CITY OF LA CENTER
CITY COUNCIL MEETING AGENDA
APRIL 12, 2017

WORK SESSION: 6:00 PM

1. SESSION CALLED TO ORDER
2. DISCUSSION: 31ST AVENUE AND PARADISE PARK ROAD VACATION
3. CLOSE WORK SESSION

REGULAR MEETING: 7:00 PM

1. MEETING CALLED TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. CONSENT AGENDA
   A. APPROVAL OF CLAIMS/ADJUSTMENTS – 04.12.17
   B. MEETING MINUTES – 03.22.17

5. COUNCIL STAFF REPORTS/ANNOUNCEMENTS
   A. MAYOR’S REPORT
   B. ATTORNEY’S REPORT
   C. COUNCIL COMMENTS
      • Councilmember Birdwell-Currey
      • Councilmember Luiz
      • Councilmember Williams
      • Councilmember Valenzuela
      • Councilmember Cerveny
   D. STAFF REPORTS

6. CITIZENS’ PUBLIC COMMENT

7. PRESENTATIONS
   A. COMMITTEE ON AGING 2016 ANNUAL REPORT UPDATE—HERB MAXEY
   B. UPDATE ON OPENING OF ILANI AND TRAFFIC MANAGEMENTS—HERMANUS STEYN, KITTLELSON ENGINEERS

8. ORDINANCES, RESOLUTIONS AND PUBLIC HEARINGS

9. ITEMS REMOVED FROM THE CONSENT AGENDA

10. UNFINISHED BUSINESS

11. NEW BUSINESS

12. EXECUTIVE SESSION
   A. RCW 42.30.110(1)(i) – CONSULTATION WITH LEGAL COUNSEL REGARDING POTENTIAL LITIGATION.

13. ADJOURNMENT
## Accounts Payable:

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### Total Checks Payable: 216,002.14

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### Auditing Officer Certification:

I, the undersigned, do hereby certify under penalty of perjury, that the materials have been furnished, the services rendered or the labor performed as described herein, and that the claim is a just, due and unpaid obligation against the City of La Center.

**Suzanne Levis**

Finance Director, City of La Center
## Computer Check Register

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**Printed:** 03/16/2017 - 3:41PM  
**Batch:** 00015.03.2017  
**Bank Account:** Colum

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**Printed:** 4/4/2017 9:17 AM

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Report Total (9 checks): 33,509.63
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REGULAR MEETING:

1. Mayor Thornton called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

Council:
Councilmember Birdwell-Currey    Absent/Excused
Councilmember Luiz               Present
Councilmember Williams           Present
Councilmember Valenzuela         Present
Councilmember Cerveny            Present
Mayor Thornton                   Present

Staff:
Marc Denney, Chief of Police
Daniel Kearns, City Attorney
Suzanne Levis, Finance Director/Clerk
Jeff Sarvis, Public Works Director

Guests:
Lissa Boynton                      Jim & Candi Irish
Doug & Barbara Burtwell            Jack LaBounty
Skip Carlson                       Larry Lewton
Sandra Day                         Andy “Sheriff” Taylor
Al Filla                           Rick & Suzi Terrell
Theresa Filla

4. CONSENT AGENDA

A. Approval of Checks Payables – 03.22.17
B. Regular Meeting Minutes – 03.08.17
C. Interlocal Agreement Between Clark County and La Center for Decant and/or Street Sweepings Processing and Disposal Services.

MOTION MADE BY COUNCILMEMBER CERVENY, SECONDED BY COUNCILMEMBER WILLIAMS AND CARRIED UNANIMOUSLY TO APPROVE THE MARCH 22, 2017 CONSENT AGENDA.
5. **COUNCIL STAFF REPORTS/ANNOUNCEMENTS.**

A. **MAYOR’S REPORT.**

- The next Mayor’s Town Hall is Wednesday, April 5, 6:30 p.m., Public Works office.

- Monument Signs Update: Mayor Thornton, Councilmember Cerveny, and Public Works Director Sarvis met with the Cowlitz Tribe regarding the monument signs at the I-5 junction. Tribal Chairman Iyall presented new alternatives; mock signs will be erected. Discussions will continue, after the City has had an opportunity to peruse the signs.

- April 12 City Council meeting: Marc Botorac of Kittleson & Associates will present an update on the interchange project.

- TDS buildings: Construction is currently underway at the two TDS buildings in order to separate them in preparation for the sale of the office building. Public Works Director Sarvis provided a summary of property line adjustments.

- Mayor Thornton recognized Ridgefield Councilmember Sandra Day in attendance.

- The New Phoenix Casino is shutting its doors effective March 26. The City’s financial consultant, Paul Lewis, will provide an update on the impact of the closure on the City at a future City Council meeting (tentatively April 12).

B. **ATTORNEY’S REPORT –** Daniel Kearns, City Attorney, gave an update on the Growth Management Board matter.

C. **COUNCIL COMMENTS.**

- **COUNCILMEMBER BIRDWELL-CURREY** – Absent/Excused.

- **COUNCILMEMBER LUIZ** – None.

- **COUNCILMEMBER WILLIAMS** – None.

- **COUNCILMEMBER VALENZUELA** asked about the City’s Growth Management Board and attorney fees reimbursements; talked about establishing a group to represent La Center at Ridgefield’s Big Paddle event and establishing a working group to organize a similar event in La Center.
• **COUNCILMEMBER CERVENY** thanked and welcomed all guests at the meeting; the North County Food Bank is holding their Spring Tea on April 22 with the theme being “Kentucky Derby.”

D. **STAFF REPORTS.**

• **DIRECTOR JEFF SARVIS, PUBLIC WORKS DEPARTMENT.** Director Sarvis provided an update on the redirection of traffic at the I-5 junction construction site for April 1-5 and April 9-13 (maps displayed); and also provided updates on other improvement projects.

• **DIRECTOR SUZANNE LEVIS, FINANCE DEPARTMENT.** The Finance Department’s Staff Report covered Facebook, Federal Reimbursement Policy, Sewer Revenue Bond, iCompass software, and RFP for financial software. The 1st Quarter Financial Report for 2017 will be presented at the April 26 City Council meeting.

6. **CITIZEN’S PUBLIC COMMENT.**

**DOUG BURTWELL, 34608 NW 11 TH AVE.** suggested installing a sidewalk from La Center to the I-5 Junction along La Center Road for walking / biking.

**JIM IRISH, 1653 E HERITAGE LOOP.** April 15 is La Center Lions’ Easter Breakfast and Egg Hunt at the Community Center; recommended City Council support Senate Bill 5806 and House Bill 2095 (interstate bridge across Columbia River).

**CANDI IRISH, 1653 E HERITAGE LOOP.** There are new yellow ribbons on the bridge.

7. **PRESENTATIONS – None.**

8. **ORDINANCES, RESOLUTIONS AND PUBLIC HEARINGS.**

A. **RESOLUTION NO. 17-416 A RESOLUTION AUTHORIZING THE ADOPTION OF THE CLARK REGIONAL NATURAL HAZARD MITIGATION PLAN.** Public Works Director Jeff Sarvis presented Resolution 17-416 accepting all of Volume 1 and the Introduction, Appendices and the City’s District’s portion of Volume 2 of the Clark Regional Natural Hazard Mitigation Plan as discussed during this evening’s Work Session and presented in part by Anthony Vendetti, CRESA, Emergency Management Coordinator. The full report is available online at FEMA.gov website.

**MOTION MADE BY COUNCILMEMBER VALENZUELA, SECONDED BY COUNCILMEMBER CERVENY AND CARRIED UNANIMOUSLY TO**
APPROVE RESOLUTION NO. 17-416 A RESOLUTION AUTHORIZING THE ADOPTION OF THE CLARK REGIONAL NATURAL HAZARD MITIGATION PLAN.

B. **Resolution No. 17-417 Repealing Resolution 10-332 and Adopting A Revised Website, Blogging And Social Media Policy.** Finance Director Suzanne Levis and City Attorney Kearns presented Resolution 17-417 updating the City’s policies which includes guidelines for the City’s upcoming Facebook page.

MOTION MADE BY COUNCILMEMBER WILLIAMS, SECONDED BY COUNCILMEMBER LUIZ AND CARRIED UNANIMOUSLY TO APPROVE RESOLUTION NO. 17-417 REPEALING RESOLUTION 10-332 AND ADOPTING A REVISED WEBSITE, BLOGGING AND SOCIAL MEDIA POLICY.

C. **Resolution No. 17-418 - A Resolution in the Matter of Delegating to the Finance Director Authority to Legally Bind the City the Sole Purpose of Requesting Federal Reimbursement.** Finance Director Suzanne Levis and City Attorney Kearns presented. This Resolution documents the process already in place for the City to request Federal funds reimbursement.

MOTION MADE BY COUNCILMEMBER LUIZ, SECONDED BY COUNCILMEMBER CERVENY AND CARRIED UNANIMOUSLY TO APPROVE RESOLUTION NO. 17-418 IN THE MATTER OF DELEGATING TO THE FINANCE DIRECTOR AUTHORITY TO LEGALLY BIND THE CITY THE SOLE PURPOSE OF REQUESTING FEDERAL REIMBURSEMENT.

D. **Ordinance No. 2017-05 Amending The Adopted Budget For The City Of La Center, Fiscal Year 2017 (Sewer Revenue Bond).** Finance Director Suzanne Levis presented. Ordinance No. 2017-05 proposes that the transactions for the sewer line to the junction and the issuance of the Special Revenue Bond be transferred to its own newly-created funds.

MOTION MADE BY COUNCILMEMBER WILLIAMS, SECONDED BY COUNCILMEMBER CERVENY AND CARRIED UNANIMOUSLY TO APPROVE ORDINANCE NO. 2017-05 AMENDING THE ADOPTED BUDGET FOR THE CITY OF LA CENTER, FISCAL YEAR 2017 (SEWER REVENUE BOND).
Mayor Thornton called for a Roll Call vote:

Councilmember Birdwell-Currey  Absent
Councilmember Luiz              Yes
Councilmember Williams          Yes
Councilmember Valenzuela        Yes
Councilmember Cerveny           Yes

9. **ITEMS REMOVED FROM THE CONSENT AGENDA** – None.

10. **UNFINISHED BUSINESS** – None.

11. **NEW BUSINESS** – None.

12. **ADJOURNMENT.**

    Meeting was adjourned at 8:04 p.m.

__________________________________________  ________________________________
Mayor Greg Thornton                        Suzanne Levis, Finance Director/Clerk
BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

CLARK COUNTY CITIZENS UNITED, INC.,
FRIENDS OF CLARK COUNTY AND
FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent,

and

3B NORTHWEST LLC, CITY OF LA CENTER,
RDGB ROYAL FARMS LLC, RDGK REST
VIEW ESTATES LLC, RDGM RAWHIDE
ESTATES LLC, RDGF RIVER VIEW
ESTATES LLC, RDGS REAL VIEW LLC,
CITY OF BATTLE GROUND, CITY OF
RIDGEFIELD, LAGLER REAL PROPERTY
LLC AND ACKERLAND LLC,

Intervenors.

Case No. 16-2-0005c

FINAL DECISION AND ORDER

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**PUBLIC PARTICIPATION AND PUBLIC INVOLVEMENT PROCESS**

**PRIVATE PROPERTY RIGHTS**

**COMPREHENSIVE PLAN ADOPTION**

**URBAN GROWTH**

**RESOURCE AND RURAL LANDS**

**INDUSTRIAL LAND BANKS**

**Challenges to Specific Elements of the 2016 Plan Update**

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SYNOPSIS
Petitioners Clark County Citizens United (CCCU) and Friends of Clark County and
Futurewise (FOCC) challenged Clark County’s 2016 Comprehensive Plan Update as
adopted in Amended Ordinance 2016-06-12. Friends also challenged Ordinance 2016-04-
03 and Ordinance 2016-05-03 establishing Rural Industrial Land Banks. The Board
concluded Clark County (County) did not err on its public participation process, private
property rights procedures, population projections, remainder parcels claims, transportation
or capital facilities or environmental claims. However, the Board found the County did not
meet RCW 36.70A requirements on urban growth expansions, buildable lands, urban
reserve overlays, agricultural land de-designations, up-zoning agriculture and forest
resource lands, variety of rural densities, and industrial land banks. The Board remands
those issues to the County and imposes invalidity on the County’s action to expand urban
growth area boundaries of Battle Ground, La Center, and Ridgefield.
I. BACKGROUND

As is required by the Growth Management Act (GMA) in RCW 36.70A.130 (5)(b), Clark County updated its Comprehensive Land Use Plan (CP) by adopting Amended Ordinance No. 2016-06-12 on June 28, 2016. Petitioners FOCC appealed claiming the County violated the GMA by expanding urban growth boundaries, annexing land within urban growth boundaries, de-designating agricultural lands, increasing and impacting rural densities and natural resource lands, failing to meet requirements for capital plans and transportation elements, failing to meet critical area and shoreline requirements and violating requirements for industrial land banks.

Petitioner CCCU also appealed the County’s CP Update claiming the County violated GMA’s requirements regarding public participation, protecting private property rights, Office of Financial Management’s population projections, designation of land within urban growth areas (UGAs), designation of and densities in natural resource lands, buildable lands models, and reviews required under the State Environmental Policy Act (SEPA). Several parties intervened on behalf of the County: the cities of La Center, Battle Ground, and Ridgefield; 3B Northwest, LLC; RDGB Royal Farms, LLC; RDGK Rest View Estates, LLC; RDGM Rawhide Estates, LLC; RDGF River View Estates, LLC; and RDGS Real View, LLC (the last five, collectively “Brown Properties”).

Prior to filing the two petitions concerning the CP Update, FOCC also appealed Clark County Ordinance 2016-04-03 enacting policies, regulations and designating two rural industrial land bank sites on agricultural lands of long-term commercial significance (ALLTCS) and Ordinance 2016-05-03 expanding the industrial land bank sites on ALLTCS. This petition regarding two Clark County ordinances was assigned GMHB No. 16-2-0002.

Although the County’s action in Case No. 16-2-0002 was not part of the County’s CP Update, FOCC reiterated the same issues regarding industrial land banks in its Petition for Review.

2 Friends of Clark County & Futurewise (FOCC), Petition for Review (July 22, 2016).
4 FOCC v. Clark County (Petition for Review, June 20, 2016).
Review of Clark County Ordinance No. 2016-06-12. The Board consolidated Case No. 16-2-0002 with the two subsequent appeals regarding the CP Update. Thus, Case No. 16-2-0005c consolidates three appeals from GMHB Nos. 16-2-0002, 16-2-0004, and 16-2-0005.

In case No. 16-2-0005c, FOCC and CCCU request the Board find the County non-compliant with RCW 36.70A and RCW 43.21C and impose invalidity on the County’s CP update.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption. This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the City is not in compliance with the GMA.

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations. The scope of the Board’s review is limited to determining whether a County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review. The GMA directs that the Board, after full consideration of the petition, shall determine whether there is compliance with the requirements of the GMA. The Board shall find compliance unless it determines that the County’s action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In order to find the County’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” Dep’t of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993).
III. BOARD JURISDICTION

The Board finds the Petitions for Review were timely filed, pursuant to RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board finds it has jurisdiction over the remaining subject matter of the petition pursuant to RCW 36.70A.280(1).

IV. PRELIMINARY MATTERS

The Hearing on the Merits was held February 8, 2017, in Vancouver, Washington. The following parties were present: Heather Burgess/Leslie Clark- CCCU, Christine Cook-Clark County, Sarah Mack/Bradford Doll- Intervenor City of La Center, Daniel Kearns (co-counsel)-Intervenor City of La Center, James Howsley- Intervenor RDGM, et al., Stephen Horenstein- Intervenor 3B Northwest, LLC, and Lagler Real Property, LLC, and Ackerland LLC, Tim Trohimovich- Futurewise, Janean Parker- Intervenor City of Ridgefield, and Susan Drummond- Intervenor City of Battle Ground.

Presiding Officer Carter reviewed preliminary matters already addressed by the Board as shown in Appendix A. Next, the Board heard oral arguments from the parties regarding:

1. Clark County’s submission of the Harman Declaration as part of their December 22, 2016 prehearing brief 8;
2. Friends of Clark County’s & Futurewise’s Motion to Strike the Declaration of Charles Harman (January 4, 2017);
3. Clark County’s Motion to Supplement the Record with Maps and Response to Motion to Strike Declaration of Charles Harman.9

During oral arguments, the County explained the Harman declaration describes the County’s past and on-going practices regarding managing and monitoring water availability in the County. The County requested the Declaration be added to the record. FOCC

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8 IR 3098 at 041369.
9 Respondent Clark County Motion to Supplement the Record and Response to Motion to Strike (January 6, 2017).
 objected to adding the declaration stating it was inconsistent with WAC 242-03-565(2) and argued the declaration was created and submitted to the Board after the County adopted Amended Ordinance 2016-06-12. Following oral argument, the Board issued an oral ruling denying the County’s motion to supplement the record with the Harman Declaration because the Declaration was not necessary or of substantial assistance to the Board in making its decision for this case.

For other preliminary matters, the Board granted requests that Intervenor RDGB Royal Farms illustrative exhibits and FOCC’s Powerpoint slides be admitted to the record. Finally, the Board accepted CCCU’s motion to withdraw Issue 9.

V. LEGAL ISSUES AND ANALYSIS

PUBLIC PARTICIPATION AND PUBLIC INVOLVEMENT PROCESS

Issue 1: PUBLIC PARTICIPATION PLAN (PPP) NOT TIMELY ADOPTED OR USED

Did the County’s adoption of the 2016 Plan Update violate RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.106(3)(a), RCW 36.70A.130(2), and RCW 36.70A.140 and WAC 365-196-600 when the County began work on the 2016 Plan Update before the County adopted its public participation program in January 2014 and, subsequently, failed to provide open and timely access to the 2016 Plan Update process and underlying analysis? [CCCU No. A]

Issue 2: PUBLIC PARTICIPATION EXCLUDED RURAL LANDOWNERS

Does the 2016 Plan Update violate public participation requirements of the GMA (including RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.106(3)(a), RCW 36.70A.130(2), and RCW 36.70A.140 and WAC 365-196-600) in routinely and systematically excluding rural and resource landowners? [CCCU No. D]

Under Issues 1 and 2, Petitioners CCCU failed to brief RCW 36.70A.035, RCW 36.70A.106(3)(a), and RCW 36.70A.130(2)— those unbriefed legal arguments are deemed abandoned.11

10 WAC 242-03-565 Motion to supplement the record. (2) Evidence arising subsequent to adoption of the challenged legislation is rarely allowed except when supported by a motion to supplement showing the necessity of such evidence to the board’s decision concerning invalidity.

11 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
Applicable Law

**RCW 36.70A.140 Comprehensive plans—Ensure public participation.**

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.

**WAC 365-196-600 Public participation**

(4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved.

(5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order to participate in the public process. If an individual or organization chooses to participate, it is an interested party for purposes of public participation.

(8) Continuous public involvement.

(a) Consideration of and response to public comments. All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

(b) Ending the opportunity for comment prior to deliberation. After the end of public comment, the local government legislative body may hold additional meetings to deliberate on the information obtained in the public hearing.

(c) Additional meetings may be necessary if the public hearings provided the county or city with new evidence or information they wish to consider. If during deliberation, the county or city legislative body identifies new information for consideration after the record of adoption has been closed, then it must provide further opportunity for public comment so this information can be included in the record.
Positions of the Parties

CCCU makes several claims that the County violated statutory requirements in the GMA regarding public participation.¹² CCCU argues the County failed to apply its Public Participation Program (PPP) to “foundational reports” used in the CP Update because these reports were adopted several years prior to the CP Update.¹³ Without public comments on those reports, CCCU argues the County violates “GMA’s mandate for continuous public participation” as required in RCW 36.70A.020 and RCW 36.70A.140.¹⁴ Next, CCCU complains the County completed Issue Paper #9 on agricultural and forest lands “a mere five days prior to formal adoption of the 2016 Plan Update—effectively denying the public any opportunity to comment … [and other] Issue papers are listed in the PPP as an essential element of the update process requiring public participation.”¹⁵ CCCU argues without public review of Issue Paper #9 and other issue papers referenced during the CP Update, the County violated RCW 36.70A.140. CCCU next claims WAC 365-196-600(8)(a) requires a “written summary and specific responses to all public comments” and that the County did not follow this requirement.¹⁶ Specifically, CCCU argues the County did not respond to comments by rural and resource landowners, some of whom have difficulty accessing the Internet and County websites, and thus the County violated WAC 365-196-600(4-5).¹⁷

¹² RCW 36.70A.020(11), RCW 36.70A.035 and RCW 36.70A.140.
¹³ Petitioner Clark County Citizens United, Inc. Prehearing Brief (December 1, 2016) at 5 “Here, the County adopted the PPP for the 2016 Plan Update on January 21, 2014. Id. at 006417. Nevertheless, almost five years prior to adoption of the PPP, the County began finalizing reports and plans that formed the basis of the 2016 Plan Update, namely (1) the Agriculture Preservation Strategies Report, finalized March 2009; (2) the Clark County Bicycle and Pedestrian Plan, finalized December 2010; (3) the Aging Readiness Plan, finalized February 2012; and (4) the Growing Healthier Report, finalized June 2012. IR 3017 (Agriculture Preservation Strategies Report); IR 2938 (Bicycle and Pedestrian Plan); IR 2943 (Aging Readiness Plan); IR 2945 (Growing Healthier Report).”
¹⁴ Id. at 6.
¹⁵ Id.
¹⁶ Id. at 8.
¹⁷ Id. at 12.
The County responds stating CCCU has not alleged specific procedural violations of the County’s PPP. The County argues there were no GMA violations when it “adopted its PPP two and one-half years before completion of its Update.” The County explains that in addition to public hearings and a variety of other public involvement strategies employed by the County and required in its PPP, members of CCCU met with certain County Board members, planning staff, GIS staff and Prosecutor’s staff to hear CCCU’s views. In regards to issue papers, the County cites WAC 365-196-600(2)(a) which provides that “Whenever a provision of the comprehensive plan or development regulation is based on factual data, a clear reference to its source should be made part of the adoption record.” The County argues this WAC provision does not require “that each report be opened up for public input on revising it.” The County explains each issue paper referenced by CCCU went through the County’s public participation process at the time the issue papers were originally completed; specifically, the County employed County Code (CCC) 40.510.040 to publicly review these earlier reports. In regards to Issue Paper #9, the County explains that “Written public comment on the [CP] Update came into the County through June 23, 2016, and the public had an opportunity to comment orally on the Update, including Issue Paper #9 and the Amended Ordinance itself, at the BOCC public hearing on June 28, 2016.”

Issue 1 and 2 Board Analysis

CCCU alleges violations of RCW 36.70A.140. That statute requires jurisdictions to adopt a public participation program. There is no allegation or argument that the County

18 Respondent Clark County Prehearing Brief (December 23, 2016) at 3. The County adopted its PPP on January 21, 2014, in addition to having codified public participation requirements in Clark County Code 40.510.040.
19 Id. at 8.
20 Id. at 5.
21 Id. at 9.
22 Id. at 9-10.
23 Id. at 11.
24 RCW 36.70A.140 “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
failed to adopt such a program. In fact, CCCU acknowledges in their prehearing briefs that the County has adopted such a program. Allegations of violations of RCW 36.70A.140 raised by CCCU shall be dismissed.

Next, CCCU allege violations of WAC 365-196-600(4-5) by claiming the County "actively excludes the subset of the community without the requisite computer skills" and thus excluded portions of the rural population. However, WAC 365-196 acts as guidance to counties and cities and compliance with the procedural criteria is not a prerequisite for compliance with the GMA. Specifically, WAC 365-196-600(4) and (5) are permissive and advise local governments that they "should try to involve a broad cross-section of the community" and that no requirements or qualifications should impair an individual's participation in CP updates. The record contains public comments on the CP from a wide

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."

25 The County adopted its PPP on January 21, 2014, and has codified public participation requirements in Clark County Code 40.510.040.

26 See CCCU Prehearing Brief at 3 "The County Violated the Public Participation Requirements of the Growth Management Act when the County Adopted its Mandatory Public Participation Plan Almost Five Years After the County Began the 2016 Plan Update, and Subsequently Failed to Follow the Public Participation Plan. (Issue No. 1 [CCCU #A]). (Emphasis added)

27 CCCU Prehearing Brief at 10 and 11.

28 WAC 365-196-030 Applicability (1) Where these guidelines apply…. (2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches. (3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board must consider the procedural criteria contained in this chapter, but determination of compliance must be based on the act itself. (Emphasis added)

29 WAC 365-196-600 (4) Each county or city should try to involve a broad cross-section of the community, so groups not previously involved in planning become involved. (5) Counties and cities should take a broad view of public participation. The act contains no requirements or qualifications that an individual must meet in order
The Board finds and concludes that CCCU fails to carry its burden of proof demonstrating the County violated WAC 365-196-600(4-5).

Finally, CCCU claims the County violated WAC 365-196-600(8)(a) because the County did not respond to each public comment during the public involvement process. WAC 365-196-600(8)(a) suggests to a local jurisdiction they should allow adequate time to hear public comments and should respond to public comments. This administrative code is permissive, not mandatory. It is well-settled that the public participation program required by RCW 36.70A.140 and WAC 365-196-600(8) does not mandate that a jurisdiction provide a specific answer to each public comment. The GMA imposes no duty on jurisdictions to respond to specific citizen comments in the public process surrounding consideration of regulations. The Board finds and concludes CCCU fails to carry its burden of proof demonstrating the County was clearly in error regarding public participation and public involvement. Allegations of violations of WAC 365-196-600 raised by CCCU shall be dismissed.

30 WAC 365-196-600(8)(a) All public comments should be reviewed. Adequate time should be provided between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate and respond to public comments. The county or city should provide a written summary of all public comments with a specific response and explanation for any subsequent action taken based on the public comments. This written summary should be included in the record of adoption for the plan.

31 Snohomish County Farm Bureau v. Snohomish County, GMHB No. 12-3-0010 (SCFB II Order on Motions, January 31, 2013). "...the Board finds the Farm Bureau’s contention that the County did not respond to its comments is without merit. It is well-settled that the public participation program required by RCW 36.70A.140 does not mandate that a jurisdiction provide a specific answer to each public comment. In Bremerton/Alpine v. Kitsap County, the Board found the most appropriate definition of “respond” within the context of RCW 36.70A.140 is “to react in response:” Applying this definition means only that citizen comments must be considered, and where appropriate, jurisdictions must take action in response to those comments and questions... “Response” may, but need not, take the form of an action, either a modification to the proposal under consideration, or an oral or written response to the [citizen] comment or question. See also CPSGMHB No. 95-03-0039c/98-3-0032c (FDO, February 8, 1999) at 24.

32 2005 GMHB LEXIS 82, *30 Macangus Ranches, Michael Leung and Dennis Daley v. Snohomish County, CPSGMHB No. 99-3-0017 (FDO, March 23, 2000) at 12. ("Respond to" public comments does not mean that counties and cities must react in response to all citizen questions or comments... means only that citizen comments and questions must be considered. . .).
PRIVATE PROPERTY RIGHTS

Issue 3: PROPERTY RIGHTS

Does the 2016 Plan Update violate GMA goal number 6 when Clark County failed to adequately consider the property rights impacts the Ordinance would have on the County’s rural and resource landowners? See RCW 36.70A.020(6) (GMA goal number 6: “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions”). [CCCU No. K1]

Applicable Law

RCW 36.70A.020 Planning goals GMA Planning Goals “shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations: . . . “(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.”

WAC 365-196-725 Constitutional provisions (1) Comprehensive plans and development regulations adopted under the act are subject to the supremacy principle of Article VI, United States Constitution and of Article XI, Section 11, Washington state Constitution.

(2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. As set forth in RCW 36.70A.370, the state attorney general has developed a publication entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property," which is updated frequently to maintain consistency with changes in case law. Counties and cities should contact the department or state attorney general for the latest edition of this advisory memorandum.

Positions of the Parties

CCCU claims the County’s CP Update violates GMA’s Goal 6 Private Property Rights because the County used growth allocations at odds with actual population allocation, used an “illegal rural vacant buildable lands model,” and “arbitrarily and discriminatorily chose not to adopt smaller rural and resource land parcel sizes” which discriminated against rural landowners and did not correct the “parcel-size non-conformity” in the County.33 CCCU cites Achen to define “property rights” and Peste for the Court’s definition of the fundamental

33 CCCU’s Prehearing Brief at 12.
attributes of property ownership. CCCU argues that the Court determined the right to use one’s property by stating the “fundamental attribute of property ownership affected here is Peste’s right to make some economically viable use of the…property.”\textsuperscript{34} CCCU concludes the Court of Appeals recognized that when a zoning designation prohibits landowners from subdividing their land and building structures in the way they had envisioned, then this “impacts a fundamental attribute of property ownership.”\textsuperscript{35} Thus, when the County failed to allow more density and subdivisions in rural areas, this impacted the property rights of rural and resource land owners.\textsuperscript{36} CCCU further argues the County improperly relied upon FOCC’s Prehearing Brief to defend the County’s decision to not allow density in rural and resource land areas.

The County first asks the Board to clarify which version of Issue 3 is under review because CCCU’s Prehearing Brief includes the phrase “arbitrary and discriminatory” whereas the Board’s Amended Prehearing Order for Issue 3 does not contain this phrase.\textsuperscript{37} Next, the County argues it considered how property rights may be impacted by the CP Update. To bolster their claim, the County included records from the Index showing how the County responded to each person concerned about property rights.\textsuperscript{38} The County incorporated by reference Petitioner FOCC’s Response Brief\textsuperscript{39} on this issue and concludes CCCU has not carried its burden of proof to show the County violated Goal 6 of the GMA. FOCC’s argues no court decision has recognized that a zoning designation prohibiting subdivision has impacted private property ownership and that CCCU misinterprets Peste. FOCC cites Bayfield, HJS Development and Isla Verda as further evidence to show the

\textsuperscript{35} Id. at 13.
\textsuperscript{36} Id. at 16.
\textsuperscript{37} GMHB No. 16-2-0005c (Amended Pre-Hearing Order, October 21, 2016) at 4. See Issue 3 Does the 2016 Plan Update violate GMA goal number 6 when Clark County failed to adequately consider the property rights impacts the Ordinance would have on the County’s rural and resource landowners. See RCW 36.70A.020(6) (GMA goal number 6: “Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions”).
\textsuperscript{38} Clark County Prehearing Brief (December 23, 2016) at 20-23.
\textsuperscript{39} Friends of Clark County’s & Futurewise’s Respondents’ Prehearing Brief on CCCU Issues (December 22, 2016) at 1-3.
courts did not hold there is a right to subdivide and did recognize that local governments can place reasonable conditions on subdivisions.\textsuperscript{40}

**Issue 3 Board Analysis**

As to the substance of the issue, the Board refers to RCW 36.70A.020(6) and WAC 365-196-725 to guide the discussion of property rights.\textsuperscript{41} Previously, in *Mahr v. Thurston County*, *Weyerhaeuser Co. v. Thurston County* and *Laurel Park v. City of Tumwater*, we stated the Board's jurisdiction, granted under GMA, does not include resolution of violations of the U.S. and/or Washington State Constitution.\textsuperscript{42} Rather the “takings prong,” or the first sentence of Goal 6, is to be reviewed to determine if adequate consideration of that prong has been given by the decision makers. The record in this case demonstrates that significant time and consideration were given to the potential for taking property rights throughout all levels of the decision-making process.

\textsuperscript{40} *Id.*

\textsuperscript{41} RCW 36.70A.020 Planning goals. (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

RCW 36.70A.370 Protection of private property. (1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law. (2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. (3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section. (4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring compliance with the provisions of this section.

WAC 365-196-725 Constitutional provisions. (2) Counties and cities planning under the act are required to use a process established by the state attorney general to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. As set forth in RCW 36.70A.370, the state attorney general has developed a publication entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property," which is updated frequently to maintain consistency with changes in case law. Counties and cities should contact the department or state attorney general for the latest edition of this advisory memorandum.

It is evident the County considered this first prong of Goal 6 when it adopted Ordinance 2016-06-12 because the Ordinance includes: “The rights of private property owners and the avoidance of any taking of private property without just compensation have been given due consideration in the development of the 2016 Plan Update policies and implementation measures.” This policy statement is in line with the first sentence in GMA Goal 6. In addition, the County’s Prehearing Brief contains considerable evidence in Tables 1, 2 and 3 of contacts with private property owners either by letter or in public hearings “setting forth the author’s views on private property rights impacts of the Update…oral testimony from landowners … verbatim minutes of public hearings” regarding private property rights.

In this case, the County has chosen to zone rural and resource land areas with densities chosen after analyzing the population projections for the County and after much public involvement. Thus, the Board finds and concludes the County’s action to not increase density in rural or resource lands did not deprive property owners of all uses to their lands. Like the Peste case, the land owners may not be able to do anything they want with their land and at densities they believe possible, but they do have the ability to use and economically prosper from their land. The Board finds and concludes CCCU fails to carry its burden of proof demonstrating the GMA Planning Goal 6 did not guide the development of Clark County Ordinance No. 2016-06-12. Allegations of violations of RCW 36.70A.020(6) shall be dismissed.

COMPREHENSIVE PLAN ADOPTION

Issue 4: TIMING TO ADOPT COMPREHENSIVE PLAN UPDATE

Did the County violate RCW 36.70A.106 and WAC 365-196-630 when it approved the 2016 Plan Update fewer than 60 days after forwarding the 2016 Plan Update to the Washington Department of Commerce (Commerce)? [CCCU No. L]
Applicable Law

RCW 36.70A.106 Comprehensive plans—Development regulations—Transmittal to state—Amendments—Expedited review.
(1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

WAC 365-196-630 Submitting notice of intent to adopt to the state.
(1) State notification and comment. (a) The act requires each county or city proposing adoption of an original comprehensive plan or development regulation, or amendment, under the act, must notify the department of its intent at least sixty days prior to final adoption. Counties and cities may request expedited review for changes to the development regulations pursuant to RCW 36.70A.106 (3)(b).

Positions of the Parties

CCCU argues the County violated RCW 36.70A.106 and WAC 365-196-630 when it held public meetings and made decisions on June 21, 2016, to adopt the Comprehensive Plan Update. They point to newspaper articles stating the County completed its update: “The County’s press release, dated June 21 (and tellingly entitled “County Council Adopts 20-Year Growth Management Plan Update”) asserts that the Board “adopted a plan that will guide growth in Clark County over the next 20 years.”45 CCCU further argues the County Commissioner meeting minutes reflect “…there is no question that the BOCC action on June 21, 2016 was the final decision on the 2016 Plan Update.”46

The County replies that CCCU’s own Petition for Review references June 28, 2016, as the date the County adopted their CP Update. The County states “In order to find that Clark County violated RCW 36.70A.106 and WAC 365-196-630(1)... the Board would need to determine that CCCU had proven the County’s action in adopting the Update on June 21, 2016 was clearly erroneous.”

45 CCCU Prehearing Brief at 17 and IR 3091.
46 Id. at 18 and IR 3086 at 040785.
**Issue 4 Board Analysis**

RCW 36.70A.106 and WAC 365-196-630(1) require local jurisdictions to notify the Department of Commerce of its intent to adopt or update its comprehensive plan at least sixty days prior to final adoption.\(^{47}\) The Board finds the County submitted its “Notice of Intent to Adopt Amendment” to Commerce on April 28, 2016.\(^{48}\) Next, the Board finds the County adopted and signed into law Amended Ordinance No. 2016-06-12 updating the Comprehensive Land Use Plan on June 28, 2016 – sixty days after the County’s notice to Commerce.\(^{49}\) The Board would like to point out that it did find a June 21, 2106, Ordinance No. 2016-06-12 in the record, but this ordinance was never signed into law, and thus the Amended Ordinance is the actual adoption of the CP update.\(^{50}\) The Board finds and concludes CCCU fails to carry its burden of proof demonstrating the County was clearly in error when it adopted Amended Ordinance No. 2016-06-12 on June 28, 2016. Allegations of violations of RCW 36.70A.106 and WAC 365-196-630 shall be dismissed.

**URBAN GROWTH**

**Issue 5: UGA EXPANSION and BUILDABLE LANDS REPORT**

Did the adoption of Amended Ordinance 2016-06-12 expanding the Battle Ground [sic], La Center, and Ridgefield urban growth areas violate RCW 36.70A.020(1), (2); RCW 36.70A.070 (internal consistency); RCW 36.70A.110(1), (2), (3); RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.210(1); or RCW 36.70A.215(1)(b) because the expansions were not needed to accommodate the planned growth and Buildable Lands reasonable measures were not adopted and implemented? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035* pp. 11 –13, pp. 14 – 15, pp. 26 – 29, pp. 41 – 46, pp. 267 – 68, Figure 12, Figure 14, Figure 15, and Figure 24A; Exhibit 2 County/UGA Comprehensive

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\(^{47}\) RCW 36.70A.106 Comprehensive plans—Development regulations —Transmittal to state—Amendments—Expedited review. (1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.


\(^{50}\) IR 3084 6/21/2016 Public BOCC Ordinance No. 2016-06-12.
Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 1]

Issue 7: ANNEXATION

Does the annexation of land within an urban growth area expansion under appeal violate RCW 36.70A.020(1), (2), (8); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.110; RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.215(1), (2), (3), (4); or any other applicable provision of state law? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 11 –13, pp. 14 – 15, pp. 26 – 29, pp. 41 – 46, pp. 267 – 68, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 12]

Under Issue 5, Petitioners FOCC failed to brief RCW 36.70A.020(1), (2); RCW 36.70A.130(1), (3), (5); RCW 36.70A.210(1) -- those unbriefed legal arguments are deemed abandoned. Under Issue 7, FOCC failed to brief RCW 36.70A.020(1), (2), (8); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.110; RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.215(1), (2), (3), (4), which constitute all of the alleged statutory violations under Issue Statement 7 -- those unbriefed legal arguments are all deemed abandoned. Issue 7 is dismissed.

The Board agrees with Clark County and Intervenor Cities that the Board has no subject matter jurisdiction over city annexation ordinances. Accordingly, the Board will confine its analysis of Issue 5 to only the allegations that Clark County Ordinance 2016-06-12 violated specific requirements of the Growth Management Act.

Applicable Law

RCW 36.70A.070 (preamble): “The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop

51 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
52 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.”

**RCW 36.70A.110(1)** states in pertinent part: “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.”

**RCW 36.70A.110(2)** states in pertinent part: “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 . . .”

**RCW 36.70A.115**: “Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.”

**RCW 36.70A.215(1)**: Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, countywide planning policies to establish a review and evaluation program. . . . The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

**RCW 36.70a.215(4): If the evaluation** required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the countywide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to
increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to countywide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

Positions of the Parties

FOCC alleges when the County expanded urban growth areas for Battle Ground, La Center, and Ridgefield, the County violated consistency requirements in RCW 36.70A.070 and requirements for reasonable measures in RCW 36.70A.215(1)(b). FOCC argues the County’s current urban growth boundaries could have accommodated the County’s 20-year population projections because the County has not reached the density to which it previously planned. FOCC cites the County’s Buildable Land Report data showing that the County’s planned densities are less than actual permitted densities, thus creating inconsistencies in planned and actual growth.

The County responded to FOCC’s Issue 5 by adopting and incorporating responses from Intervenors and by citing Panesko claiming the Board does not have jurisdiction over annexations. Intervenor City of La Center explains it has already annexed 56.55 acres within its newly expanded UGA, has zoned the land for commercial uses and argues Issue 5 and Issue 7 are moot because the Board does not have jurisdiction over annexations. Intervenor City of Ridgefield, like La Center, argues when it annexed 111 acres within its newly expanded UGA, their action rendered Issues 5 and 7 moot. Intervenor RDGB Royal Farms.

53 FOCC Prehearing Brief (December 1, 2016) at 2-5.
56 Respondent Clark County Prehearing Brief at 43. “Clark County hereby adopts and incorporates as its own the responses to these issues of the Cities of Battle Ground [sic], La Center and Ridgefield, of 3B Northwest, LLC, and of RDGB Royal Farms, LLC; RDGK Rest View Estates, LLC; RDGM Rawhide Estates, LLC; RDGF River View Estates, LLC; and RDGS Real View, LLC (the last five, collectively “Brown Properties”).” Clark County’s Prehearing Brief at 45 “Because the Board is not authorized by its governing statutes and regulations to review annexations in this appeal of the amendment of a county comprehensive plan, as a matter of law, Issue 7 must be dismissed.” See Panesko v. Lewis County, WWGMHB No. 08-02-0007c (Compliance Order, July 27, 2009) at 9-10.
57 City of La Center Prehearing Brief (December 22, 2016) at 2.
Farms argues Issue 5 is moot because Intervenor’s 111 acres of land has already been annexed by the City of Ridgefield.\footnote{Intervenor RDGB Royal Farms, Prehearing Brief (December 22, 2016) at 5.}

**Issue 5 Board Analysis**

The GMA provides that cities and counties will work together and shall attempt to reach agreement on the correct size for a UGA,\footnote{RCW 36.70A.110(2).} which the Supreme Court has held “cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable land market supply factor.”\footnote{Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al., 164 Wn.2d 329, 352 (2008).} The statute expressly provides that cities and counties shall provide “sufficient capacity of land suitable for development,” accommodating the allocated housing and employment growth, consistent with the 20-year population forecast identified by OFM.\footnote{RCW 36.70A.115.}

The Clark County Buildable Lands Report (June 2015) determined that the Cities of Battle Ground, La Center, and Ridgefield all had more vacant, buildable residential land than was needed for the 2035 planning horizon. Battle Ground’s UGA had 208 acres of “surplus” residential land. La Center’s UGA had 101 acres of “surplus” residential land. Ridgefield’s UGA had 280 acres of “surplus” residential land.\footnote{Clark County Buildable Lands Report, (Table 3, p. 9, June 2015) [attached as Tab IR 1121 to Friends of Clark County’s & Futurewise’s Dispositive Motion or Motion for Summary Judgment (October 15, 2016)].}

In 2016 (after issuance of the 2015 Buildable Lands Report), Clark County adopted Ordinance 2016-06-12, which expanded the Battle Ground UGA by 82 acres, the La Center UGA by 56 acres, and the Ridgefield UGA by 111 acres. The record shows that the size of Battle Ground, La Center, and Ridgefield UGAs exceeds the amount of land necessary to accommodate the urban growth projected by OFM. The Board is left with the firm and definite conviction that a mistake has been made by the County in enlarging these UGAs that were already oversized. **The Board finds: (1) these UGA enlargements violate RCW 36.70A.110 and RCW 36.70A.115, and (2) Ordinance 2016-06-12 is clearly erroneous in**
view of the entire record before the Board and in light of the goals and requirements of the GMA.

In addition, FOCC argue that the County and Cities failed to adopt “reasonable measures” to remedy inconsistencies in residential, commercial, and industrial densities, as required by RCW 36.70A.215. The County’s 2015 Buildable Lands Review and Evaluation Program posed the following questions, among others:

The Buildable Lands Program, at minimum should answer the following questions: What is the actual density and type of housing that has been constructed in UGA’s since the last comprehensive plan was adopted or the last seven-year evaluation completed? Are urban densities being achieved within UGA’s? If not, what measures could be taken, other than adjusting UGA’s, to comply with the GMA? 63

To answer these questions, the County used the Vacant Buildable Lands Model (VBLM), a planning and modeling tool, to compare planned and actual building data.64 The BLR used County density assumptions from 2007 and the Office of Financial Management population forecast for 2035. According to the County’s RCW 36.70A.215 Review and Evaluation Program, Battle Ground, La Center, and Ridgefield had actual 2015 observed per-net-acre housing densities as follows:

<table>
<thead>
<tr>
<th>City</th>
<th>2007 Plan Density (Housing Units per Net Acre)</th>
<th>2015 Actual Density (Housing Units per Net Acre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Battle Ground</td>
<td>6</td>
<td>4.2</td>
</tr>
<tr>
<td>La Center</td>
<td>4</td>
<td>1.9</td>
</tr>
<tr>
<td>Ridgefield</td>
<td>6</td>
<td>5.2</td>
</tr>
</tbody>
</table>

This data demonstrates an inconsistency between the densities planned for in 2007 and the actual densities that occurred over the 2007-2015 planning period. As of 2015, the three

63 IR 2904 at 034689-90.
64 IR 1121 at Bates # 014413-14 and Appendix C VBLM at Bates # 014438.
Cities had densities substantially lower than the density targets set in the 2007
Comprehensive Plan. In the aggregate, and taking into account the 2016 UGA expansions,
this means the Cities of Battle Ground, La Center, and Ridgefield are growing more by low
density sprawl rather than achieving the higher urban density targets set in the County’s
Comprehensive Plan. One of the central goals of the GMA is to reduce sprawling, low-
density development.

The Buildable Lands Report also demonstrated inconsistencies between the Clark
County Comprehensive Plan and permitted commercial development -- the 2007 planning
assumptions were based on 20 employees per net acre. However, from 2006 to 2014, new
permits show a substantially lower density of 9.3 employees per net acre.

These inconsistencies documented by the County’s RCW 36.70A.215 Review and
Evaluation Program trigger the County’s and Cities’ obligation to adopt and implement
measures that are reasonably likely to increase consistency during the subsequent five-year
period -- “reasonable measures” do not include adjusting urban growth areas. Clearly, the
Cities have experienced lower density residential and commercial growth rather than the
planned for higher urban densities. The Board is left with the firm and definite conviction that
a mistake has been made by the County in failing to adopt “reasonable measures” to
remedy these density inconsistencies. The Board finds: (1) the County’s and Cities’
failure to adopt “reasonable measures” to remedy density inconsistencies violates
RCW 36.70A.215, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the
entire record before the Board and in light of the goals and requirements of the GMA.

FOCC also asserted an “internal plan inconsistency” in violation of RCW 36.70A.070.
FOCC argues the failure to adopt reasonable measures rather than expanding the UGA is

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66 The City of Ridgefield documented that a “total of 734 lots” will be created “on over 200 acres of residential
land. IR 1121 p. 014454, Id. p. 45. This translates into a gross density of less than 3.67 housing units per acre,
almost one housing unit per acre less than the 4.5 gross housing units per acre assigned to the City of
Ridgefield by the 2007 and 2015 – 2035 Clark County Comprehensive Plans. IR 1121 p. 014414, Id. p. 5; IR
67 RCW 36.70A.215(1)(b).
68 IR 1121 p. 014429 in Tab IR 1121, Clark County Buildable Lands Report p. 20 (June 2015). The Buildable
Lands Report cautions that the observations “are from a limited set of employment data.” Id.
69 RCW 36.70A.215(1)(b).
inconsistent with the Clark County Comprehensive Plan, which provides that “[i]f the results of the seven-year buildable land evaluation reveal deficiencies in buildable land supply within UGA’s, Clark County and the cities are required first to adopt and implement reasonable measures that will remedy the buildable land supply shortfall before adjusting UGA boundaries.” The problem with this argument is that FOCC failed to point to specific language in the challenged ordinance that conflicts with or thwarts the above-quoted language in the Clark County Comprehensive Plan. Accordingly, the Board finds Petitioner FOCC failed to satisfy their burden of proof to show an internal plan inconsistency in violation of RCW 36.70A.070.

Issue 6: URBAN RESERVE OVERLAY

Did Amended Ordinance 2016-06-12’s adoption of the Urban Reserve Overlay and the Urban Reserve-10 (UR-10) and Urban Reserve-20 (UR-20) zoning districts, the repeal of the Urban Reserve-40 (UR-40) zoning district, and the application of the overlay and districts to rural and natural resource lands violate RCW 36.70A.020(2), (8), (10); RCW 36.70A.040(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (preamble), (1), (5); RCW 36.70A.110(1); RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); or WAC 365-196-815 because the land is not needed to accommodate planned urban growth and the overlay and zoning does not conserve natural resource lands or comply with the requirements for rural areas? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 12 – 13, pp. 36 – 38, pp. 96 – 97, p. 192, p. 228, p. 239, p. 265, p. 276, Figures 12 – 18, Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit 8; and Exhibit 23. [FOCC/FW No. 5]

Under Issue 6, Petitioners FOCC failed to brief RCW 36.70A.020(2), (8), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.070 (preamble) and (1); RCW 36.70A.110(1); RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); and WAC 365-196-815 -- those unbriefed legal arguments are deemed abandoned.71

71 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
Applicable Law

RCW 36.70A.070 Comprehensive plans—Mandatory elements (Effective until September 1, 2016.)

(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. (c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by...

RCW 36.70A.060 Natural resource lands and critical areas—Development regulations.
(1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.
Positions of the Parties

FOCC argues that the County’s adoption of an Urban Reserve Overlay, and the implementation of that overlay with two densities (Urban Reserve-10 (UR-10) and Urban Reserve-20 (UR-20)), together with the repeal of a UR-40 zoning district, fails to conserve designated natural resource lands and allows urban growth on rural and natural resource lands. It states that the section violates RCW 36.70A.070(5), which prohibits urban growth and densities in rural areas, as well as RCW 36.70A.060(1)(a), which requires the adoption of development regulations assuring the conservation of natural resource lands. FOCC also contends that the uses authorized within areas where the Urban Reserve Overlay is applied constitute urban uses. FOCC cites appellate court decisions which addressed protection of designated agricultural resource lands from incompatible uses. Finally, FOCC observes that a total of 307 acres of Rural and Agricultural lands would be covered by the Urban Reserve overlay, although FOCC fails to provide information indicating the amount of rural acreage and the amount of designated agricultural land.

The County states that its action merely changed the title of what had been called UR 10 and UR 20 “zoning districts” to “Urban Reserve Overlays”. The allowed uses were not changed with the adoption of Amended Ordinance 2016-06-12 and its name change to

72 FOCC Prehearing Brief at 6-8 IR 2830 p. 034114 in Tab IR 2830A, Amended Ordinance 2016-06-12 p. 50.
The purpose of Urban Reserve is set forth in CCC 40.250.100, IR 2830A at 34114: These lands are identified as future additions to Urban Growth Areas and may be added to the urban area as necessary through amendments to the Comprehensive Plan. These lands are on the fringe of the Urban Growth Boundaries. The purpose of the Urban Reserve Overlay is to protect areas from premature land division and development that would preclude efficient transition to urban development. The Urban Reserve Overlay is implemented by Urban Reserve (UR-10) for future urban residential development and Urban Reserve-20 for all other types of future urban development.

Urban Reserve-10 (UR-10) The urban reserve-10 overlay is to protect land identified on the fringe of urban growth boundaries from premature land division and development that would preclude efficient transition to urban development.

Urban Reserve-20 (UR-20) The urban reserve-20 overlay is to protect rural land on the fringe of urban growth boundaries from premature land division and development that would preclude efficient transition to large-scale non-residential development.

73 Amended Ordinance No. 2016-06-12, IR 2830A, CCC Section 40.250.10 p. 34114-34118.
75 FOCC Prehearing Brief at 8, citing IR 2929, at 035378.
Urban Reserve.\textsuperscript{76} It states the urban reserve overlay affects the same lands as had previously been subject to the zoning districts. That is, the zoning and comprehensive plan designations were not changed.\textsuperscript{77} As to FOCC’s argument regarding repeal of the UR-40 district, the County states that while the UR-40 district existed on paper it had never designated any land with that density district.

The County describes its action as “primarily a housekeeping matter”. It concludes that these “housekeeping” amendments are not subject to challenge as neither the allowed uses nor the lands subject to the application of the regulations were changed, citing\textit{Thurston County v. Western Washington Growth Management Hearings Board}.\textsuperscript{78}

As to FOCC’s argument regarding repeal of the UR-40 district, the County states that while the UR-40 district existed on paper, it had never designated any land with that density district.

\textbf{Issue 6 Board analysis and conclusions:}

In the context of a county’s duty under RCW 36.70A.130(1) to periodically “take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations,” the Supreme Court has held that a party may challenge a county’s “failure to revise” a comprehensive plan only with respect to those provisions directly affected by new or recently amended GMA provisions.\textsuperscript{79} To the extent a county takes legislative action to revise its comprehensive plan or development regulations during the update process, then those amendments must comply with the GMA and are subject to challenge within 60 days of publication of the amendment adoption notice.\textsuperscript{80}

Here, FOCC does not challenge a “failure to revise” but rather FOCC challenges actual amendments to the County’s Development Regulations adopted by Ordinance 2016-06-12. This ordinance adopted an “Urban Reserve Overlay” and codified it at new Clark

\textsuperscript{76} County Brief at 44. See also Transcript at 107, lines 20-21.

\textsuperscript{77} Transcript at 106 lines 9-21 and 107, lines 3-7.

\textsuperscript{78} 164 Wn.2d 329, 344, 189 P.3d 38 (2008).

\textsuperscript{79} \textit{Thurston County v. Western Washington Growth Management Hearings Board}, 164 Wn.2d 329, 344, 189 P.3d 38 (2008).

\textsuperscript{80} \textit{Id.} at 347.
County Code Section 40.250.100. Clark County acknowledged in its prehearing brief that the “2016 Plan Update created Urban Reserve (UR-10, UR-20) and Urban Holding (UR-10, UH-20) as true overlay districts.”

Clark County asserts that there were no substantive zoning changes and that the County merely changed the title of a code section and moved it to a different location -- but the record does not support that assertion. On page 8 of Ordinance 2016-06-12 states that “A new Clark County Code (CCC) Chapter 40.250.100 Urban Reserve Overlay is adopted.” Page 13 of the ordinance shows there was a substantive change in the allowed zoning district densities -- UR-40 was eliminated. Pages 50-54 of the ordinance show a large amount of underlined new text. Finally, a comparison between the previous Comprehensive Plan (2004-2024), page 1-17 and Figures 12, 14, and 15, and the updated Comprehensive Plan (2005-2035), page 38 and Figures 12, 14, and 15, demonstrates that there were multiple substantive changes in text and mapping. Thus, FOCC’s challenge of new code § 40.250.100 is timely.

The express purpose of CCC § 40.250.100 Urban Reserve Overlay is to “protect areas from premature land division and development that would preclude efficient transition to urban development” or “transition to large scale non-residential development.” CCC § 40.250.100 refers multiple times to “urban development,” as well as to the “orderly extension of public roads, water and sewer.” CCC § 40.250.100B.3 requires property owners to submit with the conditional use application a signed agreement “that obligates the property owner to connect to public sewer and water.” Table 40.250.100-1 allows as conditional uses recreational facilities and schools. CCC § 40.250.100B.4 contemplates the siting of schools outside of the Urban Growth Area when “the proposed site is more suitable than specific sites within the urban growth area.”

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81 Respondent Clark County’s Prehearing Brief on the Merits (December 23, 2016) at 43.
82 IR 2380 at 034072.
83 Id. at 034077.
84 Id. at 034114-18.
85 IR 2936 at 035639.
86 IR 2904 at 034687.
87 Ordinance 2016-06-12, p. 52 (adopted June 28, 2016).
These code provisions adopted by Ordinance 2016-06-12 are focused on enabling future urban growth outside the current UGA into rural areas or designated resource lands. This is urban planning not rural or resource land use planning.

Under the GMA, it is axiomatic that growth can occur outside of the UGA only if it is not urban in nature. RCW 36.70A.110(1); RCW 36.70A.070(5). Moreover, recent GMHB decisions have held county development regulations to be non-compliant with the GMA because they allowed “schools of an urban nature to be located outside the urban growth area.”

In the Soccer Fields decision the Supreme Court held that outdoor recreational facilities cannot be allowed on agricultural lands because they will remove “designated agricultural land from its availability for agricultural production.”

In the Lewis County decision, the Supreme Court held that the “County’s ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement in RCW 36.70A.060(1)(a).” In addition to residential subdivisions, these uses were found inappropriate on designated agricultural lands: public facilities; public and semipublic buildings, structures, and uses; and schools, shops, and airports.

In the Kittitas County decision, the Supreme Court upheld a Board decision finding that a variety of conditional uses allowed on agricultural lands of long-term commercial significance violated the GMA because “the County has no protections in place to protect agricultural land from harmful conditional uses.” The conditional uses that violated the GMA in Kittitas County included “kennels, day care centers, community clubhouses, governmental uses essential to residential neighborhoods, and schools with no limiting

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88 Summit-Waller et al. v. Pierce County, GMHB Nos. 15-3-0010c and 12-3-0002c (Order on Compliance, October 6, 2016) at 2-3.
89 King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields), 142 Wn.2d 543, 560-562, 14 P.3d 133, 142-143 (2000).
91 Lewis Cty., 157 Wn.2d at 507, 526 – 27; 139 P.3d at 1105, 1114 – 15.
criteria standards. The Urban Reserve Overlay adopted by Ordinance 2016-06-12 allows these uses on agricultural lands of long-term commercial significance with no lot coverage limits. "There are 307 acres of proposed Rural and Agricultural zoning under the Urban Reserve overlay."95

The Board is left with the firm and definite conviction that a mistake has been made by the County in adopting the Urban Reserve Overlay that enables future urban growth outside of the current UGA. The Board finds: (1) these UGA enlargements violate RCW 36.70A.060, RCW 36.70A.070, and RCW 36.70A.110, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

Issue 7: ANNEXATION (Addressed above with Issue 5)
Does the annexation of land within an urban growth area expansion under appeal violate RCW 36.70A.020(1), (2), (8); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.110; RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.215(1), (2), (3), (4); or any other applicable provision of state law? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 11 –13, pp. 14 – 15, pp. 26 – 29, pp. 41 – 46, pp. 267 – 68, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 12]

Issue 8: OFM POPULATION PROJECTIONS AND BUILDABLE LANDS REPORT
Does the 2016 Plan Update violate RCW 36.70A.110 because the County unlawfully relied on population projections by the Office of Financial Management (OFM) which do not take into account the population influences resulting from Clark County’s proximity to the Portland, Oregon metropolitan area? [CCCU No. I]

Applicable Laws
RCW 36.70A.110 Comprehensive plans—Urban growth areas.
(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.

95 IR 2929 p. 035378 in Tab IR 2929, FSEIS p. 6-12.
Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(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, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Positions of the Parties

CCCU argues the County violated RCW 36.70A.110 because the County selected the “medium” OFM population projection without regard to whether the “high” projections included the influx of population from Portland and the County’s most recent population data.96 CCCU claims without considering and adopting the “high” population projection, the County did not plan for sufficient land to accommodate urban needs and uses. In response, the County explains the “medium” OFM projections took into account population data from Portland and the County has discretion to select a population projection. The County chose the “medium” population projection and RCW 36.70A.110(2) gives the County discretion to make this decision.97

Issue 8 Board Analysis

RCW 36.70A.110 (2) assigns the responsibility to and gives the County discretion to choose from OFM population projections 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…” The County exercised its discretion in selecting the OFM projected

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96 CCCU Prehearing Brief (December 1, 2016) at 20 and 2.
97 Respondent Clark County.
“medium” population projection. The Board finds and concludes CCCU has failed to meet their burden of proof demonstrating the County’s choice violated RCW 36.70A110(2). Issue 8 is dismissed.

Issue 9: REMAINDER PARCELS IN UGA WILL DEVELOP INSTEAD OF OPEN SPACE

Does the 2016 Plan Update violate RCW 36.70A.030(16), RCW 36.70A.070(5)(b), and RCW 36.70A.177 when historical remainder parcels in rural developments are included in urban growth areas as potentially developable? [CCCU No. J]

At the Hearing on the Merits, CCCU moved to withdraw Issue 9 and they filed a Motion to Withdraw Issue 9.\(^9\) The Board grants the motion to strike Issue 9.

RESOURCE AND RURAL LANDS

Resource Lands

Issue 10: AGRICULTURAL LAND DE-DESIGNATION:

Did the adoption of Amended Ordinance 2016-06-12 including the de-designation of 57 acres of agricultural land of long-term commercial significance in the La Center urban growth area expansion and 111 acres in the Ridgefield urban growth area expansion, violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.210(1); WAC 365-190-040(10)(b); or WAC 365-190-050 or is the de-designation inconsistent with the Clark County comprehensive plan? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 10 – 12, pp. 14 – 15, pp. 43 – 44, pp. 84 – 86, pp. 94 – 95, Figure 14, Figure 15, Figure 22A, Figure 22B, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 2]

Under Issue 10, Petitioners FOCC failed to brief RCW 36.70A.020(8), RCW 36.70A.070 (internal inconsistency), RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.210(1); and WAC 365-190-040(10)(b) -- those unbriefted legal arguments are deemed abandoned.\(^9\)

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98 CCCU Motion to Withdraw Issue 9 (February 7, 2017).
99 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefted issue.” WAC 242-03-590(1).
Applicable Laws

RCW 36.70A.060(1)(A): Counties “shall adopt development regulations . . . to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.”

WAC 365-190-050(1): In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process.

WAC 365-190-050(3): Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The 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. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating
system is used locally, and whether there is the ability to purchase or transfer land development rights;
   (iv) The availability of public services;
   (v) Relationship or proximity to urban growth areas;
   (vi) Predominant parcel size;
   (vii) Land use settlement patterns and their compatibility with agricultural practices;
   (viii) Intensity of nearby land uses;
   (ix) History of land development permits issued nearby;
   (x) Land values under alternative uses; and
   (xi) Proximity to markets.100

Positions of the Parties

FOCC argues the County violated WAC 365-190-050(1) when it improperly de-designated agricultural lands of long term commercial significance (ALLTCS).101 FOCC claims the de-designated ALLTCS properties were isolated parcels similar to those in a Board decision in Benton County and were not part of a county-wide or area-wide ALLTCS de-designation analysis.102 FOCC contends the County should have applied the same process and criteria in a de-designation analysis as they applied when designating ALLTCS as required in WAC 365-190-050. FOCC enumerated the factors in RCW 36.70A.030(2) and described in Lewis County103 that should have been reviewed in an area- or county-wide analysis. Those factors included considering whether the property was “characterized by urban growth” or the land was primarily devoted to the commercial production of agricultural products or if public facilities such as water supply were available.104

100 These agricultural resource land designation factors are “minimum guidelines that apply to all jurisdictions,” RCW 36.70A.050(3).
101 FOCC Prehearing Brief at 12 and 13 FOCC bases its claim on RCW 36.70A.050(3) and argues WAC 365-190-050(1) requires that in “designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process.” This WAC is part of the “minimum guidelines that apply to all jurisdictions” and are to guide the designation of agricultural lands of long-term commercial significance.101 When WAC 365-190-050 uses mandatory language, local governments are required to use that provision. Clark Cty., 161 Wn. App. at 232 – 33, 254 P.3d at 875.
103 Lewis County, 157 Wn.2d at 502, 139 P.3d at 1103.
In response to this issue, the County incorporates responses from Cities of Battle Ground, La Center and Ridgefield, of 3B Northwest, LLC, and of Brown Properties.105

Intervenor Ridgefield counters FOCC’s arguments by explaining its “unique circumstance as it has been experiencing explosive recent growth—more than doubling the growth rates of any Clark County jurisdiction” and “the model used by the County to calculate the amount of vacant buildable land in the City of Ridgefield was not accurate.”106 Regarding the agricultural land de-designation, Ridgefield states “the proposed property is not agricultural land under the GMA.”107 Ridgefield concludes that Issue 10 is moot because it annexed the de-designated 111 acres, thus this issue is not in the Board’s jurisdiction.108

La Center argued FOCC ignored evidence that its 56.55 acre ALLTCS lands were properly de-designated based on the changed circumstances criteria in WAC 365-190-040(10).109 La Center explains its UGA is now encircled by urban growth, urban services are available to serve development in an expanded UGA, no recent agricultural use has occurred in La Center’s expanded UGA, water rights for irrigation have not been established, the properties in question do not have agricultural tax classifications, and they are physically isolated from farm land and uses.110 La Center claims the de-designation was based “on a comprehensive countywide agricultural trends survey and analysis.

105 Clark County Prehearing Brief (December 22, 2016) at 43.
106 Ridgefield Prehearing Brief (December 22, 2016) at 2-3.
107 Id. at 3 See IR 3022 Bates # 038787-038813, Memorandum of Eric Eiseman and Globalwise Agricultural Resource Land Analysis Report for proposed properties and also IR 039056-57, Supplement to Report
108 Id. at 2.
109 La Center Prehearing Brief (December 22, 2016) at 9-10.
110 WAC 365-190-040(10) provides: (a) Land use planning is a dynamic process. Designation procedures should provide a rational and predictable basis for accommodating change. (b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process. Designation amendments should be based on consistency with one or more of the following criteria:
   (i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), . . . (ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), . . . (iii) An error in designation or failure to designate; (iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), . . . ; or (v) A change in population growth rates, or consumption rates, especially of mineral resources.
110 Id. at 10, 12,13.
performed by an agricultural economist and published in 2007....and appropriate consideration of changed circumstances affecting the subject property.” La Center explains:

This previous analysis was updated in 2015 for the present Comprehensive Plan revision, to address changed circumstances on the Fudge and 3B Northwest parcels. It was further updated in a letter dated May 25, 2016 focused on La Center’s UGA expansion area.

Ridgefield and La Center conclude Issue 10 is moot because the cities annexed 111 and 56 acres respectively, thus this issue is not in the Board’s jurisdiction.

Intervenors 3B NW and Lagler Properties support the County's de-designation of their properties in compliance with WAC 365-190-050(3) because the land has no agricultural possibilities, has no prime soils, and is bounded by a Casino, truck stop, and school bus facility. Their property is within 800 feet of a new interchange at I-5 and La Center is building sewer lines near their property. Intervenors claim FOCC ignored evidence “that supports the de-designation of the 3B Northwest property, evidence that is more current and parcel specific than that relied upon by petitioner.” Specifically, Intervenors cite the Globalwise Report which analyzed their property and found it met de-designation requirements under GMA.

### Issue 10 Board Analysis

RCW 36.70A.020 (8) provides that counties and cities should encourage the conservation of productive agricultural lands and discourage incompatible uses. RCW 36.70A.030 defines “Agricultural land” as land primarily devoted to the commercial
production of “various categories of agriculture” and has long-term commercial significance for agricultural production. “Long term commercial significance” includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land. RCW 36.70A.050(3) directs the Department of Commerce to establish guidelines under chapter 34.05 RCW to classify and designate agricultural lands which are a category of natural resource lands.115 RCW 36.70A.170 requires cities and counties to designate “agricultural 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.”

Commerce’s guidelines in WAC 365-190-040 apply to all natural resource lands and critical areas and establish a two-step process to classify and designate natural resource lands. WAC 365-190-040 provides guidance on how to adopt and amend the overall designation process.116 It is an over-arching description of how a County should approach

115 RCW 36.70A.170 Natural resource lands and critical areas—Designations. (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate: (a) Agricultural 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;

WAC 365-190-030 (15) "Natural resource lands" means agricultural, forest and mineral resource lands which have long-term commercial significance.

116 WAC 365-190-040 Process (1) The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. These steps outlined in subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the act, the timing of the first steps coincided with development of the larger vision through the comprehensive planning process…(10) Designation amendment process.

(a) Land use planning is a dynamic process. Designation procedures should provide a rational and predictable basis for accommodating change.

(b) Reviewing natural resource lands designation. In classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process. Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process. Designation amendments should be based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or
classifying and designating all natural resource lands and critical areas. Intervenor La Center primarily cites WAC 365-190-040 as guidance used by the County to de-designate their agricultural properties, but they were in error in citing that WAC.\(^{117}\) The Board notes WAC 365-190-040 does not apply strictly to agricultural lands; rather it provides the overarching framework for a County to address natural resource lands.

Instead, the Board looks to Lewis County and the factors in WAC 365-190-050 which guide Counties when addressing agricultural lands.\(^{118}\) WAC 365-190-050(1) requires a county-wide or area-wide analysis when classifying and designating agricultural land (not a parcel-by-parcel analysis) to assure conservation of agricultural land. WAC 365-190-050(3) requires agricultural conservation by using three major factors and eleven sub-factors to determine agricultural designation. WAC 365-190-050(5) states that the final outcome of the process should “result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.” (Emphasis added)

WAC 365-190-050(1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process…. (Emphasis added)

(3) Lands should be considered for designation as agricultural resource lands based on three factors: (a) The land is not already characterized by urban growth.
…. (b) The land is used or capable of being used for agricultural production.

\(^{117}\) Intervenor City of La Center’s Prehearing Brief at 10, 15 and 16.

\(^{118}\) Lewis Cty. v. Hearings Bd., 157 Wn.2d 488, 139 P.3d 1096 (2006) at 502 “In sum, based on the plain language of the GMA and its interpretation in Benaroya I, we hold that agricultural land 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 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.” (Emphasis added)
….(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable…(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. (Emphasis added)

(5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities. 119

In reviewing the La Center property, the Board refers to La Center’s brief in which it explained how the property was de-designated:

In fact, the de-designation of the land within the expanded La Center UGA was based on a comprehensive countywide agricultural trends survey and analysis performed by an agricultural economist and published in 2007. The Globalwise 2007 report analyzed countywide agricultural trends with a site-specific focus that included the La Center I-5 junction parcels. IR 2735 (033271-340). The record also includes a specific analysis of the area formerly denominated the “LB-1” annexation area, which includes the approximately 56 acres in La Center’s expanded UGA challenged in this appeal. IR 2735 (033266 and 033270). This previous analysis was updated in 2015 for the present Comprehensive Plan revision, to address changed circumstances on the Fudge and 3B Northwest parcels. IR 1075; IR 1076. It was further updated in a letter dated May 25, 2016 focused on La Center’s UGA expansion area. IR 2735 (033258-70).120 (Emphasis added)

To further refine the Board’s understanding of how the La Center property was de-designated, it refers to a memorandum from Bruce Prenguber describing his work:

“The Futurewise letter dated May 23, 2016 asserts that my analysis of the proposed La Center urban growth area expansion is not an area-wide

119 The Board notes the County’s BERK Consulting Issue Paper 9 refers to WAC 365-190-050 in its analysis of agricultural lands See IR 3092 at Bates # 041144-6.
120 Intervenor La Center’s Prehearing Brief at 14-15.
analysis. ... My work in 2015, which reviewed in detail the **three parcels totaling 56.66 acres**, was conducted with consideration of the 2006-2007 county-wide analysis of agriculture and with due consideration to the analysis I conducted for **area LB-1**. As part of my ongoing work in 2006 and 2007, I prepared matrices that summarize my assessment of agricultural conditions in subareas of Clark County...see attachments...In the course of my work, I determined that the **current conditions are similar to what I found and reported in 2006-2007**. My 2015 report references other properties in the LB-1 area as well as the subject properties proposed for addition to the La Center UGA.”121 (Emphasis added)

The Board reviewed the Globalwise Report Attachment B in which the La Center LB-1 properties were analyzed in 2007 for their ALLTCS status.122 At that time, the Board concluded La Center’s LB-1 properties were ALLTCS. The Court of Appeals upheld the Board’s decision in *Clark County*:

"The Growth Board determined that the County's decisions de-designating these parcels from ALLTCS status and incorporating them into UGAs were noncompliant with the GMA. We affirm the Growth Board's decisions for parcels LB-1, LB-2, and LE, but remand to the Growth Board for further consideration on parcels VA, VA-2, and WB."123

Now, a 56.55 acre portion of LB-1 properties has again been de-designated by the County because La Center supplied a 2015 update to the Globalwise Report stating the 56.55 acres qualified for de-designation. But, the County failed to complete an area-wide analysis of the impacts on the agricultural industry demonstrating this property could be removed from ALLTCS. An update on one 56.55 acre parcel does not constitute an analysis to ensure the viability of agricultural economy in Clark County in accordance with WAC 365-190-050(5).

For the Ridgefield properties, the Eisemann January 6, 2016, memorandum and report to the County stated the Ridgefield properties were no longer suitable for agricultural designation and could convert to urban use.124 The report indicates “the **subject parcels**
are not suitable for long-term commercial significance for agricultural production, are subject to intense pressure for conversion to non-agricultural uses and could be easily converted to urban use.” The Eisemann memorandum does not constitute an area-wide analysis for agricultural industries’ long-term viability in Clark County as required in WAC 365-190-050(5). Further, in Clark County Staff Report to the Board of County Council, “[t]he City of Ridgefield requested that the County remove the agricultural resource designation from approximately 102 acres of actively fanned land north of Ridgefield’s Urban Growth Boundary (UGB), designate that land for residential, urban use, and include it within the city’s Urban Growth Area (UGA)… Answering the city’s request is a relatively uncomplicated application of the Growth Management Act (GMA). In light of the GMA criteria that would govern a decision on this request, staff recommends denial of Ridgefield’s request to urbanize the property.” The evidence in the record demonstrates that the County did not conduct an area-wide analysis of the effect of removing agricultural lands near Ridgefield on the agricultural industry and the staff report leads the Board to conclude the County improperly de-designated these agricultural lands.

La Center and Ridgefield ALLTCS de-designation decisions did not comply with WAC 365-190-050 in which a county-wide or area-wide study creates a “process [that] should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term.” (Emphasis added). Instead, the Board finds the County requested these cities and property owners to include in their UGA requests:

“…a map clearly indicating the subject parcels… [and] the jurisdictions are responsible for providing the de-designation analysis of any land that is proposed to be taken out of the agricultural designation. The draft de-

125 Id.
126 IR 596 at 010767. The land consists of 18 tax lots, most of which are approximately 5-6 acres. Staff has not investigated whether these are legal lots of record. The properties can all be traced to a common owner, and only one of the 18 properties contains structures. The land is not characterized by urban growth; it lacks available sewer or a water system, an urban road system, urban schools or utilities, or commercial or industrial development. No urban development within the city limits immediately adjoins the land. On its other three sides, it is bounded by agricultural resource land. It has predominantly Class III soils, and has been commercially fanned at least as recently as last month, at which time it was used as pasture for cows. The property is assessed at its current use for farmland.”
designation analysis of agricultural lands must be provided to County planning staff by May 1, 2015.”

Clearly, the County relied upon a parcel-by-parcel update from Globalwise for the La Center and Ridgefield and the County does not provide evidence of a county-wide analysis to meet requirements in WAC 365-190-050(5). The Board finds and concludes that FOCC has carried its burden of proof showing the County failed to conduct an area- or county-wide analysis in compliance with RCW 36.70A.050 and .060 and WAC 365-190-050.

Issue 11: UPZONE AG / FR LAND FOR MORE DENSITY

Did Amended Ordinance 2016-06-12’s amendments to the comprehensive plan including the land use, rural, and capital facility plan elements, amendments to the Agriculture 20 (AG-20) District to create the Agriculture 10 (AG-10) District, amendments to the Forest 40 (FR-40) District to create the Forest 20 (FR-20) District, related rural rezones, or the allowed uses, densities, or development standards applicable to the AG-10 or FR-40 districts, including but not limited to CCC 40.210.010B and E, violate RCW 36.70A.020(8), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.070(1), (3), (5); RCW 36.70A.130(1), (5), WAC 365-196-815 or WAC 365-196-825 because they fail to conserve farm and forest land, protect the quality and quantity of groundwater used for public water supplies, or are inconsistent with the comprehensive plan? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 18 – 19, Chapter 1 Land Use Element, Chapter 3 Rural and Natural Resource Element, Chapter 6 Capital Facilities and Utilities Element, Figure 22A, Figure 22B, and Figure 24A; Exhibit 3 County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8; Exhibit 25; Exhibit 26; Exhibit 28; Exhibit 30; Exhibit 31; Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 35; Exhibit 36; Exhibit 37; Exhibit 38; and Exhibit 39.

[FOCC/FW No. 3]

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127 IR 624 Bates # 011426. Email from Laurie Lebowsky, Clark County Planner III, La Center Ridgefield UGA requests: follow up (February 17, 2015).
128 IR 2740.
129 IR 3022.
130 WAC 365-190-050 (5) When applying the criteria in subsection (3)(c) of this section, the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.
Under Issue 11, Petitioners FOCC failed to brief RCW 36.70A.020(8), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.070(3); RCW 36.70A.130(1), (5), and WAC 365-196-815 or WAC 365-196-825 -- those unbrieved legal arguments are deemed abandoned.131

Applicable Law

**RCW 36.70A.060:** “Each county... shall adopt development regulations ...to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.”

Positions of the Parties

FOCC argues the County violated the GMA when it created smaller parcel sizes for agricultural and forest zoned properties because these changes increase land conversions by creating more parcels leading to less conservation of natural resource lands required in RCW 36.70A.070(1) and (5)(c) and RCW 36.70A.060(1)(a).132 FOCC cites a Supreme Court holding that counties are required to “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.”133 FOCC argues 10 acres lot sizes will not meet standards in the GMA nor in Court decisions.134 Citing various agricultural, forestry and economic experts, FOCC reiterates findings that minimum lot size of 40 acres will “make substantial progress in protecting farmland...” and the County’s data show that Clark County’s farmland sizes have increased 5.4% from 2007 to 2012.135 FOCC also cites forest

131 “Failure by such a party to brief an issue shall constitute abandonment of the unbrieved issue.” WAC 242-03-590(1).
133 Id. and *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.
134 Id.
industry data that “[p]arcels smaller than 40 acres have much lower timber harvest rates and are more likely to be converted to residential land uses.” FOCC refers to the County’s Final Environmental Impact Statement (FEIS) showing smaller parcels may not be as attractive to larger agricultural businesses. Lastly, FOCC argues smaller parcel sizes will encourage more non-agricultural and non-forestry uses such as residential subdivisions requiring more water supply, but according to FOCC’s citations to Ecology’s WRIA report, water has “already been spoken for” and this “violates the requirement that the land use element must protect “the quality and quantity of groundwater used for public water supplies…” In sum, FOCC argues the County’s Amended Ordinance risks a failure to “conserve designated agricultural lands” as required by the GMA and King County and fails to protect surface and groundwater as required by GMA and Hirst.

The County replies that natural resource lands were not de-designated by reducing parcel sizes nor were allowed uses changed, thus agricultural and forest lands are not in jeopardy of being converted to non-resource lands. The County’s Amended Ordinance contains Findings 1.7.2 citing information from BERK Consulting’s Issue Paper 9 (Paper) that agriculture and forest land trends show more success with smaller lot sizes.

“The County has considered a number of resources, including Agricultural Preservation Strategies Report, 2010, Rural Lands Study: Assessment of Agriculture and Forestry in Clark County, BERK 2012, and the 2016 update of the Clark County Agriculture and Forest Land Inventory and Analysis (2016, BERK). Clark County has the second highest percentage of very small farms...
in the State. Family farming is critical to the continued viability of the agricultural community in the County. The authorization for 10-acre lot size will facilitate more affordable owner-occupied family farms. This continues to reflect the unique structure of farming in Clark County. The BERK Reports further document support for the Forest Land lot size.\[142\]

The County brief argues smaller farmers have other rural businesses, they meet the demand for local produce for community supported agriculture and other GMA counties throughout Washington have minimum lot sizes of 10 to 40 acres.\[143\] The County explains that in compliance with innovative zoning techniques allowed in RCW 36.70A.177, residential clustering will also be an option to conserve agricultural land.\[144\] Regarding water supply, the County explained that Clark County’s Instream Flow Rules for WRIA 27 and 28 are less than ten years old, “…are much more current. They identify reservations for permit exempt wells and they establish methodology for evaluating impact of wells to surface waters. The applications for permit exempt wells are tracked by both Clark County and the Department of Ecology so as to generate information on remaining water resources” and their Capitol Facilities Policies call for “for proof of public or private domestic water sources, producing sufficient quantity and quality of water before permits can be issued.\[145\]

**Issue 11 Board Analysis**

The question before the Board is whether smaller parcel sizes for agriculture and forest resource lands will assure agricultural and forest land conservation as required by RCW 36.70A.060(1), whether these smaller parcel sizes will protect water quality and quantity as required in RCW 36.70A.070(1) and if the County has measures in place to protect the rural character of the area required by RCW 36.70A.070(5). These are mandatory elements in comprehensive plans which have been interpreted by the Courts and give the Board guidance.

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\[142\] IR 2830 Amended Ordinance 2016-06-12 Finding 1.7.2.

\[143\] County Prehearing Brief at 51.

\[144\] IR/Tab 3085, Amended Ordinance 2016-06-12.

\[145\] HOM Transcript at 100 -102 Clark County Attorney (Ms. Cook): “So, yes, applicants must prove that there is water. They make that proof to the Department of Public Health.” HOM Transcript at 102.
In Amended Ordinance 2016-06-12, the County considered a number of studies and land assessments before it reduced parcel sizes on lands zoned for agriculture from 20 acres to 10 acres and on lands zoned for forest from 40 acres to 20 acres.\(^{146}\) The County’s Ordinance Finding 1.7.2 explains the County has the second highest percentage of very small farms in the State and smaller farms will “facilitate affordable owner-occupied family farms.”\(^{147}\) The County based its findings on Issue Paper 9 which analyzes the County’s agricultural and forestry trends, shares of commodity values and acreage.\(^{148}\)

However, the County’s argument is not compelling. The Board found the Paper’s analysis of farms categorized them a “small, very small, mid-sized and large based on value” and showed a graph with the commodity value for each farm size.\(^{149}\) The Paper demonstrates that small farms have increased in number, but not in commodity value.\(^{150}\) At the same time, the Paper states that while “[l]arge and mid-sized farms both decreased between 1997 and 2007. These two categories represent only 4% of all farms in Clark County in 2007.”\(^{151}\) But most persuasive to the Board is that the Paper concludes that while the number of large farms has decreased, their share of the total commodity output stayed nearly constant at around 85-89% over the same time period.\(^{152}\) And, although Clark County has the second highest “proportion of such very small farms in the state”, the Paper states:

In terms of mid-size and large farms...the County’s 2012 Rural Lands Study found they produce the vast majority of commodity values in the county with relatively few farms considering the 2007 data. That finding is still true as of the 2012 Census. However, there are fewer large farms than in 2007 and the overall commodity values are lower in 2012 than in prior years.\(^{153}\) (Emphasis added)

\(^{146}\) IR 2830 Bates 034066, 034081, 034085.
\(^{147}\) IR 2830 Amended Ordinance 2016-06-12 Finding 1.7.2.
\(^{148}\) IR 3092 at 041130 for farms and 041148 for forestry.
\(^{149}\) Id. at 041128.
\(^{150}\) Id. at 041128 Exhibit A: Graph showing: Clark County Farms Size by Value of Commodities.
\(^{151}\) Id. at 041129 and 041130.
\(^{152}\) Id. at 041130.
\(^{153}\) Id.
Furthermore, the Paper finds that larger, commercial farms account for the health of the agricultural industry in Clark County:

"Commercial farms are the most productive farm type, with 38 farms producing $39.4 Million as of 2007. Put another way, 3% of Clark County farms accounted for 75% of total commodity outputs."154

In addition to reviewing commodity values, the Board also reviewed data about the size of farms and their effect on viability of the agricultural industry. Data in the Paper show that farms greater than 50 acres have decreased between 1997 and 2012 and farm sizes between 1-9 acres now constitute 44% of farms in Clark County, with farm sizes between 10-50 acres at 42%.155 The County does have a greater proportion of small farms compared to other counties in Washington State. The Paper finds:

"Farm size reflects urban and suburban land use patterns with agriculture dominated by small-scale operations…

The average size of a Clark County farm in 2007 was 37 acres, compared to the Washington average of 381 acres. The Clark County farm average in 2012 was slightly higher at 39 acres as was the average for Washington State at 396 acres.

Clark County's numbers are comparable to other, primarily urban counties like Pierce (10) and King (8)."156 (Emphasis added)

A telling section of Issue Paper 9 about the size and functions of small farms can be found in "Location and Spatial Pattern of Agriculture":

The pattern of small farms being found in both the Rural and AG zoned areas is similar to findings in the 2012 Rural Lands Study. That study identified the diversity in location and type of agriculture across the County, and found that a diverse set of small farms and enterprises are increasingly becoming part of the rural landscape.

Per the Census of Agriculture results, very small and small farms that produce little income are mostly supported with non-farm income.
Many farmers in this category farm for non-market reasons and may be willing to farm at a loss, given unpaid farm labor within these households. The growing demand for local produce and increasing market share of CSAs presents farms in these categories with opportunities to generate additional income. *Many of these farms also host other co-located rural businesses that may, or may not, be related to agriculture.* (Emphasis added).\(^{157}\)

This is a commentary on the difficulties of operating small farms and that most are supported by “non-farm income” and, unfortunately, farm at a loss. The bright side of the findings in the Paper are that small farms can contribute to the Community Supported Agriculture (CSA) markets, but as the data above show, the majority of agricultural commodity revenue is from mid- and large size farms. The Board does not find the County’s argument compelling that a smaller farm will enhance and maintain the agricultural industry. Finally, the Paper cites several examples of growing and successful agricultural ventures in Clark County. For example:

“Cattle and calves are the agricultural product found on the largest number of Clark County farms. 23\% of Clark County farms produce cattle and calves.

The number of farms with Poultry and egg products more than doubled between 1997-2007. Though it has dropped by 49 farms, in 2012 it was still more than twice the 1997 or 2002 total.

Fruit, tree nuts, and berries and cut Christmas trees make up the largest non-livestock portion of Clark County farms.

The number of Clark County farms growing fruit, tree nut, and berry products has doubled since 1997.

The number of farms growing cut Christmas trees and short term woody crops has grown by 26\%.”\(^{158}\)

Regarding forestry, the Paper contained two pages of summary data comparing forestry lots sizes between Clark County and five counties which allow 20 and 80 acre

\(^{157}\) *Id.* at 0141139-40.

\(^{158}\) *Id.* at 041137.
forestry parcels.\textsuperscript{159} The Paper is replete with data of agricultural commodities and acreage, with limited data about forestry, but no clear reasoning or analysis about the impacts of smaller parcel sizes for agricultural or forestry industries. The Board notes that nowhere in Issue Paper 9 does it comment on or analyze the impacts on the agricultural or forestry industry if parcels sizes are reduced 20 to 10 or 40 to 20 acres, respectively.

To understand impacts of parcel size reduction, the Board also looked to the County’s Final Environmental Impact Statement (FEIS)\textsuperscript{160} and found the FEIS similarly did not analyze the environmental or economic impacts of reducing parcel sizes. Instead, it explains that changing agricultural parcel size would “diminish the ability of the County to attract larger scale agricultural operations” and stated impacts would be “minimal.”\textsuperscript{161} The Board notes that according to the FEIS, if the County is required to conserve its agricultural industry, then diminishing the ability to attract those industries is counter to the GMA and Court decisions.

The Board looked to experts cited in FOCC’s prehearing brief to understand the impacts of smaller parcels on agricultural lands.\textsuperscript{162} Experts cited by FOCC demonstrate that smaller parcels of rural, agricultural and forest lands lead to more land consumed by non-rural uses which in turn require more infrastructure such as water and roads which lead to higher per acre land costs.\textsuperscript{163} The Board also reviewed reports demonstrating larger lot

\textsuperscript{159} Id. at 041158.
\textsuperscript{160} IR 2929.
\textsuperscript{161} IR 2929 Bates # 035382 -83 Resource Lands 1) The Preferred Alternative also includes replacing the FR-40 zoning designation with an FR-20 zoning designation. Parcels zoned FR-40 would be rezoned to FR-20, with a new minimum parcel size of 20 acres. An estimated 412 new parcels could be created under full build-out conditions in Forest zones. Only 25 of the 412 potential new parcels are a direct result of the changes proposed in the Preferred Alternative. \textit{Therefore, the impacts of the change in zoning are minimal.} 2) The County proposes to reduce the minimum parcel size for agriculture land from twenty (AG-20) to ten acres (AG-10). This could increase property valuation and \textit{diminish the ability of the County to attract larger scale agricultural operations.} An estimated 1,750 new parcels could be created under full build-out conditions in the Agriculture zone, with the changes under the Preferred Alternative accounting for 842 of the potential 1,750 new parcels. \textit{As a result, impacts of the change in zoning would be moderate.} (emphasis added)
\textsuperscript{162} FOCC Prehearing brief at 28-30.
sizes prevent conversion of natural resource lands to suburban sprawl. The article from the American Planning Journal states:

"[m]inimum lot sizing at up to 40 acre densities merely causes rural sprawl – a more insidious form of urban sprawl. However, Napa County California uses a 160-acre minimum lot size zoning coupled with very strict review of building permits in agricultural areas…Some eastern Oregon counties created 320 acre minimum lot size districts. Some western Oregon counties attempted 5-acre minimums, but settled for 20 to 40 acre minimums. This approach, while it prohibited nonfarm uses in theory, did not clearly define acceptable uses. The approach failed largely because many counties attempted to gain the smallest minimum acceptable to the LCDC [state agency]. Owners divided farms and sold the parcels as hobby farms or very large suburban lots…resulting in worse land use patterns, because they created rural sprawl and the loss of many times more prime farmland than would have resulted from an unrestricted market."164 (Emphasis added)

The American Farmland Trust report describes “Agricultural Protection Zoning” (APZ) used throughout the United States and found that densities supporting and protecting agriculture range from 20 acre parcels in the Eastern United States (due to high land prices) to 640 acre parcels in the Western United States.165 Wyoming and Colorado have 35 acre parcels for agriculture and Solano County, California requires 20 acres for “non-essential agricultural land…and 160 acres for extensive, essential agriculture. Overall, the report concludes APZ ordinances “should have no more than one house for every 20 acres.”166

The Board finds this data informative and compelling because it places Clark County’s agricultural zoning change into a regional and national perspective as shown by evidence in the record. The agricultural industry is not only located in Clark County, but must compete on a regional, national and global scale. To allow 10 acre parcels in Clark County will erode the competitiveness of the agricultural industry in Clark County. The
County's decision to reduce parcels is contrary to national and regional practices and contrary to our Supreme Court's *King County* decision in which it said: “...the GMA requires the preservation of productive agricultural land and does not allow such land to be diverted to nonagricultural uses.” 167 The County's Finding 1.7.2 are not supported by evidence in the record from Issue Paper 9:

- Smaller parcel sizes in Clark County do not contribute the largest commodity value for agricultural industry. 168
- Mid-size and large farms produce the vast majority of commodity values in the County. 169
- Lot sizing for agriculture at up to 40 acre densities merely causes rural sprawl. 170

The Board finds and concludes FOCC has carried their burden of proof that reducing parcel sizes for agricultural and forestry lands will not meet requirements in RCW 36.70A.060 or .070 nor does it meet the standards established in *King County* where the County is 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.

**Issue 12:** AG/FR DESIGNATION BASED ON FALSE ISSUE PAPER # 9

Does the 2016 Plan Update violate WAC 365-195-050 and -060 in its designations of agriculture and forest lands, and in its amendment of resource-related development regulations and amended zoning maps, when the 2016 Plan Update relies on late-completed Clark County Issue Paper #9 which excluded meaningful public participation regarding soils considerations mandated by the GMA, when the findings and conclusions in Issue Paper #9 are not supported by fact, and when the 2016 Plan Update disregards and misapplies predominant parcel size, use capability, and long-term commercial significance? [CCCU No. E]


168 IR 3092 at 041130.

169 *Id.* at 041129 Exhibit A: Graph showing: *Clark County Farms Size by Value of Commodities.*

170 IR1418 at 019613-15.
Applicable Law

WAC 365-190-050 Agricultural resource lands

(3) (b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

CCCU argues the County violated WAC 365-196-050(3)[sic] when it failed to use Natural Resources Conservation Service (“NRCS”) soil classification system during the 2016 CP Update.\(^{171}\) CCCU contends the County process to amend forest and agricultural lands zones deprived the public from commenting on Issue Paper 9 before making zoning determinations, thereby violating the GMA. Lastly, CCCU complains the County rejected a proposal from CCCU for R-1 and R-2.5 for forest resource zone thereby violating GMA.\(^ {172}\)

The County responds that no new natural resource lands were designated and the County only changed the density zoning for existing natural resource lands.\(^ {173}\) The County provides legal history about CCCU’s long-held complaint about where natural resource lands have been designated, concluding that CCCU’s complaint has been addressed numerous times in the courts.\(^ {174}\) In conclusion, the County claims CCCU does not cite GMA authority for their position regarding unlawful natural resource designations.

\(^{171}\) CCCU Prehearing Brief at 23-25.

\(^{172}\) Id. at 25.

\(^{173}\) County Prehearing Brief at 32.

\(^{174}\) Id. at 33 A detailed history of litigation spawned by the 60 appeals of Clark County’s first GMA plan is set forth in FOCC Comments for the Record, by David McDonald, IR/Tab No. 1483.
Issue 12 Board Analysis

CCCU has not made clear legal arguments about which sections of RCW 36.70A are non-compliant, but CCCU’s Footnote 16 states their claim is based on WAC 365-190-050 and -060. In Issue 10 above, the Board explained process requirements for WAC 365-190-040 (overall process) and for WAC 365-190-050 (agricultural lands). In Issue 12, CCCU raised complaints that the County used data in addition to the NRCS data layer, the latter required in WAC 365-190-050(3)(B)(ii). The County used the NRCS layer and other data; nothing in the WAC precludes them from using other data, as long as they use NRCS data as well. CCCU’s claim about data layers is dismissed.

Next, CCCU argues the new resource land zones do not have as much development density as CCCU would like and that their proposal for more density was not adopted by the County. Nothing in the GMA or its implementing regulations requires the County to adopt a specific proposal by individuals or associations of individuals. The GMA gives the County broad discretion to adopt policies, plans and regulations that meet GMA requirements.175 Finally, CCCU’s claim the County did not give the public sufficient time to review the Issue Paper 9 is not a GMA violation. The County held a hearing on the Paper and took public comments and used its discretion to incorporate or not incorporate those comments into their Amended Ordinance 2012-06-12.176 The Board finds and concludes that CCCU has failed to prove the County violated WAC 365-190-050 or .060. Issue 12 is dismissed.

Issue 13: NO “VARIETY” OF RURAL DENSITIES

Did Amended Ordinance 2016-06-12’s adoption of a single “Rural,” comprehensive plan designation, excluding limited areas of more intense rural development and similar categories, in the land use and rural elements and on Exhibit 2 the “County/UGA Comprehensive Plan Clark County, Washington” map, the county’s future land use map, violate RCW 36.70A.020(2), (9), (10); RCW 36.70A.070 (preamble), (1), (5); or RCW 36.70A.130(1), (5) because the rural element fails to provide for a variety of rural densities

176 County Prehearing Brief at 10.
and rural uses? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 p. 10, pp. 14 – 16, p. 31, pp. 36 – 45, Chapter 3 Rural and Natural Resource Element, and Figure 24A; and Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]. [FOCC/FW No. 4]

Under Issue 13, Petitioners FOCC failed to brief RCW 36.70A.020(2), (9), (10); RCW 36.70A.070 (preamble), (1); and RCW 36.70A.130(1)—those unbriefed legal arguments are deemed abandoned.177

Applicable Law

RCW 36.70A.070(5)(B): 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.

Positions of the Parties

FOCC claims the County has only a single “rural” designation rather than a variety of designations as is required in RCW 36.70A.070(5) and in Thurston County and Kittitas.178 FOCC cites the Kittitas decision holding that “A plain reading of the statute indicates that the Plan itself must include something to assure the provision of a variety of rural densities.”179 FOCC concludes that, similar to the Kittitas case, Clark County’s Comprehensive Plan only has one rural designation.180

The County replies their CP Land Use Element “calls out various Rural base zones: Rural 5, Rural 10, Rural 20, Rural Center 1, Rural Center 2.5, Rural Commercial 2, Rural

177 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
179 Kittitas Cnty., 172 Wn.2d at 169, 256 P.3d at 1205.
180 FOCC Prehearing brief at 34.
Commercial 1, Rural Industrial, and Rural Industrial Land Bank.”

Thus, the County’s rural designations and variety of densities comply with the GMA.

**Issue 13 Board Analysis**

RCW 36.70A.070 sets forth mandatory elements of a jurisdiction's comprehensive plan, one of which is the “rural” element. RCW 36.70A.070(5) states that the rural element “shall provide for a variety of rural densities.” The County’s updated 2015-35 Comprehensive Plan Chapter 1 on land use establishes 20-Year plan designations and location criteria for four types of lands throughout the County: urban, rural, resource, and overlay districts. Within each category, the County then establishes a variety of plan designations or categories. For example, in Urban Lands, the County establishes “Urban Low Density Residential (UL)” which is a designation for predominantly single-family residential development with densities between 5 and 10 units per acre; it is implemented through zoning regulations: “The base zones which implement this 20-Year Plan designation are the R1-20, R1-10, R1-7.5, R1-6 and R1-5 zones.” Within the Rural Lands designation, the County has four designations, three of which are implemented through the County zoning regulations. The County has created rural densities based on

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181 See IR/Tab 2904 (Core Document), Land Use Element, pages 23-48.
182 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: (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.
183 IR 2904 Core Document - 20-Year Adopted Comp Growth Management Plan 2015-2035 at 034682.
184 Id. at 034682.
185 Id. at 034685 Rural Lands. The Rural (R) designation is intended to provide lands for residential living in the rural area. 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. These areas are subject to normal and accepted forestry and farming practices. The Rural 5, 10 and 20 base zones implement this designation…. (Emphasis added)
186 Rural Center (RC) The rural center residential zones are to provide lands for residential living in the Rural Centers at densities consistent with the comprehensive plan. These districts are only permitted in the designated Rural Centers and are implemented with the RC-1 and RC-2.5 base zones. (Emphasis added)
different zones within the Rural Lands. Each designation (except Rural Industrial Land Banks) is implemented through the County’s zoning regulations. The County FSEIS also defines rural character and rural lands, consolidates the designations and implements rural lands densities through zoning regulations:

**Rural Lands:** The 2016 Comprehensive Plan proposes to consolidate comprehensive plan land use designations, and create a “Rural Lands” designation which will be implemented by R-5, R-10, R-20 zones.\(^{186}\)

In Kittitas the Court ruled that the Kittitas County Comprehensive Plan “…does not directly include a variety of rural densities but instead allows the zoning code to designate densities, which has effectively resulted in a variety of densities in the rural area, including one dwelling unit per 3, 5, and 20 acres.” However, the Court posed the question of whether the GMA is satisfied “by reference in the Plan to zoning regulations that have included six possible designations (with three possible densities) and innovative zoning techniques or whether the Plan itself must include some designations or other language to directly and prospectively provide for a variety of rural densities.”\(^{187}\) (Emphasis added) The Court discussed the question of how counties shall “provide for a variety of rural densities” and they focused on the term “provide for.” They concluded “what, if anything, must be in a comprehensive plan regarding a variety of rural densities is now squarely before the court. A plain reading of the statute indicates that the Plan itself must include something to assure

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Rural Commercial (CR) This commercial district is located in rural areas outside of urban growth boundaries in existing commercial areas and within designated Rural Centers. These areas are generally located at convenient locations at minor or major arterial crossroads and sized to accommodate the rural population. Rural commercial areas are not intended to serve the general traveling public in rural areas located between urban population centers. Rural commercial areas within designated Rural Centers are implemented with the CR-2 base zone. Existing commercial areas outside of these Rural Centers are implemented with the CR-1 base zone. All new rural commercial applications shall address the criteria for new commercial areas through a market and land use analysis. (Emphasis added)

Rural Industrial (R) This industrial designation is to provide for industrial uses in the rural area that are primarily dependent on the natural resources derived from the rural area. The Heavy Industrial base zone implements this designation. (Emphasis added)

Rural Industrial Land Bank (RILB) A rural industrial land bank is a master planned location for major industrial developments established consistent with RCW 36.70A.367. The minimum size of the land bank is 100 acres.\(^{186}\) IR 2929 at 035377.\(^{187}\) Kittitas Cty. v. E. Wash. Growth Mgmt. Hearings Bd., 172 Wn.2d 144, 256 P.3d 1193 (2011) at 167.
the provision of a variety of rural densities.” Their reasoning was based on concerns by
some parties that, if not required in the Plan itself, the GMA will be evaded “through site-
specific rezones.” The Court was concerned that interested parties could not raise GMA
compliance in Land Use Petition Act petitions, so counties could change their zoning
regulations, and thus evade GMA process to implement a variety of densities, simply
through changes to their zoning codes, rather than GMA Comprehensive Plan
amendments.

Here, the County CP chapter on rural lands refers to zoning regulations to implement
the rural land designation: “The Rural 5, 10 and 20 base zones implement this
designation…. These districts are only permitted in the designated Rural Centers and are
implemented with the RC-1 and RC-2.5 base zones… Existing commercial areas outside
of these Rural Centers are implemented with the CR-1 base zone…. Heavy Industrial
base zone implements this designation.” (Emphasis added) While the CP includes a
policy referencing different densities (Policy 3.2.3 at page 91), it relies on the zoning code
for implementation. The CP’s Figure 24-A map shows all “Rural” residential areas as a
single color with no densities denoted. It is clear the Clark County CP does not provide
for a variety of rural densities in its plan as required by RCW 36.70A.070(5)(b), but refers to
its zoning regulations to implement the variety of densities. In accordance with the Kittitas
decision, the CP itself must include a variety of rural densities. The Board finds and
concludes, FOCC has carried its burden of proof showing the County did not comply
with RCW 36.70A.070(5) regarding a variety of rural densities.

191 IR 2904 Bates # 034685.
192 IR 2904 at 034740.
193 Id.
Issue 14: RURAL BUILDABLE LANDS REPORT CAPS RURAL GROWTH


Applicable Law

RCW 36.70A.110 Comprehensive plans—Urban growth areas.
(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, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses. (emphasis added)

WAC 365-196-425 Rural element.
(2) Establishing a definition of rural character.

CCCU argues the County used “non-validated, ever-changing” planning assumptions in its Buildable Land Report in violation of RCW 36.70A.110(2) and WAC 365-196-425(2)\(^{195}\) causing a cap in rural growth.\(^{195}\) CCCU enumerates at length the various models used for the BLR and how they were discussed by County officials and staff and appealed to courts.\(^{196}\) It states that the decision in Clark County Citizens United, “decisively settled that the use of population projections developed for urban area planning cannot lawfully be employed to project or plan for rural growth.”\(^{197}\)

The County responds that it has discretion to decide OFM population projections and planning assumptions to be used in BLR.\(^ {198}\) It corrects CCCU’s misstatement of the holding

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\(^{194}\) WAC 365-196-425(2) is one of the procedural criteria. As such, a challenger cannot establish a violation.

\(^{195}\) CCCU Prehearing Brief at 30.

\(^{196}\) Id. at 27 – 29.

\(^{197}\) Clark County Citizens United v. Clark County Natural Resources Council, 94 Wn. App. 670, 676.

\(^{198}\) County Prehearing Brief at 36.
in Clark County Citizens United. Finally, the County argues the legislature gave it discretion to make planning assumption decisions and they did not violate GMA.

Issue 14 Board Analysis

CCCU fails to establish how the County’s action violated RCW 36.70A.70A.110(2). That statute only addresses the use of OFM population projections to accommodate projected urban uses and provides “…the county and each city within the county shall include areas and densities sufficient to permit the urban growth.” As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses. Nothing in RCW 36.70A.70A.110(2) addresses planning for rural growth. As the County observes, CCCU misstates the holding in Clark County Citizens United. The question of employing OFM population projections when planning for rural growth was not the issue before the Court and, in fact, the Court stated the following in a footnote:

> 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 area. That question is not presented by this appeal.199 (Emphasis added)

The Board finds and concludes CCCU has not carried its burden of proof showing the County violated RCW 36.70A.110(2). The Board dismisses Issue 14.

Issue 15: R-1 AND R-2.5 vs NEW UPZONED PARCELS

Does the 2016 Plan Update violate WAC 365-196-425 in its designations of rural lands, and in its amendment of rural-related development regulations and zoning maps, when the 2016 Plan Update disregards and misapplies predominant parcel size and density and rural character? [CCCU No. G]

Issue 16: URBAN / RURAL SPLIT OF 90/10 vs 85/15

Does the 2016 Plan Update violate WAC 365-196-425(3)(a) and 365-196-210(27) because the County relied on a 90/10 urban to rural population split projection when the historical population allocation has averaged closer to an 85 urban / 15 rural split? [CCCU No. H]

Applicable Law

WAC 365-196-030 Applicability

(2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches. (Emphasis added)

Positions of the Parties

In Issue 15, CCCU argues the County’s “procedural and substantive errors regarding resource land designations” means the County’s rural land designations also violate WAC 365-196-425. CCCU claims “[r]ural land designations are not actual “designations” because they occur by default after urban and resource land designations are made; in other words, rural lands are the leftovers after a county makes its urban and resource designations.”

The County responds that they did not designate rural lands in their 2016 CP Update.

In Issue 16, CCCU asserts the County did not define rural character in the CP update, thus violating WAC 365-196-425(2)(c). Further, by adopting an aspirational 90/10% urban/rural split for the County’s future population densities, the County does not reflect the reality of 85/15% rural/urban population split. CCCU argues the County violated WAC 365-196-425(2)(b)(ii) by failing to adopt a rural definition and imposing a 90/10 urban/rural split because the County failed to consider how the 2016 Plan Update would “[f]oster [the County’s] traditional rural lifestyles, rural-based economies, and opportunities to both life and work in rural areas.”

200 CCCU Prehearing Brief at 30.
201 Id. at 31.
202 IR 2123 Thorp Report.
203 CCCU Prehearing Brief at 31.
For Issue 15, the County replies it “did not designate either resource lands or Rural lands by the 2016 Plan Update. CCCU has not met its burden to prove that the County’s inactions with regard to Rural lands designation were clearly erroneous and violative of GMA.” For Issue 16, the County defers to FOCC’s reply brief. FOCC responded that rural character is defined under the heading of “Rural County Area” in the County 2016 Comprehensive Growth Management Plan Update Final Supplemental Environmental Impact Statement (FSEIS) Chapter 6.0 Land and Shoreline Use pp. 6-11 – 6-12 (April 2016). FOCC argues the 90/10% urban/rural population split is achievable based on data from the Buildable Lands Report.

**Issue 15 and 16 Board Analysis**

These issues allege violations of sections of Chapter 365-196 WAC, the Procedural Criteria for Adopting Comprehensive Plans and Development Regulations. That chapter was adopted merely to provide assistance to local governments in interpreting the GMA, and does not add requirements beyond the provisions of the GMA itself. Compliance with the procedural criteria is not a prerequisite for compliance with the GMA; the criteria are merely recommendations for meeting GMA requirements. The Board determines whether a jurisdiction is in compliance with the GMA “based on the act itself.” Further, underlying goals of the GMA encourage development in urban areas (Goal 1), and reduce sprawl (Goal 2). How jurisdictions achieve accomplishment of those goals is within their discretion. Under RCW 36.70A.3201, jurisdictions have a “broad range of discretion.” The Board finds and

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204 County’s Prehearing Brief at 37.
205 IR 2929 at 035377.
206 FOCC Respondents’ Prehearing Brief on CCCU Issues (December 22, 2016) at 9 “But the Buildable Lands Report documents that between 2006 and 2014, 9.1 percent of the building permits were issued in the “rural” areas and 90.9 percent of the building permits were issued in UGAs. So the growth allocation is achievable. Most of the numbers that CCCU rely on are not shares of past or future growth, but rather comparisons of the total population in the UGAs with the total population in the rural areas and resources lands. This is an apples to oranges comparison.”
208 WAC 365-196-030(2) and (3).
CONCLUDES, CCCU is unable to establish GMA violations in regards to Issues 15 and 16 and those issues are dismissed.

INDUSTRIAL LAND BANKS

Issue 17: DEADLINE MISSED FOR INDUSTRIAL LAND BANKS

See Order Denying Partial Summary Judgment and Dismissing Issue 17 (November 29, 2016)

Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.367(6) and RCW 36.70A.130(1)(d) because the industrial land banks were designated after the deadline in RCW 36.70A.367(6) and RCW 36.70A.130(4)? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 p. 31, pp. 36 - 37, p. 97, p. 228, p. 402, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 9]

Issue 18: PROCEDURAL ERRORS IN INDUSTRIAL LAND BANK DESIGNATION

Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.130(1), (3), (5); RCW 36.70A.210(2), (3); the applicable provisions of RCW 36.70A.365(2); or RCW 36.70A.367(1), (2), (3), (4), (7) by failing to comply with the procedural and substantive requirements for industrial land banks? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 p. 31, pp. 36 - 37, p. 97, p. 228, p. 402, Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 11]

Applicable Laws:

RCW 36.70A.210 Countywide planning policies. (1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "countywide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities. (2) (a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a

209 See Footnote 202 below.
meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a countywide planning policy.  (3) A countywide planning policy shall at a minimum, address the following: ...(g) Policies for countywide economic development and employment, which must include consideration of the future development of commercial and industrial facilities...(emphasis added)

RCW 36.70A.365 Major industrial developments.  A county required or choosing to plan under RCW 36.70A.040 may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas. A major industrial development may be approved outside an urban growth area in a county planning under this chapter if criteria including, but not limited to the following, are met: (h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area. (emphasis added)

RCW 36.70A.367 Major industrial developments—Master planned locations. In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (5) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas. (1) A master planned location for major industrial developments may be approved through a two-step process: Designation of an industrial land bank area in the comprehensive plan; and subsequent approval of specific major industrial developments through a local master plan process described under subsection (3) of this section. (a) The comprehensive plan must identify locations suited to major industrial development due to proximity to transportation or resource assets. The plan must identify the maximum size of the industrial land bank area and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section. In selecting locations for the industrial land bank area, priority must be given to locations that are adjacent to, or in close proximity to, an urban growth area.  (b) The environmental review for amendment of the comprehensive plan must be at the programmatic level and, in addition to a threshold determination, must include: ..... (i) An inventory of developable land as provided in RCW 36.70A.365; and (ii) An analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.
FOCC argues the County failed to meet requirements in RCW 36.70A.210, .365, and .367 by not consulting with cities in designating rural industrial land banks (RILB), by failing to conduct a land inventory suitable for industrial sites or land banks, and failing to include findings that suitable land is not available within a UGA, and thereby locating the industrial site outside the UGA. FOCC refers to Ordinance No. 2016-04-03, an Addendum and a Response to SEPA Comments as evidence the County did not comply with these statutes. FOCC also argues the County failed to include RILB infrastructure funding data and how impacts of RILB will be mitigated. FOCC questions whether the loss of 600 acres of agricultural lands will be sufficiently mitigated by the County's proposed 100' buffer, claiming the County violated RCW 36.70A.365(2)(f) requiring separate mitigation for impacts on agricultural lands.

In response, the County adopted Intervenor Lagler’s legal arguments in Intervenor’s December 22, 2106, Prehearing Brief. Intervenor Lagler responds to FOCC’s allegations by clarifying the cities and County did coordinate and points to the Record which “includes copies of letters to both the City of Battle ground and the City of Vancouver …as well as a series of minutes from meetings between Clark County and all of the cities…regarding the Rural Industrial Land Bank.” In response to claims about an inventory, Intervenor Lagler explains its RILB Application to Clark County included an inventory of available

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210 FOCC Prehearing Brief at 35 See Also IR 143 and IR 158 (Note: Ordinance 2016-04-03 challenged in GMHB Nos. 16-2-0002 and 16-2-0004, both of which were consolidated into this GMHB No. 16-2-0005c). 211 Id. at 36 But the Addendum’s discussion of mitigation measures includes no information on how the new infrastructure will be provided or how the impact fees the county charges will be updated to include the considerable costs of the needed infrastructure. IR 158 p. 001885 in Tab IR 158, Addendum Part II: Alternative Sites Analysis p. 26. IR 143 p. 0010701, Clark County Rural Industrial Land Bank Responses to SEPA Comments Planning Commission Proposal p. 6. 212 Id. at 37 See RCW 36.70A.365(2) A major industrial development may be approved outside an urban growth area in a county planning under this chapter if criteria including, but not limited to the following, are met: (a) New infrastructure is provided for and/or applicable impact fees are paid; (b) Transit-oriented site planning and traffic demand management programs are implemented; (c) Buffers are provided between the major industrial development and adjacent nonurban areas; (d) Environmental protection including air and water quality has been addressed and provided for; (e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas; (f) Provision is made to mitigate adverse impacts on designated agricultural lands, forestlands, and mineral resource lands; 213 Clark County Prehearing Brief at 55. 214 Intervenor 3B NW LLC and Lager Prehearing Brief at 10; Tab 9 to Intervenor’s Prehearing Brief and website: rilb.Clark.wa.gov RILB IR 192, pp. 002689 – 002725.
property conducted by the Columbia River Economic Development Council.\textsuperscript{215} Regarding
claims about infrastructure funding and mitigation, Intervenor argues\textsuperscript{216} the record contains
a conceptual sewer plan prepared by Clark Regional Wastewater District designed
specifically for this Rural Industrial Land Bank;\textsuperscript{217} a report on the availability of utilities for
the Rural Industrial Land Bank;\textsuperscript{218} and information about the ability of transportation
improvements in the vicinity of the Rural Industrial Land Bank to serve the site.\textsuperscript{219}

Regarding agricultural land de-designation Intervenor states “It is not at all clear that
the creation of a Rural Industrial Land Bank (“RILB”) is subject to … WAC Section 365-190-
050(3),”\textsuperscript{220} but explains the RILB application fully analyzes the WAC factors and case law
requirements.\textsuperscript{221} For the Lagler property near the City of Vancouver, Intervenor points to
FOCC’s lack of current information arguing “Although petitioner’s prehearing brief accurately
sets forth the de-designation requirements found in WAC 365–190–050, the petitioner’s
analysis of these criteria does not use the most current information in order to get to

\textsuperscript{215} Id. at 11 “That inventory makes it clear that the largest site available within any of Clark County’s urban
growth areas is 78 acres. (RILB IR 16, pp. 000131 – 000168) This RILB is being created to serve much larger
development than can currently be provided for within the urban growth boundary in Clark County. This is the
fundamental purpose of the Rural Industrial Land Bank – to provide for parcels larger than can be found inside
urban growth areas. (RCW 36.70A.367(4)(a)

\textsuperscript{216} Id. at 11.

\textsuperscript{217} RILB IR 13, p. 000122.

\textsuperscript{218} RILB IR 72, pp. 00675 – 00677.

\textsuperscript{219} RILB IR 79, pp.. 000712 – 000718.

\textsuperscript{220} Intervenor 3B NW LLC and Lager Prehearing Brief at 2 at Footnote #1 See: WAC 365-190-050 Agricultural
resource lands. (3) Lands should be considered for designation as agricultural resource lands based on three
factors: (a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should
use the criteria contained in WAC 365-196-310. (b) The land is used or capable of being used for agricultural
production. This factor evaluates whether lands are well suited to agricultural use based primarily on their
physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than
others, including some livestock production operations. (c) The land has long-term commercial significance for
agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria,
as applicable...

\textsuperscript{221} Id. at 3 See IR 2740 Letter from Bruce Prenguber “Areawide Analysis for 2015 Review of AG Lands & De-
designation by La Center” See also: Rural Industrial Land Bank (RILB) Index of Record (IR) 6, pp. 000077 –
000082.
petitioner’s desired outcome.” Intervenor enumerates why the Lagler property meets WAC 365-190-050(3) requirements for agricultural land de-designation.

For other aspects of de-designation, such as agricultural land mitigation, Intervenor Lagler stated “for the loss of agricultural land that a certain amount of acreage for small organic (non–dairy) farms be set aside as part of the RILB master plan process for this project.” Regarding parcel size and proximity to markets, this Intervenor quotes the Globalwise Report indicating changing conditions have impacted the land required by the County’s Agricultural Boundaries. Intervenor concludes the County has complied with the requirements to establish an RILB and many of FOCC’s objections are addressed in the record.

Issue 18 Board’s Findings and Conclusions:

Three GMA statutes apply to industrial developments. RCW 36.70A.365 and RCW 36.70A.367 both set forth requirements a County must meet to site specific major industrial developments or for the designation of master planned locations for major industrial activity. Both statutes require consultation with cities consistent with RCW 36.70A.210 and .215 and require counties to adopt county-wide planning policies; industrial development is one of the countywide policies. The County’s updated Comprehensive Plan defines and has countywide planning policies for Rural Industrial Land Banks (RILB) in the Land Use Chapter. The overarching Countywide Planning Policy goal is:

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222 Id. at 4.
223 Id. at 11-15 for Lagler Property and at 4 for 3B Property de-designation criteria.
224 Id. at 12.
225 Id. at 14-15 See IR 2740 Globalwise Report at 22 “Historically cow dairies were a major part of Clark County agriculture. The county’s dairy industry has steadily declined. Dairy farmers in the county indicate that there are seven remaining cow dairies.”
226 RCW 36.70A.210; RCW 36.70A.365; RCW 36.70A.367.
227 WAC 365-196-305 also speaks to county and city consultation: County-wide planning policies. (1) Purpose of county-wide planning policies. The act requires counties and cities to collaboratively develop county-wide planning policies to govern the development of comprehensive plans. The primary purpose of county-wide planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a common border or related regional issues...(4)(g) County-wide economic development and employment...
3.0 Countywide Planning Policies Rural Industrial Land Bank

GOAL: Support the creation of a rural industrial land bank consistent with the growth management act to provide a master planned location for living wage jobs and industries supporting rural communities in an environmentally sensitive manner.229

The countywide planning policies were adopted previous to this instant case and cannot now be challenged by Petitioners. **The Board finds and concludes, FOCC has not carried its burden of proof demonstrating the County has not met RCW 36.70A.210 requirements.**

The Board next reviews FOCC’s claim the County did not meet requirements in RCW 36.70A.365 applicable to major industrial developments. This statute is limited to “a process for reviewing and approving proposals to authorize siting of specific major industrial developments outside urban growth areas.” (Emphasis added) In Clark County Ordinance 2016-04-03, the County approved two industrial land banks under RCW 36.70A.367 neither of which proposed a specific major industrial development.230 Thus, RCW 36.70A.365 does not apply in this case. **The Board finds and concludes, FOCC fails to carry its burden of proof demonstrating the County violated RCW 36.70A.365.**

Lastly, the Board reviews requirements under RCW 36.70A.367, which include a two-step process: 1.) “[d]esignation of an industrial land bank area in the comprehensive plan; and 2.) subsequent approval of specific major industrial developments through a local master plan process described under subsection (3) of this section.” In the first step, a County must:

“(a)...identify locations suited to major industrial development due to proximity to transportation or resource assets.

...**identify the maximum size of the industrial land bank area** and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section.

229 Id. at 034746.
230 FOCC Petition for Review Case No. 16-2-0002 (June 20, 2016) Ordinance No. 2016-04-03 “An ordinance relating to land use, and for establishing two rural industrial land bank sites in Clark County. WHEREAS, Clark County is allowed to plan for up to two rural industrial land bank sites under the Growth Management Act (RCW 36. 70A.367); and WHEREAS, the County received an application in February 2014 for establishing two sites as rural industrial land banks...”
… priority must be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(b) The environmental review for amendment of the comprehensive plan must be at the programmatic level and, in addition to a threshold determination, must include:

(i) An inventory of developable land as provided in RCW 36.70A.365;

(ii) An analysis of the availability of alternative sites within urban growth areas and the long-term annexation feasibility of sites outside of urban growth areas.”

(Emphasis added)

The County adopted Ordinance No. 2016-04-03 and 2016-05-03 to establish RILBs and relied upon a Staff Report for the particulars of the RILB. The Ordinances identify two RILB locations near UGAs, establishes 100 acres as the minimum size and adopts findings that the County conducted a land inventory in 2011, an EIS in 2007 with an EIS Addendum in 2015, and a regional, area-wide agricultural land de-designation analysis. FOCC argues the County did not meet RCW 36.70A.367(2)(b)(i) requirements for findings in Ordinance 2016-04-03 that an inventory of developable lands had been completed. FOCC claims the inventory in .367 is linked to .365 and thus the County must have findings in its Ordinance. But, FOCC’s argument fails because the County updated its 2007 EIS with a 2015 Addendum which includes an inventory of RILB environmental requirements. In addition, the requirement for findings in RCW 36.70A.365 applies “to site the major industrial development” which is different than an industrial land bank. FOCC fails to demonstrate that .367 inventory requirements are linked to the .365 inventory.

FOCC’s remaining arguments focus on RCW 36.70A.365 violations, but they do not apply here. The County’s action involves RILBs which fall under RCW 36.70A.367. The County is required under RCW 36.70A.367 to establish a maximum size for RILBs.

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231 RCW 36.70A.(2)(a and b).
234 FOCC Prehearing Brief at 35.
235 RCW 36.70A.365(2)(h) An inventory of developable land has been conducted and the county has determined and entered findings that land suitable to site the major industrial development is unavailable within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close proximity to the urban growth area. (Emphasis added)
RCW 36.70A.367 Major industrial developments—Master planned locations

(2)(a) The comprehensive plan must identify locations suited to major industrial development due to proximity to transportation or resource assets. **The plan must identify the maximum size of the industrial land bank area** and any limitations on major industrial developments based on local limiting factors, but does not need to specify a particular parcel or parcels of property or identify any specific use or user except as limited by this section. In selecting locations for the industrial land bank area, priority must be given to locations that are adjacent to, or in close proximity to, an urban growth area. (emphasis added)

The County established RILBs in Ordinance 2016-04-03:

WHEREAS, by county code (CCC Section 40.560.010 (J)), the minimum size for a rural industrial land bank is 100 acres; and

WHEREAS, the proposed sites for the rural industrial land bank are currently zoned for agricultural uses, requiring a de-designation analysis; and

WHEREAS, the County prepared an inventory identifying locations suited to major industrial use, an analysis of the availability of alternative sites, conceptual master plan, comprehensive plan amendments, and development regulations pursuant to RCW 36.70A.367;236 (Emphasis added)

Subsequently, the County updated its comprehensive plan by adopting Amended Ordinance 2016-06-12. The updated CP includes RILBs goals and policies:237


237 IR 2904 at 034746 RILB Policies 3.8.1. Designate a rural industrial land bank that is compatible with surrounding land uses and that creates long term value for both the community and the industrial users. 3.8.2 Develop rural major industrial developments within the designated rural industrial land bank that promotes sustainable development by minimizing our environmental impacts, protecting natural resources and reducing waste. 3.8.3 Anticipate changing market and industrial needs and maintain the flexibility required for a variety of light industrial uses within the rural industrial land bank. 3.8.4 Ensure rural major industrial development within the rural industrial land bank respects and preserves critical areas functions and values and develops a stormwater solution that mimics the natural hydrology of the site while developing buffers both internally and externally. Incorporate low impact development strategies. 3.8.5 Ensure infrastructure requirements are met to maximize the land value. Coordinate infrastructure analysis and planning with public and private agencies so that their long term planning can anticipate the future light industrial development within the rural industrial land bank. 3.8.6 Develop a roadway and site infrastructure backbone within the rural industrial land bank that allows for phased development based on the market needs. Accommodate rail access. 3.8.7 Promote a level of predictability for future light industrial developers and the County through the flexibility of standards and consolidated reviews.
Rural Industrial Land Bank

GOAL: Support the creation of a rural industrial land bank consistent with the growth management act to provide a master planned location for living wage jobs and industries supporting rural communities in an environmentally sensitive manner.238

However, the Clark County Comprehensive Plan (2015-2035), Land Use Element Section on “Rural Industrial Land Bank (RILB)” at pages 36-37, adopted by Amended Ordinance 2016-06-12 fails to “identify the maximum size of the industrial land bank area,” as required by RCW 36.70A.367(2)(a).239 The Board is left with the firm and definite conviction that a mistake has been made by the County in designating the industrial land bank area in the Comprehensive Plan without identifying the maximum size of the industrial land bank area.

The Board finds: (1) this action violates 36.70A.367(2)(a), and (2) Ordinance 2016-06-12, Ordinance 2016-04-03 Ordinance 2016-05-03 are clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

Issue 19: DE-DESIGNATING 602 AG LAND ACRES

Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.130(1), (5); RCW 36.70A.170; WAC 365-190-040(10)(b); WAC 365-190-050; or is the ordinance inconsistent the Clark County comprehensive plan because it de-designated approximately 602.4 acres of agricultural lands of long-term commercial significance? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 10 – 12, pp. 14 – 15, p. 31, pp. 36 – 37, pp. 43 – 44, pp. 84 – 86, pp. 94 – 95, p. 97, p. 228, p. 402, Figure 22A, Figure 22B, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 10]

Under Issue 19, Petitioners FOCC failed to brief RCW 36.70A.020(8); RCW 36.70A.030(2); RCW 36.70A.050(3); RCW 36.70A.070 (internal consistency); RCW

238 IR 2904 at 034746.
239 Id.
36.70A.130(1), (5); WAC 365-190-040(10)(b) -- those unbriefed legal arguments are deemed abandoned.240

Applicable Law

**RCW 36.70A.060(1)(A):** Counties “shall adopt development regulations . . . to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.”

**WAC 365-190-050(1):** In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process.

**WAC 365-190-050(3):** Lands should be considered for designation as agricultural resource lands based on three factors:

- **(a) The land is not already characterized by urban growth.** To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

- **(b) The land is used or capable of being used for agricultural production.** This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

  - (i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The 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. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

  - (ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

- **(c) The land has long-term commercial significance for agriculture.** In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

240 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;
(ii) The availability of public facilities, including roads used in transporting agricultural products;
(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;
(iv) The availability of public services;
(v) Relationship or proximity to urban growth areas;
(vi) Predominant parcel size;
(vii) Land use settlement patterns and their compatibility with agricultural practices;
(viii) Intensity of nearby land uses;
(ix) History of land development permits issued nearby;
(x) Land values under alternative uses; and
(xi) Proximity to markets. 241

Positions of the Parties

FOCC argues RCW 36.70A.170(1) and RCW 36.70A.060(1)(a) require the County to designate and protect agricultural lands and there is no exception for Rural Industrial Land Banks (RILB). Yet, FOCC contends two RILB sites recently de-designated by the County are in the same “Area VB” the County tried to previously de-designate, but the Court of Appeals upheld the Board’s decision finding this prior de-designation non-compliant with GMA. 242 In other words, FOCC concludes the Court previously mandated these sites remain in agricultural status.

Next, FOCC argues the County did not use an area-wide process to de-designate the RILBs and while the “County’s analysis did look at other parcels in the vicinity, the County only de-designated the 602.4 acres in the RILBs even though some of the other parcels

241 These agricultural resource land designation factors are “minimum guidelines that apply to all jurisdictions,” RCW 36.70A.050(3).
242 FOCC Prehearing Brief at 37. See also Clark Cnty, 161 Wn. App. at 220, 254 P.3d at 868.
have a lower percentage of prime soils and de-designating this site isolates the AG-20 lands west of SR 503."\textsuperscript{243}

FOCC then enumerates the \textit{Lewis County} factors it claims the County improperly analyzed before de-designating the RILB properties:\textsuperscript{244} the land is not already characterized by urban growth;\textsuperscript{245} the land is primarily devoted to the commercial production of agricultural products;\textsuperscript{246} and the land has long-term commercial significance for agricultural production.\textsuperscript{247} FOCC argues the RILBs, as analyzed in the County’s Agricultural Lands Analysis for Rural Industrial Land Banks Appendix B, shows the “602.4 acres of agricultural land continues to meet the factors in WAC 365-190-050 and the County Comprehensive Plan”\textsuperscript{248} because the land is “outside a sewer service area and that agricultural roads on the properties allow the movement of farm vehicles off of SR 503 in discussing the availability of public facilities;\textsuperscript{249} “fails to consider the agricultural products enumerated in RCW 36.70A.030(2) as the \textit{Lewis County} decision requires;”\textsuperscript{250} “fails to note… that the designation of agricultural land “should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural

\textsuperscript{243} Id. IR 159 Agricultural Lands Analysis Rural Industrial Land Bank Candidate Alternative Sites, BERK Consulting, in conjunction with Cairncross & Hempelmann, September 2015 / Revised February 2016 pp. 001913 – 38. Hereinafter RILB Appendix B: Agricultural Lands Analysis.
\textsuperscript{244} FOCC Prehearing Brief at 38-40. \textit{Lewis County}, 157 Wn.2d at 502, 139 P.3d at 1103.
\textsuperscript{245} Id. IR 171 p. 002501 in Tab 171, “RILB Vicinity Google Earth 2015 Images for Emailing and IR 159 p. 001925 in Tab IR 159, ILB Appendix B: Agricultural Lands Analysis p. 23.
\textsuperscript{246} Id. IR 1535 pp. 020853 – 54 in Tab IR 1535A of FOCC’s SJM, \textit{Promoting Agricultural Food Production in Clark County}, A proposal developed by the Clark County Food System Council p. 4 (November 2013). This is also IR 128 GMHB No. 16-2-0002 record. See also IR 171 p. 002501 in Tab 171, “RILB Vicinity Google Earth 2015 Images for Emailing;” IR 159 pp. 001927 – 30 in Tab IR 159, ILB Appendix B: Agricultural Lands Analysis pp. 25 – 28.
\textsuperscript{247} Id. at 001929 Appendix B: Agricultural Lands Analysis p. 27-28. See also IR 1535 p. 020875 in Tab IR 1535 of FOCC SJM, USDA Natural Resources Conservation Service Minnesota, \textit{Land Capability Classes} webpage p. 1.
\textsuperscript{248} Id. IR 159 pp. 001926 – 38 in Tab IR 159, ILB Appendix B: Agricultural Lands Analysis pp. 25-36.
\textsuperscript{249} Id. IR 159 p. 001930, ILB Appendix B: Agricultural Lands Analysis p. 28; IR 171 p. 002501 in Tab 171, “RILB Vicinity Google Earth 2015 Images for Emailing;” IR 107 pp. 001515 – 16 in Tab IR 107, Vancouver Public Works Department from the \textit{City of Vancouver Comprehensive Plan} p. 5-26 & Clark County Regional Waste Water District map.
\textsuperscript{250} Id. \textit{Lewis County}, 157 Wn.2d at 502, 139 P.3d at 1103. RCW 36.70A.030(2) is quoted above; IR 159 p. 001933, pp. 001936 – 37 in Tab IR 159, ILB Appendix B: Agricultural Lands Analysis p. 31, pp. 34 – 35.
industry in the county over the long term." In sum, FOCC argues the de-designation of agricultural land for the RILB violated the GMA.

The County defers this issue to Intervenor Lagler Real Property, LLC and Ackerland, LLC. Intervenor cited WAC 365-190-050(3) explaining the ALLTCS properties meet criteria for de-designation because FOCC has mischaracterized the current state of the properties. Intervenor argues the properties have "been improved to urban standards creating an incompatibility with farming activity and these improvements impede the ability to transport animals and feed between the Lagler and Ackerland parcels." Their property "has declining value for dairy production according to the Analysis of the Agricultural Economic Trends and Conditions in Clark County Report by Globalwise dated April 16, 2007..." Intervenors refute the notion their property meets criteria to qualify as agricultural land.

**Issue 19 Board Analysis**

The question before the Board is whether the County properly de-designated Site 1 selected for the RILB. FOCC and Intervenors offered extensive materials about the nature of the properties and whether the scope of the de-designation analysis met GMA requirements. Appendix B shows the County received an RILB application with the following information:

In 2014, Clark County received a docket application to establish an RILB on properties that straddle SR 503 north of the Vancouver UGA:

- Ackerland property west of 117th Avenue, 223.72 acres.
- Lagler property east of 117th Avenue, 378.71 acres.

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252 County Prehearing Brief at 54-55.

253 Intervenor 3B NW and Lagler Prehearing Brief at 12.

254 Id.

255 Id. 12-16.
Presently the zoning for both properties is Agriculture (AG-20). The requested zoning is light Industrial (IL); the IL zone uses are listed in Clark County Code (CCC) Section 40.230.085.256

The sites were studied for a variety of agricultural and employment uses, including urban industrial uses, in a 2007 Environmental Impact Statement (EIS). Prior Comprehensive Plan amendments included the properties in the Vancouver UGA, but the expansions were removed after a Growth Management Hearings Board determination and compliance order requiring the County to do so. The sites have not previously been evaluated as part of potential RILB.257

An important step in the RILB process is an inventory of developable land and analysis of the availability of alternative sites within UGAs and the long-term annexation feasibility of sites outside of UGAs (RCW 36.70A.367(2)). As a result of a draft inventory applying criteria of what makes a good industrial site (available under separate cover, BERK et al September 2015), five sites have been identified as candidate alternative sites for further evaluation, including the docket site. See Exhibit 2. Sites 1 through 4 have been designated as having long-term significance for commercial agriculture. Site 5 does not contain lands designated as long-term significance for agriculture.258

The County requested BERK Consulting prepare a county-wide or area-wide analysis as required in WAC 365-190-050.259 The record shows BERK conducted an “Agricultural Lands Analysis” (Analysis) for four RILB sites in which they reviewed hundreds of acres of land for each site. Site 1 contains the Ackerland and Lagler properties and the County reviewed 3,196 acres and then selected 602.4 acres to de-designate from ALLTCS to RILB.260 BERK claims their analysis for this site was an area-wide study.261 However, like

256 IR 159 p. 001905, ILB Appendix B: Agricultural Lands Analysis.
257 IR 159 at 001909 and at 001905.
258 Id. at 001906.
259 FOCC Prehearing Brief at 37. See also WAC 365-190-050 Agricultural resource lands. In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities must not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.
260 IR 159 at 001909.
the parcel-by-parcel analysis in Issue 10, the Board finds the County did not analyze the county-wide or area-wide impacts on the agricultural industry if it removed the 602 acres from agricultural production.

Agricultural land conservation is predicated on RCW 36.70A.020 (8)-the natural resource industries goal:

Maintain and enhance natural resource-based industries, including … agricultural … industries. Encourage the conservation of productive … agricultural lands, and discourage incompatible uses.

RCW 36.70A.170(1) required counties to designate natural resource lands, including agricultural lands. Designation of those natural resource lands was the first step that counties were required to accomplish following adoption of the GMA. That designation preceded the adoption of comprehensive plans and the establishment of urban growth areas. As the Supreme Court stated in City of Redmond:

"The significance of agricultural land preservation in the GMA can be seen in the very timing of key actions mandated statute."262

The Redmond court went on to state:

Natural resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses by allowing incompatible uses nearby impairs the viability of the resource industry.263

As this Board observed in Clark County Natural Resources Council and Futurewise v. Clark County:

The viability of the agricultural industry involves more than the mere conservation of land for production. There must be a significant base of land and production to support all of the agriculturally based businesses that are part of the industry, including processors, suppliers, shippers, cold storage plants, equipment repairers, and so on. In combination, the lands, producers and support businesses constitute the agricultural economy. As stated above

261 Id. at 001908 “Site 1 and Areawide Study Area” and 001910 Areawide analysis conducted Site 1 3,196 acre Ag designation area.
262 City of Redmond v. CPSGMHB, 136 Wn2d 38.
"natural resource lands are protected... to ensure the viability of the natural resource-based industry that depends on them". If a jurisdiction fails take a broader view, and chooses to de-designate agricultural lands on a parcel by parcel basis, it is inevitable that the jurisdiction eventually reaches a point where the agriculture production base decreases to such an extent that elements of the support industry cannot survive economically. That process continues as the production side of the industry is unable to obtain services, thus leading to further conversion of agricultural lands to non-agricultural uses. The long-term result is the disappearance of the agricultural industry.264

WAC 365-190-050(5) states that the final outcome of a designation process should "result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities." (Emphasis added) Here, the County reviewed four sites and selected 602 acres within one site that may or may not have a key role to play in the agricultural industry in Clark County or the area. The County in 2004 found this land had long-term significance for agriculture when it designated the land pursuant to the requirements of RCW 36.70A.170.265 Following a subsequent de-designation by the County in 2007, the Board in its Amended Final Decision and Order in Case No. 07-2-0027, found the property (then referred to as Area VB) was improperly de-designated by Clark County. That decision led to the County rescinding its de-designation.266 There no evidence reflected in the record analyzing the effect of de-designation on the economic viability of the agricultural industry in Clark County. Also there has been no documentation of substantial changes in the land. As the Court of Appeals observed:

Absent a showing that this designation was both erroneous in 2004 and improperly confirmed by the Growth Board, or that a substantial change in the land occurred since the ALLTCS designation, the prior designation should remain. Without such deference to the original designation, there is no land

264 Case No. 09-02-0002 (FDO, August 6, 2009) at 21.
266 Id. at 227-228.
use plan, merely a series of quixotic regulations.\textsuperscript{267}

The Board finds and concludes FOCC has carried their burden of proof demonstrating the County failed to conduct an area-wide analysis for this RILB site.

Next, the Board reviews the \textit{Lewis County} “WAC Factors”\textsuperscript{268} claimed by FOCC to be deficient in the County’s Agricultural Lands Analysis in Exhibit 3.\textsuperscript{269} First, was Site 1 characterized by urban growth?

- RCW 36.70A.030 Definitions (19) “Urban growth” refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. \textit{Characterized by urban growth} refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

- WAC 365-190-050(3)(a) The land is \textit{not already characterized by urban growth}. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

The Board refers to the description in the Analysis which states “parcels are in dairy, other agricultural or rural residential”\textsuperscript{270} and it refers to Exhibit 171 in which the property itself has green and brown fields with a white farm building.\textsuperscript{271} Both the description in the Appendix B and the photograph show the property is not characterized by urban growth. It may be that this parcel is adjacent to an urban growth boundary, but the Board has found in Issue 5 above that the County’s UGAs are too large. Thus, de-designating these parcels for RILB would be inappropriate for the next 20 year planning horizon because the UGA is already oversized.

\textsuperscript{267} \textit{Id.} at 234.
\textsuperscript{268} \textit{Lewis County}, 157 Wn.2d at 502, 139 P.3d at 1103 and WAC 365-190-050(1), (2) and (3)(a-c).
\textsuperscript{269} IR 159 at 001909-12.
\textsuperscript{270} \textit{Id.} at 001909.
\textsuperscript{271} IR 171 p. 002501 in Tab 171, RILB Vicinity Google Earth 2015 Images for Emailing.
WAC 365-190-050(3)(c)(v) lists one criteria for designating agricultural land as “[r]elationship or proximity to urban growth areas,” but this does not mean that every piece of land abutting an UGA must be converted to urban uses. The Legislature intended for counties and cities to identify, designate and conserve agricultural land in RCW 36.70A.060 and that jurisdictions “shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with …these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.” The GMA was not intended to allow a domino effect of urbanization of parcel next to parcel. Carried to its logical end, natural resource lands would never be protected. Without designating and protecting natural resource lands, there is nothing to prevent the continuing loss of these lands. Site 1 in this case is not characterized by urban growth, even though it may be near an urban growth area. **The Board finds Site 1 meets the first WAC factor of “not characterized by urban growth” as specified in WAC 365-190-050(3)(a).**

Second, is Site 1 “used or capable of being used for agricultural production”? Several sections in the Analysis for Site 1 state the site is “used for ag dairy and hay/silage…contains Class 1, 2, 3 soils…76% of soils are considered prime farmland.” This information shows the properties are still capable of and are now being used for agricultural purposes. **The Board finds Site 1 meets the second WAC factor of “land is used or capable of being used for agricultural production” as specified in WAC 365-190-050(3)(b).**

Third, does Site 1 have “long-term commercial significance for agriculture”? Following the non-exclusive criteria WAC 365-190-050(3)(c)(i-ix), the County’s Analysis documents that roads are available for “freight route…and urban traffic… water is available along this road…sewers are located to the south of the property.” Other indicators noted in the Analysis are: the properties are in agricultural current use tax status; Site 1 abuts the Vancouver UGA; property values are less for agriculture than other uses; the Clark County Food System Council promotes locally grown food, but Site 1 dairy products are not sold

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272 IR 159 at Bates # 001909.  
273 Id. at 001910.
locally. In reviewing Site 1 descriptions, the predominant information is that the site has facilities to serve commercial agricultural uses, is classified under current use taxes for agriculture, has rural residential uses surrounding it, and has a close proximity to Vancouver’s market. **The Board finds Site 1 meets the third WAC factor of “the land has long-term commercial significance for agriculture” as specified in WAC 365-190-050(3)(c).**

Finally, WAC 365-190-050(5) requires counties to designate an amount of “agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term.” For all RILB sites reviewed, the County explains:

Based on the Rural Lands Study, there has been a "decline in the number of commercial and mid-sized farms in Clark County between 1997 and 2007, and presumably through 2012 (relayed anecdotally from key informants). The long-term outlook for larger farms in Clark County is in transition due to water rights, labor, and access farm supportive services.

The cost of running a smaller dairy has increased, as have regulatory requirements such as water quality. Lower land prices, lower rainfall, and the efficiencies gained with a larger operations and management have led many dairies to move from Western Washington to Eastern Washington. Even if there is current use taxation, the cost to purchase the land is based on market value.

These findings are from the County’s Issue Paper 9 which the Board addressed in Issue 11 above. Our analysis did not find commercial agricultural industry in immediate decline or that small farms were more successful than medium or large farms. We noted that Issue Paper 9 stated that while the number of large farms has decreased **their share of the total commodity output stayed nearly constant at around 85-89%** over the same time period...In terms of **mid-size and large farms**...the County’s 2012 Rural Lands Study found they **produce the vast majority of commodity values** in the county with relatively few farms considering the 2007 data. Placing the RILB Site 1 into the context of the

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274 Id. at 001910-11.
275 IR 159 at Bates #001912.
276 IR 3902 at 041130.
County's Issue Paper 9, the Board finds that Site 1 will continue contributing to the long-
term viability of agricultural commerce in Clark County. The Board finds and concludes
FOCC carried their burden of proof demonstrating the County failed to meet RCW
36.70A.060 and WAC 365-190-050.

Challenges to Specific Elements of the 2016 Plan Update

Issue 20: DEFICIT IN TRANSPORTATION FUNDING 20-YR PLAN

Did Amended Ordinance 2016-06-12’s adoption of the transportation element, including an
admitted deficit of $158,104,000 for the 20-year transportation facility plan, violate RCW
36.70A.020(3), (12); RCW 36.70A.070 (preamble), (1), (6); or RCW 36.70A.130(1), (3), (5)
See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year
Comprehensive Growth Management Plan 2015-2035 Chapter 5 Transportation, Appendix
A Transportation Issues, Appendix E Capital Facility Plans Review, Appendix G: Capital
Facilities Financial Plan, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark
County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington
[map]. [FOCC/FW No. 6]

Under Issues 20, FOCC failed to brief RCW 36.70A.020(3), RCW 36.70A.130, those
unbriefed legal arguments are deemed abandoned.277

Applicable Law

RCW 36.70A.070(3) and (6)

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital
facilities owned by public entities, showing the locations and capacities of the
capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the
proposed locations and capacities of expanded or new capital facilities; (d) at
least a six-year plan that will finance such capital facilities within projected funding
capacities and clearly identifies sources of public money for such
purposes…(emphasis added)

(6) A transportation element that implements, and is consistent with, the land use
element.

(a) The transportation element shall include the following sub-elements:
(iv) Finance, including:

277 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-
03-590(1).
(A) An analysis of funding capability to judge needs against probable funding resources;
(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;
(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met…
(c) The transportation element described in this subsection (6), the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent. (Emphasis added)

FOCC claims the County violated RCW 36.70A.070(6)(a)(iv)(C) due to a projected shortfall over 20-year planning period. They state the County does not have a plan to “close this deficit.” The County replies that FOCC misreads subsection (6)(a)(iv), and instead two sections of GMA must be read together: “[t]he six-year [transportation improvement plan] TIP must specifically provide that funding sources will be adequate to ensure public facilities are available to serve development, reading RCW 36.70A.070(3) and 070(6) together.”

Issue 20 Board’s Findings and Conclusions:

FOCC’s cites the Board’s Shoreline decision as a requirement to have financing for both 6 and 20 year time periods, but FOCC failed to include the last sentence of the Board’s order “…[t]he GMA capital facilities and transportation elements require a general financing plan or range of funding sources for the 20-year period and a specific six-year CIP or TIP to ensure public facilities are available to serve development. RCW 36.70A.070(3) and 070(6).

The City asserts its six-year TIP and CFP will begin to incorporate 185th Street Subarea Plan projects in the next few years to be coordinated with right-of-way construction and timed for station opening in eight years. The Board has previously ruled that a specific

funding plan is only required for capital facilities needed in the coming six years."\textsuperscript{279} In previous cases, the Board has also ruled that six-year transportation funding plans comply with GMA:

The Board stated: "[A] specific funding plan is only required for capital facilities needed in the coming six years," accepting the County’s representation that no immediate amendment to its six-year CIP was required, and assuming "the County in good faith is revising its CFP to incorporate updated water system improvements."\textsuperscript{280}

(Emphasis added)

Neither the GMA nor previous Board decisions require a County to develop a 20-year financing plan. If there is a discrepancy in capital revenues and expenditures over 20-years, as shown in Clark County Updated Comprehensive Plan in Table 5.8,\textsuperscript{281} then the County must comply with RCW 36.70A.070(6)(a)(iv)(C). This statute requires the County to address the shortfall: "If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;"\textsuperscript{282} The County developed strategies to balance their Capital Facilities Plan over the next 20-Year planning period.\textsuperscript{283}

\textsuperscript{279} Shoreline Preservation Society (SPS) v. City of Shoreline, GMHB No. 15-3-0002 (FDO, December 16, 2015) at 26 of 55.
\textsuperscript{280} KCRP V, Order Finding Compliance, p. 9. See also Davidson Serles v. City of Kirkland, Case No. 09-3-0007c (FDO, October 5, 2009), at 8: “The Board finds no requirement in the capital facilities element for the City to identify funding for capital projects beyond the six-year window.”
\textsuperscript{281} IR 2904 CORE DOCUMENT 20-Year Adopted Comp Growth Management Plan 2015-2035 - As Adopted 6/28/2016 at 34809.
\textsuperscript{282} RCW 36.70A.070(6)(a)(iv)(C.)
\textsuperscript{283} IR 2904 at =034809-10 Strategies to Balance the CFP The Growth Management Act requires the 6-year transportation improvement plan to be financially constrained and balanced. The 20-year transportation capital facilities plan is more speculative and is not required to be balanced. The projected revenue shortfall of $158.1 million represents about 23% of the total projected capital cost, which could be considered significant in the absence of any strategies to close the gap. There are a variety of strategies and policy actions available to the Board of County Commissioners to balance the 20-Year CFP. Options for increasing revenues include updating Traffic Impact Fees, adopting a motor vehicle excise tax of up to $20 per vehicle and increasing the local option fuel tax to the statutory limit. Based on recent policy decisions and preliminary work on the Traffic Impact Fee update, it is realistic to assume that an additional $40 to 50 million could be raised from these fees. Grant revenue estimates are also very conservative. Reductions in the capital projects list are also likely. Several projects on the list would not contribute substantially to mobility on the transportation network in proportion to their estimated cost. Other listed projects are in areas that are likely to be annexed before county financing is available and would then become the responsibility of the annexing city.
The Board finds and concludes FOCC failed to demonstrate the County violated RCW 36.70A.070(6).

**Issue 21: CAPITAL FACILITIES PLAN DID NOT INCLUDE ALL GMA REQUIREMENTS**

Did Amended Ordinance 2016-06-12’s adoption of the capital facilities plan element violate RCW 36.70A.020(1), (12); RCW 36.70A.070 (preamble), (1), (3); or RCW 36.70A.130(1), (3), (5) because it does not comply with the requirements for capital facility plan elements? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035* Chapter 6 Capital Facilities and Utilities Element, Appendix E Capital Facility Plans Review and Analysis, Appendix G: Capital Facilities Financial Plan, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 7]

Under Issue 21, Petitioners FOCC failed to brief RCW 36.70A.020(1), (12); RCW 36.70A.070 (preamble) and (1); and RCW 36.70A.130(1), (3), (5) -- those unbriefed legal arguments are deemed abandoned.\(^\text{284}\)

**Applicable Law**

**RCW 36.70A.070**

Comprehensive plans—Mandatory elements.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and

The Transportation Capital Facilities Plan will be reviewed on a regular basis, not to exceed every five years, to ensure that the projected gap between costs and revenues is declining. If the potential shortfall increases and becomes critical, the potential courses of action in addition to those identified above would include reduction in the level-of-service standards and reassessment of the land use plan. The transportation needs identified to serve growth in the next 20 years were evaluated by analyzing high volume corridors in the county. Local streets may experience greater volumes of “cut-through” traffic as a result of congestion on the major corridors. The county may rely on the local streets to serve a greater amount of traffic volume when needed projects cannot be funded.

\(^{284}\) “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
consistent. Park and recreation facilities shall be included in the capital facilities plan element.

Positions of the Parties

FOCC argues RCW 36.70A.070(3) fails to provide information about some elements in the County’s capital facilities plan. Specifically, FOCC claims the following are deficient:

unclear forecast of demand and supply for capital facilities such as water systems;\(^285\) revenues sources and amounts coming from each source are not estimated;\(^286\) La Center’s sewer system includes debt financing, but no repayment sources are identified;\(^287\) discovery Clean Water Alliance 2016-2021 Capital Plan Summary lists no sources of funding;\(^288\) Clark County School Districts six-year capital costs do not show revenues;\(^289\) and Vancouver’s law enforcement training center funding is “unknown.”\(^290\)

The County responds to FOCC’s deficiencies with a table showing FOCC’s issues and where the County addressed those alleged deficiencies.\(^291\) They explain FOCC’s complaints are either addressed in the table or in the text of the Comprehensive Plan. The County explained at the Hearing on the Merits how its water resources are managed and funded.\(^292\)

\(^{286}\) IR 2904 pp. 035021 – 22, *Id.* pp. 374 – 75.
\(^{287}\) IR 2904 pp. 035020 – 22, *Id.* pp. 373 – 75.
\(^{289}\) IR 2904 p. 035029, *Id.* p. 382.
\(^{290}\) IR 2904 p. 035031, *Id.* p. 384.
\(^{291}\) IR 2904 p. 035038, *Id.* p. 391.
\(^{292}\) IR 2904 p. 035046, *Id.* p. 399.
\(^{293}\) County Prehearing Brief at 57-59
\(^{294}\) HOM Transcript at 100. The WRIA “Futurewise claims that the Clark County plan failed to protect water resources. In several ways, Clark County certainly does protect surface and groundwater, both quantity and quality. The two WRIA rules in Clark County, 27 and 28, in contrast to the rule in Whatcom County, are less than ten years old. The Hirst court specifically spoke to the fact that the Nooksack rule in Whatcom County was kind of antiquated. It wasn’t based on what is now current science, it was based on old knowledge. The WRIA rules in effect in Clark County are much, much, much more current. They identify reservations for permit exempt wells, they establish methodology for evaluating impact of wells to surface waters. The applications for permit exempt wells are tracked by both Clark County and the Department of Ecology so as to generate information on remaining water resources. … the Capital Facilities and Utilities Framework Plan Policies at Bates Numbers 034834 and 5, so these Plan Policies 6.2.7 through 6.2.10 call for proof of public or private domestic water sources, producing sufficient quantity and quality of water before permits can be issued. This
Issue 21 Board Analysis

The County’s Capital Facilities and Utilities Element, Tables 6.2 through 6.7 identify sources of public money for capital facilities. Table E.14 responds to FOCC alleged deficiencies and the County’s explanation at the HOM suffices to meet all requirements in RCW 36.70A.070(3). The Board reviewed the County’s evidence offered in response to FOCC’s claims and finds the County’s CFP meets GMA requirements. **FOCC has failed to carry its burden of proof demonstrating the County failed to comply with RCW 36.70A.070(3). Issue 21 is dismissed.**

Issue 22: COUNTY DID NOT HAVE PUBLIC HEARING ON CPPs

Does the 2016 Plan Update violate RCW 36.70A.100, RCW 36.70A.210, and WAC 365-196-305 because the 2016 Plan Update relies, in part, on amended countywide planning policies and an amended community framework plan, without the County first adopting a process to amend or update the CPPs or CFP that were incorporated in the 2016 Plan Update? [CCCU No. B]

**Applicable Law**

**RCW 36.70A.210(2)(e)**

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, **shall adopt a countywide planning policy according to the process provided under this section** and that is consistent with the agreement pursuant to (b) of this subsection, **and after holding a public hearing or hearings** on the proposed countywide planning policy. (Emphasis added)

Under Issue 22, CCCU failed to brief RCW 36.70A.100 and WAC 365-196-305, those unbriefed legal arguments are deemed abandoned.295

and subsequent provisions in the plan as implemented by the county public health department meet the GMA requirements to protect surface and groundwater.”

295 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).
Positions of the Parties

CCCU argues it does not challenge the CPP but instead challenges the 2016 Plan Update because it is based on CPPs. CCCU alleges a violation of RCW 36.70A.210 because the “County never adopted procedures for amendment of the CPP, the County cannot amend the CPP without first “holding a public hearing or hearings.” (RCW 36.70A.210(2)(e). CCCU claims “[a]s a result of the County’s failure to hold a public hearing on the CPP amendment, the 2016 CPP amendment is invalid.”

The County responds that CCPs are “part of the Clark County 20-Year Comprehensive Growth Management Plan 2105-2035.” The CCPs were not amended without public hearings and minimal amendments were made such as technical corrections or deletions obsolete sections.

Issue 22 Board Analysis

CCCU’s arguments were difficult to follow, but the basis of their complaint is only a violation of RCW 36.70.210(2)(e) which states a County must adopt countywide planning policies (CCPs) and hold public hearings on those policies. The County originally adopted its CCPs in 2007 and then amended them in 2016 with technical changes. When the County held its public hearings on the CP, the policies were open for public discussion at that time. The Board finds and concludes the County met requirements in RCW 36.70A.210(2)(e) because it adopted CCP and held hearings on those policies. Issue 22 is dismissed.

296 CCCU Prehearing Brief at 32-34.
297 County Prehearing Brief at 38. See also IR/Tab 2936 (throughout Core Document).
298 Id. “They were presented in binders (books) to the BOCC and the Planning Commission for public work sessions on May 4 and May 5, 2016, respectively; a joint public hearing of the BOCC and the Planning Commission on May 19 and May 24, 2016; the Planning Commission’s public hearing on June 2, 2016; and the BOCC public hearings on June 21, 2016 and June 28, 2016.”
299 Id. “For example, proposed amendments to CPP 1.1.6, which are red-lined. The following were proposed for deletion: “, at least every seven (7) years,”; “RCW”; and “.215.” The word “Chapter” was inserted. Amendments of similar significance, in general the deletion of obsolete references, were proposed for CPP 1.18 and 1.19.
300 County Prehearing Brief and see also IR/Tab 2936 (throughout Core Document) and IR/Tab 2904 (throughout Core Document).
Environmental Issues

Issue 23: SHORELINE/CRITICAL AREAS NOT REVIEWED UNDER GMA

Did Amended Ordinance 2016-06-12’s adoption of the comprehensive plan’s Chapter 4 Environmental Element and the failure to review and if necessary revise Subtitle 40.4 Clark County Code (CCC), Critical Areas and Shorelines, violate RCW 36.70A.020(9), (10); RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(2), (3); RCW 36.70A.130(1), (5), (7); RCW 36.70A.170; RCW 36.70A.172(1); WAC 365-190-080; WAC 365-190-090; WAC 365-190-100; WAC 365-190-110; WAC 365-190-120; WAC 365-190-130; WAC 365-195-905; WAC 365-195-915; WAC 365-196-485; or WAC 365-196-830 because they fail to adequately designate and protect critical areas.[sic] See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 Chapter 4 Environmental Element and Figures 7 and 8. [FOCC/FW No. 8]

Under Issue 23, FOCC failed to brief RCW 36.70A.020, .040, .050, .060, .172; and WAC 365-190-080; WAC 365-190-090; WAC 365-190-100; WAC 365-190-110; WAC 365-190-120; WAC 365-190-130; WAC 365-195-905; WAC 365-195-915; WAC 365-196-485; or WAC 365-196-830, those unbriefed legal arguments are deemed abandoned.301

FOCC contends the County violated RCW 36.70A.130 as Amended Ordinance 2016-06-12 failed to state that it constituted the required review (and revision if needed) of its comprehensive plan and land use regulations, including its critical area ordinances. The argument is made in support of its allegation that the County failed to revise its geologically hazardous area (a type of critical area) regulations. FOCC references the tragic, lethal Oso landslide in Snohomish County, Washington and cites studies which it states support more stringent critical area regulations than the County has adopted. It cites the Thurston County302 and SOSA303 decisions in support, observing that Amended Ordinance 2016-06-12 neither includes a “finding” that the Ordinance constitutes a RCW 36.70A.130 update, nor does it state the reasons the County did not update its critical areas regulations.

301 “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).


While the County suggests FOCC’s claim is “perplexing”, the County’s documentation of the fact the Ordinance constituted the required update, including review of its critical area regulations, was less than ideal. Amended Ordinance 2016-06-12 does not include a finding that a review and evaluation had occurred and that revisions were not required. On the other hand, it is abundantly clear from the record that the ordinance did constitute the culmination of a years-long comprehensive plan update process, beginning in 2013. The Ordinance’s Findings and Recitals make numerous references to the process, referring throughout to the “2016 Plan Update”.

Documentation of critical area regulation consideration was similarly lax. While the Ordinance does refer to a prior critical area regulation update, the date of that review is not referenced. The County’s counsel observed the County staff began their work by consulting the Department of Commerce checklist which the County describes as a “checklist used by the State agency responsible for matters related to the GMA [and which] states in detail what is required in a comprehensive plan and what changes in governing law [have occurred] since a county’s last plan review and update [and which] must be addressed in an Update”. That checklist includes numerous required CP elements and components, asks whether or not the jurisdiction’s current plan addresses them and whether amendments are needed to meet statutory requirements. One of those elements/categories are “Policies to designate and protect critical areas”, including geologically hazardous areas. Another involves regulations designating and protecting critical areas, while a third specifically addresses geologically hazardous areas. To all of those questions, the County indicated

304 County Brief at 59.
305 RCW 36.70A.130(1)(b).
306 IR 2830A, Bates 34066-34067. See also IR 49 at Bates 6123 (11/04/2013 News Release announcing the start of the Update Process) and IR 1107 (email correspondence re: the update with the Dept. of Commerce).
307 Id. Bates 34065-34071.
308 County Brief at 60.
309 IR 3009, Bates 38400 and following.
310 Id. Bates 38402-38403.
311 Id. Bates 38412.
312 Id. Bates 38414.
near the end of the update process (May 4, 2016) that it had addressed the category in its
current plan or regulations and that no further review was needed.

SOSA presented a decidedly different situation than FOCC references in this matter.
There, the question was whether Skamania County had actually completed its periodic
review. As the Court observed:

However, the County’s characterization of the Resolution as “periodic review”
considerably strains the plain meaning of the term and the effect of the Resolution. The Resolution merely designated certain resource lands, pursuant to the County’s
obligation under RCW 36.70A.170, and declared that the Resolution itself “meets the
requirements of the Growth Management Act (RCW 36.70A) for the conservation of
forest, agricultural, and mineral resource lands.” The Resolution does not purport to
satisfy the RCW 36.70A.130(1)(b) obligation, nor does it even contain the word
“review.”313

There is no question here as to whether or not Clark County undertook and
completed its RCW 36.70A.130 periodic review. Thurston County is also distinguishable.
There the county argued a 2004 update challenge regarding designation of agricultural
resource lands under RCW 36.70A.170 was time barred, contending it had designated
those lands in 2003, and that no challenge had been filed. The Court upheld the Board
decision which concluded the challenge was timely. The basis of the decision was that in
passing the 2003 resolution, the county resolution merely provided that the “amendments
brought the natural resources lands chapter into compliance with the Act, but it did not refer
to RCW 36.70A.130, [and] did not make a finding that it was an ‘update . . . ’.”314 As stated,
Amended Ordinance 2016-06-12, and the process leading to its adoption, clearly
constituted the County’s required periodic update. While a specific finding so stating,
including reference to review of its critical area regulations, would have been far
preferable, FOCC has not met its burden to establish a violation of RCW 36.70A.130.

313 Save Our Scenic Area & Friends of the Columbia Gorge v. Skamania County, 183 Wn.2d 455, 465-466
Issue 24: SEPA NOT DONE ON EARLY REPORTS

Does the 2016 Plan Update violate RCW 43.21C.031 because the County never adopted or completed required review under the State Environmental Policy Act of the Growing Healthier Report, the Aging Readiness Plan, the Agriculture Preservation Strategies Report, and the Clark County Bicycle and Pedestrian Plan prior to relying on them in the 2016 Plan Update? [CCCU No. C]

CCCU’s Issue 24 only alleges a violation of RCW 43.21C.031 which states as follows:

(1) An environmental impact statement (the detailed statement required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact. The environmental impact statement may be combined with the recommendation or report on the proposal or issued as a separate document. The substantive decisions or recommendations shall be clearly identifiable in the combined document. Actions categorically exempt under RCW 43.21C.110(1)(a) and 43.21C.450 do not require environmental review or the preparation of an environmental impact statement under this chapter.

(2) An environmental impact statement is required to analyze only those probable adverse environmental impacts which are significant. Beneficial environmental impacts may be discussed. The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement. The subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate sections of an environmental impact statement. Discussions of significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated should be consolidated or included, as applicable, in those sections of an environmental impact statement where the responsible official decides they logically belong.

CCCU’s framing of Issue 24 was torturous. It originally alleged only a violation of chapter 43.21C. In light of the requirements of RCW 36.70A.290(1), and at the Board’s direction during a pre-hearing conference, CCCU was directed to provide a specific statute
or statutes alleged to have been violated. Following that, CCCU then submitted two different versions of the issue statement, the first on September 15, 2016 and the second on September 20. In the first version it failed to specify which section of chapter 43.21C was violated, but added numerous alleged violations of the GMA. The September 20, 2016 version specified the SEPA section as RCW 43.21C.03, but added numerous sections of chapter 197-11 WAC to which Clark County objected. The Board then issued an order which clearly specified that the issue statement would be worded as set forth above, removing all references to chapter 197-11 WAC. As WAC 242-03-260 provides, petitions for review may only be amended within a limited period of time following filing. CCCU fails to cite RCW 43.21C.031 in its opening brief or directly address the requirements of that statute. Instead it argues violations of numerous SEPA rules included in chapter 197-11 WAC, and in a footnote it states the following:

The County may argue that CCCU did not list these WAC provisions in its issue statement and therefore cannot argue the County failed to comply with them. But CCCU argues that the County failed to comply with SEPA itself—the WACs provide the touchstone to determine whether the County’s action complied with SEPA. See RCW 43.21C.095 (the WACs “shall be accorded substantial deference in the interpretation of this chapter” . . .
The County did in fact make that argument and the Board agrees with the County. The Board only has the jurisdiction to address alleged violations set forth in a Petition for Review filed within 60 days after a jurisdiction publishes notice of adoption of legislation. The Board may not allow a party to freely amend allegations following that period of time other than as provided in WAC 242-03-260. Issue 24 shall be dismissed.

**Issue 25:** SEPA NOT DONE ON REMANTS FROM 1994 PLAN

Does the 2016 Plan Update violate RCW 43.21C.031 when the County failed to conduct environmental review under the State Environmental Policy Act on the remnants from approximately 36,000 square acres of land that were erroneously designated as agri-forest under the County’s 1994 Comprehensive Plan? [CCCU No. K2]

CCCU frames this issue statement differently than set forth in the Amended Prehearing Order. It amends the issue statement as follows: “The County Failed to Document Environmental Review under the State Environmental Policy Act as to Non-Compliant Remnants of the County’s Illegal Agri-Forest Designation” (underlining added). That is, it now seeks to argue that the County failed to “document” SEPA environmental review of a compliance action involving a 1994 comprehensive plan as opposed to its original claim that the County failed to “conduct” such a review. Notwithstanding that difference, CCCU simply fails to establish any violations of RCW 43.21C.031 in its opening brief. Its argument involves 3,500 acres of land which were included in a 1995 challenge of a Clark County 1994 comprehensive plan. It contends that the County “has never demonstrated that it conducted SEPA review on any subsequent efforts to bring the 3,500 acres into GMA compliance.” However, CCCU fails to establish that the County’s citations to IR 3087, 3088, and 3089 do not constitute appropriate SEPA review. The Board finds and concludes CCCU has failed to establish any violations of RCW 43.21C.031 in regards to Issue 25.

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320 Petitioner CCCU, Inc.’s Prehearing Brief at 39.
321 GMHB No. 95-2-0067.
NON-COMPLIANCE and INVALIDITY

The Board has determined that Clark County failed to comply with the GMA and remands this matter to the County to achieve compliance under RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.215, and WAC 365-190-050 as follows:

Issue 5: UGA EXPANSIONS and BUILDABLELANDS REPORT

Did the adoption of Amended Ordinance 2016-06-12 expanding the Battle Ground [sic], La Center, and Ridgefield urban growth areas violate RCW 36.70A… because the expansions were not needed to accommodate the planned growth and Buildable Lands reasonable measures were not adopted and implemented?

• The Board finds: (1) these UGA enlargements violate RCW 36.70A.110 and RCW 36.70A.115, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

• The Board finds: (1) the County’s and Cities’ failure to adopt “reasonable measures” to remedy density inconsistencies violates RCW 36.70A.215, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.

• Accordingly, the Board finds Petitioners failed to satisfy their burden of proof to show an internal plan inconsistency in violation of RCW 36.70A.070.

Issue 6: URBAN RESERVE OVERLAY

Did Amended Ordinance 2016-06-12’s adoption of the Urban Reserve Overlay and the Urban Reserve-10 (UR-10) and Urban Reserve-20 (UR-20) zoning districts, the repeal of the Urban Reserve-40 (UR-40) zoning district, and the application of the overlay and districts to rural and natural resource lands violate RCW 36.70A.060; RCW 36.70A.070; RCW 36.70A.110… because the land is not needed to accommodate planned urban growth and the overlay and zoning does not conserve natural resource lands or comply with the requirements for rural areas?

• The Board finds: (1) these UGA enlargements violate RCW 36.70A.060, RCW 36.70A.070, and RCW 36.70A.110, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.
Issue 10: AGRICULTURAL LAND DE-DESIGNATION
Did the adoption of Amended Ordinance 2016-06-12 including the de-designation of 57 acres of agricultural land of long-term commercial significance in the La Center urban growth area expansion and 111 acres in the Ridgefield urban growth area expansion, violate RCW 36.70A… or is the de-designation inconsistent with the Clark County comprehensive plan?

- The Board finds and concludes that FOCC has carried its burden of proof showing the County failed to conduct an area- or county-wide analysis in compliance with RCW 36.70A.050 and .060 and WAC 365-190-050.

Issue 11: UPZONE AG / FR LAND FOR MORE DENSITY
Did Amended Ordinance 2016-06-12’s amendments to the comprehensive plan… to create the Agriculture 10 (AG-10) District… to create the Forest 20 (FR-20) District… fail to conserve farm and forest land… or are inconsistent with the comprehensive plan?

- The Board finds and concludes FOCC has carried their burden of proof that reducing parcel sizes for agricultural and forestry lands will not meet requirements in RCW 36.70A.060 or .070 nor does it meet the standards established in King County where the County is 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.

Issue 13: NO “VARIETY” OF RURAL DENSITIES
Did Amended Ordinance 2016-06-12’s adoption of a single “Rural,” comprehensive plan designation, violate RCW 36.70A…. because the rural element fails to provide for a variety of rural densities and rural uses?

- The Board finds and concludes, FOCC has carried its burden of proof showing the County did not comply with RCW 36.70A.070(5) regarding a variety of rural densities.

Issue 18: PROCEDURAL ERRORS IN INDUSTRIAL LAND BANK DESIGNATION
Did Amended Ordinance 2016-06-12, Ordinance 2016-04-03 and Ordinance 2016-05-03 violate RCW 36.70A…. by failing to comply with the procedural and substantive requirements for industrial land banks?

- The Board finds and concludes FOCC has carried its burden of proof demonstrating the County violated RCW 36.70A.367(2)(h) in regards to size limitations for RILBs.
**Issue 19: DE-DESIGNATING 602 AG LAND ACRES**

Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.... or is the ordinance inconsistent the Clark County comprehensive plan because it de-designated approximately 602.4 acres of agricultural lands of long-term commercial significance?

- The Board finds and concludes FOCC carried their burden of proof demonstrating the County failed to meet RCW 36.70A.060 and WAC 365-190-050

Under RCW 36.70A.302(1), the Board may determine that part or all of a comprehensive plan or development regulations are invalid if the Board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

A Determination of Invalidity can only be issued if the Board finds Clark County’s adoption of Ordinance No. 2016-06-12 fails to comply with the GMA and that its continued validity would substantially interfere with the fulfillment of the GMA’s goals. GMA Planning Goals 1, 2, and 8 in RCW 36.70A.020 are stated as follows:

(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 forestlands and productive agricultural lands, and discourage incompatible uses.

The Board hereby makes the following determinations:
Invalidity Findings of Fact

1. La Center and Ridgefield claim to have annexed the de-designated agricultural lands of long-term significance that were part of newly enlarged Urban Growth Areas.

2. The record shows Clark County is processing rural rezones from lower density rural zones to higher density rural zones.

3. The record shows rezones and subdivisions will increase rural densities the proposed development may vest prior to exhaustion of appeals.

4. The record shows Clark County does not need expanded Urban Growth Areas in order to accommodate OFM-projected population or employment growth over the next 20 years.

5. Residential growth has occurred in Battle Ground, La Center, and Ridgefield at lower than planned for densities, which contributes to low-density sprawl in Clark County.

6. Land in the La Center and Ridgefield UGA expansions and the Industrial Land Banks continue to qualify as agricultural lands of long-term commercial significance.

7. Areas within the Ridgefield UGA expansion and the Industrial Land Banks has been found to be highly productive farm land.

8. The Urban Reserve Overlay enables urban growth on productive farm and forest lands.

9. Adoption of the amendments to Clark County Comprehensive Plan violate RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.215, RCW 36.70A.367 and WAC 365-190-050.

10. There is evidence in the record indicating a risk for project vesting in this case, which would render GMA planning procedures as ineffectual and moot -- if such project vesting was to occur, then the remand of this case to the County would be meaningless and there would be no practical way to address GMA compliance.
Invalidity Conclusions of Law

1. The Growth Management Hearings Board made findings of noncompliance with RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.215, RCW 36.70A.367 and WAC 365-190-050 and issued an order of remand under RCW 36.70A.300.

2. The continued validity of the expanded Urban Growth Area Boundaries of Battle Ground, La Center, and Ridgefield that were adopted by Clark County Amended Ordinance No. 2016-06-12 would substantially interfere with the fulfillment of the GMA Planning Goals 1 (Urban Growth), 2 (Reduce Sprawl), and 8 (Natural Resource Industries).

Determination of Invalidity

The particular parts of the Comprehensive Plan that are determined to be invalid are as follows:

1. The expansions of the Urban Growth Area Boundary for the City of Battle Ground shown on the 2016 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12, and also shown on Figure 12 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.

2. The expansions of the Urban Growth Area Boundary for the City of La Center shown on the 2016 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12, and also shown on Figure 14 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.

3. The expansions of the Urban Growth Area Boundary for the City of Ridgefield shown on the 2016 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12, and also shown on Figure 15 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.
VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board Orders:

- Clark County Amended Ordinance No. 2016-06-12 fails to comply with RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.215, RCW 36.70A.367 and WAC 365-190-050.
- Clark County Amended Ordinance No. 2016-06-12 is remanded to Clark County to achieve compliance with the Growth Management Act.
- The expanded Urban Growth Area Boundaries of Battle Ground, La Center, and Ridgefield are determined to be Invalid.

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<tr>
<td>Compliance Due</td>
<td>September 19, 2017</td>
</tr>
<tr>
<td>Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record</td>
<td>October 3, 2017</td>
</tr>
<tr>
<td>Objections to a Finding of Compliance</td>
<td>October 17, 2017</td>
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<tr>
<td>Response to Objections</td>
<td>October 27, 2017</td>
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<td><strong>Telephonic Compliance Hearing</strong></td>
<td><strong>November 7, 2017 10:00 AM</strong></td>
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<td><strong>(800) 704-9804 and use pin code 7579646#</strong></td>
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The County’s Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 30 pages for Objections to Finding of Compliance, and 5 pages for the Response to Objections.

So ordered this 23rd day of March, 2017.

Nina Carter, Board Member

Raymond L. Paolella, Board Member
Concurrence by Board Member Roehl:

I add the following only to clarify my understanding of chapter 365-196 WAC and to add that understanding for the benefit of future petitioners. In my opinion, allegations of violations of that chapter merit little discussion or analysis. Any extensive analysis, together with statements such as the chapter “requires” anything, implies the chapter carries some regulatory weight. It does not. The chapter constitutes “procedural criteria”. As such, a challenger cannot establish a violation.\(^{322}\) By including consideration of a petitioner’s allegations of violations of this chapter of the Washington Administrative Code, the Board implies a jurisdiction can violate the chapter. The Board’s jurisdiction is limited, in the context of this case, to determining whether the County’s actions are in compliance with the goals and requirements of chapter 36.70A RCW. While the Board considers the procedural criteria, determinations of compliance must be based on requirements of the GMA itself.

William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.\(^{323}\)

\(^{322}\) WAC 365-196-030 Applicability (1) Where these guidelines apply…. (2) Compliance with the procedural criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take. Counties and cities can achieve compliance with the goals and requirements of the act by adopting other approaches. (3) How the growth management hearings board use these guidelines. The growth management hearings board must determine, in cases brought before them, whether comprehensive plans or development regulations are in compliance with the goals and requirements of the act. When doing so, board must consider the procedural criteria contained in this chapter, \textit{but determination of compliance must be based on the act itself. (Emphasis added)}

\(^{323}\) Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.

A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.
Monthly Update ~ March was a pretty eventful month for crime, we handled case reports for vehicle prowls, a runaway, DUI's, a DV arrest and a home burglary. We also had several Clark County Sheriff and Ridgefield PD calls for assistance.

Home Burglary ~ On March 6, 2017, the La Center Police responded to a call for a suspicious vehicle. Upon arriving, LCPD determined that a home in that area had been burglarized and many items were stolen including firearms and money. The suspicious vehicle had left the area and it is uncertain at this time if the suspicious vehicle is linked to the crime. Details being released are limited due to this being an ongoing, active investigation.

LCPD would like to remind everyone to please make sure you lock your doors on your vehicles and homes and if you are leaving town for any length of time, complete a “Security Request form” with LCPD. We also strongly encourage home security systems. While none of these suggestions are fool proof, it may deter a thief.

We need the residents of this city to lock up their property and begin watching for suspicious people in their neighborhoods. Criminal conduct is rarely committed in front of law enforcement, so assistance from our citizens in the form of watchful eyes and timely reporting is of great importance to reducing crimes of this type. Report any suspicious activity to “911” or the non-emergency “311” immediately.

Rumors ~ As your Chief, I would like to respond to some recent community rumors. There have been comments made about “why do we have so many officers in La Center, it is such a small town with so little crime”. To efficiently handle 24-hour coverage seven days a week taking into account that Officers do take vacations, take sick time or may have a medical issue or injury; because, sometimes, injuries are more prevalent by continuously working long hours and fluctuating schedules.

In a perfect world based upon the math without adding an officer for contingencies, it requires that the City have 5.8 (math) or 6 patrol officers employed to cover 365 days a year, 24 hours a day. The La Center Police Department has consistently stayed at minimum staffing level or less, a majority of the time since 2010. Because of this shortage, we have overtime shifts, uncovered shifts or had to request partnering Cities to respond as we did not have an Officer on duty or available.

Therefore, the misconception that we have more Officers than needed is unfounded as we are currently understaffed with only 3 patrol officers as a result of Officers resigning, retiring or taking medical leave. Keep in mind in a perfect situation if all goes well, it takes a minimum of nine months to get an officer hired, trained and able to work an unsupervised shift by themselves.
As our calls for service increase, our boundaries grow and we have an increase in tourist population due to junction development; we need to be progressive in public safety and stay ahead of the game.

Also, the La Center Police department does not have a service contract with the Cowlitz tribe casino to provide public safety service as some may think. There is no commitment or promise of revenue or a subsidized agreement between the Cowlitz and LCPD. With current staffing issues, we would not be able to provide service to the Cowlitz tribe regardless.

**Crime Stats in La Center**: Comparing crime stats from this year to last year, for the current month.

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</table>

Sincerely,

**Marc Denney (signed electronically)**

Marc Denney  
Chief of Police
RFP – Evaluation of Sewer Services Wastewater Systems – Update – The process is proceeding with interested bidders. The proposal dates are being extended by a couple of weeks to allow the bidders time to respond to the City’s draft service agreement.

Water Trail Park – Update – The project is out for bid. Bids are due on April 17th. We are still waiting on the DAHP permit and Shoreline substantial development permit. These permits are in process.

Annual Recycle Day – Reminder - Clark County has set the date for April 29, 2017 between 9 a.m. – 1 p.m. as the annual recycling day event at Holley Park. I do not have all of the details at this time as to the types of materials that will be collected. The City will distribute flyers to utility customers along with posting information on the City web page in very near future.

Street Vacation Process – The City has not had many Street Vacation requests over the years. The interchange construction project has impacted roadways that are no longer being used for public travel. I will be going over the processes for vacating City streets during a work session scheduled for April 12th at 6 p.m.

Sanitary Sewer Construction - We are projecting that the La Center Road, Sanitary Sewer Project will be out for bid by the last week of April. Construction, June – September.

Roadway and Slide Repairs – This winter was particularly hard on our City streets. Additionally there are two slide areas that we are addressing. The public works crew performed temporary repairs on the streets and slide areas. Spencer Road has an on-going slide causing the roadway to settle. A portion of the slope along Pollock Road slid earlier this spring. Plans for repairs are being finalized. Right now, I anticipate using current street budget dollars to perform repairs.

Roundabout – Update - The following update is provided by the City Engineer, Tony Cooper

March 2017 FSG Murphy Casino owner George Teeny signed for the Temporary Construction Easement (TCE) and sidewalk easement on the north side of 4th Street adjacent to the New Phoenix Casino. The owner will need to submit a W9 form and signature authorization for approval of the easement documents and payment to the owner.

April 4th 2017 The appraisal was submitted to Michel’s Development and the owner requested a possession and use agreement be signed for the construction easement approval adjacent to Pacific Highway. Michel’s Attorney reviewed the agreement and submitted comments to the city. The City Attorney is currently reviewing the comments to the agreement. This could take another two to three weeks to accomplish approval and payment.
April 28th

Once the agreements are signed and the city pays for the easements, the right of way map and all easement documents are submitted to WSDOT Right of Way Department for review and approval. The state review of the documents could take a week.

April 28th

Once WSDOT ROW Department approves the documents. The plans and contract documents are being reviewed concurrently by WSDOT Local Programs Office and should be approved at approximately the same time the right of way documents are approved by WSDOT ROW. The Supplemental Local Agency Agreement and Project Prospectus are submitted to Headquarters when signed by the city.

May 1st through 12th

Once WSDOT Headquarters receives the agreements they will authorize the STP-R construction fund. A form is submitted to the Transportation Improvement Board (TIB) along with the STP-R funding authorization document for TIB to authorize state funds.

Middle of May

Begin bid advertisement

End of May to June

Open bids and begin construction.

As always, please contact me by email jsarvis@ci.lacenter.wa.us or phone 360.263.7661 with any questions or concerns.

Respectfully Submitted,

Jeffrey B. Sarvis, Public Works Director
Clark County Commission on Aging
2016 Annual Report
4 Major Topic Areas

- Housing-2016
- Transportation
- Healthy Communities
- Supportive Services-2017
Why focus on housing?

• Reviewed section on housing in the Aging Readiness Plan
• Educated ourselves and others
• Learned from community experts
• Sought public comment
• Identified direction towards a stronger housing market
2016 Focus on Housing

10 experts talk about successful aging in place, universal design and the housing market

Monthly presentations were to:

- Educate
- Ask questions of experts
- Seek public comment
- Identify direction towards a stronger housing market
Recommendations for policy direction and stronger marketplace

Encourage the construction of new single-family homes that can accommodate all residents and visitors regardless of age or ability by the inclusion of these design features:

1. No-step entryway
2. Doorways and hallways have minimum width of 36 inches and lever handles instead of doorknobs
3. Bathroom on main level with reinforced wall backing and space for walker or wheelchair
4. Light switches, electrical outlets, thermostats mounted no higher than 48 inches and no lower than 18 inches
Recognize that the most practical and cost-effective means of providing “visitable” housing to meet the projected need is with new construction.

1. Developing standard drawings detailing construction specifications for expedited permit application and approval.
2. Identifying tax credits, incentives and grants available for homeowners or builders.
3. Identify and publicize programs such as VA assistance for disabled veterans.
Increase neighborhood functionality, connectivity and accessibility with a combination of pedestrians, cars, bikes and public transportation.

1. Ensure all new neighborhoods are built with sidewalks and curb cuts.
2. Ensure safety and access for fire and emergency medical responders to reach and transport residents.
3. Develop funding strategies for priority sidewalk construction, improvement and repair to connect existing neighborhoods.
Thank you!

2016 Annual Report
Recommendations for policy direction and stronger marketplace

Based on information from our housing speaker series and public comments, the Commission on Aging recommends the community discusses, refines and implements the following policy and marketplace solutions.

Policy direction

Encourage the construction of new single-family homes that can accommodate all residents and visitors regardless of age or ability by the inclusion of these design features:

1. A no-step entry way connected to an accessible route to the driveway or sidewalk;
2. All doorways and hallways have a minimum clear width of 36 inches and lever handles instead of door knobs;
3. Bathroom on the main floor with reinforced wall backing for secure attachment of grab bars and adequate space for a walker or wheelchair; and
4. Light switches, electrical outlets, thermostats and other environmental controls mounted no higher than 48 inches and no lower than 18 inches above finished floor.

Recognize that the most practical and cost-effective means of providing “visitable” housing to meet the projected need is with new construction.

Retrofit and remodel existing housing for aging in place by:

1. Developing standard drawings detailing construction specifications for expedited permit application and approval.
2. Identifying tax credits, incentives and grants available for homeowners or builders.
3. Identify and publicize programs such as VA assistance for disabled veterans.

“Visitable” is an emerging term meaning barrier-free housing, accessible to all residents and visitors.
Increase neighborhood functionality, connectivity and accessibility with a combination of pedestrians, cars, bikes and public transportation.

1. Ensure all new neighborhoods are built with sidewalks and curb cuts.
2. Ensure safety and access for fire and emergency medical responders to reach and transport residents.
3. Develop funding strategies for priority sidewalk construction, improvement and repair to connect existing neighborhoods.

Marketplace ideas

Clark County and the Commission on Aging will:

1. Collaborate with the Building Industry Association to promote “visitability” choices for new and existing homes. Encourage the BIA to showcase a Universal Design home in the Clark County 2018 Parade of Homes.
2. Work with housing nonprofits such as Habitat for Humanity and Vancouver Housing Authority to ensure new affordable housing projects paid for with private and public funds are built to allow access for all potential residents.
3. Encourage all Clark County cities to adopt “visitability” programs with voluntary initiatives and/or code requirements.
4. Continue work with Clark County Association of Realtors to revise and increase designations for accessible features in the use of the multiple listing service.
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As community ambassadors, the Commission on Aging provides leadership, advocacy, community awareness and partnerships to initiate change toward an all-age-friendly, livable community.
Dear Community Members,

Thank you for helping make this year’s focus on housing a success. Your attendance, questions and comments at our public meetings were invaluable. We heard the passion in your voices and are grateful you are our strongest partners.

We took what we learned from our speakers and you and developed the recommendations in this report to the county council. These recommendations will help reshape the housing market to better serve people of all incomes, ages and abilities, whether their home is a house or apartment or in an urban, suburban or rural location.

Our report details our year-long housing program. We thank our speakers and look forward to continuing our partnership with them, especially at the Clark County Housing Summit on Feb. 9, 2017.

Looking ahead, we remain steadfast to our charge to educate, raise awareness and advocate through focus areas outlined in the Aging Readiness Plan. They are housing, supportive services, transportation, healthy communities and community engagement. Nearly 90 percent of people age 50 and older want to live in their own home as they age, and these focus areas are crucial to ensuring that desire is within reach, for all of us. We have learned that what older people need, younger people prefer.

Next year’s focus will be on Supportive Services. We will seek help identifying speakers with the expertise to inform us as well as listen and respond to you. We are grateful to Clark County for creating the Commission on Aging in 2012 as a forum to address important issues.

Our goal then and now is to achieve an “all-age friendly, livable community.” We are counting on your help.

Thank you and take care,

Marjorie A. Ledell
Chair, Commission on Aging
Aging Readiness Plan

Aging Readiness Plan
Knowing that more than 10,000 people turn 65 each day nationwide, the then-Board of County Commissioners appointed a 24-member panel in 2010 to assess the county’s capacity to serve its residents. The Aging Readiness Task Force developed a plan that identified 91 strategies focusing on healthy communities, housing, transportation, supportive services and community engagement. The plan includes perspectives about how to effectively cultivate and protect the thing residents say they want most — the ability to age in community.

Commission on Aging
The commission was established May 20, 2012, as recommended in the Aging Readiness Plan. The commission was, and is, tasked with leading and managing the implementation of the plan — fostering countywide awareness, dialogue and insight into challenges and opportunities for all residents. The commission is supported by volunteers and Community Planning. It works on a variety of fronts, and as community ambassadors, members provide leadership, education, advocacy and community awareness.

Current Members
Marian Anderson
Ali Caley
Chuck Frayer
Pat Janik
Marjorie Ledell
Herb Maxey
Linda O’Leary
Bill Ritchie
Donna Roberge

Past COA Members
Gary Beagle
John Correa
Patricia Gray
Bob Holdridge
Kathy McLaughlin
Scott Perlman
Lisa Rasmussen
Randy Scheel
Kiersten Ware
Karin Woll

COA Past Chairs
Gary Beagle
Bill Ritchie
Kiersten Ware
The Commission on Aging dedicated its fourth year to the issue of housing, especially for people 60 and older. At each meeting, an invited expert provided insights on a specific aspect of housing. The presentations were to:

- Educate commission members and the public
- Direct questions to the expert to gain further information
- Seek comments and questions from the public
- Identify and recommend ways to shape the direction of policy and a stronger housing market

An outgrowth of this year’s program is a housing summit early next year to discuss this report’s findings with major players in the housing industry, policy makers from across the county and nonprofit organizations. In addition, a summit goal is to further develop collaborative relationships and partnerships to reshape the housing market for all ages and incomes.
Christina Marneris
Community Services Program Supervisor,
Area Agency on Aging and Disabilities of Southwest Washington:

**How to be prepared to talk with parents about long-term housing needs.**

1. Talking with your parents about long-term needs does not have to be difficult.
2. Not having the conversation could make matters worse.
3. Think about what to gain, not ultimatums.
4. Choose the right moment and place.

Alan De La Torres
Environmental Gerontologist and Research Associate,
Portland State’s Institute on Aging:

**How housing in Clark County is changing and what that means to seniors. You have more choices than ever.**

1. Communities that fare best in the future tackle challenges and embrace possibilities for aging residents.
2. Housing should be:
   - Well designed
   - Affordable
   - Close to essential services and infrastructure
   - Integrate a diversifying population
   - Foster social and physical well being
3. Millennials and baby boomers prefer small yards in walkable neighborhoods.
4. Universal design means:
   - Zero-step entrance to home
   - Wide doorways and hallways
   - Bathrooms on first level.
5. If features are incorporated when a home is built, cost to the builder is less than the cost to retrofit.
6. Lifelong housing should be fully accessible and adaptable for grab bars and conversion to an accessory dwelling unit; include adjustable countertops and cupboards and outlets at waist-level.
Patrick Roden
Founder of Aging-in-Place.com and a registered nurse:

Know what aging in place means and how it can be achieved physically, emotionally and socially.

1. Mental competence rises with brain stimulation and decreases with lack of stimulation.

2. Novelty and challenges of a complex environment are examples of brain stimulation while standardization and routines are examples of lack of brain stimulation.

3. Custodial care typically does not provide stimulation. People who age in their own surroundings with regular contact with family, friends and neighbors typically do better than those who do not.

Andy Silver
Executive director for Council for the Homeless:

Our community’s affordable housing crisis; why is it happening and what we can do about it?

He outlined unique aspects of our community and local policy choices that contributed to our affordable housing crisis.

When a household is spending more than half its income on housing, members are at increased risk of becoming homeless, he said.

1. Every $100 increase in rent is associated with: 6 percent rise in homelessness in metro areas and 32 percent increase in homelessness in non-metro areas. Housing costs drive demand for and success of homeless services.

2. Nationally, increased demand means 37 percent of households live in rental housing, the highest since mid-1960s and an increase of nine million households from 2005 to 2015.

3. Without change, we will not produce the right mix of housing to meet the need.

4. Factors driving supply are: zoning, cost structure incentives and financing incentives. New rentals are for people with the highest incomes.

5. The policy and regulatory environment includes system development costs, multi-family zoning v. single-family zoning and incentives such as pre-approved plans for middle range housing.

6. Financing involves a mix of locally controlled funding, philanthropy and public/private partnerships with banks.

7. Individuals can make money and do the right thing.
Amanda Davis
Interior Design department chair, Portland Community College:

How simple design choices can help people age-in-place affordably and efficiently and how the boomer market is reshaping houses for the future.

1. The boomer generation is adding accessibility to the residential landscape and will be making more changes as they age.
2. More affluent seniors are moving to the east or west coast.
3. People 65 and older have the most disposable income, but the markets are not serving them.
4. 70 percent of the disposable income in the U.S. belongs to those 65 and older, while only 5 percent of advertisers target this group.
5. Promoting access and safety through home remodeling and smart technologies
   • Home remodeling includes first-floor bathroom, wheelchair accessibility, raised toilets and wide walkways.
   • Assistive technologies include motion sensors in hallways, alerts of exterior doors, diet monitors on the refrigerator and sleep monitors under mattresses.
6. “Future proofing” a home means designs that leave enough room for future things such as drawers and cabinet storage spaces rather than doors.

Mark Eshelman
Loan officer for Pinnacle Capital Mortgage, which specializes in reverse mortgages:

What financing options are available for remodeling, renovating, retrofitting and new construction for seniors and boomers and potential tax benefits.

Aging in place: How do we pay for it? Examples of financing options for low to moderate incomes include:

• Clark County Housing Rehabilitation Program
• Vancouver’s Housing Rehabilitation Program
• USDA Single-Family Housing Repair Loan and Grant and Evergreen Habitat for Humanity’s A Brush with Kindness Program. Potential tax benefits of renovating, remodeling and retrofitting a home

Every $100 increase in rent is associated with a 6 percent rise in homelessness in metro areas and 32 percent increase in homelessness in non-metro areas.
Sherri Adams
Realtor and Seniors Real Estate Specialist:

What to consider when moving. Selling a senior’s home is different because many factors need to be considered.

1. Is moving the best alternative and have other options been explored?
2. Do close family members support the decision to sell?
3. What is the best way to downsize a lifetime’s worth of possessions and family heirlooms?
4. What are the tax-related implications of a sale?
5. What effects might a sale have on future income?

Here are some quick facts to keep in mind:

• Many seniors rely on fixed incomes, receiving an average $1,234 monthly Social Security check. If they are fortunate, they have supplemental retirement income.
• The 55+ buyer and seller market has nearly doubled in the past 20 years.
• By 2050, people 65 and older will be 20 percent of the U.S. population.

A Clark County Realtors Association survey showed that 62.3 percent of members saw an increase in home buyers over age 55 and 55 percent indicated most buyers wanted a suburban home. That could be because the desired homes are not in urban areas and 88 percent of buyers over 55 want a single-family dwelling.

Aaron Marvin
Owner of A.C.T. Builders, vice president of the Clark County Building Industry Association and a Certified Aging in Place Specialist:

Simple steps to ensure a successful home renovation or new-build project and the apparent need for more regulations in the housing market. Aaron outlined steps for selecting a contractor that included:

1. Set a budget and have an idea of what you want
2. Ask around, conduct formal research online
3. Talk with people who have had similar contracting work done and look at the completed projects
4. Interview contractors and think about whether you actually like the person
5. Get bids, and then hire a contractor.

Aaron suggested the following resources:

• What You Should Know About Hiring a Contract, Remodeler or Handyman, by ProtectMyHome.net;
• Independent Contractor Guide by the Washington State Department of Labor and Industries.

Reshaping the housing market to better meet the evolving needs of seniors requires a change of thinking and consumer demand, he said.
Roy Johnson
Executive director of the Vancouver Housing Authority:

**Our community’s public housing crisis and why it is happening.**

Quick facts:
1. Vancouver had the highest percentage of rent increases in the nation.
2. Rapidly increasing rents and low vacancy rates result in an increase in homelessness.
3. Hard to use rental assistance when rents are above Fair Market Rent.
4. High demand for housing is resulting in renovations, rent increases and displacement.
5. Sources of funding for public housing are declining as the need increases. New sources need to be found.
6. Older units are adapted to residents’ needs. All new housing is accessible.

Aaron Murphy
Architect, entrepreneur and author of ADM Architecture:

**How housing is the hub of happiness, health and longevity. Here are some of his major points:**

1. The built environment is designed for a person who is of average height and weight, has perfect eyesight and hearing, and is right-handed and able-bodied.
2. 87 percent of elder fractures are due to falls.
3. 70 percent of retirees are forecast to run out of money within 10 years.
4. Housing stock hasn’t change since the 1950s.
5. Good design encourages mobility and activity, family support and involvement with others.
6. Today assisted living is approximately $4,500 per month; the median cost of a nursing home is $8,973 per month.
7. Remodeling a home into a forever home would allow you to stay 10-15 years longer with part-time care and potentially save you up to $500,000.
8. Universal design doesn’t mean a home looks or feels institutional.
9. Adding universal design features in a new home costs virtually nothing.
The demand for housing that can adapt to the changing needs of residents continues to outpace the supply.

- An AARP survey found that 87 percent of people prefers to retire in place and will need accessible, affordable housing.¹
- What the public wants does not converge with what the industry provides.
- Incorporating accessible elements in new construction is easier than a remodel.

¹ AARP PPI, “What is Livable? Community Preferences of Older Adults,” April 2014
Recommendations for policy direction and stronger marketplace

Based on information from our housing speaker series and public comments, the Commission on Aging recommends the community discusses, refines and implements the following policy and marketplace solutions.

Policy direction

Encourage the construction of new single-family homes that can accommodate all residents and visitors regardless of age or ability by the inclusion of these design features:

1. A no-step entry way connected to an accessible route to the driveway or sidewalk;
2. All doorways and hallways have a minimum clear width of 36 inches and lever handles instead of door knobs;
3. Bathroom on the main floor with reinforced wall backing for secure attachment of grab bars and adequate space for a walker or wheelchair; and
4. Light switches, electrical outlets, thermostats and other environmental controls mounted no higher than 48 inches and no lower than 18 inches above finished floor.

Recognize that the most practical and cost-effective means of providing “visitable” housing to meet the projected need is with new construction.

Retrofit and remodel existing housing for aging in place by:

1. Developing standard drawings detailing construction specifications for expedited permit application and approval.
2. Identifying tax credits, incentives and grants available for homeowners or builders.
3. Identify and publicize programs such as VA assistance for disabled veterans.

“Visitable” is an emerging term meaning barrier-free housing, accessible to all residents and visitors.
Increase neighborhood functionality, connectivity and accessibility with a combination of pedestrians, cars, bikes and public transportation.

1. Ensure all new neighborhoods are built with sidewalks and curb cuts.
2. Ensure safety and access for fire and emergency medical responders to reach and transport residents.
3. Develop funding strategies for priority sidewalk construction, improvement and repair to connect existing neighborhoods.

Marketplace ideas

Clark County and the Commission on Aging will:

1. Collaborate with the Building Industry Association to promote “visitability” choices for new and existing homes. Encourage the BIA to showcase a Universal Design home in the Clark County 2018 Parade of Homes.
2. Work with housing nonprofits such as Habitat for Humanity and Vancouver Housing Authority to ensure new affordable housing projects paid for with private and public funds are built to allow access for all potential residents.
3. Encourage all Clark County cities to adopt “visitability” programs with voluntary initiatives and/or code requirements.
4. Continue work with Clark County Association of Realtors to revise and increase designations for accessible features in the use of the multiple listing service.
Implementing the Aging Readiness Plan

The Commission on Aging has developed several programs to implement a robust aging readiness plan, including:

- hOur Impact Time Bank
- Public presentations that reach out to all sectors of the community
- Encouraging Universal Green Design
- Providing education, resources and advocacy

A six-prong strategy has been identified in the Aging Readiness Plan.
hOur IMPACT
Time Bank

The Commission on Aging developed the county’s first time bank. The hOur IMPACT Time Bank allows neighbors to exchange skills or services without money changing hands. The time bank concept promotes a variety of strategies identified in the Aging Readiness Plan. The hOur IMPACT Time Bank was launched in May 2015. It now has 134 members, including nine nonprofits, three neighborhood associations, one farmers market and three public programs.

Public presentations:

Neighborhood associations: Maplewood, Vancouver Heights, NE Hazel Dell, Vancouver Neighborhood Alliance, Fruit Valley, Esther Short, Lincoln, Northwest, North Salmon Creek and Rose Village. Two presentations to the Neighborhood Associations Council of Clark County and Vancouver Office of Neighborhoods.

At public libraries: Battle Ground, Ridgefield, La Center, Camas, Washougal, Salmon Creek and Cascade Park. A presentation at the holiday luncheon of the Fort Vancouver Regional Library two years in a row to reach their volunteer program coordinators.

Clark County Youth Commission: We partnered with the Clark County Youth Commission to get members’ input on how this program could be rolled out to teens. Sixteen members joined hOur IMPACT and participated in two park clean ups.

Senior retirement communities: Courtyard Village Retirement Living, Columbia Ridge and Smith Tower Senior Living community.

Noon concert series at Esther Short Park: An information booth at the Wednesday, six-week concerts series.

Salmon Creek Farmers Market: An information booth at the Legacy Hospital Farmers Market.

Community organizations: Share volunteer coordinators, Lewis River Rotary and YMCA CASA Connection coordinators. Attended the Faith Based Coffees to introduce the program and met with Clark County Food Bank, Go Connect, Flash Love, Columbia Springs and Americans Building Community.

County and city coordination: We coordinate with the following county and city departments: Community Services, Public Health, Youth Commission, Parks and Vancouver Housing Authority, and neighborhood associations and Fort Vancouver Regional Library coordinators.

All ages and skills are welcome to participate in hOur IMPACT Time Bank.

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EACH OF US HAS UNIQUE GIFTS AND TALENTS TO SHARE
Universal Design

This long-term approach combines environmentally sustainable elements of green building with universal design, which uses simple, proven ideas to make a home comfortable for a wide range of abilities.

The commission prepared an idea book to provide information and inspiration and showcased the benefits of universal green design at the well-attended Home and Garden Fair. The commission works with builders to include universal green design elements in their homes. To date, the commission has distributed 1,200 idea books.

Universal design is an integral component of aging in place and its importance was highlighted by many of the experts who spoke to the commission during the 2016 focus on housing.

Universal design is an integral component for aging in place.
Education, awareness and advocacy

In prior years, the Commission on Aging operated on a June–July calendar. Beginning in July 2015, the commission moved to a fiscal calendar. From July 2015 through December 2016, the commission worked to provide education, community awareness and advocacy to move toward an all-age-friendly, livable community. Below is a list of events the commission attended to provide information on topics related to aging in Clark County.

**City councils:** Then-Chair Bill Ritchie presented the 2015 CoA Annual Report to all city councils to keep them updated on the commission’s progress implementing elements of the Aging Readiness Plan.

**Senior Resource Fair:** Hosted by U.S. Representative Jaime Herrera Beutler, the fair provides resources on a variety of opportunities for seniors. Commission members and staff provided information about the group’s work.

**Prime of Your Life Day at 2015 Clark County Fair:** Then-Chair Bill Ritchie received an award during this event.

**Clark County Youth Commission:** Collaborated with Youth Commission to develop youth participation in the hOur IMPACT Time Bank program.

**Fall into Health Wellness Resource Fair:** Commission member Karin Woll staffed a table at the fair to provide information about the work of the commission.

**Fred Meyer holiday:** Member Karin Woll collaborated with Fred Meyer on East Mill Plain during the holiday gift wrapping promotion, talking with people about the Commission on Aging and hOur IMPACT program while they waited for their gifts to be wrapped.

**Lions meeting:** Member Bill Ritchie presented information about the work of the commission to the Lions Club.

**NACCC meeting:** Member Karin Woll and staff provided information about the commission’s work and hOur IMPACT time bank to the Neighborhood Association Council of Clark County.
Helpful References


These references were either provided by the experts that presented to the commission this year or by research conducted by the commission itself.


Edinberg, Mark. The Do's and Don'ts of Communicating with Aging Parents, www.ec-online.net/knowledge/articles/dosndonts.html

Homewyse, 2016. Homewyse construction calculator www.homewyse.com/


National Center on Caregiving, Holding a Family Meeting, Family Caregiver Alliance – National Center on Caregiving, www.caregiver.org/holding-family-meeting


Clark County Mission Statement
Clark County’s mission is to enhance the quality of life of our diverse community by providing services with integrity, openness and accountability.