



TO: Clark County Council
FROM: Oliver Orjiako, Director
PREPARED BY: Jose Alvarez, Planner III
DATE: February 22, 2023
SUBJECT: Issue Paper 1: Overview of Planning under GMA in Clark County (1994-2020)

Purpose

This memorandum is to give the County Council (Council) background information on the pending Clark County 20-Year Comprehensive Growth Management Plan update. It also provides an overview of appeals of the plan updates and resolutions of each of the appeals through the Growth Management Hearings Board and the Courts.

Introduction

The Growth Management Act (GMA) requires the county to "...review, at least every ten years, Chapter 36.70A RCW, and related laws requires designation of urban growth area, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area (RCW 36.70A.130(a))." Such revision shall be made "...to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period." Clark County adopted a comprehensive plan in 1994, 2004, 2007, and 2016. The next update cycle requires the county to review, revise and update the plan, if necessary, by June 30, 2025.

Background

In 1994, the county adopted the first comprehensive plan, which resulted in a total of 41,229 acres, or 64.42 square miles, of urban growth areas. The plan was remanded by the Western Washington Growth Management Hearings Board for inconsistency between, including but not limited to, population projections, resource designation issues, parcel sizes in rural areas, SEPA, and capital facilities planning. After additional work, the county revised the comprehensive plan in 1997 to comply with the hearings board findings.

By 1999, the second comprehensive plan effort was launched. The state Office of Financial Management (OFM) projected a 20-year Clark County population

increase to between 453,280 and 571,061 people. As adopted, the county's 2004 plan assumed an annual growth rate of 1.69 percent, resulting in a projected mid-range population forecast of 517,741. Urban growth areas were expanded by 6,124 acres, or 9.57 square miles. Fourteen appeals challenging the 2004 plan were filed with the hearings board. The appeals focused, in part, on a last-minute reduction in the assumed growth rate, moving it from 1.83 percent to 1.69 percent.

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

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

The 2007 plan was appealed. The appellants were John Karpinski, Clark County Natural Resources Council, and Futurewise. They argued that the county had erroneously moved 4,351 acres from agricultural designation to a non-resource designation and included those lands within urban growth areas.

As a result of the appeals process, the revised designation of about 1,500 acres was ruled invalid, and those lands were removed from urban growth areas and again designated as agricultural lands. All 1,500 acres had been zoned for employment lands. The 2013 vacant lands inventory showed that there were 6,696 acres of vacant land zoned for employment opportunity. The Washington Supreme Court ruled in March 2013 that the Court of Appeals should not have ruled on the de-designation of agricultural lands that had been annexed quickly by the Cities of Ridgefield and Camas after they lost their agricultural designations.

In 2016, given the most recent economic downturn, changing demographics and lower than anticipated growth rates, OFM published new, lower growth projections for 2035 for Washington counties. The Council chose a 20-year population target that was less than what was planned for in the 2007 plan. The UGA boundaries were not reduced to reflect this reduction, as the Council wanted to protect the

planning efforts and investments already under way by the local jurisdictions.

The plan adopted by Council in 2016 had expansions of UGA boundaries in Battle Ground, La Center, and Ridgefield that were not consistent with the Growth Management Act. The plan also included a 50% reduction in minimum lot sizes on certain resource designated lands. The 20-acre minimum lot size in AG-20 zone went to a 10-acre minimum in AG-10, with a similar reduction in the Forest Tier II zones from FR-40 to FR-20, and an optional cluster provision was created. For additional changes, please refer to Issue Paper 1.1 and 1.2.

In 2017 the Growth Management Hearing Board (GMHB) issued a Final Decision and Order, which held as follows:

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.

In 2019 the Washington State Court of Appeals issued its decision, summarized as follows:

The Friends of Clark County and Futurewise (FOCC), as well as Clark County Citizens United (CCCU), petitioned the Growth Management Hearings Board (Board) to review the 2016 Plan Update for compliance with the GMA. The City of Ridgefield, City of La Center, 3B Northwest LLC (3B), and five other individual LLCs¹ intervened in that action.

The Board issued its Final Decision and Order (FDO), which concluded, in part, that the County did not comply with the GMA when it (1) dedesignated three areas of agricultural land and designated these lands as urban growth areas (UGA), (2) dedesignated agricultural land and designated this area as a rural industrial land bank (RILB), (3) reduced agricultural and forestland parcel sizes, and (4) adjusted rural densities. However, the Board concluded that the County complied with the procedural requirements of the GMA.

The land on the Lagler farm near the PVJR railroad was designated for an industrial land bank.

The County took some efforts to come into compliance, after which the Board issued a compliance order. The Board concluded that the County remained noncompliant regarding dedesignating agricultural land for two UGAs and the RILB but that it had complied regarding one UGA, the agricultural and forestland parcel sizes, and rural densities.

The parties appeal both the FDO and the compliance order. Additionally, FOCC moves to dismiss the County's and 3B's petitions for judicial review of the FDO for lack of appellate jurisdiction because they did not properly and timely serve their petitions for judicial review.

The County, La Center, Ridgefield, and the LLCs argue that the Board's finding of the County's noncompliance regarding the County's UGA designations are moot and that the Board acted arbitrarily and capriciously by requiring the County to take further action regarding these UGAs. The County also argues that the Board erroneously interpreted a rule regarding agricultural lands and erred when it concluded that the County violated the GMA by dedesignating agricultural lands for the RILB.

CCCU argues that the Board erred by concluding that the County complied with the GMA's procedural requirements regarding public participation, an issue paper, and source documents, and that the County complied with the GMA regarding designations of agricultural and forestlands, population projections, and private property considerations. CCCU further argues that the Board erred by concluding the County violated the GMA when the County reduced parcel sizes of agricultural and forestland.

FOCC argues that the compliance order erroneously declared issues to be moot regarding readopted forestland and rural density provision from the County's prior comprehensive plan.

We grant FOCC's motion to dismiss the County's and 3B's petitions for judicial review of the FDO, for lack of appellate jurisdiction. In the published portion of our opinion, we hold that issues regarding the annexed lands are moot. In the unpublished portion of this opinion, we hold that the Board did not err regarding the remaining issues raised by CCCU and FOCC, and remand to the Board for further proceedings in accordance with this opinion.

On January 8, 2020, the Washington Supreme Court denied the petition for review filed by CCCU, and the additional issues filed by Futurewise, which sought to overturn the Court of Appeals decision on UGA expansions, mootness, and agricultural designation. On March 26, 2020, the GMHB found the County in compliance with all outstanding issues.

To summarize, in appeal, the Growth Board and the Courts held that the 2016 designations of agricultural resource land had been improper because the County had failed to engage in the required countywide process (see pages 14 through 18 of the Issue Paper 1.1). The appellate bodies also struck down the UGA expansions because the additional land was not needed to accommodate growth, and because the County did not implement reasonable measures before expanding the boundaries.

Issue papers 1.1 and 1.2 prepared by staff, dated September and November, 2020, are attached as Exhibit A and Exhibit B, provide the regulatory and historical context related to the designation of agricultural resource land and rural lands. The two Issue papers are the chronology of comprehensive planning in Clark County as it pertains to agriculture and rural lands.

Planning assumptions

Much information goes into making decisions during a comprehensive plan update. GMA requires Clark County and its cities to monitor growth patterns through the buildable lands report. The county and cities also are required to use actual new development data, as well as consideration of “reasonable measures” such as change in zoning, increase in density to revise and update their growth plans (RCW 36.70A.215). In addition, planning assumptions for growth rate and jobs/acre are used to determine the number of acres to allocate for population and job growth. The Council must select a 2045 population target from within the range provided by the Office of Financial Management (OFM) population projections.

Planning assumptions for the 1994 through 2016 plan updates are shown in Table 1 on the next page.

Table 1: Planning Assumptions: 1994-2016

Assumption	1994	2004	2007	2016
OFM Range*	356,873 – 416,071	453,280 – 571,061	476,692 – 625,316	459,617 – 681,135
20-Year Population Projections**	416,071	517,741	584,310	577,431
Planned population growth	123,000	147,278	192,635	128,586
Urban/Rural population growth split	81/19	90/10	90/10	90/10
Assumed Annual population growth rate	2.35%	1.69%	2.2% (2004-2010), 2% (2011-2024)	1.26%
Housing type ratio	60% single family, 40% multifamily	75% single family, 25% multifamily	75% single family, 25% multifamily	75% single family, 25% multifamily
Persons per Household	2.33	2.69	2.59	2.66
New jobs	58,100	84,203	138,312	101,153
Average jobs to population ratio***	01:02.1	01:01.8	01:01.4	1 to 1
Market Factor	25%, residential and commercial; 50%, industrial	0%, residential; 25%, business park and commercial; 50%, industrial	10%, residential; 0% for commercial, business park and industrial	15%, residential; 15% for commercial, business park and industrial

* The 2016 OFM population forecast was prepared in 2012 and reflects the severe recession and slow growth in the preceding period.

**The population chosen by Council, slightly above the medium projection.

*** In 2016 the County switched to a Jobs to Household Ratio, which is the metric that is more commonly used by other agencies (i.e. RTC,

ESD) Source: 20-Year Comprehensive Growth Management Plan



Exhibit A

Clark County Comprehensive Plan

Agricultural Resource Land
Issue Paper 1.1 – September 2020 Update

Purpose

The purpose of this issue paper is to provide regulatory and historical context related to the designation of agricultural resource land in Clark County, WA.

Comprehensive Planning in Clark County

The following occurred prior to the adoption of the Growth Management Act of 1990.

- 1935 Clark County established its first county planning department and planning commission under Chapter 35.63 RCW.
- 1961 In 1959, the state legislature approved Chapter 36.70 RCW, which applied specifically to county, regional and joint planning programs. Clark County adopted its first Comprehensive Plan (1961 Plan) on April 27, 1961 with the corresponding map on October 2, 1961. [Commissioners' Journal book, page 25929 and 26235 respectively].
- 1971 The county adopted an urban services boundary for the City of Vancouver. The boundary served to limit the extension of sewer, water, and roads while establishing a planning area for the determination of future services.
- 1979 On May 10, 1979, Clark County adopted the Clark County Comprehensive Plan (1979 Plan); Volume 1 and 2. The 1979 Plan included a map that identified appropriate levels of development on all lands in unincorporated Clark County and adopted urban area boundaries for the cities of Vancouver, Camas, Washougal, Ridgefield, La Center, and Battle Ground and the town of Yacolt. [1979 Plan Map].

In rural areas, the 1979 Plan designated and provided policies to encourage the preservation of forest, agricultural and mining land while setting varying levels of housing lots for rural residential areas. The 1979 Plan stated that "agricultural land was considered an irreplaceable natural resource and concerted community effort should be made to protect it as a basic element of the local economy." [1979 Plan, Vol. 2, page 10]. The following policies were used to prepare the 1979 Plan:

1. "To encourage the preservation of agriculture uses on land which is best suited for agricultural production;
2. To encourage the maintenance and creation of those farm sizes needed to accommodate the types of agriculture which are suited to Clark County;
3. Provide for other limited activities which can be considered accessory to agricultural uses (e.g., feed and seed, tractor sales); and
4. Agricultural activities should be considered the most reasonable use of land in areas subject to severe periodic flooding." [1979 Plan, Vol. 2, page 10].

The 1979 Plan designated agricultural land throughout Clark County stating that “the basic philosophy which serves as the cornerstone of this element is that, whenever possible, those areas which are most suitable for agriculture should be used for food and fiber production. When used here, the term, ‘suitability,’ reflects soil type, drainage improvements, ownership patterns and limitations to development.” [1979 Plan, Vol. 2, page 10]. The 1979 Plan noted that it was “important to protect prime and good agricultural soil because this soil type is limited.” [1979 Plan, Vol. 2, page 10]. In the existing conditions section, the 1979 Plan noted that the “production of agricultural land is based largely on the suitability of soils to grow crops for both livestock feed and human consumption.” [1979 Plan, Vol. 1, page 9]. “Agricultural soil suitability ratings developed by the USDA Soil Conservation Service showed that “agricultural lands with suitability ratings of prime and good make up over sixty percent (60%) of productive farmlands in Clark County.” [1979 Plan, Vol. 1, page 9].

To accomplish the continuation of agricultural productivity, the 1979 Plan proposed a “minimum lot size of twenty acres in both agriculture and timber designated areas. Clustered housing or rural planned unit developments were permitted.” [1979 Plan, Vol. 2, page 10]. The 1979 Plan stated that “clustering of housing in this manner could help retain sixty to eighty percent (60-80%) of these lands in open, agricultural, or forest use.” [1979 Plan, Vol. 2, page 11]. The 1979 Plan noted that these policies were intended to protect the rural character of rural lands and focus urban development within urban areas.

The 1979 plan also included chapters related to transportation planning (adopting an arterial road plan as a part of the countywide plan map), identifying heritage areas, and creating policies on improving community appearance. [RES. 1979-05-46]. The 1979 Plan stated that its planning horizon was “intended to be a ten (10) year period for the development of Clark County.” [1979 Plan, Vol. 2, page 3]. In addition, the 1979 Plan could be updated annually in light of changing circumstances and a major reevaluation would occur every five (5) years.

- 1980 On June 11, 1980, Clark County adopted a countywide zoning ordinance and map. [RES. 1980-06-80].

Growth Management in Clark County 1990 - 2020.

- 1990 The state legislature adopted the Growth Management Act (GMA) as codified primarily in Chapter 36.70A RCW. The GMA responded to concerns about rapid population growth, increasing development pressures, increased traffic congestion, pollution, school overcrowding, urban sprawl and the loss of rural lands. The GMA required counties to adopt comprehensive land use plans, preliminary classifications and designations, and to enact development regulations on or before July 1, 1993. [Laws of WA, 1990 1st Ex. Session, Section 5, page 6]. Under Section 5 Guidelines to Classify Agriculture, Forest and Mineral Lands and Critical Areas, the GMA instructed the state Department of Community, Trade and Economic Development (now Commerce) to adopt guidelines under Chapter 34.05 RCW to guide the classification of agricultural lands. Section 5 required that Commerce consult with the state Department of Agriculture regarding guidelines for agricultural lands and consult with interested parties. Commerce was further instructed to consider public input obtained at public hearings when adopting the minimum guidelines. [Laws of WA, 1990 1st Ex. Session, Section 5, page 6].
- 1991 In April 1991, Commerce adopted guidelines for designation of agricultural lands in Chapter 365-190 WAC.
- 1992 Clark County adopted countywide planning policies pursuant to RCW 36.70A.210 on July 22, 1992. [ORD. 1992-07-60].

1993 The Community Framework Plan (Framework Plan) was adopted on May 26, 1993. [ORD. 1993-05-41]. This forward-looking document provided policy direction in the development of the 1994 Comprehensive Plan and addressed regional issues. The county adopted the following agricultural policies in the framework document:

3.0 "Resource Lands - These policies are to ensure the conservation of agricultural, forest, and mineral resource lands and protect these lands from interference by adjacent uses which affect the continued use, in the accustomed manner, of these lands for production of food, agricultural products, timber, or the extraction of minerals.

3.1 Countywide Planning Policies

The county and each municipality shall cooperate to ensure the preservation and protection of natural resources, critical areas, open space and recreational lands within and near the urban area through adequate and compatible policies and regulations.

3.2 Framework Plan Policies

3.2.0 The county and its jurisdictions at a minimum are to consider agricultural land based on WAC 365-190-050.

3.2.1 The county and its jurisdictions at a minimum are to consider forest land based on WAC 365-190-060.

3.2.2 The county and its jurisdictions at a minimum are to consider mineral resource lands based on WAC 365-190-070.

3.2.3 Identify agricultural land on parcels currently used or designated for agricultural use and provide these parcels special protection.

3.2.4 Identify forest land on parcels currently used or designated for forest use and provide these parcels special protection.

3.2.5 Encourage the conservation of large parcels which have prime agricultural soils for agricultural use and provide these parcels special protection.

3.2.6 Establish standards for compatible land uses on land designated for agriculture, forest and mineral resource uses.

3.2.7 Review cluster residential development on agriculture or forest land to ensure these developments continue to conserve agriculture and forest land.

3.2.8 Develop a range of programs (such as purchase of development rights, easements, preferential tax programs, etc.) to provide property owners incentives to maintain their land in natural resource uses.

3.2.9 Mineral, forestry and agricultural operations are to implement best management practices to minimize impacts on adjacent property.

3.2.10 Establish buffers for natural resource lands (agriculture, forest, or mineral lands) and urban and rural uses to lessen potential impacts to adjacent property.

3.2.11 Establish right to farm or harvest ordinances to protect the continued operation of natural resource lands.

3.2.12 Public facility and/or utility availability are not to be used as justification to convert agriculture or forest land.” [Framework Plan, pages 22-23].

- 1993 The Board of County Commissioners (BOCC) convened a Rural and Natural Resource Lands Advisory Committee charged with classifying and designating agricultural and forest resource lands based on the minimum guidelines contained in Chapter 365-190 WAC. The Rural and Natural Resource Lands Advisory Committee comprised of members of the public formed two subcommittees to streamline the effort: the 12-member Farm Focus Group and the 6 member Forest Focus Group. Each subcommittee issued reports in December 9, 1993.

The Farm Focus Group Final Report (Farm Group Report) noted that the Farm Focus Group had generated countywide core area maps based on state guidelines. Soil quality was a primary factor. Commerce required that the land-capability classification system of the U.S. Dept. of Agriculture Soil Conservation Service (Soil Conservation Service) be used to classify soils of agricultural resource land. [Farm Group Report, page 1]. The effects of proximity to population areas and the possibility of more intense uses of the land were also important factors. [Farm Group Report, page 1]. WAC 365-190-050 Agricultural Lands provided ten factors for counties and cities to consider:

1. “the availability of public facilities;
2. tax status;
3. the availability of public services;
4. relationship or proximity to urban growth areas;
5. predominant parcel size;
6. land use settlement patterns and their compatibility with agricultural practices;
7. intensity of nearby land uses;
8. history of land development permits issued nearby;
9. land values under alternative uses; and
10. proximity to markets.” [Farm Group Report, page 1].

The Farm Focus Group could not reach consensus on the designation of agricultural lands of long-term commercial significance and the group split into two factions, each of which developed its own position statement. The Farm Group Report contained two different position statements. Position statement #1 “concluded that except for the Vancouver Lake lowlands, agriculture is generally no longer economically viable in most parts of Clark County. Position statement #2 stated that “agriculture is economically viable in Clark County and should be conserved.” [Farm Group Report, page 3]. The Farm Focus Group concluded in its memorandum to the Rural and Natural Resource Lands Advisory Committee that both position statements carried equal weight. [Farm Group Report Memorandum, page 1].

The Rural and Natural Resource Lands Advisory Committee identified approximately 35,916 acres that exhibited characteristics common to both agriculture and forest designation and were not identified as agricultural land or forest land in either the Farm Focus Group or Forest Focus Group reports. The Rural and Natural Resource Lands Advisory Committee created a new hybrid resource designation, Agri-forest, to designate lands that exhibited characteristics common to both the agriculture and forest designations. The Rural and Natural Resource Lands Advisory Committee applied the Agri-forest designation to areas north of the East Fork of the Lewis River during the development of the Draft Supplemental Impact Statement but was unable to complete the work due to time constraints.

Staff completed the balance of the analysis for other areas adjacent to land designated Forest Tier I and property south of the East Fork of the Lewis River. Staff added the Agri-forest designation to those lands for the following reasons, according to a memo dated

October 13, 1994, from Planning Director Craig Greenleaf to the Planning Commission (Greenleaf Memo):

1. "The committee separated the selection process into independent determinations of agriculture and forestry characteristics, leaving some land inappropriately considered;
2. The Farm Focus Group did not include heavily forested lands; some of those lands were commingled with agricultural lands and were overlooked by both focus groups;
3. Factors which are not objective tended to carry less weight (e.g. settlement patterns and their compatibility with agricultural practices).
4. The Forest Focus Group discounted the role of soils as a factor because they were found to be uniformly of high quality; and
5. The Farm Focus Group's failure to agree on "long term commercial significance" led to severe difficulty in defining agricultural lands on a consensual basis and narrowed the committee's outcome to things over which agreement was reached." [Greenleaf Memo, pages 3-4].

1994 On December 20, 1994, the Clark County 20-year Comprehensive Growth Management Plan 1994-2014 (1994 Plan) designated a total of 41,229 acres, or 64.42 square miles, of urban growth areas. [ORD. 1994-12-47 and 1994-12-53].

1994 On December 28, 1994, the Board of County Commissioners amended Clark County Code 9.26 to recognize the right to farm/log. [ORD. 1994-12-53].

1995 On February 28, 1995, a total of 85 different petitioners filed 61 separate petitions that challenged the 1994 Plan with the Western Washington Growth Management Hearings Board (GMHB). [GMHB Case No. 95-2-0067 (Achen, et. al.)]. One of the appellants, Clark County Citizens United (CCCU), raised the following resource related issues in its petition to the GMHB:

1. Did the county's designation of agricultural resource lands comply with the GMA?
2. Did the county's designation of agri-forest resource lands comply with the GMA?
3. Did the county's designation of forest resource lands comply with the GMA?

CCCU raised the following issues related to the parcel sizes in the rural area:

1. Did the county's designation of land use densities in rural areas comply with the GMA?
2. Does a comprehensive plan that would make more than seventy percent (70%) of the properties in rural areas non-conforming comply with the GMA?
3. Does a comprehensive plan which bases its land use densities strictly on OFM population projections comply with the GMA, when the county knows or should have known that those population projections underestimate anticipated population growth?
4. May the county disregard its adopted framework plan policies when it adopts a comprehensive plan under the GMA and, if not, is the comprehensive plan consistent with the county's adopted framework plan policies?
5. Does a comprehensive plan that ignores existing conditions in rural areas comply with the GMA?
6. Did the county comply with the requirements of the State Environmental Policy Act (SEPA), RCW Ch. 43.21C and the GMA, in particular when the concept of rural villages and hamlets had been included in earlier drafts of the SEPA and were removed from the final?

1995 On September 20, 1995, in its Final Decision and Order (1995 FDO), the GMHB in Case No. 95-2-0067 (Achen, et. al.) remanded the 1994 Plan for inconsistency between population projections and capital facilities planning. However, the GMHB affirmed the county's designations of agricultural, forest and agri-forest resource lands.

"In classifying and designating agricultural and forest lands, Clark County not only considered WAC 365-190-050 and -060, but in fact used them exclusively." [1995 FDO, page 11].

"Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were lands of 'long-term commercial significance.' Petitioners have failed to carry their burden of proving the decision was an erroneous application of goals and requirements of the GMA. The county chose a decision that was within the reasonable range of discretion afforded by the act." [1995 FDO, page 14].

On the issue of parcel size, the GMHB decision stated that no evidence in the record supported 5-acre minimum parcel size designation north of the rural resource line (a delineation by the East Fork of the Lewis River that recognized the differences in the character and parcelization between the area north of the river and that south of the river). The GMHB had two major concerns. First was that the 5-acre size was insufficient to buffer adjacent resource lands, and second was that significant parcelization had occurred in the rural and resource areas between 1990 and 1993.

"At the time of adoption of the emergency moratoria on clusters, subdivision planned unit developments, and large lot developments in April of 1993, an estimated 19 square miles of segregations had occurred since May 1, 1990... [1995 FDO, page 21-22]. There are implementation measures the county could take to level this playing field and reinject some fairness into the situation... If they do not, the unfair position that many of these site-specific petitioners find themselves in will be perpetuated." [1995 FDO, page 25]. (Emphasis added.)

"...the Farm Focus Group established what became known as the 'rural resource line'. South and west of this resource line, the focus group, staff and the Planning Commission recognized that segregations and parcelizations had occurred involving thousands of lots ranging from 1 to 2.5 acres." [1995 FDO, page 22].

"A major omission that the BOCC made in establishing a 5-acre minimum lot size for all rural areas was ignoring the differences that existed north and south of the 'resource line'. [1995 FDO, pages 22-23].

"The BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990." [1995 FDO, page 24].

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

1. Agricultural resource land designation had been lawful.

"There is substantial evidence in the record to support the county's designation of agricultural resource lands." [Poyfair Decision, page 5].

2. The agri-forest designation was invalid;

"The agri-forest designations violate the GMA.... Furthermore, there is no substantial evidence in the record to support the designation of agri-forest lands under the GMA." [Poyfair Decision, page 5]. "...failure to solicit meaningful public input for the agri-forest resource lands violates the public participation..." [Poyfair Decision, page 5].

3. The EIS issued by the county violated SEPA because of procedural flaws;

"The agri-forest resource land designations were disclosed subsequent to the publication of the final Plan EIS and were not disclosed or discussed in any way in the EIS alternatives." [Poyfair Decision, page 5].

"The Board's decision to uphold the adequacy of the EIS absent additional environmental analysis regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous." [Poyfair Decision, pages 5-6].

4. On the issue of parcel size, the court ruled that the removal of rural activity centers was not addressed in the EIS; and

"...the county needed to provide a variety of rural densities to be compliant with the GMA, and that could be achieved by designating rural centers as envisioned in the Community Framework Plan." [Poyfair Decision, page 5].

5. Rural development regulations were inconsistent with GMA because of failure to provide for a variety of rural densities.

"The eradication of the centers and their replacement with a uniform lot density violates the planning goal requiring a variety of residential densities." [Poyfair Decision, page 6].

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

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

The Board decision, however, compelled the county to downzone substantial portions of the rural area in order to meet the Board's apparent requirements." [Poyfair Decision, page 6].

"The Board's interpretation was erroneous, and the county's decision to follow the Board's lead was unfortunate." [Poyfair Decision, Pages 6-7].

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

- 1998 The Agri-forest Focus Group comprised of 13 public members, (including some CCCU members), made recommendations on re-designating approximately 35,000 acres of Agri-forest designated resource lands. The Agri-forest Focus Group majority recommended that approximately 99% of the land should be designated Rural-5, Rural-10 and Rural-20. Rural-10 and Rural-20 were newly created in order to provide a variety

of rural densities, as required by Judge Poyfair, and to buffer adjacent resource lands, primarily north of the rural resource line, as required by the GMHB. Certain members of the Agri-forest Focus Group issued minority reports. One of the two minority reports questioned the designation of 3,500 acres to rural as opposed to resource use and the other minority report recommended only 5- and 10-acre Rural zoning, similar to the 1979 Plan. On July 28, 1998, the BOCC adopted the Agri-forest Focus Group majority recommendation. [ORD. 1998-07-19].

- 1999 On May 11, 1999, the GMHB issued a Compliance Order (1999 Compliance Order) in Case No. 95-2-0067 (Achen et. al.) upholding the creation of six rural center designations and the change to Rural designations for approximately 35,000 acres of agri-forest lands; except for the 3,500 acres mentioned in the minority report, the designation of which was remanded back to the county.

"We find that Clark County is not in compliance with the GMA as relates to the 3,500 acres. In order to comply with the Act, the county must review the 3,500 acres in light of the Supreme Court's holding in Redmond and the appropriate criteria stated therein to determine if RL [resource land] designation is appropriate." [1999 Compliance Order, page 14]. (The State Supreme Court had ruled in Redmond v. CPSGMHB that current management of land for commercial agricultural production is not required for resource designation.)

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

- 2003 County staff completed a technical review on the remaining 3,500 acres remanded by the GMHB for lawful designation under the GMA. The technical review found that a majority of the 3,500-acres remanded to the county by the 1999 Compliance Order [GMHB Case No. 95-2-0067 (Achen et. al.)] were not associated with designated resource areas. The county applied a non-resource designation of Rural-5, Rural-10 or Rural-20 to those properties on September 23, 2003. [RES. 2003-09-12].
- 2004 On September 7, 2004, the periodic update of the Clark County 20-year Comprehensive Growth Management Plan 2004-2024 (2004 Plan) added 6,124 acres, or 9.57 square miles, to urban growth areas. The county did not de-designate agricultural resource land. [ORD. 2004-09-02]. Petitioners filed 14 separate petitions to appeal the 2004 Plan and raised 43 issues with the Growth Management Hearings Board. The appeals focused, in part, on a last-minute reduction in the assumed growth rate moving it from 1.83 percent to 1.69 percent. There was no challenge to the rural element by any party.
- 2004 On December 16, 2004, the GMHB consolidated all 14 petitions under GMHB Case No. 04-2-0038c (Building Industry). After a series of procedural motions, only two petitioners, the Clark County Natural Resources Council (CCNRC) and Futurewise, remained as petitioners. The number of issues was reduced from 43 to 8. The county launched a new two-year update process that reopened the 2004 Plan. Based on agreements with the county, the cities of Battle Ground and Vancouver and the development industry petitioners withdrew their appeals.
- 2005 On November 23, 2005, the GMHB issued an order Amending Final Decision and Order of August 22, 2005 (2005 Amended FDO) on Reconsideration for GMBH Case No. 04-2-0038c (Building Industry). The decision upheld the 2004 Plan, finding:

"The county has not changed the manner or the conditions of how it applies Urban Reserve or Industrial Urban Reserve designations to commercially significant agricultural lands in the county comprehensive plan since these designations were found compliant by this board. Nor have the Growth

Management Act requirements changed since this concept was found compliant in 1997.” [2005 Amended FDO, page 48].

“The county’s development regulations to conserve agricultural lands and prevent interference from incompatible uses are unchallenged and therefore deemed compliant.” [2005 Amended FDO, page 49].

“A property owner who wishes to change the designation of commercially significant agricultural land that also has an Urban Reserve or Industrial Urban Reserve overlay, must still meet the criteria for designation and zoning map changes outlined in CCC 40.50.010. Any owner of commercially significant agricultural land would be obliged to do the same.” [2005 Amended FDO, page 49].

“The limitations in county code at CCC40.50.010(G) and (I) deter the conversion of adjacent lands designated agricultural lands within the current twenty-year planning horizon.” [2005 Amended FDO, page 49].

No party appealed the 2005 Amended Final Decision and Order. The appeal of the 2004 Plan was ended.

- 2006 The GMHB issued its Order Finding Compliance and Closing Case No. 95-2-0067c (Achen, et. al.) on June 6, 2006. This Order was not appealed, and ended the appeal of the 1994 Plan, as amended on remand, which the GMHB found to be compliant with GMA.
- 2007 On September 25, 2007, the county adopted 2007 Plan amendments that adjusted the growth assumption in the 2004 Plan from 1.67% annually to 2.0% annually and added 12,023 acres to urban growth areas, more than a third of which had been designated as agricultural resource lands, and most of which was newly zoned for employment. [ORD. 2007-09-13]. John Karpinski, the Clark County Natural Resources Council, and Futurewise appealed the 2007 Plan, arguing that the county had erroneously de-designated 4,351 acres from agricultural resource land to non-resource designations and included those lands within urban growth areas. [GMHB Case No. 07-2-0027c (Karpinski)].
- 2008 Clark County convened the Agriculture Preservation Advisory Committee in March 2008. The 16-member committee represented the farming and nurserymen wishing to continue in agriculture, the land trust and preservation community, food cooperatives, and related interests was charged with the development of a draft farm preservation plan. The committee met eleven times between March 2008 and January 2009 with technical assistance from the State Conservation Commission. The farm preservation plan recommended the committee’s conclusions on the most effective short- and long-term actions to protect the opportunity to pursue and enhance commercial and non-commercial agriculture in the county.
- 2008 In its Amended Final Order and Decision, dated June 3, 2008 (2008 Final Order), the GMHB ruled in Case no. 07-2-0027c (Karpinski) on the de-designation of 19 areas of agricultural resource lands of long-term commercial significance. The GMHB affirmed the 2007 Plan with regard to 8 of the 19 areas and remanded the decision to the county with regard to the other 11 areas. The GMHB found that the de-designation of the following areas did not comply with RCW 36.70A.020(2), RCW 36.70A.020(8), and RCW 36.70A.1070:
- Battle Ground – BC (68.16 acres),
 - Camas – CA-1 (342.56 acres),
 - Camas – CB (402.19 acres),

- La Center - LB-1 (218.81 acres),
- La Center - LB-2 (244.53 acres),
- La Center - LE (112.47 acres),
- Ridgefield – RB-2 (199.69 acres),
- Vancouver – VA (125.02 acres),
- Vancouver – VA-2 (22.89 acres),
- Vancouver – VB (780.43 acres), and
- Washougal – WB (116.06 acres). [2008 Final Order, page 78 and 79].

1. Agricultural conservation's role in managing growth.

"There is no doubt that the GMA sees agricultural lands and the industry that relies on them as something special given the duty set forth to designate agricultural land and conserve such land in order to maintain and enhance the agricultural industry." [2008 Final Order, page 33].

"The pressure to convert these lands, especially in areas impacted by population growth and development is even more prevalent today (2008). The GMHB recognizes that counties and cities of WA face a multitude of difficult and demanding challenges when determining how their communities will grow....WA's limited, irreplaceable agricultural lands are at the forefront of this mandate..." [2008 Final Order, page 33].

"The GMA, through RCW 36.70A.020 (8), .060, .070, .170, and-.177 direct counties and cities to protect agricultural lands by:

1. *Designating agricultural lands of long-term commercial significance (RCW 36.70A.170);*
2. *Assuring the conservation of agricultural land (RCW 36.70A.060);*
3. *Assuring that the use of adjacent lands does not interfere with the continued use of agricultural lands for agricultural purposes RCW 36.70A.060);*
4. *Conserving agricultural land in order to maintain and enhance the agricultural industry (RCW 36.70A.177);*
5. *Discouraging incompatible uses (RCW 36.70A.020); and*
6. *Adopting development regulations to implement these mandates (RCW 36.70A.060)." [2008 Final Order, page 33].*

"The question of the meaning of agricultural lands, under the GMA, was clarified by the Supreme Court in the Lewis County v. WWGMHB decision. In that case, the proper definition of agricultural land was set forth in the court holding; we hold that agricultural land is land:

- a. Not already characterized by urban growth*
- b. That is primarily devoted to 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.*

This definition emphasizes the three required elements of agricultural lands - that it is not already characterized by urban grown, that it is primarily devoted to agricultural production, and has long-term commercial significance for agricultural production." [2008 Final Order, page 34].

2. In assessing the relationship of the GMA agricultural goal to the economic development goal, the GMHB cited the Washington Supreme Court's decisions in King County v. CPSGMHB and Lewis County v. WWGMHB:

"The Board finds that the Supreme Court held the GMA creates a mandate to designate agricultural lands because the Act includes goals with directive language and specific requirements. The Board finds that the GMA's economic development goal cannot supersede the agricultural mandate defined by the Supreme Court. The Supreme Court, in a later case, also set out a three-part test for evaluating agricultural lands." [2008 Final Order, page 3].

Prior to issuance of the GMHB decision, the cities of Camas and Ridgefield annexed approximately 327 acres and 200 acres, respectively, of former agricultural and rural lands.

The county and other parties appealed the Growth Management Hearings Board Amended Final Decision to Clark County Superior Court. Case No. 08-2-03625-5c.

- 2009 On June 12, 2009, Judge Robert Harris issued a ruling in Clark County Superior Court which affirmed the GMHB Amended Final Decision and Order [GMHB Case No. 07-2-0027c (Karpinski)] in part, reversed it in part, and dismissed the appeal of annexed lands in Camas and Ridgefield. [Case No. 08-2-03625-5 consolidated].

Clark County appealed in part and also took action ordered by Clark County Superior Court to redesignate areas known as Vancouver VB (parts of which would be designated in 2016 as Rural Industrial Land Banks), Battle Ground BC, a portion of the areas known as Ridgefield RB-2 and Camas CA-1 as agricultural land. [ORD. 2009-12-15].

- 2011 The Court of Appeals on April 13, 2011, remanded three of the eleven areas found non-compliant by the GMHB in Case No. 07-2-0027c (Karpinski) and affirmed the GMHB as to the others, including with regard to three areas that had been annexed by cities and had not been the subjects of appeal to the Court of Appeals. [Clark County v. WWGMHB, 161 Wash. App. 204 (2011)].

- 2011 On September 1, 2011, the Board of County Commissioners approved a contract with BERK & Associates to complete a Rural Lands Study which was phase 3 of the Rural Lands Review project. [Clark County Staff Report 200-11].

- 2012 BERK & Associates completed the Rural Lands Study Situation Assessment on May 15, 2012. The Situation Assessment included: 1) a policy review of rural trends in Clark County, 2) market research study on agricultural and forest products, 3) a Transfer of Development Rights framework, and 4) a review of the Current Use Taxation program.

- 2012 On June 12, 2012, the Board of County Commissioners amended the pertinent sections of Clark County Code 40.100, 40.210, 40.220, 40.230, and 40.310 to allow roadside farm stands and agricultural markets. [ORD. 2012-06-02]. The code amendments originated from an Agriculture Preservation Advisory Committee recommendation in 2008 that had been forwarded to the Rural Lands Task Force for further review.

- 2012 On October 9, 2012, Clark County amended CCC 14.06.101.2 that amends IRC Section R101.0 and CCC 14.05.101.2 amends IBC Section 101.2 exempting agricultural buildings from acquiring a building permit as long as they meet the definition of an agricultural building as defined by IBC Section 202. [ORD 2012-10-08].

- 2013 The Washington Supreme Court granted review of the Court of Appeals' ruling on the Karpinski decision by the GMHB [Clark County v. WWGMHB, 161 Wash. App. 204

(2011)], considering only an issue involving un-appealed issues relating to the annexed areas of Camas. The Supreme Court vacated the Court of Appeals decision, holding that the Court of Appeals had improperly ruled on issues that no party had appealed. [Clark County v. WWGMHB, 177 Wn.2d 136 (March 21, 2013)].

Two of the justices issued a concurring opinion that agreed in the result, but for a different reason. The concurrence stated that after annexation by the cities, the designation of the annexed lands was moot, because the county could take no action to regulate those lands. The annexed lands remain annexed and urban.

In the course of the appeals and compliance processes, the GMHB and the Court of Appeals ruled that the de-designation of 1,500 acres of agricultural land had been noncompliant and invalid. The county removed those lands from urban growth areas and re-designated them as agricultural lands. The 1,500 acres had been included in the Battle Ground, Camas, Ridgefield, Vancouver, La Center, and Washougal urban growth areas. [ORD. 2009-12-15].

- 2013 A new periodic update of the comprehensive plan with a required completion date June 30, 2016, began on July 2013.
- 2013 In November 2013, the county surveyed owners of properties zoned for agriculture (AG-20) and forest (FR-40) to determine preferences of these owners for smaller minimum parcel sizes. Owners of AG-20 parcels larger than 10 acres and FR-40 parcels larger than 20 acres received letters asking for their preferences. The Board considered the results to decide if changes were needed in the county's rural lands policy. Any proposed changes would be done as part of the periodic review of the comprehensive plan update.
- 2014 On March 11, 2014, the GMHB entered an Order on Remand in Case No. 07-2-0027c (Karpinski) that upheld the de-designations of Vancouver VA and VA-2, based on urban growth within those areas, and concluded that area Washougal WB could not be de-designated.
- 2014 On July 1, 2014, the Board of County Commissioners amended the comprehensive plan and zoning maps to re-designate the area known as Washougal WB as agriculture (AG-20). [ORD 2014-07-03].
- 2014 The GMHB issued its Order Finding Compliance and Closing Case No. 07-2-0027c (Karpinski) on September 4, 2014. The appeal of the 2007 Plan was ended and the 2007 Plan, as amended on remand, was found to be compliant with GMA.
- 2016 2016 On April 26, 2016, the county established two rural industrial land bank (RILB) sites amending the 20-year Comprehensive Growth Management Plan 2004-2024 plan and zoning map designations from Agriculture (AG-20) to Employment Center (IL and IL- RILB Overlay) for eleven parcels located in the vicinity of State Route 503. In doing so, the county amended the 2007 Plan Land Use and Rural and Natural Resource Elements, the arterial atlas, and Clark County Code sections 40.230.085 and 40.520.075. [ORD. 2016-04-03].
- 2016 On May 10, 2016, the county amended the rural industrial land banks to include two parcels whose zoning was to be changed by Ordinance 2016-04-03, but which had been inadvertently left off the list of parcels in the ordinance. [ORD.2015-05-03]. Futurewise and Friends of Clark County (FOCC) appealed the ordinances (Ordinances 2016-04-03 and 2016-05-03) that established the two rural industrial land banks to the Growth Management Hearings Board. [GMHB Case No. 16-2-0002].

2016 On June 28, 2016, the Clark County Council updated the plan pursuant to RCW 36.70A.130, adopting the amended Clark County 20-year Comprehensive Growth Management Plan 2015-2035 (2016 Plan), which:

- amended the Rural Industrial Land Bank plan map designation from Employment Center to Rural Industrial Land Bank;
- reduced the minimum lot size for agriculture resource lands from twenty (20) acres to 10 acres (AG-20 to AG-10) and Tier II Forest resource lands from forty (40) acres to twenty (FR-40 to FR-20), and created an optional cluster provision;
- created a single rural comprehensive plan designation allowing for a Type III process to rezone rural land to R-5, R-10, and R-20;
- reduced the minimum lot size for some rural lands from twenty (20) acres to ten (10) acres (R-20 to R-10);
- combined rural center commercial (CR-2) and rural commercial (CR-1) into a single comprehensive plan designation of rural commercial.
- expanded the urban growth boundaries of the cities of Battle Ground, La Center and Ridgefield, and
- merged two rural traffic impact fee districts into one. [Amended ORD. 2016-06-12].

Clark County Citizens United (CCCU), Futurewise and Friends of Clark County (FOCC) appealed the 2016 Plan. The GMHB consolidated all cases including RILB Case No 16-2-0002 under GMHB Case No. 16-2-0005c (CCCU-Futurewise). (Note that the county adopted other plan amendments not relevant to rural lands.) 2016 Prior to issuance of the GMHB decision, the cities of La Center and Ridgefield annexed approximately 57 acres and 111 acres, respectively, of land that had been de-designated from agricultural use.

2016 Prior to issuance of the GMHB decision, the cities of La Center and Ridgefield annexed approximately 57 acres and 111 acres, respectively, of land that had been de-designated from agricultural use.

2017 In its Final Decision and Order dated March 23, 2017 (2017 FDO), the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) ruled on 25 issues raised by the appellants. The county prevailed on 18 issues, including the following:

1. All of CCCU's issues and arguments, including complaints about participation, timing, SEPA, property rights, density in the rural area, population projections and allocation, cluster remainders, the supposed rural vacant buildable lands model and the background reports.
2. FOCC's issues about the Capital Facilities Plan and funding, critical areas ordinances, the RILB deadline and annexation.

The GMHB held that the county was noncompliant on certain issues raised by Futurewise, as follows:

1. Urban Growth Area (UGA) expansions – each of the cities (Battle Ground, Ridgefield and La Center) had surplus lands and did not need an expanded UGA. The county and the cities had failed to take reasonable measures other than expansion to address issues related to sizing for each UGA.
2. De-designations for UGA expansions by Ridgefield and La Center – the county had failed to conduct an area-wide analysis of lands that addressed the effects of the de-designations on the viability of the agricultural industry in the area(s).
3. Urban reserve overlay – the GMHB described the overlay areas as “UGA enlargements.”
4. Allowing greater density in the resource zones – the GMHB held that this action did not protect and enhance the agricultural and forest industries.

5. Only one comprehensive plan designation for rural lands (outside urban centers) – the GMHB found that having one comprehensive rural lands designation implemented by R-5, R-10 and R-20 zones was not compliant with GMA.
6. RILB creation – the GMHB held that the county had not identified the maximum size of the RILB as required by GMA.
7. De-designation for the RILB – The GMHB held that the de-designation of agricultural resource land had not been proper because:

*“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.” [2017 FDO, page 78].*

“...the county failed to complete an area-wide analysis of the impacts on the agricultural industry...” [2017 FDO, page 41].

*“...de-designation decisions did not comply with WAC 365-196-050 in which a countywide 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) [2017 FDO, page 42].*

The GMHB initially found that the plan was invalid only with respect to the de-designations for urban lands and the UGA expansions for the cities of Battle Ground, La Center and Ridgefield.

“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.” [2017 FDO, page 80].

In response, the county adopted an ordinance on April 25, 2017, that suspended land divisions within lands designated agriculture, forest tier II and rural, and zone changes within those lands pursuant to CCC 40.560.020. [ORD. 2017-04-14]. In June, that suspension was made permanent. [ORD. 2017-06-04]. On July 11, 2017, the county amended the 2016 Plan, zoning maps and county code as follows:

1. Returning resource designations and zoning to agriculture AG-20 and forest FR-40;
2. Returning rural comprehensive plan designations to Rural-5, Rural-10, and Rural-20.
3. Repealing the urban reserve use list.

4. Returning the Battle Ground Urban Growth Area to its pre-update size.
 5. Naming a maximum size for the rural industrial land banks. [ORD. 2017-07-04].
- 2017 On August 3, 2017, the Board of County Councilors advertised for volunteers to serve on an Agriculture Advisory Committee to review the remaining recommendations of the Agricultural Preservation Advisory Committee (2008) and focus on the long-term “viability of agriculture”. The BOCC ultimately and decided to put the conversation on hold.
- 2017 On September 26, 2017, the county amended the 2015 Buildable Lands Report in RES. 2017-09-13 to reflect recent development in Battle Ground, Ridgefield and La Center, and measures taken by those cities to achieve the densities projected for them. [GMHB in Case No. 16-2-0005c (CCCU-Futurewise)].
- 2018 On January 10, 2018, the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) issued an Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidly, Stay Order and Supplement the Record (18 Compliance Order). Concerning the minimum lot sizes on agricultural and forest lands, the Urban Reserve uses, the Battle Ground UGA, the Rural plan designations, and the maximum size of rural industrial land banks, the GMHB held that the county had achieved compliance. The GMHB found that:

“With the county amendments in Ordinance 2017-07-04 regarding agricultural and forest lands, the Board finds and concludes that the county is now in compliance with RCW 36.70A.060 and RCW 36.70A.070.” [18 Compliance Order, page 12].

The GMHB stated that the county had taken no action to cure its noncompliance on the following issues:

1. The county had not demonstrated need for the UGB expansions in Ridgefield and La Center.
2. The county had done nothing to cure the unlawful de-designations of agricultural lands that Ridgefield and La Center brought into their UGBs.
3. The county had done nothing to cure the unlawful de-designation of 602 acres of agricultural land of long-term commercial significance (ALLTCS) for the RILB.

“Clark County was before this Board in 2007 in a similar challenge of the county’s process to de-designate approximately 4,000 acres of ALLTCS, then expand urban growth area boundaries to encompass those newly de-designated lands, and then various cities within Clark County rapidly annexed the former ALLTCS. The annexations took place while this Board was hearing the case and before it could render its decision about the county’s ALLTCS de-designation process. Eventually, the Court of Appeals found some of the ALLTCS should not have been de-designated and attempted to address the timing of GMA appeals and city annexations, but our Supreme Court vacated that portion of the Court of Appeals’ decision which addressed the timing of appeals and annexations.

Here the Board is once again presented with a challenge of the county’s process to change agricultural lands into urban or industrial lands. In 2016, as in 2007, the county de-designated ALLTCS abutting the cities of La Center, Ridgefield and Battle Ground as well as in proposed industrial areas. Then the county expanded the cities’ UGAs to encompass the newly de-designated agricultural lands and designated two rural industrial land banks. And, as in 2007, while appeals were pending before this Board challenging the county’s de-designation action, the cities rapidly annexed

the former ALLTCS land from the expanded UGAs and zoned it for residential uses. The county and city processes have arguably denied recourse for challengers of ALLTCS de-designation. In the present case, while the Petitioners challenged the validity of the annexations themselves (Issue 7), the Board concluded it lacked jurisdiction to rule on that question. The Board did, however, find the county out of compliance with the GMA on Issue 5 (unwarranted UGA expansions) and Issues 10 and 19 (non-compliant de-designation of ALLTCS).” [18 Compliance Order, pages 13-14].

The county appealed the unfavorable aspects of the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) decision to the Court of Appeals. CCCU appealed with respect to its losses on all of its issues. FOCC and Futurewise appealed the findings of compliance regarding minimum lot sizes in the Rural and Resource lands.

- 2018 On February 15, 2018, the Board of County Councilors held a joint work session with the Planning Commission to discuss future work plan items including an area-wide agriculture assessment and the feasibility of a pilot Transfer of Development Rights program. The Board decided not to move forward with these items.
- 2018 On October 17, 2018, the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) issued its Order Finding Continuing Noncompliance (18 Second Compliance Order), regarding Issues 5, 10, and 19.

“Based upon review of the July 23, 2018, County Statement of Actions Taken to Achieve Compliance, the Growth Management Act, prior Board orders and case law, having considered the arguments of the parties offered in the briefing and at the compliance hearing, and having deliberated on the matter, the Board Orders:

- The County's Motions to rescind, modify or dismiss Issues 5 and 10 are DENIED.*
- The County's Motion to Stay Issue 19 is DENIED.*
- Clark County is in CONTINUING NONCOMPLIANCE with RCW 36.70A.060 and WAC 365-190-050 regarding the 602 acres of former ALLTCS that were designated as Rural Industrial Land Banks.*
- Clark County is in CONTINUING NONCOMPLIANCE with RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.215 of the GMA by failing to take any corrective legislative action to address the noncompliance of Clark County Amended Ordinance No. 2016-06-12, relating to the Urban Growth Areas of the Cities of La Center and Ridgefield.*
- The March 23, 2017, Determination of Invalidity remains in full force and effect, invalidating the UGA expansions for the cities of Ridgefield and La Center, as 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 Figures 14 and 15 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.*
- Clark County is in CONTINUING NONCOMPLIANCE with RCW 36.70A.050 and RCW 36.70A.060 and WAC 365-190-050 of the GMA by failing to take any corrective legislative action to address the noncompliance of Clark County Amended Ordinance No. 2016-06-12, relating to the de-designation of 57 acres of agricultural land of long-term commercial significance near the City of La Center Urban Growth Area and 111 acres near the City of Ridgefield Urban Growth Area.*
- The following parts of the 2016 Clark County Comprehensive Plan continue to be invalid, and invalidity remains in full force and effect as stated in the Board's January 10, 2018, Compliance Order: De-designation of ALL TCS on 57 acres near the La Center UGA and 111 acres near the Ridgefield UGA, as enacted in Amended Ordinance 2016-06-12 and Clark County's 2016 Comprehensive Plan*

Map, Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12 and also shown on Figure 24A of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.

- *The following parts of the 2016 Clark County Comprehensive Plan continue to be invalid and invalidity remains in full force and effect as stated in the Board's January 10, 2018, Compliance Order: De-designation of ALLTCS on 602 acres underlying two rural industrial land banks, as enacted in Amended Ordinance 2016-06-12 and Clark County's 2016 Comprehensive Plan Map, Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12 and also shown on Figure 24A of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035."* [18 Second Compliance Order, pages 13- 14].

- 2018 On December 18, 2018, the council adopted Interim Ordinance 2018-12-64 that suspended land use applications to develop lands within the RILB.
- 2019 On February 12, 2019, the county extended the Interim Ordinance 2018-12-64 that suspended land use applications to develop lands within the RILB for six (6) months.
- 2019 On July 9, 2019, the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) ruled in its Order Granting Stay for Issues 5, 10, and 19 and Re-enforcing Invalidity that the county need not take and report on actions to come into compliance regarding Issue 19 (RILB) until a final appellate decision was rendered on all issues, including the de-designations of agricultural lands.
- 2019 In 2012, Washington voters passed Initiative-502, which legalized the possession and use of one ounce or less of marijuana for persons over 21. The state Liquor and Cannabis Board adopted regulations regarding the production, processing, and retailing of marijuana and related products in Chapter 314-55 WAC. On July 2, 2019, Clark County Council amended county code to allow for the production and processing of marijuana in rural areas and retailing of marijuana within the Vancouver Urban Growth Area. [ORD. 2019-07-01].
- 2019 On August 6, 2019, Clark County Council extended Interim Ordinance 2018-12-64, suspending land use applications to develop lands within the RILB, for another six (6) months.
- 2019 On November 12, 2019, the county repealed and rescinded the establishment of the two rural industrial land banks and the de-designation of 602 acres of agricultural land underlying the RILB, as an appropriate response to the GMHB's orders in Case No. 16-2-0005c (CCCU-Futurewise) and the decision of the Washington Court of Appeals regarding the two rural industrial land banks. [ORD.2019-11-16].
- 2020 On January 8, 2020, the Washington Supreme Court denied the petitions of both CCCU and Futurewise to review the Court of Appeals decision regarding the 2016 comprehensive plan update. [Clark County Citizens United v. Growth Management Hearings Board, 194 Wn.2d 1021, 455 P.3d 130 (2020)].
- 2020 On March 26, 2020, The GMHB in Case No. 16-2-0005c (CCCU-Futurewise) ruled in its Order on Remand from the Court of Appeals that *"The Board found the County in compliance with RCW 36.70A.060 and WAC 365-190-050 and rescinded invalidity regarding 602 acres of agricultural lands that have been removed from Rural Industrial Land Bank designations. The Board also rescinded invalidity regarding the Urban Growth Areas (UGA) for the Cities of Ridgefield and La Center because the Court of Appeals*

ruled that annexations by La Center and Ridgefield rendered the UGA expansion issues moot.” [page 1].

The appeal of the 2016 Plan was ended. The next periodic review of the county’s comprehensive plan is due June 30, 2025.



Exhibit B

Clark County Comprehensive Plan

Rural Land

Issue Paper 1.2 – November 2020

Purpose

The purpose of this issue paper is to provide regulatory and historical context related to the designation of rural land in Clark County, WA and Clark County Code amendments to support the rural lifestyle.

Comprehensive Planning in Clark County

The following occurred prior to the adoption of the Growth Management Act of 1990.

- 1935 Clark County established its first county planning department and planning commission under Chapter 35.63 RCW.
- 1961 In 1959, the state legislature approved Chapter 36.70 RCW, which applied specifically to county, regional and joint planning programs. Clark County adopted its first Comprehensive Plan (1961 Plan) on April 27, 1961, with the corresponding map on October 2, 1961. [Commissioners' Journal book, page 25929 and 26235 respectively].
- 1971 The county adopted an urban services boundary for the City of Vancouver. The boundary served to limit the extension of sewer, water, and roads while establishing a planning area for the determination of future services.
- 1979 On May 10, 1979, Clark County adopted the Clark County Comprehensive Plan (1979 Plan); Volume 1 and 2. The 1979 Plan included a map that identified appropriate levels of development on all lands in unincorporated Clark County and adopted urban area boundaries for the cities of Vancouver, Camas, Washougal, Ridgefield, La Center, and Battle Ground and the town of Yacolt. [1979 Plan Map].

In rural areas, the 1979 Plan designated and provided policies to encourage the preservation of forest, agricultural, and mining land while setting varying levels of housing lots for rural residential areas. Four Rural Residential categories were widely distributed throughout the county outside of urban growth areas. The density ranges reflected existing rural residential development patterns. The 1979 Plan noted that "it should be understood that existing residential property or lots smaller than the recommended sizes will not be affected by the 1979 Plan recommendations. Any existing lot can be developed provided it can comply with health regulations. The rural densities recognized in the 1979 Plan were:

- Suburban - 1 to 2 ½ acres,
- Rural Residential – 2 ½ to 5 acres,
- Rural Estate - 5 to 10 acres, and
- Farm Residential - Over 10 acres." [1979 Plan, Vol. 2, page 17 and 18].

In addition, "lot sizes in rural residential areas should be related to the existing development pattern, the availability of essential services, natural limitations, and proximity

to the urban areas. Rural residential areas should be protected from urban encroachment to preserve the character of the area. Clustered housing should be encouraged in all residential areas including that portion of agricultural and forest lands used for residential purposes.” [1979 Plan, Vol. 2, page 15].

The 1979 plan included chapters related to transportation planning (adopting an arterial road plan as a part of the countywide plan map), identifying cultural heritage areas, and creating policies on improving community appearance. [RES. 1979-05-46]. The 1979 Plan stated that its planning horizon was “intended to be a ten (10) year period for the development of Clark County.” [1979 Plan, Vol. 2, page 3]. In addition, the 1979 Plan could be updated annually in light of changing circumstances and a major reevaluation would occur every five (5) years.

- 1980 On June 11, 1980, Clark County adopted a countywide zoning ordinance and map. [RES. 1980-06-80].

Growth Management in Clark County 1990 - 2020.

- 1990 The state legislature adopted the Growth Management Act (GMA) as codified primarily in Chapter 36.70A RCW. The GMA responded to concerns about rapid population growth, increasing development pressures, increased traffic congestion, pollution, school overcrowding, urban sprawl and the loss of rural lands. The GMA required counties to adopt comprehensive land use plans, preliminary classifications and designations, and to enact development regulations on or before July 1, 1993. Under Section 7 - Comprehensive Plans Mandatory Elements, the GMA instructed counties to include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. “The rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of rural densities.” [Laws of WA, 1990 1st Ex. Session, Chapter 17, Section 7, page 1979].
- 1991 In April 1991, the state Department of Community, Trade and Economic Development (now Commerce) adopted guidelines in WAC 365-196-330 for establishing a rural element in comprehensive plans. Section 330 was renumbered as WAC 365-196-425 effective February 19, 2010.
- 1992 Clark County adopted countywide planning policies pursuant to RCW 36.70A.210 on July 22, 1992. [ORD. 1992-07-60].
- 1993 In April 1993, Clark County adopted emergency moratoria on cluster subdivisions in the agricultural and forest zoning districts, planned unit developments in the rural estate, rural farm, rural residential, and suburban residential zoning districts, and interim requirements for county review and approval of large lot (5-20 acre) land divisions. [ORD. 1993-04-13 through 15 and 1993-04-26 through 28].
- 1993 The Community Framework Plan (Framework Plan) was adopted on May 26, 1993. [ORD. 1993-05-41]. The Framework Plan provided policy direction in the development of the 1994 Comprehensive Plan. The county adopted the following Framework Plan policies for rural centers and rural lands:
- 1.0 “Land Use - The land use element for 20-year comprehensive plans determines the general distribution and location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other uses. The land use element includes population densities, building intensities, and estimates of future population growth. The land use element is to provide for protection of groundwater resources,

and where applicable, address drainage, flooding, and run-off problems and provide for coordinated solutions.” [Framework Plan, page 13].

1.2 “Framework Plan Policies

1.2.0 Establish a hierarchy of activity centers, including both urban and rural centers.

Hierarchy of Centers

All Planning should be in the form of complete and integrated communities containing housing, shops, workplaces, schools, parks, and civic facilities essential to the daily life of the residents. Community size should be designed so that housing, jobs, daily needs and other activities are within easy walking distance of each other.” [Framework Plan, page 15].

b. “Outside of urban growth and urban reserve areas, Rural Activity Centers provide public facilities (e.g., fire stations, post offices, schools and commercial facilities) to support rural lifestyles. Rural centers may not have a full range of urban levels of services.

Villages are characterized by residential uses, rural commercial, post offices, veterinary clinics, daycare, existing commercial and industrial uses, schools, package sanitary treatment, village greens and public water. The residential densities are to be a minimum of 2 units per acre and no more than 4 units per acre (1.5 to 3 gross units per acre).

Hamlets are smaller than villages and have residential uses, community or public water systems, and rural commercial development to support rural and natural resource uses. These are convenience commercial centers with residential densities a minimum of 2 units per acre and no more than 4 units per acre (1.5 to 3 gross units per acre).” [Framework Plan, page 16-17].

The county adopted the following rural lands policies in the Framework Plan:

4.0 “Rural Lands – The Rural Lands Element contains policies governing the use of lands which are not reserved for agriculture, forest, or mineral resources, nor are they designated for urban development. Land uses, densities, and intensities of rural development are to be compatible with both adjacent urban areas and designated natural resource lands.

4.1 Countywide Planning Policies

The county shall recognize existing development and provide lands which allow rural development in areas which are developed or committed to development of a rural character.

4.2 Framework Plan Policies

4.2.0 Rural areas should meet at least one of the following criteria:

- opportunities exist for small scale farming and forestry which do not qualify for resource land designation;
- the area serves as buffer between designated resource land or sensitive areas;
- environmental constraints make the area unsuitable for intensive development;

- the area cannot be served by a full range of urban levels of service; or
 - the area is characterized by outstanding scenic, historic or aesthetic values which can be protected by a rural designation.
- 4.2.1 Recreational uses in rural areas should preserve open space and be environmentally sensitive.
- 4.2.2 Commercial development of appropriate scale for rural areas are encouraged within rural centers.
- 4.2.3 Establish large lot minimums for residential development appropriate to maintain the character of the rural area.
- 4.2.4 Develop a program for the transfer or purchase of development rights (TDR) or similar programs to encourage implementation of these rural lands policies.
- 4.2.5 New master planned resorts are to meet the following criteria:
- provide self-contained sanitary sewer systems approved by the Southwest Washington Health District;
 - be served by public water systems with urban levels of fire flow;
 - preserve and enhance unique scenic or cultural values;
 - focus primarily on short-term visitor accommodations rather than for-sale vacation homes;
 - provide a full range of recreational amenities;
 - locate outside urban areas, but avoid adversely impacting designated resource lands;
 - preserve and enhance sensitive lands (critical habitat, wetlands, critical areas, etc.);
 - housing for employees only may be provided on or near the resort;
 - comply with all applicable development standards for master planned resorts, including mitigation of on and offsite impacts on public services, utilities, and facilities.
- 4.2.6 Encourage the clustering of new development within a destination resort or a designated rural center (village or hamlet). All new development should be a scale consistent with the existing rural character.
- 4.2.7 Revise existing development standards and housing programs to permit and encourage development of affordable housing for people who work in resource-based industries in rural centers.” [Framework Plan, pages 24 and 25].

1993 The Board of County Commissioners (BOCC) convened a Rural and Natural Resource Lands Advisory Committee charged with classifying and designating agricultural and forest resource lands based on the minimum guidelines contained in Chapter 365-190 WAC. The Rural and Natural Resource Lands Advisory Committee comprised of members of the public formed two subcommittees to streamline the effort: the 12-member Farm Focus Group and the 6 member Forest Focus Group. Each subcommittee issued reports in December 9, 1993.

The Farm Focus Group Final Report (Farm Group Report) noted that the Farm Focus Group had generated countywide core area maps based on state guidelines. Soil quality was a primary factor. Commerce required that the land-capability classification system of

the U.S. Dept. of Agriculture Soil Conservation Service (Soil Conservation Service) be used to classify soils of agricultural resource land. [Farm Group Report, page 1].

The effects of proximity to population areas and the possibility of more intense uses of the land were also important factors. [Farm Group Report, page 1]. WAC 365-190-050 Agricultural Lands provided ten factors for counties and cities to consider:

1. "the availability of public facilities;
2. tax status;
3. the availability of public services;
4. relationship or proximity to urban growth areas;
5. predominant parcel size;
6. land use settlement patterns and their compatibility with agricultural practices;
7. intensity of nearby land uses;
8. history of land development permits issued nearby;
9. land values under alternative uses; and
10. proximity to markets." [Farm Group Report, page 1].

The Farm Focus Group could not reach consensus on the designation of agricultural lands of long-term commercial significance and the group split into two factions, each of which developed its own position statement. The Farm Group Report contained two different position statements. Position statement #1 "concluded that except for the Vancouver Lake lowlands, agriculture is generally no longer economically viable in most parts of Clark County. Position statement #2 stated that "agriculture is economically viable in Clark County and should be conserved." [Farm Group Report, page 3]. The Farm Focus Group concluded in its memorandum to the Rural and Natural Resource Lands Advisory Committee that both position statements carried equal weight. [Farm Group Report Memorandum, page 1].

The Rural and Natural Resource Lands Advisory Committee identified approximately 35,916 acres that exhibited characteristics common to both agriculture and forest designation and were not identified as agricultural land or forest land in either the Farm Focus Group or Forest Focus Group reports. The Rural and Natural Resource Lands Advisory Committee created a new hybrid resource designation, Agri-forest, to designate lands that exhibited characteristics common to both the agriculture and forest designations. The Rural and Natural Resource Lands Advisory Committee applied the Agri-forest designation to areas north of the East Fork of the Lewis River during the development of the Draft Supplemental Impact Statement but was unable to complete the work due to time constraints.

Staff completed the balance of the analysis for other areas adjacent to land designated Forest Tier I and property south of the East Fork of the Lewis River. Staff added the Agri-forest designation to those lands for the following reasons, according to a memo dated October 13, 1994, from Planning Director Craig Greenleaf to the Planning Commission (Greenleaf Memo):

1. "The committee separated the selection process into independent determinations of agriculture and forestry characteristics, leaving some land inappropriately considered;
2. The Farm Focus Group did not include heavily forested lands; some of those lands were commingled with agricultural lands and were overlooked by both focus groups;
3. Factors which are not objective tended to carry less weight (e.g., settlement patterns and their compatibility with agricultural practices).
4. The Forest Focus Group discounted the role of soils as a factor because they were found to be uniformly of high quality; and
5. The Farm Focus Group's failure to agree on "long term commercial significance" led to severe difficulty in defining agricultural lands on a consensual basis and narrowed the

committee's outcome to things over which agreement was reached." [Greenleaf Memo, pages 3-4].

- 1994 On December 20, 1994, the Clark County 20-year Comprehensive Growth Management Plan 1994-2014 (1994 Plan) designated a total of 41,229 acres, or 64.42 square miles, of urban growth areas. [ORD. 1994-12-47 and 1994-12-53].
- 1994 On December 28, 1994, the Board of County Commissioners amended Clark County Code 9.26 to recognize the right to farm/log. [ORD. 1994-12-53].
- 1995 On February 28, 1995, a total of 85 different petitioners filed 61 separate petitions that challenged the 1994 Plan with the Western Washington Growth Management Hearings Board (GMHB). [GMHB Case No. 95-2-0067 (Achen, et. al.)]. One of the appellants, Clark County Citizens United (CCCU), raised the following resource related issues in its petition to the GMHB:
1. Did the county's designation of agricultural resource lands comply with the GMA?
 2. Did the county's designation of agri-forest resource lands comply with the GMA?
 3. Did the county's designation of forest resource lands comply with the GMA?

CCCU raised the following issues related to the parcel sizes in the rural area:

1. Did the county's designation of land use densities in rural areas comply with the GMA?
 2. Does a comprehensive plan that would make more than seventy percent (70%) of the properties in rural areas non-conforming comply with the GMA?
 3. Does a comprehensive plan which bases its land use densities strictly on OFM population projections comply with the GMA, when the county knows or should have known that those population projections underestimate anticipated population growth?
 4. May the county disregard its adopted framework plan policies when it adopts a comprehensive plan under the GMA and, if not, is the comprehensive plan consistent with the county's adopted framework plan policies?
 5. Does a comprehensive plan that ignores existing conditions in rural areas comply with the GMA?
 6. Did the county comply with the requirements of the State Environmental Policy Act (SEPA), RCW Ch. 43.21C and the GMA, in particular when the concept of rural villages and hamlets had been included in earlier drafts of the SEPA and were removed from the final?
- 1995 On July 23, 1995, ESB 5019 amended Chapter 36.70A RCW adding a new section to allow major industrial developments outside of urban growth areas. RCW 36.70A.365 allows counties to site major industrial developments where there is a specific development application involved. RCW 36.70A.367 provided a process for counties to establish up to two rural industrial land banks with the intent that they develop as industrial properties, but that statute expired in 2016.
- 1995 On September 20, 1995, in its Final Decision and Order (1995 FDO), the GMHB in Case No. 95-2-0067 (Achen, et. al.) remanded the 1994 Plan for inconsistency between population projections and capital facilities planning. However, the GMHB affirmed the county's designations of agricultural, forest and agri-forest resource lands.

"In classifying and designating agricultural and forest lands, Clark County not only considered WAC 365-190-050 and -060, but in fact used them exclusively." [1995 FDO, page 11].

"Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were

lands of 'long-term commercial significance.' Petitioners have failed to carry their burden of proving the decision was an erroneous application of goals and requirements of the GMA. The county chose a decision that was within the reasonable range of discretion afforded by the act." [1995 FDO, page 14].

On the issue of parcel size, the GMHB decision stated that no evidence in the record supported 5-acre minimum parcel size designation north of the rural resource line (a delineation by the East Fork of the Lewis River that recognized the differences in the character and parcelization between the area north of the river and that south of the river). The GMHB had two major concerns. First was that the 5-acre size was insufficient to buffer adjacent resource lands, and second was that significant parcelization had occurred in the rural and resource areas between 1990 and 1993.

"At the time of adoption of the emergency moratoria on clusters, subdivision planned unit developments, and large lot developments in April of 1993, an estimated 19 square miles of segregations had occurred since May 1, 1990... [1995 FDO, page 21-22]. There are implementation measures the county could take to level this playing field and reinject some fairness into the situation... If they do not, the unfair position that many of these site-specific petitioners find themselves in will be perpetuated." [1995 FDO, page 25]. (Emphasis added.)

"...the Farm Focus Group established what became known as the 'rural resource line'. South and west of this resource line, the focus group, staff and the Planning Commission recognized that segregations and parcelizations had occurred involving thousands of lots ranging from 1 to 2.5 acres." [1995 FDO, page 22].

"A major omission that the BOCC made in establishing a 5-acre minimum lot size for all rural areas was ignoring the differences that existed north and south of the 'resource line'." [1995 FDO, pages 22-23].

"The BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990." [1995 FDO, page 24].

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

1. Agricultural resource land designation had been lawful.

"There is substantial evidence in the record to support the county's designation of agricultural resource lands." [Poyfair Decision, page 5].

2. The agri-forest designation was invalid;

"The agri-forest designations violate the GMA.... Furthermore, there is no substantial evidence in the record to support the designation of agri-forest lands under the GMA." [Poyfair Decision, page 5]. *"...failure to solicit meaningful public input for the agri-forest resource lands violates the public participation..."* [Poyfair Decision, page 5].

3. The EIS issued by the county violated SEPA because of procedural flaws;

“The agri-forest resource land designations were disclosed subsequent to the publication of the final Plan EIS and were not disclosed or discussed in any way in the EIS alternatives.” [Poyfair Decision, page 5].

“The Board’s decision to uphold the adequacy of the EIS absent additional environmental analysis regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous.” [Poyfair Decision, pages 5-6].

4. On the issue of parcel size, the court ruled that the removal of rural activity centers was not addressed in the EIS; and

“...the county needed to provide a variety of rural densities to be compliant with the GMA, and that could be achieved by designating rural centers as envisioned in the Community Framework Plan.” [Poyfair Decision, page 5].

5. Rural development regulations were inconsistent with GMA because of failure to provide for a variety of rural densities.

“The eradication of the centers and their replacement with a uniform lot density violates the planning goal requiring a variety of residential densities.” [Poyfair Decision, page 6].

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

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

The Board decision, however, compelled the county to downzone substantial portions of the rural area in order to meet the Board’s apparent requirements.” [Poyfair Decision, page 6].

“The Board’s interpretation was erroneous, and the county’s decision to follow the Board’s lead was unfortunate.” [Poyfair Decision, Pages 6-7].

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

- 1998 The Rural Center Task Force members represented various organizations including CCCU, Rural Clark County Preservation Association, Clark County Natural Resources Coalition, Hazel Dell Sewer District, Meadow Glade Homeowners Association, fire districts, and rural property owners. The Rural Center Task Force presented their recommendations on establishing new rural centers pursuant to RCW 36.70A.070(5)(d) and WAC 365-196-425. The BOCC accordingly established the rural centers of Amboy, Chelatchie Prairie, Dollars Corner, Meadow Glade, Hockinson and Brush Prairie on June 16, 1998. [ORD. 1998-06-20].

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

forest designated resource lands. The Agri-forest Focus Group majority recommended that approximately 99% of the land should be designated Rural-5, Rural-10 and Rural-20. Rural-10 and Rural-20 were newly created in order to provide a variety of rural densities, as required by Judge Poyfair, and to buffer adjacent resource lands, primarily north of the rural resource line, as required by the GMHB. Certain members of the Agri-forest Focus Group issued minority reports. One of the two minority reports questioned the designation of 3,500 acres to rural as opposed to resource use and the other minority report recommended only 5- and 10-acre Rural zoning, similar to the 1979 Plan. On July 28, 1998, the BOCC adopted the Agri-forest Focus Group majority recommendation. [ORD. 1998-07-19].

- 1999 On May 11, 1999, the GMHB issued a Compliance Order (1999 Compliance Order) in Case No. 95-2-0067 (Achen et. al.) upholding the creation of six rural center designations and the change to Rural designations for approximately 35,000 acres of agri-forest lands; except for the 3,500 acres mentioned in the minority report, the designation of which was remanded back to the county.

"We find that Clark County is not in compliance with the GMA as relates to the 3,500 acres. In order to comply with the Act, the county must review the 3,500 acres in light of the Supreme Court's holding in Redmond and the appropriate criteria stated therein to determine if RL [resource land] designation is appropriate." [1999 Compliance Order, page 14]. (The State Supreme Court had ruled in Redmond v. CPSGMHB that current management of land for commercial agricultural production is not required for resource designation.)

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

- 1999 On October 12, 1999, the county adopted Chapter 18.303B Rural Cluster Development. The purpose of the new chapter was "to provide for small lot residential development in the rural zoning districts which maintains rural character, maintains and conserves larger remainder parcels, protects and/or enhances sensitive environmental and wildlife habitat areas, and minimizes impacts to necessary public services. These goals are achieved by allowing the placement of homes on a small portion of the property while maintaining the majority of the site in a remainder parcel. This is consistent with the goals and policies the Growth Management Act [GMA], especially the provisions for innovative development techniques to conserve open space and resource lands." [ORD. 1999-10-08].
- 2000 On December 12, 2000, the county considered the recommendation of the Rural Center Task Force and approved the historical community of Fargher Lake as a rural center. [ORD. 2000-12-16].
- 2002 In April 2002, the county commissioners appointed a 12-member Rural Enterprises Task Force to develop recommendations on the criteria and standards that apply to the business use of rural properties. "This effort was in response to complaints from rural business operators about county restrictions on the use of rural property for varying types of business use. The central issue is the use of rural property. For some, it is the right to do what they wish with their property, including the use of it as a base for a home-based business conducted either on the property or elsewhere. For others, it is the right not to have a rural setting infringed upon by neighbors with home-based businesses." The task force was charged with recommending a way to resolve this problem according to a memo dated August 1, 2003, from Long Range Planning Manager Patrick Lee to the Planning Commission.
- 2003 County staff completed a technical review on the remaining 3,500 acres remanded by the GMHB for lawful designation under the GMA. The technical review found that a majority of

the 3,500-acres remanded to the county by the 1999 Compliance Order [GMHB Case No. 95-2-0067 (Achen et. al.)] were not associated with designated resource areas. The county applied a non-resource designation of Rural-5, Rural-10 or Rural-20 to those properties on September 23, 2003. [RES. 2003-09-12].

- 2004 On June 15, 2004, the county repealed CCC 40.260.100 and amended CCC 40.210.010 to support the use of rural and urban property for home businesses while protecting the integrity of the zoning district and maintaining the residential character of the area where the business is located. The code language followed the recommendations of the Rural Enterprises Task Force. [ORD. 2004-06-10].
- 2004 On September 7, 2004, the periodic update of the Clark County 20-year Comprehensive Growth Management Plan 2004-2024 (2004 Plan) added 6,124 acres, or 9.57 square miles, to urban growth areas. The county did not de-designate agricultural resource land. [ORD. 2004-09-02]. Petitioners filed 14 separate petitions to appeal the 2004 Plan and raised 43 issues with the Growth Management Hearings Board. The appeals focused, in part, on a last-minute reduction in the assumed growth rate moving it from 1.83 percent to 1.69 percent. There was no challenge to the rural element by any party.
- 2004 On December 16, 2004, the GMHB consolidated all 14 petitions under GMHB Case No. 04-2-0038c (Building Industry). After a series of procedural motions, only two petitioners, the Clark County Natural Resources Council (CCNRC) and Futurewise, remained as petitioners. The number of issues was reduced from 43 to 8. The county launched a new two-year update process that reopened the 2004 Plan. Based on agreements with the county, the cities of Battle Ground and Vancouver and the development industry petitioners withdrew their appeals.
- 2005 On November 23, 2005, the GMHB issued an order Amending Final Decision and Order of August 22, 2005 (2005 Amended FDO) on Reconsideration for GMBH Case No. 04-2-0038c (Building Industry). The decision upheld the 2004 Plan, finding:

"The county has not changed the manner or the conditions of how it applies Urban Reserve or Industrial Urban Reserve designations to commercially significant agricultural lands in the county comprehensive plan since these designations were found compliant by this board. Nor have the Growth Management Act requirements changed since this concept was found compliant in 1997." [2005 Amended FDO, page 48].

"The county's development regulations to conserve agricultural lands and prevent interference from incompatible uses are unchallenged and therefore deemed compliant." [2005 Amended FDO, page 49].

"A property owner who wishes to change the designation of commercially significant agricultural land that also has an Urban Reserve or Industrial Urban Reserve overlay, must still meet the criteria for designation and zoning map changes outlined in CCC 40.50.010. Any owner of commercially significant agricultural land would be obliged to do the same." [2005 Amended FDO, page 49].

"The limitations in county code at CCC40.50.010(G) and (I) deter the conversion of adjacent lands designated agricultural lands within the current twenty-year planning horizon." [2005 Amended FDO, page 49].

No party appealed the 2005 Amended Final Decision and Order. The appeal of the 2004 Plan was ended.

- 2006 The GMHB issued its Order Finding Compliance and Closing Case No. 95-2-0067c (Achen, et. al.) on June 6, 2006. This Order was not appealed, and ended the appeal of the 1994 Plan, as amended on remand, which the GMHB found to be compliant with GMA.
- 2007 On September 25, 2007, the county adopted 2007 Plan amendments that adjusted the growth assumption in the 2004 Plan from 1.67% annually to 2.0% annually and added 12,023 acres to urban growth areas, more than a third of which had been designated as agricultural resource lands, and most of which was newly zoned for employment. [ORD. 2007-09-13]. John Karpinski, the Clark County Natural Resources Council, and Futurewise appealed the 2007 Plan, arguing that the county had erroneously de-designated 4,351 acres from agricultural resource land to non-resource designations and included those lands within urban growth areas. [GMHB Case No. 07-2-0027c (Karpinski)].
- 2008 During the 2007 Plan update process, the Board of County Commissioners expressed a desire for a future focus on rural issues. On February 13, 2008, the BOCC held a Rural Lands Review project work session. The work session discussion focused on the establishment of a new Rural Lands Task Force. As part of the work session, the BOCC reviewed rural principles and values and identified the charge for the new Rural Lands Task Force.

The Rural Lands Task Force comprised of 16 members from the public representing the rural landowners was appointed in May 2008. The task force convened between June and September 2008 and was charged with completing phase 1 of the Rural Lands Review project: to identify and define rural character using the GMA and the Rural Element of the Comprehensive Plan.

- 2008 In addition to the Rural Lands Task Force, Clark County convened the Agriculture Preservation Advisory Committee in March 2008. The 16-member committee represented the farming and nurserymen wishing to continue in agriculture, the land trust and preservation community, food cooperatives, and related interests was charged with the development of a draft farm preservation plan. The committee met eleven times between March 2008 and January 2009 with technical assistance from the State Conservation Commission. The farm preservation plan recommended the committee's conclusions on the most effective short- and long-term actions to protect the opportunity to pursue and enhance commercial and non-commercial agriculture in the county.
- 2008 In its Amended Final Order and Decision, dated June 3, 2008 (2008 Final Order), the GMHB ruled in Case no. 07-2-0027c (Karpinski) on the de-designation of 19 areas of agricultural resource lands of long-term commercial significance. The GMHB affirmed the 2007 Plan with regard to 8 of the 19 areas and remanded the decision to the county with regard to the other 11 areas. The GMHB found that the de-designation of the following areas did not comply with RCW 36.70A.020(2), RCW 36.70A.020(8), and RCW 36.70A.1070:
- Battle Ground – BC (68.16 acres),
 - Camas – CA-1 (342.56 acres),
 - Camas – CB (402.19 acres),
 - La Center - LB-1 (218.81 acres),
 - La Center - LB-2 (244.53 acres),
 - La Center - LE (112.47 acres),
 - Ridgefield – RB-2 (199.69 acres),
 - Vancouver – VA (125.02 acres),
 - Vancouver – VA-2 (22.89 acres),

- Vancouver – VB (780.43 acres), and
- Washougal – WB (116.06 acres). [2008 Final Order, page 78 and 79].

1. Agricultural conservation's role in managing growth.

"There is no doubt that the GMA sees agricultural lands and the industry that relies on them as something special given the duty set forth to designate agricultural land and conserve such land in order to maintain and enhance the agricultural industry." [2008 Final Order, page 33].

"The pressure to convert these lands, especially in areas impacted by population growth and development is even more prevalent today (2008). The GMHB recognizes that counties and cities of WA face a multitude of difficult and demanding challenges when determining how their communities will grow....WA's limited, irreplaceable agricultural lands are at the forefront of this mandate..." [2008 Final Order, page 33].

"The GMA, through RCW 36.70A.020 (8), .060, .070, .170, and-.177 direct counties and cities to protect agricultural lands by:

- 1. Designating agricultural lands of long-term commercial significance (RCW 36.70A.170);*
- 2. Assuring the conservation of agricultural land (RCW 36.70A.060);*
- 3. Assuring that the use of adjacent lands does not interfere with the continued use of agricultural lands for agricultural purposes RCW 36.70A.060);*
- 4. Conserving agricultural land in order to maintain and enhance the agricultural industry (RCW 36.70A.177);*
- 5. Discouraging incompatible uses (RCW 36.70A.020); and*
- 6. Adopting development regulations to implement these mandates (RCW 36.70A.060)." [2008 Final Order, page 33].*

"The question of the meaning of agricultural lands, under the GMA, was clarified by the Supreme Court in the Lewis County v. WWGMHB decision. In that case, the proper definition of agricultural land was set forth in the court holding; we hold that agricultural land is land:

- a. Not already characterized by urban growth*
- b. That is primarily devoted to 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.*

This definition emphasizes the three required elements of agricultural lands - that it is not already characterized by urban grown, that it is primarily devoted to agricultural production, and has long-term commercial significance for agricultural production." [2008 Final Order, page 34].

2. In assessing the relationship of the GMA agricultural goal to the economic development goal, the GMHB cited the Washington Supreme Court's decisions in King County v. CPSGMHB and Lewis County v. WWGMHB:

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

language and specific requirements. The Board finds that the GMA's economic development goal cannot supersede the agricultural mandate defined by the Supreme Court. The Supreme Court, in a later case, also set out a three-part test for evaluating agricultural lands." [2008 Final Order, page 3].

Prior to issuance of the GMHB decision, the cities of Camas and Ridgefield annexed approximately 327 acres and 200 acres, respectively, of former agricultural and rural lands.

The county and other parties appealed the Growth Management Hearings Board Amended Final Decision to Clark County Superior Court. Case No. 08-2-03625-5c.

2008 On September 17, 2008, the Rural Lands Task Force presented to the BOCC a recommended definition of what rural character is for Clark County and a vision statement as follows:

"For Clark County, Rural Character is:

- Where the natural landscape predominates over the built environment;
- Where there is small acreage farming and forestry;
- Where provisions have been made to protect the land for future generations;
- Where there are modern economic opportunities to live and work in the rural area, particularly in and around rural centers;
- Where fish and wildlife habitats are valued;
- Where mining is a land use;
- Where urban services are not generally provided; and
- Where natural surface water and recharge areas are protected.

Rural Vision Statement: Clark County is to be positioned for present and future uses using fair, consistent and creative zoning. Specifically:

- Ease regulations and provide tax incentives for encouraging small scale agriculture and forestry;
- Expand cluster development in agricultural and forest zones;
- Create 5-acre agriculture and forestry homestead zones;
- Expand uses of Rural Centers to enhance their economic viability and community identity;
- Graduate lot sizes radiating from Rural Centers;
- Create a Zoning Fairness Board;
- Protect wetland and wildlife habitats;
- Allow and encourage alternative energy projects;
- Facilitate creation of local utility districts in and around Rural Centers; and
- Expand recreational opportunities." [September 17, 2008, BOCC Work Session Rural Lands Review].

2009 On March 24, 2009, the BOCC held a work session to finalize "Rural Principles and Values and re-affirm the 2007 Plan planning assumption of a 90/10 urban/rural split for population growth.

Rural Principles and Values:

1. Rural areas are where natural landscapes dominate over the built environment.
2. Rural areas are where urban services are minimal or not provided.
3. Clark County is to be positioned for present and future uses using fair, consistent and creative rural zoning.
4. Encourage modern economic opportunities, including home businesses, compatible with surrounding uses by:
 - a. expanding uses in rural centers to enhance their economic viability and community identity; and

- b. expanding recreational and tourism opportunities.
 - 5. Maintain and enhance farming and forestry while minimizing incompatibilities with adjacent uses by:
 - a. minimizing the conversion of productive farmland; and
 - b. encouraging locally grown food.
 - 6. Identify real Urban Reserve areas that are poised to become urban areas when growth boundaries are expanded.
 - 7. Maintain breaks/green spaces – natural borders.
 - 8. Balance tax base among school districts, where appropriate.
 - 9. Re-affirm the right to farm/log ordinance.
 - 10. Rural areas are where fish and wildlife habitat are valued.” [March 24, 2009, BOCC Work Session Rural Lands Review Memorialization, pages 1 and 2].
- 2009 The Rural Lands Task Force re-convened with the addition of three members of the Agriculture Protection Advisory Committee on June 2, 2009, to launch phase 2 of the Rural Lands Review project.
- 2009 On June 12, 2009, Judge Robert Harris issued a ruling in Clark County Superior Court which affirmed the GMHB Amended Final Decision and Order [GMHB Case No. 07-2-0027c (Karpinski)] in part, reversed it in part, and dismissed the appeal of annexed lands in Camas and Ridgefield. [Case No. 08-2-03625-5 consolidated].
- Clark County appealed in part and also took action ordered by Clark County Superior Court to redesignate areas known as Vancouver VB (parts of which would be designated in 2016 as Rural Industrial Land Banks), Battle Ground BC, a portion of the areas known as Ridgefield RB-2 and Camas CA-1 as agricultural land. [ORD. 2009-12-15].
- 2010 The Rural Lands Task Force completed phase 2 of the Rural Lands Review and reviewed their recommendations with the BOCC at an April 14, 2010, work session. The recommendations focused on amendments to rural centers, agriculture and forest, mining, rural economy, urban reserve, and rural reserve. The BOCC reviewed each recommendation and provided direction whether to move the recommendation forward for more conversation and analysis. [April 14, 2010, BOCC Work Session Rural Lands Review Memorialization, pages 1 to 10].
- 2010 Clark County Code was amended to add a new section CCC 40.260.245 Wineries in response to ongoing issues and to encourage rural business. [ORD. 2010-10-02].
- 2011 On March 22, 2011, the Board of County Commissioners adopted Clark County Code amendments based on the Rural Lands Task Force recommendations. The code amendments were included in a larger Retooling Our Code project. The Retooling Our Code project consisted of several amendments over an 18-month period. The March 2011 amendments modified the rural commercial districts, rural center residential uses, rural center mixed use overlay districts, equestrian events centers and equestrian facilities, kennels, animal boarding facilities, and animal feed yards. [ORD. 2011-03-09].
- 2011 The Court of Appeals on April 13, 2011, remanded three of the eleven areas found non-compliant by the GMHB in Case No. 07-2-0027c (Karpinski) and affirmed the GMHB as to the others, including with regard to three areas that had been annexed by cities and had not been the subjects of appeal to the Court of Appeals. [Clark County v. WWGMHB, 161 Wash. App. 204 (2011)].
- 2011 On September 1, 2011, the Board of County Commissioners approved a contract with BERK & Associates to complete a Rural Lands Study which was phase 3 of the Rural Lands Review project. [Clark County Staff Report 200-11].

- 2011 On December 6, 2011, the Board of County Commissioners adopted Clark County Code amendments based on the Rural Lands Task Force recommendations. The code amendments were included in a larger Retooling Our Code project. The December 2011 amendments added neighborhood parks and housing for temporary workers. [ORD. 2011-12-09].
- 2012 BERK & Associates completed the Rural Lands Study Situation Assessment on May 15, 2012. The Situation Assessment included: 1) a policy review of rural trends in Clark County, 2) market research study on agricultural and forest products, 3) a Transfer of Development Rights framework, and 4) a review of the Current Use Taxation program.
- 2012 On June 12, 2012, the Board of County Commissioners amended the pertinent sections of Clark County Code 40.100, 40.210, 40.220, 40.230, and 40.310 to allow roadside farm stands and agricultural markets. [ORD. 2012-06-02]. The code amendments originated from an Agriculture Preservation Advisory Committee recommendation in 2008 that had been forwarded to the Rural Lands Task Force for further review.
- 2012 On October 9, 2012, the Board of County Commissioners adopted the recommendations of the Equestrian Advisory Group. The advisory group had engaged the public over a 2- year period and recommended amendments to the Comprehensive Plan Rural Element, establishment of a new Equestrian Overlay Zone district, and an amendment to CCC 40.210.020(D) to allow equestrian facilities as a use on a rural cluster remainder lot. [ORD. 2012-12-20].
- 2012 On October 9, 2012, Clark County amended CCC 14.06.101.2 that amends IRC Section R101.0 and CCC 14.05.101.2 amends IBC Section 101.2 exempting agricultural buildings from acquiring a building permit as long as they meet the definition of an agricultural building as defined by IBC Section 202. [ORD 2012-10-08].
- 2013 The Washington Supreme Court granted review of the Court of Appeals' ruling on the Karpinski decision by the GMHB [Clark County v. WWGMHB, 161 Wash. App. 204 (2011)], considering only an issue involving un-appealed issues relating to the annexed areas of Camas. The Supreme Court vacated the Court of Appeals decision, holding that the Court of Appeals had improperly ruled on issues that no party had appealed. [Clark County v. WWGMHB, 177 Wn.2d 136 (March 21, 2013)].

Two of the justices issued a concurring opinion that agreed in the result, but for a different reason. The concurrence stated that after annexation by the cities, the designation of the annexed lands was moot, because the county could take no action to regulate those lands. The annexed lands remain annexed and urban.

In the course of the appeals and compliance processes, the GMHB and the Court of Appeals ruled that the de-designation of 1,500 acres of agricultural land had been noncompliant and invalid. The county removed those lands from urban growth areas and re-designated them as agricultural lands. The 1,500 acres had been included in the Battle Ground, Camas, Ridgefield, Vancouver, La Center, and Washougal urban growth areas. [ORD. 2009-12-15].

- 2013 On April 4, 2013, the Board of County Commissioners held a work session to provide an overview for a new commissioner on the Rural Lands Review project and the Rural Lands Study. The Board provided direction on the remaining recommendations as follows:
- homesteading/farmsteading would be dropped from further consideration,
 - develop a cluster provision for resource lands to move forward in the periodic update,

- a rural planned unit development provision in connection with a transfer of development rights program should be investigated in more detail, and
 - survey property owners and analyze the feasibility of AG-5 and AG-10 zoning districts.
- 2013 A new periodic update of the comprehensive plan with a required completion date June 30, 2016, began in 2013.
- 2013 Clark County Code 40.260.245 Wineries was amended to include tasting rooms, events, and on-site food service on September 3, 2013. [ORD. 2013-08-11].
- 2013 In November 2013, the county surveyed owners of properties zoned for agriculture (AG-20) and forest (FR-40) to determine preferences of these owners for smaller minimum parcel sizes. Owners of AG-20 parcels larger than 10 acres and FR-40 parcels larger than 20 acres received letters asking for their preferences. The Board considered the results to decide if changes were needed in the county's rural lands policy. Any proposed changes would be done as part of the periodic review of the comprehensive plan update.
- 2014 On March 11, 2014, the GMHB entered an Order on Remand in Case No. 07-2-0027c (Karpinski) that upheld the de-designations of Vancouver VA and VA-2, based on urban growth within those areas, and concluded that area Washougal WB could not be de-designated.
- 2014 On July 1, 2014, the Board of County Commissioners amended the comprehensive plan and zoning maps to re-designate the area known as Washougal WB as agriculture (AG-20). [ORD 2014-07-03].
- 2014 The GMHB issued its Order Finding Compliance and Closing Case No. 07-2-0027c (Karpinski) on September 4, 2014. The appeal of the 2007 Plan was ended and the 2007 Plan, as amended on remand, was found to be compliant with GMA.
- 2014 The state Department of Natural Resources Division of Geology and Earth Resources produced an updated aggregate resource inventory map of Clark County that was significantly different from the previous inventory map. The Board of County Commissioners appointed the Mineral Lands Task Force in 2012 to review the new resource inventory map and the recommendations from the Rural Lands Task Force. The Mineral Lands Task Force comprised 8 members of the public representing property owners near mining operations, mining and aggregate operations, and a hydrologist. On December 16, 2014, the Board of County Commissioners adopted comprehensive plan and zoning map amendments related to the Surface Mining Overlay, new comprehensive plan Mineral Lands policies, and procedures for amending the overlay [RES. 2014-12-08] and, repealed CCC 40.250.020, replacing it with a new section CCC 40.250.022. [ORD. 2014-12-06].
- 2016 On April 26, 2016, the county established two rural industrial land bank (RILB) sites amending the 20-year Comprehensive Growth Management Plan 2004-2024 plan and zoning map designations from Agriculture (AG-20) to Employment Center (IL and IL- RILB Overlay) for eleven parcels located in the vicinity of State Route 503. In doing so, the county amended the 2007 Plan Land Use and Rural and Natural Resource Elements, the arterial atlas, and Clark County Code sections 40.230.085 and 40.520.075. [ORD. 2016- 04-03].
- 2016 On May 10, 2016, the county amended the rural industrial land banks to include two parcels whose zoning was to be changed by Ordinance 2016-04-03, but which had been inadvertently left off the list of parcels in the ordinance. [ORD.2015-05-03]. Futurewise and Friends of Clark County (FOCC) appealed the ordinances (Ordinances 2016-04-03 and

2016-05-03) that established the two rural industrial land banks to the Growth Management Hearings Board. [GMHB Case No. 16-2-0002].

2016 On June 28, 2016, the Clark County Council updated the plan pursuant to RCW 36.70A.130, adopting the amended Clark County 20-year Comprehensive Growth Management Plan 2015-2035 (2016 Plan), which:

- amended the Rural Industrial Land Bank plan map designation from Employment Center to Rural Industrial Land Bank;
- reduced the minimum lot size for agriculture resource lands from twenty (20) acres to 10 acres (AG-20 to AG-10) and Tier II forest resource lands from forty (40) acres to twenty (FR-40 to FR-20), and created an optional cluster provision;
- created a single rural comprehensive plan designation allowing for a Type III process to rezone rural land to R-5, R-10, and R-20;
- reduced the minimum lot size for some rural lands from twenty (20) acres to ten (10) acres (R-20 to R-10);
- combined rural center commercial (CR-2) and rural commercial (CR-1) into a single comprehensive plan designation of rural commercial.
- expanded the urban growth boundaries of the cities of Battle Ground, La Center and Ridgefield, and
- merged two rural traffic impact fee districts into one. [Amended ORD. 2016-06-12].

Clark County Citizens United (CCCU), Futurewise and Friends of Clark County (FOCC) appealed the 2016 Plan. The GMHB consolidated all cases including RILB Case No 16-2-0002 under GMHB Case No. 16-2-0005c (CCCU-Futurewise). (Note that the county adopted other plan amendments not relevant to rural lands.)

2016 Prior to issuance of the GMHB decision, the cities of La Center and Ridgefield annexed approximately 57 acres and 111 acres, respectively, of land that had been de-designated from agricultural use.

2017 In its Final Decision and Order dated March 23, 2017 (2017 FDO), the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) ruled on 25 issues raised by the appellants. The county prevailed on 18 issues, including the following:

1. All of CCCU's issues and arguments, including complaints about participation, timing, SEPA, property rights, density in the rural area, population projections and allocation, cluster remainders, the supposed rural vacant buildable lands model and the background reports.
2. FOCC's issues about the Capital Facilities Plan and funding, critical areas ordinances, the RILB deadline and annexation.

The GMHB held that the county was noncompliant on certain issues raised by Futurewise, as follows:

1. Urban Growth Area (UGA) expansions – each of the cities (Battle Ground, Ridgefield and La Center) had surplus lands and did not need an expanded UGA. The county and the cities had failed to take reasonable measures other than expansion to address issues related to sizing for each UGA.
2. De-designations for UGA expansions by Ridgefield and La Center – the county had failed to conduct an area-wide analysis of lands that addressed the effects of the de-designations on the viability of the agricultural industry in the area(s).
3. Urban reserve overlay – the GMHB described the overlay areas as “UGA enlargements.”

4. Allowing greater density in the resource zones – the GMHB held that this action did not protect and enhance the agricultural and forest industries.
5. Only one comprehensive plan designation for rural lands (outside urban centers) – the GMHB found that having one comprehensive rural lands designation implemented by R-5, R-10 and R-20 zones was not compliant with GMA.
6. RILB creation – the GMHB held that the county had not identified the maximum size of the RILB as required by GMA.
7. De-designation for the RILB – The GMHB held that the de-designation of agricultural resource land had not been proper because:

*“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.” [2017 FDO, page 78].*

“...the county failed to complete an area-wide analysis of the impacts on the agricultural industry...” [2017 FDO, page 41].

*“...de-designation decisions did not comply with WAC 365-196-050 in which a countywide 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) [2017 FDO, page 42].*

The GMHB initially found that the plan was invalid only with respect to the de-designations for urban lands and the UGA expansions for the cities of Battle Ground, La Center and Ridgefield.

“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.” [2017 FDO, page 80].

In response, the county adopted an ordinance on April 25, 2017, that suspended land divisions within lands designated agriculture, forest tier II and rural, and zone changes within those lands pursuant to CCC 40.560.020. [ORD. 2017-04-14]. In June, that suspension was made permanent. [ORD. 2017-06-04]. On July 11, 2017, the county amended the 2016 Plan, zoning maps and county code as follows:

1. Returning resource designations and zoning to agriculture AG-20 and forest FR-40;
 2. Returning rural comprehensive plan designations to Rural-5, Rural-10, and Rural-20.
 3. Repealing the urban reserve use list.
 4. Returning the Battle Ground Urban Growth Area to its pre-update size.
 5. Naming a maximum size for the rural industrial land banks. [ORD. 2017-07-04].
- 2017 On August 3, 2017, the Board of County Councilors advertised for volunteers to serve on an Agriculture Advisory Committee to review the remaining recommendations of the Agricultural Preservation Advisory Committee (2008) and focus on the long-term “viability of agriculture”. The BOCC ultimately and decided to put the conversation on hold.
- 2017 Clark County Council held a work session on September 13, 2017, to discuss the feasibility, scope, and budget of creating a Transfer of Development Rights program as recommended by the Rural Lands Study Situation Assessment prepared by BERK & Associates and Forterra on May 15, 2012. Council decided not to move forward with a Transfer of Development Rights program at that time.
- 2017 On September 26, 2017, the county amended the 2015 Buildable Lands Report in RES. 2017-09-13 to reflect recent development in Battle Ground, Ridgefield and La Center, and measures taken by those cities to achieve the densities projected for them. [GMHB in Case No. 16-2-0005c (CCCU-Futurewise)].
- 2017 The 2017 legislature enacted 3ESB 5517 (Exhibit 3), and Gov. Jay Inslee signed the bill into law, effective Oct. 19. The bill amended the GMA to allow “freight rail dependent uses” and gave Clark and Okanogan counties authority to allow such uses adjacent to short line railroads as authorized by RCW 36.70A.060 and RCW36.70A.108.
- 2018 Under the Freight Rail Dependent Uses project phase 1, the county reviewed comprehensive plan amendments and a new overlay with the Railroad Advisory Committee. On January 9, 2018, the Board of County Council amended the Land Use, Rural and Natural Resource, and Transportation elements of the comprehensive plan to create policies to support freight rail dependent uses on rural and resource lands and created a new Freight Rail Dependent Use Overlay. The overlay was applied to properties designated as agricultural resource lands located within 500 feet of the short line railroad line between NE 119th Street and NE 149th Street, excluding land zoned R-5 and land within the Brush Prairie Rural Center. [ORD. 2018-01-01].
- 2018 On January 9, 2018, the county amended CCC 40.560.010(l)(2)(b) to change the process for the evaluation of new rural centers from an “annual review” to a “docket” process. [ORD. 2018-01-01].
- 2018 On January 10, 2018, the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) issued an Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidly, Stay Order and Supplement the Record (18 Compliance Order). Concerning the minimum lot sizes on agricultural and forest lands, the Urban Reserve uses, the Battle Ground UGA, the Rural plan designations, and the maximum size of rural industrial land banks, the GMHB held that the county had achieved compliance. The GMHB found that:

“With the county amendments in Ordinance 2017-07-04 regarding agricultural and forest lands, the Board finds and concludes that the county is now in compliance with RCW 36.70A.060 and RCW 36.70A.070.” [18 Compliance Order, page 12].

The GMHB stated that the county had taken no action to cure its noncompliance on the following issues:

1. The county had not demonstrated need for the UGB expansions in Ridgefield and La Center.
2. The county had done nothing to cure the unlawful de-designations of agricultural lands that Ridgefield and La Center brought into their UGBs.
3. The county had done nothing to cure the unlawful de-designation of 602 acres of agricultural land of long-term commercial significance (ALLTCS) for the RILB.

“Clark County was before this Board in 2007 in a similar challenge of the county’s process to de-designate approximately 4,000 acres of ALLTCS, then expand urban growth area boundaries to encompass those newly de-designated lands, and then various cities within Clark County rapidly annexed the former ALLTCS. The annexations took place while this Board was hearing the case and before it could render its decision about the county’s ALLTCS de-designation process. Eventually, the Court of Appeals found some of the ALLTCS should not have been de-designated and attempted to address the timing of GMA appeals and city annexations, but our Supreme Court vacated that portion of the Court of Appeals’ decision which addressed the timing of appeals and annexations.

Here the Board is once again presented with a challenge of the county’s process to change agricultural lands into urban or industrial lands. In 2016, as in 2007, the county de-designated ALLTCS abutting the cities of La Center, Ridgefield and Battle Ground as well as in proposed industrial areas. Then the county expanded the cities’ UGAs to encompass the newly de-designated agricultural lands and designated two rural industrial land banks. And, as in 2007, while appeals were pending before this Board challenging the county’s de-designation action, the cities rapidly annexed the former ALLTCS land from the expanded UGAs and zoned it for residential uses. The county and city processes have arguably denied recourse for challengers of ALLTCS de-designation. In the present case, while the Petitioners challenged the validity of the annexations themselves (Issue 7), the Board concluded it lacked jurisdiction to rule on that question. The Board did, however, find the county out of compliance with the GMA on Issue 5 (unwarranted UGA expansions) and Issues 10 and 19 (non-compliant de-designation of ALLTCS).” [18 Compliance Order, pages 13- 14].

The county appealed the unfavorable aspects of the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) decision to the Court of Appeals. CCCU appealed with respect to its losses on all of its issues. FOCC and Futurewise appealed the findings of compliance regarding minimum lot sizes in the Rural and Resource lands.

- 2018 The 2012 Rural Lands Study had included a recommendation for a Public Benefit Rating System (PBRs) to replace Current Use/Open Space Taxation. On January 16, 2018, the Clark County Council formed a team to audit the Current Use Program and an interdepartmental team led by the County Assessor’s Office to explore and design a PBRs.
- 2018 Clark County Council, recognizing that the unincorporated county needed an increase in the diversity of housing choices and variety of housing types, created a new section CCC 40.260.022 Accessory Dwelling Units - Rural on January 30, 2018. [ORD. 2018-01-17].

- 2018 On February 15, 2018, the Board of County Councilors held a joint work session with the Planning Commission to discuss future work plan items including an area-wide agriculture assessment and the feasibility of a pilot Transfer of Development Rights program. The Board decided not to move forward with these items.
- 2018 Under the Freight Rail Dependent Uses project phase 2, the Freight Rail Dependent Use Advisory Committee recommended to council a new Clark County Code section 40.250.120 Freight Rail Dependent Use Overlay, amendments to a variety of Clark County Code sections to support development in the overlay, and an amendment to the Freight Rail Dependent Use Overlay map. On September 18, 2018, at a Clark County Council work session, the Freight Rail Dependent Use phase 2 project was placed on hold pending the outcome of litigation between the county and the Portland Vancouver Junction Railroad.
- 2018 On October 17, 2018, the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) issued its Order Finding Continuing Noncompliance (18 Second Compliance Order), regarding Issues 5, 10, and 19.

“Based upon review of the July 23, 2018, County Statement of Actions Taken to Achieve Compliance, the Growth Management Act, prior Board orders and case law, having considered the arguments of the parties offered in the briefing and at the compliance hearing, and having deliberated on the matter, the Board Orders:

- The County's Motions to rescind, modify or dismiss Issues 5 and 10 are DENIED.*
- The County's Motion to Stay Issue 19 is DENIED.*
- Clark County is in CONTINUING NONCOMPLIANCE with RCW 36.70A.060 and WAC 365-190-050 regarding the 602 acres of former ALLTCS that were designated as Rural Industrial Land Banks.*
- Clark County is in CONTINUING NONCOMPLIANCE with RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.215 of the GMA by failing to take any corrective legislative action to address the noncompliance of Clark County Amended Ordinance No. 2016-06-12, relating to the Urban Growth Areas of the Cities of La Center and Ridgefield.*
- The March 23, 2017, Determination of Invalidity remains in full force and effect, invalidating the UGA expansions for the cities of Ridgefield and La Center, as 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 Figures 14 and 15 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.*
- Clark County is in CONTINUING NONCOMPLIANCE with RCW 36.70A.050 and RCW 36.70A.060 and WAC 365-190-050 of the GMA by failing to take any corrective legislative action to address the noncompliance of Clark County Amended Ordinance No. 2016-06-12, relating to the de-designation of 57 acres of agricultural land of long-term commercial significance near the City of La Center Urban Growth Area and 111 acres near the City of Ridgefield Urban Growth Area.*
- The following parts of the 2016 Clark County Comprehensive Plan continue to be invalid and invalidity remains in full force and effect as stated in the Board's January 10, 2018, Compliance Order: De-designation of ALL TCS on 57 acres near the La Center UGA and 111 acres near the Ridgefield UGA, as enacted in Amended Ordinance 2016-06-12 and Clark County's 2016 Comprehensive Plan Map, Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12 and also shown on Figure 24A of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.*
- The following parts of the 2016 Clark County Comprehensive Plan continue to be invalid and invalidity remains in full force and effect as stated in the Board's*

January 10, 2018, Compliance Order: De-designation of ALLTCS on 602 acres underlying two rural industrial land banks, as enacted in Amended Ordinance 2016-06-12 and Clark County's 2016 Comprehensive Plan Map, Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12 and also shown on Figure 24A of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.” [18 Second Compliance Order, pages 13-14].

- 2018 On December 18, 2018, the council adopted Interim Ordinance 2018-12-64 that suspended land use applications to develop lands within the RILB.
- 2019 On February 12, 2019, the county extended the Interim Ordinance 2018-12-64 to suspend land use applications to develop lands within the RILB for six (6) months.
- 2019 On July 9, 2019, the GMHB in Case No. 16-2-0005c (CCCU-Futurewise) ruled in its Order Granting Stay for Issues 5, 10, and 19 and Re-enforcing Invalidity that the county need not take and report on actions to come into compliance regarding Issue 19 (RILB) until a final appellate decision was rendered on all issues, including the de-designations of agricultural lands.
- 2019 In 2012, Washington voters passed Initiative-502, which legalized the possession and use of one ounce or less of marijuana for persons over 21. The state Liquor and Cannabis Board adopted regulations regarding the production, processing, and retailing of marijuana and related products in Chapter 314-55 WAC. On July 2, 2019, Clark County Council amended county code to allow for the production and processing of marijuana in rural areas and retailing of marijuana within the Vancouver Urban Growth Area. [ORD. 2019-07- 01].
- 2019 On August 6, 2019, Clark County Council extended Interim Ordinance 2018-12-64, suspending land use applications to develop lands within the RILB, for another six (6) months.
- 2019 On November 12, 2019, the county repealed and rescinded the establishment of the two rural industrial land banks and the de-designation of 602 acres of agricultural land underlying the RILB, as an appropriate response to the GMHB’s orders in Case No. 16-2-0005c (CCCU-Futurewise) and the decision of the Washington Court of Appeals regarding the two rural industrial land banks. [ORD.2019-11-16].
- 2019 On December 11, 2019, the County Council agreed with the Planning Commission’s recommendation and voted to deny a new Proebstel Rural Center, as the proposal did not meet the criteria in RCW 36.70A.070(5) and WAC 365-196-425(6) that define limited areas of more intense rural development.
- 2020 On January 8, 2020, the Washington Supreme Court denied the petitions of both CCCU and Futurewise to review the Court of Appeals decision regarding the 2016 comprehensive plan update. [*Clark County Citizens United v. Growth Management Hearings Board*, 194 Wn.2d 1021, 455 P.3d 130 (2020)].
- 2020 On February 18, 2020, following the passage of HB 2243 amending RCW 36.70A.213, County Council amended Clark County Code 40.370.010 to allow extension of public facilities and utilities to serve a school sited in a rural area that serves students from a rural area and an urban area, subject to certain requirements. The Council also increased the Rural District traffic impact fee rate to \$352. [Ordinance 2020-02-02].
- 2020 On March 26, 2020, The GMHB in Case No. 16-2-0005c (CCCU-Futurewise) ruled in its Order on Remand from the Court of Appeals that “*The Board found the County in*

compliance with RCW 36.70A.060 and WAC 365-190-050 and rescinded invalidity regarding 602 acres of agricultural lands that have been removed from Rural Industrial Land Bank designations. The Board also rescinded invalidity regarding the Urban Growth Areas (UGA) for the Cities of Ridgefield and La Center because the Court of Appeals ruled that annexations by La Center and Ridgefield rendered the UGA expansion issues moot.” [page 1].

The appeal of the 2016 Plan was ended. The next periodic review of the county’s comprehensive plan is due June 30, 2025.