited from development.

Clark: Clark County Code 40.530.010 describes two categories for nonconforming lost. Legal nonconforming and illegal nonconforming. Since the assumption simply states "nonconforming" the assumption is invalid. "C. Nonconforming Status. 1. Any lot, use, or structure which, in whole or part, is not in conformance with current zoning requirements shall be considered as follows:
a. Legal Nonconforming. Lots, uses and structures legally created or established under prior zoning and/or platting regulations. These lots, uses and structures may be maintained or altered subject to provisions of this chapter. b. Illegal Nonconforming. Lots, uses and structures which were not in conformance with applicable zoning and/or platting regulations at the time of creation or establishment. Illegal nonconforming lots, uses and structures shall be discontinued, terminated or brought into compliance with current standards. 2. It shall be the burden of a property owner or proponent to demonstrate the legal nonconformity of a lot, use, and structure."

WAC: This is planning assumption is not based on historical data from Clark County, and there is not an existing state code that requires or stipulates this assumption. . However, state code dictates that planning assumptions for comprehensive plan updates are left to the discretion of the counties. RCW 36.70a.070 (5) (b) states that "Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative

techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character." Applying the same assumptions used for urban land use would not be in compliance with the requirements by state code as these assumptions are not consistent with rural character.

Pierce: 20.65.005 Nonconforming lots. Except as otherwise required by law, a lot legally established prior to the effective date of the ordinance codified in this title, which does not conform to the minimum lot area, minimum lot width and/or minimum lot depth requirements of this title, nevertheless may be developed subject to all other development standards, use restrictions and other applicable requirements established by this title. For the purposes of this chapter, a lot shall include at a minimum, all property having the same Pierce County assessor's tax identification number. (Ord. 2529 § 1, 1997; Ord. 2181 § 1, 1988).

Thurston: TCC 24.50.060 allows provisions for legally created nonconforming lots to be developed. There are several stipulations that place restrictions on how much of the lot is eligible for development, but it is still considered a legal lot and is likely to develop.

Spokane: The Spokane County Comp. Plan RL.5.5 explains "Isolated non-residential uses in rural areas, which are located outside of rural activity centers or limited development areas, may be designated as conforming uses and allowed to expand or change use provided the uses were legally established on or before July 1, 1993, are consistent with rural character, and detrimental impacts to the rural area will not be increased or intensified." Lots which were established before July 1993 are considered legal non-confirming lots and they are eligible for development and expansion. There is no provision for applying an assumption of 10% development from rural nonconforming lots.

Note: There is not a provision in county documents that states that a percentage of nonconforming lots should be expected to develop. If the lot is legal nonconforming it should be counted in the land inventory. If the lot is illegal nonconforming, it should not be considered conforming.

Assumption 7:

Assumption: A 7.5% rural Market Factor should be used to provide a reasonable margin for the law of supply and demand to comply with the GMA requirement to provide a sufficient supply and achieve the affordable housing goal. Implementation of this rural Market Factor is accomplished by deducting this percentage of parcels from the total available rural parcels. Note that this rural Market Factor is half of the urban Market Factor of 15% in order to also satisfy the GMA goal of reducing low density sprawl.

R.W. Thorpe & Associates, Inc. Findings - INVALID The Market Factor in the Washington State code allows counties to use a "reasonable supply and demand factor when sizing Urban Growth areas. This would not necessarily be applicable to rural growth projections.

Effect: The findings of this assumption as invalid means that there will not be a 7.5% deduction from available rural lands inventory.

Response: Market Factor as described in Washington State Code (RCW 36.70a.110) provides counties the flexibility to use local supply and demand calculations when sizing urban growth areas. Since the area in question is the calculation of available rural lots, which lay outside the UGA, this assumption likely would not be valid. Furthermore, the 7.5% assumption as it applies to rural lands is not consistent with previous urban assumptions as they are applied to rural development.

Clark: The Clark County comprehensive plan calls for County-wide Planning Policies state the following; **(3.0.1)** "The county shall recognize existing development and provide lands, which allow rural development in areas, which are developed or committed to development of a rural character. Replicating actions reserved for urban land use would not reflect the rural character as outlined in the County Comprehensive plan."

WAC: Under RCW 36.70A.110 of the Washington State Code, each county is required to make accommodations for affordable housing across all segments and sectors. RCW 36.70a.110 (2) states that each urban growth area shall make planning determinations which include a reasonable land market supply factor. In determining the market factor, RCW 36.70a.110 allows for jurisdictions to include local circumstances and cities and counties have discretion to do so in their comprehensive plans. Furthermore, RCW 36.70a.070 (5) (b) states that "Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character." Applying the same assumptions used for urban land use would not be in compliance with the requirements by state code as these assumptions are likely not consistent with rural character.

Whatcom: The Whatcom County comprehensive plan uses a final market factor deduction after all other land use deductions are implemented. Page 7. Sec. 3.6 indicates that a 15% market factor should be used for vacant, residential, commercial and industrial zones. While the Whatcom uses the same deduction as Clark County, it should be considered that the market deduction is set for parcels within the UGA, therefore it is likely that the rural parcels would need to calculate a different percentage based on rural land use trends.

Pierce: As stipulated in **policy 2.1.1**, "urban growth areas must be of sufficient size to accommodate only the urban growth projected to occur over the succeeding 20-year planning period." This infers that the urban growth area should not be over-sized. However, in determining the appropriate size of the urban growth area, various components must be taken into account, such as critical areas, open space, and a market safety factor, i.e., maintaining a supply of developable land sufficient to allow market forces to operate.

Spokane: The Spokane County Regional Land Quantity Analysis uses market factor in its methodology stating "Market Factor (MF): A land market supply factor used by each jurisdiction as a cushion in determining how much land will be needed over the next twenty years. The concept tries to balance the competing issues of contributing neither to sprawl nor to increased housing prices. It recognizes that not all land designed for UGA uses can be expected to come on the market over the twenty-year planning period. A market factor of up to 25% was recently determined by the Central Puget Sound GMA Hearings Board (Kitsap County case) to be presumed reasonable. Any larger factor would be Planning Technical Committee May 24, 2011 10 closely scrutinized by the Central Board. While this case did not address market factors specific to cities it suggests that jurisdictions using market factors in excess of 25% will need to document why the higher rate is appropriate. The commercial land formula uses 25% or a 1.25 factor. Jurisdictions planning with a higher market factor will need to demonstrate why a higher rate is more appropriate."

Thurston: The Thurston County comprehensive plan accounts for the market factor as stipulated in **RCW 36.70a110.** Thurston County uses the market factor only as it applies to UGAs. Additionally, the Thurston County Buildable Lands Report from 2014 states that "The urban growth area may not exceed the areas necessary to accommodate the growth management planning projections, plus a reasonable land market supply factor, or market factor. In determining this market factor, counties and cities may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth."

King: According to the King County Buildable Lands report from 2002, King County includes a market factor for different regions of the county. As stated in **Chapter 1 page 17** Deduction of a percentage of the remaining land assumed not to be available for development during the planning period. In even the most urbanized settings, a portion of the net land supply will always be withheld from development or redevelopment due to several factors. These factors include personal use, investment or speculative holding, land banking for future business expansion, and other considerations that serve to hold land off the market. This adjustment to the land supply is referred to as a "market factor." Consistent with LCTF recommendations, market factors ranged generally from 5% to 20%, with re-developable land discounted more heavily than vacant land. Variations within and outside of the recommended range reflect local land ownership and market conditions, as

well as knowledge about proposed projects. Furthermore, **page 26** explains "There is no certainty that the remaining land will, in fact, be developed, but it has the potential to be developed if demand is sufficient. Market factors vary by jurisdictions within a range, based on countywide guidelines. Using the guidelines, each jurisdiction determined appropriate market factors for their city, often on a zone by zone basis. This meant that market factor determinations were based on local knowledge of an area's marketability." The King County Draft Comprehensive plan explains "The Rural Area cannot be a significant source of affordable housing for King County residents, but it will contain diverse housing opportunities through a mix of large lots, clustering, existing smaller lots and higher densities in Cities in the Rural Area and Rural Towns, as services permit." (pg. 3-17). While some affordable housing in the rural areas is required by the GMA, it is not at a significant level in areas with higher urban densities, additionally, the market factor was not used in these calculations.

Assumption 8:

Assumption: The adopted VBLM used for urban areas includes a 27.7% infrastructure deduction for urban parcels for roads and storm water. Because rural parcels are much larger than urban parcels, no infrastructure the rural infrastructure deduction is assumed to be small. No deduction shall be used for rural parcels for any infrastructure such as roads, storm water, parks, schools, fire stations, conservation areas, lakes, streams, protected buffers, Etc.

R.W. Thorpe & Associates, Inc. Finding – PARTIALLY INVALID: The population density of the rural areas lends to a reduction of necessary services in the rural areas. Thus, the 27.7% infrastructure reduction would be significantly larger than what is actually necessary. Therefore, this assumption on its face is likely true, however, a zero deduction would likely be false as some land area is necessary for infrastructure to support future development.

Effect: The finding of this assumption as partially valid means that more research into rural land infrastructure reductions is needed. The county will need to determine an infrastructure reduction percentage between 0% and 27.7% that is representative of rural developmental patterns. The calculated percentage will then be deducted from the rural available lands inventory.

Response: In assumptions 5, 6, and 7 it is suggested that urban assumptions should apply to rural areas, however assumption 8 indicates that the same assumption for an urban area should not apply to a rural area. This is inconsistent and there is no explanation for this inconsistency.

Clark: The Clark County VBLM uses the 27.7% infrastructure reduction to apply to vacant and under-utilized lots within the UGA. While this it is likely a correct assumption that rural development would require a significantly smaller percentage for infrastructure purposes, a zero deduction is also not reasonable.

WAC: Again, as previously state under assumption 7, **RCW 36.70a.070(5)(b)** states that "(r)ural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character." Although the urban and rural areas should be treated differently, as stated in previous assumptions, this assumption can be considered true as it would be a conservative estimate since the necessary infrastructure in the rural areas would be limited and not necessarily need the 27.7% deduction.

Whatcom: The Whatcom County Land Capacity Analysis uses an infrastructure reduction to determine future land capacity. The percentage of deduction used is based on recent development

trends in similar areas. Looking at the data from recent rural development trends the county surmises what percent reduction is appropriate. The 2014 Whatcom County Comprehensive plan states "Development in rural areas should not receive urban levels of service except where necessary to protect public health, safety, and the environment. Services should be coordinated to ensure that rural areas receive appropriate services including law enforcement protection, fire protection, and emergency services." (Ch. 2 pg. 72). This indicates that at least some percentage of land should account for infrastructure buildout.

Note: It appears that no other counties have a specific framework for calculating the necessary infrastructure deductions for rural areas, however, according to Whatcom County there is a need to ensure that there is at least some deduction for rural infrastructure needs.

Urban/Rural Population Split:

Historical basis of 20-year trend indicates an 85/15 or 86/14 split. The proposal is a 90/10 split. The actual urban/rural split has consistently been 86/14 for decades and is a viable policy option. The 1994 approved plan used 80/20. A more moderate policy of 87.5/12.5 forecasts 16,656 new rural persons for this plan update.

Findings: The population growth split has historically averaged 89% urban and 11% rural for the past 20 years. The 2004 and 2007 comprehensive plans have used the 90/10 growth projection which is accurate.

Response: While the overall population trend indicates an 86/14 urban rural split, the population growth has actually increased at the 89/11 level, which means that the rural population is steadily decreasing in terms of its annual growth percentage. Therefore, the county would actually need to accommodate fewer future residents in rural areas. Thus, it appears that all four alternatives project significantly more lots than what is needed to accommodate growth.

Clark: Clark County has historically used the 90/10 urban rural population growth split. These numbers were used in the planning assumptions for the past two comprehensive plans (2004 and 2007). Using Table 3 from Exhibit A: Planning Assumptions Rev. v1.09, the actual total population split between urban and rural can be calculated to determine growth percentages and determine the accuracy of the 90/10 growth assumption. (Total pop. yr. 2 – total pop. yr. 1) = total increase. (Rural pop. yr. 2 – rural pop. yr. 1 = total rural pop. increase). (Rural increase/total increase = rural growth %.

Table 3: The Actual Urban / Rural split for the past 20 years

Year	County-wide Population	Rural Population	Percent Rural Population	Urban / Rural Split
1995	279,522	43,254	15.5	84/16
1996	293,182	44,882	15.3	85/15
1997	305,287	46,409	15.2	85/15
1998	319,233	48,104	15.1	85/15
1999	330,800	49,429	14.9	85/15
2000	346,435	51,182	14.8	85/15
2001	354,870	52,002	14.7	85/15
2002	369,360	53,548	14.5	85/15
2003	375,394	54,146	14.4	86/14
2004	384,713	54,869	14.3	86/14
2005	395,780	56,009	14.2	86/14

2006	406,124	57,551	14.2	86/14
2007	414,743	58,608	14.1	86/14
2008	419,483	59,042	14.1	86/14
2009	424,406	59,623	14.0	86/14
2010	427,327	59,858	14.0	86/14
2011	432,109	60,544	14.0	86/14
2012	435,048	60,845	14.0	86/14
2013	443,277	61,489	13.9	86/14
2014	446,785	61,948	13.9	86/14

Source: Clark County Assessor GIS records

WAC: Growth trends vary throughout the State of Washington and therefore there is no specific state code governing how counties project their growth across a 20 year planning cycle. However, the state code does allow local city and county jurisdictions the autonomy to make planning decisions based on local circumstances.

Whatcom: According to US Census data, the Whatcom County urban/rural split is 76/24. Whatcom County used the actually population split to calculate the county-wide planning assumptions for the comprehensive plan update. This works for Whatcom County as the growth rate between urban and rural areas is roughly the same at 78/22.

Spokane: According to the 2009 Spokane County Urban Growth area update, the urban/rural population split projected for 2031 is a 75/25 split. This number is consistent with the county's overall population through the past decade. The county uses the projected growth numbers instead of the actual population breakdown to determine planning needs. Spokane County's actions are in line with the use of the 90/10 split to evaluate Clark County.

Thurston: Thurston County BLR indicates an increasingly urban population trend. Currently 31% of Thurston County's population resides in rural areas. The population growth, however, is increasingly urban. New growth in the county has developed at the 86/14 split recently. Projected population growth in Thurston County is 13% rural and 87% urban. These trends are similar to Clark County and in line with this assumption.

King: According to the King County BLR, the urban and rural population split is 92/8.

Clark County average household size:

The Clark County comprehensive plan update was developed with the assumption that 2.66 individuals per household would remain consistent and thus require between 4,835 and 4,870 new rural housing units to accommodate population growth over the next two decades ((129,556/2.66)*.10).

Findings: The projected population increase of 129,556 (Table S-1; Page S-2) over the next 20 years indicates that there is a need for 4,870 new residential units in the rural areas of Clark County. Based on these projections, all four alternatives, detailed on Page 1-3 of the Draft Supplemental EIS, which were considered exceed the number of units needed to accommodate the growth.

Response: According to recent census data, after nearly 50 years of average household size decline, the average person per household number in the US is on the rise. There is need to take these calculations into consideration when determining the projected average household size over the next 20 years.

Clark: According to the US Census bureau the total estimated population for Clark County Washington in 2014 was 438,272 and the total number of housing units were 169,520. The ratio (438,272/169,520) is equal to 2.60 person's per-household.

WAC: Washington State has an average household size of 2.54 which is below the national average of 2.61.

Whatcom: US Census data indicates that the average household size for Whatcom County is 2.50 which is below the state average or 2.54 and below the national average of 2.61.

Pierce: US Census data indicates that Pierce County has an average household size of 2.6 which is equal to the national average of 2.61. The Pierce County BLR accounts for a smaller average household size when calculating 20 year population projects and need for additional residential units. The number is adjusted down from the 2000 census date to reflect a trend of decreasing household sizes. Pierce County's buildable lands model assumes an average household size of 2.8 pphh. The projected number is used to build a cushion and to stay consistent with the national trend of an increase in average pphh. The Pierce County buildable lands report does not use a total county wide pphh calculation for its projections, but rather the ratio is broken down into local city jurisdictions.

Spokane: US Census data indicates that Spokane County has an average household size of 2.43 which is below the national average of 2.61.

Thurston: US Census data indicates that Thurston County has an average household size of 2.5 which is below the national average of 2.61.

King: US Census data indicates that King County has an average household size of 2.4 which is below the national average of 2.61.

Exhibit 3

Use of Invalid instead of Indeterminate

The use of the term "invalid" over "indeterminate" was based on three precise factors.

The primary factor for using invalid over indeterminate is that R.W. Thorpe & Associates, Inc. was tasked with examining the validity of each assumption on their face. The contract reached between Clark County and R.W. Thorpe & Associates, Inc. states "Step 1: Review the Planning Assumptions introduced on November 4, 2015 (Alternative 4.b) and provide professional opinion on the validity of these assumptions and whether they should be applied to the Vacant Buildable Lands Model for the rural lands.". Assumptions which were found to not be based in-fact would therefore need to be excluded from the VBLM.

Secondly, the definition of "validity" is to "hold water, to be valid, sound, and defensible; to show no inconsistency when put to the test."[i] Assumptions therefore, would either need to be valid and based in truth or not valid at all. Under the contract guidelines, R.W. Thorpe & Associates, Inc. was responsible to determine which assumptions were based in truth. Determinations of invalidity were made through analysis of state and county code and a best practice review of similar counties.

Finally, GMA (RCW 36.70a.070) guidelines stipulate that local circumstances may be considered at the county's discretion, however, a written record of explanation is required to justify how the adopted rural assumptions harmonize with GMA planning goals. Since no written record is available, and no credible evidence is available to justify the Alternative 4.b planning assumptions, the burden of proof falls to the county to prove their rationale. Since no rationale was provided, indeterminate is not a possible option for deciding which assumptions should be included in the VBLM.

RCW 36.70a.070

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. **Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.**

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

[i] "Validity." *The Free Dictionary*. Farlex. Web. 20 Jan. 2016.