

**From:** [Rebecca Messinger](#)  
**To:** [Oliver Orjiako](#); [Jose Alvarez](#); [Sonja Wisler](#)  
**Subject:** FW: Issue Paper 1, to the Comprehensive Plan Update, is fatally flawed and needs to be corrected  
**Date:** Monday, April 1, 2024 11:36:15 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Please see the below comments from CCCU.  
Thank you!



**Rebecca Messinger**  
Clerk to the Council  
COUNTY MANAGER'S OFFICE

564-397-4305



---

**From:** Kathleen Otto <Kathleen.Otto@clark.wa.gov>  
**Sent:** Monday, April 1, 2024 11:35 AM  
**To:** Rebecca Messinger <Rebecca.Messinger@clark.wa.gov>  
**Subject:** FW: Issue Paper 1, to the Comprehensive Plan Update, is fatally flawed and needs to be corrected



**Kathleen Otto**  
County Manager

564.397.2458



---

**From:** Clark County Citizens United, Inc. <[cccuinc@yahoo.com](mailto:cccuinc@yahoo.com)>  
**Sent:** Friday, March 29, 2024 12:00 AM  
**To:** Gary Medvigy <[Gary.Medvigy@clark.wa.gov](mailto:Gary.Medvigy@clark.wa.gov)>; Karen Bowerman <[Karen.Bowerman@clark.wa.gov](mailto:Karen.Bowerman@clark.wa.gov)>; Michelle Belkot <[Michelle.Belkot@clark.wa.gov](mailto:Michelle.Belkot@clark.wa.gov)>; Glen Yung

<[Glen.Yung@clark.wa.gov](mailto:Glen.Yung@clark.wa.gov)>; Sue Marshall <[Sue.Marshall@clark.wa.gov](mailto:Sue.Marshall@clark.wa.gov)>; Kathleen Otto <[Kathleen.Otto@clark.wa.gov](mailto:Kathleen.Otto@clark.wa.gov)>

**Subject:** Issue Paper 1, to the Comprehensive Plan Update, is fatally flawed and needs to be corrected

**EXTERNAL:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Clark County Council  
March 28, 2024  
P.O.Box 5000  
Vancouver, Washington 98666

FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN

**Re: Issue Paper 1, to the Comprehensive Plan Update, is fatally flawed and needs to be corrected**

Dear Councilors,

As Clark County Citizens United, Inc. reviews the initial document to the 2025 Comprehensive Plan Update, called Issue Paper 1, it is evident there are many important facts, that have been left out. In addition, the story telling is deceptive and leads one to believe the county really did nothing wrong, that they didn't fix. But that is wrong.

The following is a "copy and paste" of the actual text of a portion of Issue Paper 1. As CCCU reads through the document, it is clear there are numerous incomplete or incorrect statements, many of which were deceptive. CCCU was front and center in this history of the Plan, since 1994, and know exactly what happened.

When staff discusses the 1993 Rural and Natural Resource Lands Committees in this report, they talk about the criteria of the two groups. Two of future CCCU's Board members were on those groups and they retained documents over what happened. But staff didn't say that at the last hour, the committees were told to disregard their work, and that other work would be used. That work was attorney, John Karpinski's, "Green Alternative". He submitted the information to Elise Scolnik, a county planner who asked him to submit his recommendations. He thanked her for using his recommendations as the one and only alternative, for the 1994 Comprehensive Plan.

One stark omission in the Issue Paper 1 is that of the **Court of Appeals, Division II Published Opinion**, whereby that court upheld the Superior Court, Poyfair Decision, in its entirety. Neither of those courts received a confirmation from Clark County that those court Orders were followed and completed. In the county rendition of quotations from the Poyfair decision, staff left out a critical part of the decision which

stated the county failed to recognize the existing development that was in place prior to the GMA. Doing so was illegal.

Regardless of what county staff, attorneys and the Hearing Board say, those court actions were never complied with. The Hearing Board later stated that because of a later court action and the adoption of the 2004 Plan, they "assumed" that the numerous remaining issues were resolved. We all know, they were not.

Staff stressed Poyfair's statement regarding agriculture land. But they didn't get it quite right. He said the evidence before him claimed the county had correctly designated those land, and even though he could not rule in favor of CCCU, he believed that the agriculture lands needed to be revisited. In other words it was the county's word against CCCU.

But since then, CCCU was able to confirm just how the county did designate agriculture resource land. The GIS 1993 Metadata page described the method used to determine those lands was by using aerial photography, assessors designations and staff interpretation. There was nothing said about soil, long term production, predominant use, or urban type development. Had CCCU gotten that information at the time of the Poyfair hearing, the decision would have been different. We all know that Agriculture and Forest land designations were done illegally, as was the 36,000 acre Agri-forest designation.

The following information comes from Issue Paper 1. CCCU Notes are interspersed in red type.

It is crystal clear that Clark County is overdue to comply with two court decisions and orders, and CCCU asks this Council to do just that, in the upcoming 2025 Comprehensive Plan update.

Sincerely,

Carol Levanen, Exec. Secretary

Clark County Citizens United, Inc.  
P.O.Box 2188  
Battle Ground, Washington 98604

(The following are excerpts of Issue Paper 1, beginning on page 6, with CCCU corrections and notes in red text)

**1997** CCCU and others appealed the GMHB (1995 FDO) in Case No. 95-2-0067 (Achen, et. al.) decision to Clark County Superior Court. Judge Edwin Poyfair issued Findings of Fact, Conclusions of Law and Order (Poyfair Decision) in case No. 96-2-00080-2 on April 4, 1997, which held that:

1. Agricultural resource land designation had been lawful. "There is substantial evidence in the record to support the county's designation of agricultural resource

lands.” [Poyfair Decision, page 5].

**CCCU NOTES: Had CCCU found the GIS1993 Metadata page at this time, the judge would have likely ruled in favor of CCCU..**

2. The agri-forest designation was invalid; 7 | Page “The agri-forest designations violate the GMA.... Furthermore, there is no substantial evidence in the record to support the designation of agri-forest lands under the GMA.” [Poyfair Decision, page 5]. “...failure to solicit meaningful public input for the agri-forest resource lands violates the public participation...” [Poyfair Decision, page 5].

3. The EIS issued by the county violated SEPA because of procedural flaws; “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.” [Poyfair Decision, page 5]. “The Board’s decision to uphold the adequacy of the EIS absent additional environmental analysis regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous.” [Poyfair Decision, pages 5-6].

**CCCU NOTES: The county never corrected the EIS, and claimed what they had done was enough.**

4. On the issue of parcel size, the court ruled that the removal of rural activity centers was not addressed in the EIS; and “...***the county needed to provide a variety of rural densities to be compliant with the GMA, and that could be achieved by designating rural centers as envisioned in the Community Framework Plan.***” [Poyfair Decision, page 5].

**CCCU NOTES: On page 5 of the Poyfair Decision, it does not read as staff has stated. In fact it says nothing like that. It does say, ”**

***“(there) is no substantial evidence in the record to support the designation of Agri-forest lands.....***

***5. Agricultural Resource Lands. There is substantial evidence in the record to support the County’s designation of agricultural resource lands.***

***6. Comprehensive Plan EIS. The Comprehensive Plan EIS issued by the county violates the State Environmental Policy Act...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 addition public comments. The County failed to comply with SEPA’s requirement for additional environmental review when a proposal changes substantially from the one address in the initial EIS. The Board’s decision to uphold the adequacy of the (page 6) EIS absent additional environmental analysis regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous.”***

5. Rural development regulations were inconsistent with GMA because of failure to provide for a variety of rural densities. “The eradication of the centers and their replacement with a uniform lot density violates the planning goal requiring a variety of residential densities.” [Poyfair Decision, page 6].

“The only requirement for rural areas in the GMA is that growth in rural areas not be urban in character. While the GMA contains no restrictions on rural growth, it does require a variety of residential densities.” [Poyfair Decision, page 6].

“There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for.” [Poyfair Decision, page 6].

The Board decision, however, compelled the county to downzone substantial portions of the rural area in order to meet the Board’s apparent requirements.” [Poyfair Decision, page 6]. “The Board’s interpretation was erroneous, and the county’s decision to follow the Board’s lead was unfortunate.” [Poyfair Decision, Pages 6-7]

**CCCU NOTES: Staff left out critical language in the Order stated on page 6. In part it should read:**

***“7. Rural Land Densities. The County's rural and resource development regulations are inconsistent with the GMA...***

***It is evident the rural land use density regulations were driven in part by earlier Growth Management Hearing Board decisions requiring urban population plus rural populations to equal Office of financial Management population forecasts....This formulaic view of the GMA requirement is fatally flawed. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for...***

***The only requirement for rural areas in the GMA is that growth in rural areas not be urban in character. While the GMA contains no restrictions on rural growth, it does require a variety of residential densities. Bu trying to comply with the board's errant decision, the County violated a GMA planning goal through no fault of the County's, the Board had an end in sight and disregarded the GMA's mandate in applying an unauthorized formula to the review of the Clark County Comprehensive Plan's land use densities. The Board's interpretation was erroneous,..”***

**Another critical statement left out of this narative reads on page 7:**

***“(The) County's decision to follow the Board's lead was unfortunate. The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the terms of the GMA.”***

The county did not appeal the Superior Court decision and instead began a process to comply with the court’s order. The first step was to appoint two task forces; one to deal with the agri-forest designation and the other with establishing rural centers.

**1998** The Agri-forest Focus Group comprised of 13 public members, (including some CCCU members), made recommendations on re-designating approximately 35,000 acres of Agri-forest designated resource lands.

The Agri-forest Focus Group majority recommended that approximately 99% of the land should be designated Rural-5, Rural10 and Rural-20. Rural-10 and Rural-20 were newly created in order to provide a variety of rural densities, as required by Judge Poyfair, and to buffer adjacent resource lands, primarily north of the rural resource line, as required by the GMHB.

Certain members of the Agri-forest Focus Group issued minority reports. One of the two minority reports questioned the designation of 3,500 acres to rural as opposed to resource use and the other minority report recommended only 5- and 10-acre Rural zoning, similar to the 1979 Plan.

**CCCU NOTES: Of the 13 members only three CCCU members were on the Group, the rest were environmental advocates. It was clear a biased decision would be reached. CCCU members filed a minority report that the Planning Commission upheld. In retribution, the environmental group filed their own report. Regardless of the PC recommendations, the commissioners sided with the environmental group. When one Planning Commission member asked the county attorney when the PC would take up the Poyfair Decision, the attorney told them, they didn't have time. The PC was ordered not to discuss the court action or consider any changes.**

**On July 28, 1998**, the BOCC adopted the Agri-forest Focus Group majority recommendation. [ORD. 1998-07-19]. 1999

**CCCU NOTES: Staff failed to include the most important court action, the Court of Appeals Published Opinion, in its rendition of the history of the Comprehensive Plan. The cap on rural growth was recognized at that time, as a 80/20 population split "formula". Since that time that ratio was changed to 90/10 and now staff is claiming 95/5.**

**CCNRC appealed to the Washington Supreme Court, but they would not hear the case and deferred to the COA.**

**Filed: March 12, 1999**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II  
No. 22164-I-II  
PUBLISHED OPINION**

**" Page 4 CCCU appealed to the Clark County Superior Court, which reversed the Board's order. The court GMA did not require the County to use OFM's population projections as a fixed cap on non-urban growth, and that the Board had exceeded its authority by creating and imposing such a cap on the County.**

**Page 5 CCNRC now appeals to this court. Its primary contention is that the**

trial court “erroneously concluded OFM population projections are not a restraint/cap on rural growth.” This contention involves a question of law that we review without deference to the trial court, but arguably with deference to the Board. According to CCCU, the question is whether “the GMA requires (that) the OFM population projections be used as the defining element in establishing land use densities in rural areas.” In simpler terms, the question is whether the GMA requires a county to use OFM’s population projections as a cap on non-urban growth.”

The GMA requires a county to consider OFM population projections when sizing urban growth areas. Thus, RCW 36.70A110 provides in part:

In the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas

Are adequately sized and infrastructure in those growth areas is provided for. The Board’s requirement to, in essence,

Require a vacant buildable lands analysis for the rural area was erroneous. This Board decision, however, compelled

The County to downzone substantial portions of the rural areas in order to meet the Board’s apparent requirements.

Page 6

1. Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not Urban in nature. . .

2. Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. . .

3. Nothing in the GMA provides that a county must use OFM’s population projections for any other purpose. More particularly, nothing in the GMA provides that a county must use OFM’s population projections as a cap or ceiling when planning for non-urban growth. Construed according to its plain meaning, then, the GMA does not require counties to use OFM’s population projections as a cap or ceiling on non-urban growth.

Page 8

Based on the foregoing, we conclude that the GMA does not require counties to use OFM’s projections as a cap on non-urban growth. The Board exceeded its authority, and the trial court did not err by reversing the Board’s ruling.

**Affirmed. Morgan. J.**  
**We concur: Bridgewater, C.J.**  
**Reynolds, J.P.T**

**On May 11, 1999**, the GMHB issued a Compliance Order (1999 Compliance Order) in Case No. 95-2-0067 (Achen et. al.) upholding the creation of six rural center designations and the change to Rural designations for approximately 35,000 acres of agri-forest lands; except for the 3,500 acres mentioned in the minority report, the designation of which was remanded back to the county. “We find that Clark County is not in compliance with the GMA as relates to the 3,500 acres. In order to comply with the Act, the county must review the 3,500 acres in light of the Supreme Court’s holding in Redmond and the appropriate criteria stated therein to determine if RL [resource land] designation is appropriate.” [1999 Compliance Order, page 14]. (The State Supreme Court had ruled in Redmond v. CPSGMHB that current management of land for commercial agricultural production is not required for resource designation.)

No party appealed the 1999 Compliance Order. The county initiated a process to review the 3,500 acres, as required.

**2003** County staff completed a technical review on the remaining 3,500 acres remanded by the.....

Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604  
E-Mail [cccuinc@yahoo.com](mailto:cccuinc@yahoo.com)