

**O'Donnell, Mary Beth**



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CP16#0277

**From:** Orjiako, Oliver  
**Sent:** Tuesday, September 09, 2014 1:47 PM  
**To:** O'Donnell, Mary Beth; Cook, Christine  
**Cc:** Euler, Gordon; Alvarez, Jose  
**Subject:** FW: Memorandum to the Commissioners - Information to be placed in the public record

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Just FYI. Mary Beth for index.

**From:** Madore, David  
**Sent:** Tuesday, September 02, 2014 12:52 PM  
**To:** Orjiako, Oliver  
**Subject:** FW: Memorandum to the Commissioners - Information to be placed in the public record

FYI.

**From:** Carol Levanen [<mailto:cnldental@yahoo.com>]  
**Sent:** Wednesday, August 27, 2014 10:46 PM  
**To:** Madore, David  
**Subject:** Fw: Memorandum to the Commissioners - Information to be placed in the public record

----- Forwarded Message -----

**From:** Carol Levanen <[cnldental@yahoo.com](mailto:cnldental@yahoo.com)>  
**To:** David Madore <[david.madore@clark.wa.gov](mailto:david.madore@clark.wa.gov)>; Tom Mielke <[tom.mielke@clark.wa.gov](mailto:tom.mielke@clark.wa.gov)>; "ed.barnes@clark.wa.gov" <[ed.barnes@clark.wa.gov](mailto:ed.barnes@clark.wa.gov)>; Carol Levanen <[cnldental@yahoo.com](mailto:cnldental@yahoo.com)>; Susan Rasmussen <[sprazz@tds.net](mailto:sprazz@tds.net)>; Leah Higgins <[leahnwhomes@gmail.com](mailto:leahnwhomes@gmail.com)>; Rick Dunning <[ralan1953@gmail.com](mailto:ralan1953@gmail.com)>; Rita Dietrich <[billrita@pacifier.com](mailto:billrita@pacifier.com)>; Jerry Olson <[wcrolsons@tds.net](mailto:wcrolsons@tds.net)>; Fred Pickering <[fredp@vacolt.com](mailto:fredp@vacolt.com)>; Jim Malinowski <[j.malinowski@ieee.org](mailto:j.malinowski@ieee.org)>; Frank White <[firfarmer@yahoo.com](mailto:firfarmer@yahoo.com)>; Benjamin Moss <[benjaminmoss@johnlscott.com](mailto:benjaminmoss@johnlscott.com)>; Lonnie Moss <[lon@moss-wriston.com](mailto:lon@moss-wriston.com)>; Melinda Zamora <[mzamora1001@gmail.com](mailto:mzamora1001@gmail.com)>; Nick Redinger <[nickredinger@hotmail.com](mailto:nickredinger@hotmail.com)>; Curt Massie <[cmassie331@gmail.com](mailto:cmassie331@gmail.com)>; Marcus Becker <[marcusb35@msn.com](mailto:marcusb35@msn.com)>; Clark County Citizens United Inc. <[cccuinc@yahoo.com](mailto:cccuinc@yahoo.com)>  
**Sent:** Friday, August 22, 2014 10:14 PM  
**Subject:** Memorandum to the Commissioners - Information to be placed in the public record

Clark County Board of Commissioners August 22, 2014

P.O. Box 5000

Vancouver, Washington 98666

For the Public Record

**Re: June 26, 2014 Memorandum from Oliver Orjiako, Director of Community Planning, regarding Resource Land Designations**

The memorandum to the commissioners begins with a statement that Clark County Citizens United, Inc. says the county should "revisit....parcel sizes of one and 2.5 acres that were in effect prior to ....adoption of the first Comprehensive Plan under the Growth Management Act.

CCCU's position is that existing parcelization be recognized in a zone that reflects predominant parcel sizes. Currently, almost 100% of rural lots in Clark County are substandard to their designated zone. Even though there are hundreds of one

acre parcels throughout the county, CCCU is recommending that a one acre lot size be reserved for a cluster ordinance in all zones.

Mr. Orjiako indicates his report is a "revisit of the records from approximately 1993 to 1998 relating to designation of resource land and rural parcel size. He mentions an appeal to the Superior Court and Clark County's responses to the appellate rulings.

Mr. Orjiako failed to mention the 1999 ruling from the Washington State Court of Appeals that states, "Based on the foregoing, we conclude that the GMA does not require counties to use the OFM's projections as a cap on non-urban growth. The Board exceeded its authority, and the trial court did not err in reversing the Board's ruling. In that reversal, the Superior Court states that

*" It is evident the rural land use density regulations were driven in part by earlier Growth Management Hearing Board Decision requiring urban population plus rural population to equal Office of Financial Management population forecasts.... This formulaic view of the GMA requirement is fatally flawed. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for. This Board decision, however, compelled the County to downzone substantial portions of the rural areas in order to meet the Boards apparent requirements.*

*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. By trying to comply with the board's errant decision the County violated the GMA planning goal.*

*Through no fault of the County's, the Board had an end in sight and disregarded the GMA's mandate in applying an unauthorized formula to the review of the Clark County Comprehensive Plan land use densities. The board's interpretation was erroneous and the County's decision to follow the Board's lead was unfortunate. The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the terms of the GMA."*

In essence, the Court of Appeals upheld all of the passage of the OFM language as it identifies and relates to both the Superior Court and the Court of Appeals decisions.

Mr. Orjiako discusses the 1993 creation of the Rural and Natural Resource Lands Advisory

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Committee, and indicates that the 1993 Forest Focus Group and the Farm Focus Group were direct sub committees of that creation.

The Rural and Natural Resource Lands Advisory Committee was not part of the actual Focus Groups. Two of CCCU's Board members, Fred Pickering and Dan Dupuis, were on the original Forest Focus Group and one of CCCU's members, Don Kemper, was on the original Farm focus Group. CCCU has extensively interviewed these people to get an accurate accounting of what happened during their tenure. They confirmed their work followed the GMA guidelines contained in the WAC Chapter 365-190, but insist that a few days prior to submitting their recommendations to the county, an attorney, John Karpinski and Planning Director, Jerri Bohard, approached the groups and introduced a packet of different recommendations. The result was massive downzoning of all of the resource and rural lands, which was very different than what the focus groups intended. Members of those groups gave public testimony protesting those changes

Mr. Ojiako discusses the response of the Farm Focus Groups report and the criteria used. The memo to Jerri Bohard of October 25, 1994 was made after the submittal of the report. The Forest Focus Group issued its' report on December, 5, 1993. In addition, the Department of Community Development decided to require the use of the private forest land grading system from the Department of Revenue, which was not a criteria within the GMA.

In RCW 36.70A 050 Guidelines to classify Agricultural, forest and mineral lands and critical lands. it states, " *The department shall consult with the Department of Agriculture regarding guidelines for Agriculture lands, the department of Natural resources regarding forest lands and mineral resource lands. (2)...the department shall consult with interested parties, including but not limited to ....(a) cities.....(b) counties.....(c) developers...(d) builders....(e) owners .....(f) environmental organizations...(h) special districts...(i) state agencies (j) Indian tribes.. In addition, ...public hearings....the public input obtained at such public hearings. (4) The guidelines....regarding classification of forest lands shall not be inconsistent with guidelines adopted by the Department of Natural Resources.*

he report further states "the Rural and Natural Resource Lands Advisory Committee ( not the focus groups) began the process of designating Agri-Forest for areas north of the East Fork of the Lewis River. The process was completed by staff.....

This committee was not part of the Focus Groups and was not part of the original work of the groups. But, it was given the power, with the help of staff, to designate virtually all of rural Clark County, and particularly 35,000 acres of Agri-Forest resource lands. Craig Greenleaf, Planning Director, attempted to justify the designations by claiming the committee selection process left "land inappropriately considered", "...the farm focus group did not include heavily forest lands, role of soils....found to be uniformly of high quality, and "long term commercial significance" lead to severe difficulty in defining agriculture lands

." Instead, he allowed unknown persons, to the public, to determine the outcome of these rural lands.

The memorandum then discusses the 67 appellants and CCCU's issues. Three items regarding designation of ag resource land, agri-forest resource lands and forest resource land were noted.

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It followed with the September 9, 1995 GMHB ruling.

Clark County Citizens United, had many other issues in the appeal and only agriculture lands designation was dismissed.

But, Justice Poyfair made comment during the hearings that he believed the agriculture designations did need further review by the county, but there was not enough evidence in the record to rule against the designation. The appeal decision included numerous Findings of Facts and Conclusions of Law stated here:

#3

- *Statutory Mandate - The Board is not above the law....*; #4 *Agri-Forest Lands - The agri-forest resource designations violate the GMA .; Additionally, failure to solicit meaningful public participation....violated the public participation provisions of the GMA ; #6 - Comprehensive Plan EIS - The County failed to comply with SEPA's requirement...regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous. ( These are two separate items). #7 - rural Land Densities - The County's rural and resource development regulations are inconsistent with the GMA.....requires a variety of residential densities and housing types, ...by identifying pre-existing small development patterns in rural areas and creating rural activity centers with a variety of rural densities. (These are two separate items); \* There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for. The County's decision to follow the Board's lead was unfortunate. The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the term of the GMA.*

The discussion then goes to the Superior Court appeal and the subsequent April 4, 1997 ruling.

It states, "The EIS issued by the county was in violation of the SEPA because the agri-forest designation was disclosed subsequent to the publication of the Final EIS" ....The county put together two task forces, one to deal with agri-forest and the other with rural centers.

The 35,000 acres of agri-forest didn't have an EIS applied to it in 1994, and even though task forces were formed to address the court ruling and change the parcel sizes and designations, the actual land mass that was affected, has never gone through an EIS.

The report mentions that "Staff...recommended elimination of rural centers due to....OFM forecasts....

The courts ruled that it was illegal to use OFM projections to eliminate the rural centers. But, It is interesting to note that in response to planner, Peggy Scolnick's request for recommendations to the Comprehensive Plan, attorney, John Karpinski issued on March 16, 1994, the "CCNRC Green Alternative Details". He states, "As you know, CCNRC's Green Alternative has four elements: (1) reduced Urban Growth Boundaries; (2) enhanced Ag and Forest land protections; (3) increased Critical Land protection; (4) vigorous rural development limitations."

In item III, C. he directs the county to "Substantially reduced or eliminated "rural activity centers". He "thinks the County's apparent consideration of including this alternative as a full and complete alternative in the Growth Management DEIS."

Mr. Orjako states that in CCCU's court issues of land use densities in rural areas....,"more than seventy percent (70%) of the properties in rural areas are non-conforming", and noted the

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"Comprehensive Plan which basis its' land use densities strictly on OFM populations projections, ...disregard its' adopted framework plan policies" ....plan that ignores existing conditions in rural areas....do not comply with the requirements of State Environmental policy Act. But, then discusses that the GMHB stated there was no evidence in the record to support 5 acre minimum parcel size.....

This is like putting apples and oranges together in the same basket. The Courts and the Hearing Board are two different agencies and the court ruled the Hearing Board was wrong and "not above the law". The court did not support the Hearing

Board decision and told the Board to remand all of the illegal and incorrect items noted in the court ruling, back to the county to correct. That has never happened. But with little change, the Board validated the plan anyway.

This report discusses that in the April 1997 ruling....the Superior Court states that 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. , Specifically, it states the court said "The eradication of the rural activity centers violates the planning goal requiring a variety of residential densities".

This is not what the ruling said. It does say the county needed to provide a variety of rural densities. But, it does not say that the designation of the rural centers can be used to achieve that goal. Unfortunately, the county has combined what the ruling does say, into one action. The ruling states, "*One of the planning goals requires a variety of residential densities and housing types,....met by identifying pre-existing small development patterns in rural areas ...and....creating rural activity centers with a variety of rural densities....*

The word "and" in this sentence means, "*as well as, or, in addition to*", according to Webster's College Dictionary. The decision language was written by CCCU attorney, Glen Amster, and the intent of that sentence was confirmed further on in the decision, where justice Poyfair states, "*The result is a plan that gives little regard for the realities of existing development in direct contradiction of the term of the GMA.*"

In the report it says that "to comply with the Superior Court ruling, the BOCC convened a 13 member task force which in March 1998 reported it's recommendations..... There were two minority reports issued by members of the task force....the other recommended five to ten acres zoning similar to the 1980 Plan.

CCCU, Inc. Board members, Carol Levanen and Jim Malinowski were on that task force. At the first meeting of the group, commissioner Betty Sue Morris was in attendance and gave the order that the group could not consider any parcel size less than five acres. Even though many members thought 2.5 acres was appropriate, given the existing parcels, they were bound to the five, ten and twenty acre designations. But, the group was lopsided to the no-growth side. Whenever a pro-growth member was absent, the opposition took advantage of the situation and designated parcels in large lot zoning, regardless of the criteria and existing conditions on the ground. If there was a large parcel, it was locked up. There was so much of this activity, that the pro-growth group members simply couldn't sign their names to such a process. This resulted in the drafting of a minority report. The no growth members then drafted their own minority report, in

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response to the first one, thus resulting in the two reports.

In the Summary, it states that "*regarding resource designations, both the GMHB and the Superior Court decisions affirmed the county's designations as compliant with the GMA. The Ag 20, FR 40 FR80 in place today are the same as adopted in 1994 and upheld by both the GMHB and the Superior Court. It also states that "The updates of 2004 and 2007....readopted the previous land use actions.....*

This statement is only partially true. The GMHB affirmed the designations as compliant, but the court did not weigh in on the changes and it would have taken another court action to involve the courts in the process again. When the original appeals were filed against the Plan, the Hearing Board rolled all of the resource land appeals into the one Agri-Forest appeal filled by CCCU. There were numerous appeals regarding agriculture and forest resource lands, but none of those other appeals were heard by the Hearing Board or the courts. The Hearing Board followed their own lead, regardless of the reprimand and directives from the court, and enabled the county to create a plan that does not reflect the court decisions. The county continues to use the OFM projections to plan rural areas and continues to ignore the existing development patterns and existing parcels.

It is unfortunate that the hearings board is the avenue by which remands travel, because in Clark County's case, "**The result is a plan that gives little regard for the realities of existing rural development in direct contradiction of the term of the GMA.**

Clark County Citizens United, Inc. was told by the Board of Commissioners and staff that rural lands were not being considered in the 2004 and 2007 updates. CCCU was given directions by the county, not to submit any testimony for the purpose of discussing the rural lands. Regardless of the directives, CCCU did provide public testimony over rural lands concerns and the EIS. But, in reviewing a copy of the 2004-2007 Clark County Comprehensive Land Use Plan, given to CCCU at the time, to a current copy, it's clear that additional pages have been added to the Rural and Resource Element of the Plan to include language regarding the equine community. In addition, the current Plan is much larger than the same Plan distributed in 2004 - 2007.

Clark County Citizens United, Inc has waited long enough for the county to comply with the law. Since 1999, the Clark County Board of Commissioners, has promised that those corrections will be made with each update, but it has never happened. Instead, the county has formed many advisory councils, focus groups and "studies" to justify the Plan, to assure that the changes never will be made and the law can continue to be ignored. The public has no idea that any of this land use activity has taken place since 2004, because it has been disguised within a legitimate county agency. CCCU urges the county to honor the court mandates and GMA and make necessary corrections and changes to rural lands in the 2016 Clark County Comprehensive Land Use Plan.

Sincerely,

Carol Levanen, Ex. Secretary  
Clark County Citizens United, Inc.  
P.O. Box 2188  
Battle Ground, Washington 98604