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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. Copsy, *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.<sup>1</sup>

"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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<sup>1</sup> "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).<sup>2</sup>

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<sup>3</sup>. 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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<sup>2</sup> 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.

<sup>3</sup> <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<sup>4</sup>.

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<sup>5</sup>. 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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<sup>4</sup> 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.

<sup>5</sup> <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)*<sup>6</sup>

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

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<sup>6</sup> <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).<sup>7</sup>

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

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<sup>7</sup> <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 been 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<sup>8</sup>  
On The Rural Area, Fails To Protect Rural And Resource Lands And  
Fails To Protect The Rural Character As Defined By State Statute**

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<sup>8</sup> 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.<sup>9</sup>

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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.

<sup>9</sup> "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**

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:

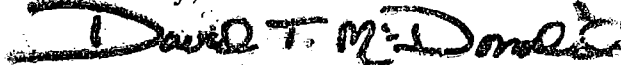
“Some say that no citizen should have private property rights, that the “greater good” is served by requiring citizens to live in high density transit oriented inner cities and that rural properties should be left to nature, that government should buy up private property rights to prohibit any further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

A handwritten signature in black ink that reads "David T. McDonald". The signature is written in a cursive style with a large, sweeping initial "D".

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