Schroader, Kathy

From: Orjiako, Oliver
Sent: Tuesday, February 16, 2016 9 46 AM
To: Albrecht, Gary, Alvarez, Jose, Anderson, Colete, Euler, Gordon, Hermen, Matt, Kamp, Jacqueline, Lebowsky, Laurie, Lumbantobing, Sharon, Orjiako, Oliver, Schroader, Kathy, Wiser, Sonja
Subject: FW FOCC Comments
Attachments: David, SDEIS comments, 9 14 pdf, FOCC- Comments-160216 docx

All

FYI and for the record. Thanks

From: David McDonald [mailto:david@mcdonaldpc.com]
Sent: Sunday, February 14, 2016 12:20 PM
To: Orjiako, Oliver
Cc: Boldt, Marc; Olson, Julie (Councilor); Stewart, Jeanne
Subject: FOCC Comments

Dr. Orjiako.

Please find my comments for the Comp Plan update record on behalf of myself and FOCC for the Tuesday hearing. I apologize for the timing of submission but I have been out of the country since January 27th and only returned to the office on Friday the 12th. The comments come in three parts 1) a letter, 2) a copy of my original comments on the legal history of our Comp Plan, including the Poyfair decision, that I submitted to the record last fall dated September 14, 2015 and 3) the RW Thorpe response recently submitted to the record rejecting Councilor Madore's assertion that their findings should have been stated as "indeterminate" rather than "invalid".

Thank you for attention to these matters.

Best Regards,

David

FRIENDS OF CLARK COUNTY
PO BOX 513
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September 14, 2015

Board of County Councilors
Planning Commission Members
% Mr. Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

Via pdf and e-mail to Oliver.Orjiako@clark.wa.gov and via hand delivery

Mr. Orjiako:

This letter is to respond to the letter in the record from Carol Levanen dated August 4, 2015 and the e-mail from Carol Levanen dated August 31, 2015 and correct the inaccuracies in her two submissions. I am submitting these comments on behalf of Friends of Clark County.

Both of Ms. Levanen's submissions wrongfully suggest that the County failed to comply with the rulings in Case 96-2-00080-2[1]. The majority of the contents of

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[1] In her August 31, 2015 e-mail she states the following:

"This WWGM Hearings Board Remand demonstrates that all of Judge Poyfair's orders were not followed. Instead, the Board isolated the remand to just Agri-Forest and Rural Centers and ignored action on the other orders handed down by the Superior Court. 'They' timed this remand decision to happen just after the Court of Appeals decision of 1999, counting on CCCU's attorney not being available to protest the remand action. CCCU believes that the Clark County 1994 Comprehensive Land use Plan was the most corrupt process of any in the state except perhaps Seattle. The Plan in place today, is the same plan that was adopted in the rural and resource land in 1994. It has never been changed and after over twenty years, legitimate changes must be made."

In her letter dated August 4, 2015 she makes three assertions: 1) Clark County is not in compliance with Judge Poyfair's ruling because it never did a SEPA analysis of the Agri-Forest Lands, 2) The County never complied with "the Court orders or the Order of Remand". "No progress reports can be found and the Hearing Board only conducted a few compliance hearings for agri-forest and rural centers. 'They' failed to assure the County complied with *all* of the court orders which also included items 3) Statutory Mandate, (4) Agri-Forest Lands (6) Comprehensive Plan EIS, and (7) Rural Land Densities. This resulted in the 36,000 acres of Agri-Forest Land and the rural centers never having an EIS to support changes that did occur

these two documents is simply not supported by the record and/or totally misrepresents or obfuscates the reality of Judge Poyfair's decision and the other related legal actions.

The simple truth is that Ms. Levanen and Ms. Rasmussen, who herald themselves as the preservers of rural life despite many farmers and foresters who object to their positions, more than achieved their goals in 1990s to reduce lot sizes in the rural zone, eliminate the Agri-Forest zone, implement Rural Centers and reduce development regulations that would have provided more protective regulations of the environment.

In order to understand the claims that Ms. Levanen is wrongfully asserting, one must go back and follow the record from the filing of the first appeals that challenged the County's 1994 Comprehensive Plan to the last Compliance Order issued by the WWGMHB in 2006.

History of the *Achen* Appeal and *Poyfair* Remand

In 1994, after work by multiple task forces, input from thousands of citizens, scores of public hearings and intermediary and interlocutory legal actions, our County adopted our first Comprehensive Plan. A myriad of parties appealed the Comprehensive Plan to the WWGMHB. While the appeals were being litigated, Clark County executed a stipulation in WWGMHB Case No. 94-2-0014 stating that the County failed to enact interim development regulations designed to designate and protect critical areas and natural resource lands. Instead, the County relied on various combinations of existing non-GMA ordinances and zoning, which it admitted failed to meet the identification, designation or protection requirements of state law. Therefore, the County agreed to go back to the public process on their development regulations.

In September 1995, The WWGMHB issued a Final Decision and Order (FDO) in the case commonly known as *Achen et al* case of which CCCU was a Petitioner. There were 16 separate motions filed on reconsideration and the WWGMHB subsequently ruled on each of those and issued an Order on Reconsideration on December 6, 1999. Several appeals were taken from the WWGMHB FDO. However many issues of non-compliance found by the WWGMHB were not appealed and those issues were remanded to the County for compliance.

The appeals from the WWGMHB FDO and Order on Reconsideration were assigned to Clark County Superior Court Judge Poyfair. Judge Poyfair subsequently issued an opinion that reversed the WWGMHB Final Decision and Order (FDO) on several grounds and held the following: 1) The Agri-Forest designation violated GMA; 2) the County's failure to solicit meaningful public input for the Agri-Forest designation violated the public participation provisions of the GMA requiring early and continuous public participation in the development and adoption of the comprehensive plans; 3) The county failed to ensure a variety of densities in the rural area because it removed the

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later", and 3) Some claim that some writings (no citations to the articles are provided so it is impossible to know which articles to which she refers) misconstrue the 1999 Court of Appeals opinion regarding the use of OFM numbers. (One appeal was take from Judge Poyfair's rulings and that was an appeal by CCNRC challenging the portion of Judge Poyfair's ruling regarding the county's assertion that they were mandated to use the OFM number in determining rural population allocation).

designation of rural centers from its Community Framework Plan; 4) determined the rural population allocation based upon the use of the selected OFM number and 5) the EIS was inadequate because it failed to include the Agri-Forest designation in its analysis.

Judge Poyfair also issued an Order on Reconsideration denying various motions for reconsideration and clarification and affirming the Findings of Fact, Conclusions of Law and Order issued on April 4, 1997 with one exception, which dealt with the issue of variety of rural densities. He found that the eradication of the centers violated the planning goal of requiring a variety of rural densities and reaffirmed that the WWGMHB erred by mandating that the County use OFM projections for allocation of rural population. *See* Order on Reconsideration (June 5, 1997)[2].

One piece of Judge Poyfair's ruling that CCCU continues to ignore, and most important to the current process, is that Judge Poyfair found there ***was substantial evidence in the record to support the County's designation of agricultural resource lands***. CCCU did ***not*** appeal that portion of the Poyfair decision and it remains valid to this day.

Procedurally, Judge Poyfair remanded the case to the WWGMHB who, in turn, issued a Remand Order in August 1997 that remanded all the issues from the Poyfair decision to the County. The Remand Order stated:

> Therefore, it is ordered that Clark County is not in compliance with the Growth Management Act as to those matters set forth in the separate appeals and the matter is remanded to Clark County to achieve compliance consistent with earlier orders of the Board *as modified by the Superior Court orders referenced above which are incorporated herein*. Because of the unusual scope and complexity of the issues, under the provisions of Chapter 429, Laws of 1997, Section 14(3)(b), compliance shall be achieved by March 2, 1998. The County shall submit a report on the progress it is making toward compliance by December 15, 1997.
>
> *See WWGMHB* #95-2-0067 dated August 11, 1997 (emphasis supplied).

This remand is known as the "Poyfair Remand". As can be seen by the language of the Order, the WWGMHB remanded all issues in Judge Poyfair's ruling to the County, including the issue subsequently appealed by CCNRC. After the remand, Clark County went back to work on all of the issues ordered to be remanded to the County.

While the Poyfair Remand was being dealt with at the County level, CCNRC appealed one issue--whether or not the County was ***required*** to use the OFM number in determining a cap on rural population allocations. The appellate court ruled that, although GMA did not ***require*** the county to use OFM's projections as a cap on non-urban

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[2] Both the April 4, 1997 Findings of Fact, Conclusions of Law and Order and the June 5, 1997 Order on Reconsideration were drafted and submitted by CCCU's attorney

growth, it ***could*** use the OFM projection number if doing so would otherwise meet the goals of the Act. Specifically, the court stated:

> Without so holding, we assume that the GMA *permits* a county to use OFM's population projections when planning for lands outside its urban growth areas.
>
> *Clark Cnty. Natural Res. Council v. Clark Cnty. Citizens United, Inc.*, 94 Wash. App. 670, 676, 972 P.2d 941, 944 (1999)(emphasis in the original)

Thus, as set forth by Judge Poyfair, GMA allows for the County to use a variety of tools for population allocation, including the OFM numbers. but does not mandate that those tools be utilized. The Court of Appeals issued its opinion on March 12, 1999. CCNRC filed a petition for review with the Washington Supreme Court but that Petition for Review was denied in November 1999.[3]

In addition, while the matter was pending in front of Judge Poyfair (his hearing was held on October 16, 1996), other actions were being taken on the *Achen* case. The County was attempting to comply with the portions of the WWGMHB's original FDO and Order on Reconsideration where the County was found to be non-compliant with the GMA but those findings of noncompliance ***were not appealed and were not in front of Judge Poyfair.*** Thus the process had now become bifurcated with some of the non-compliance issues being appealed to the Superior Court (Poyfair) and some of the issues being remanded to the County.

On October 1, 1996, the WWGMHB issued a Compliance Order and Order of Invalidity regarding multiple issues that had been remanded to the County pursuant to the original FDO and Order on Reconsideration ***that were not a part of the appeal in front of Judge Poyfair***. In that October 1, 1996 Compliance Order and Order of Invalidity, the WWGMHB found the County non-compliant on a number of issues that had been remanded. One such issue involved growth in the rural area. The WWGMHB found that the work on the population allocation, and zoning and designations, in the rural areas regarding rural, resource lands and urban reserve areas to be invalid. *See* http://www.gmhb.wa.gov/LoadDocument.aspx?did=866 (Compliance Order and Order of Invalidity dated October 1, 1996). This Order covered multiple areas of the County's Comprehensive Plan.[4] Some of those Findings and Conclusions of this new October 1,

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[3] The correct legal citation for the Court of Appeals' decision in *Clark County Natural Resources Council v Clark County Citizens United, Inc.*, 94 Wash.App. 670, 677, 972 P.2d 941, ***review denied***, 139 Wash 2d 1002, 989 P.2d 1136 (1999)

[4] 1. Include all property of the Ridgefield municipal boundaries within the UGA;

2. Eliminate the new "redesignated" UGA of the City of Camas and redesignate the area between Camas and Vancouver;

1996 Compliance Order and Order of Invalidity were appealed to the Clark County Superior Court and the appeals were assigned to Judge Nichols (Nichols I). CCCU participated in these appeals.

While the appeals were pending before Judge Nichols, the WWGMHB held another compliance hearing in October 1997 on issues where the county had been found to have been non-compliant with the GMA but which had not been appealed from the WWGHB and assigned to Judge Nichols[5]. So, now the original FDO and Order on

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3. Adopt appropriate criteria to determine if and/or when UGA boundaries need to be moved;

4. Determine the proper designation of "non-prime" industrial lands outside the Vancouver UGA;

5 Eliminate all non-prime industrial designations within the urban reserve area;
6. Adopt development regulations to prohibit the conversion of prime industrial land to

other uses;

7. Clarify or eliminate the "no net loss" industrial policy concerning both "prime" and "non-prime" industrial lands;

8. Eliminate any and all resource lands from the urban reserve area and place appropriate resource designations on the properties;

9 Adopt and implement a public participation process that complies with the Act for the commercial code;

10. Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of non-conforming lot sizes, as well as other techniques to reduce the impact of parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas,

11 Increase the minimum lot sizes of rural areas located north of the "rural resource line";

12. Adopt effective implementing DRs for existing stormwater pollution.

13. Analyze and make appropriate changes to the capital facilities element taking into consideration the incorporated plans, the completed Vancouver capital facilities element and the increase population projection.

In order to comply with the Act, Ridgefield must take appropriate action to correctly designate and analyze all property within its boundaries.

[5]So, as a result of the *Achen et al* appeal to the WWGMHB, some issues were appealed (Poyfair) and some were remanded for the County to come into compliance At a subsequent Compliance hearing on the issues that had not been appealed (Poyfair) but had been remanded to the County, there was another split and some of those findings by the WWGMHB were appealed (Nichols) while others were found to be compliant and others were remanded to the County for further work to come into compliance. Once Poyfair ruled, CCNRC appealed one aspect of his ruling (OFM numbers) but the *entire* decision was remanded to the WWGMHB and, in turn, to the County to obtain compliance. Once Nichols ruled, the Board held a hearing and re-issued a new Compliance Order and Order of Invalidity but there does not appear to be any further compliance orders or hearings on the Nichols appeal. In March of 2009, the Board held a compliance hearing on the Poyfair remand that CCCU filed a motion to dismiss that claiming that

Reconsideration were now trifurcated: 1) Some issues were in front of Judge Poyfair; 2) Some issues were in front of Judge Nichols and 3) Some of the original issues that had been remanded to the County, but not appealed, were still being handled by Compliance hearings in front of the WWGMHB.

After the October 1997 Compliance hearing, the WWGMHB issued a Compliance Order on December 17, 1997. The various parties stipulated to the following issues to be a part of the October 1997 hearing:

CCNRC should have filed a new petition rather than have a compliance hearing on whether the County had complied with the Poyfair remand. Finally, in 2006, the WWGMHB issued a final Order in the *Achen et al* case that stated the following:

> THIS Matter comes before the Board upon its order to show cause why compliance should not be found on the remaining issues in this case. The Board issued an Order to Show Cause Re. Compliance, on May 8, 2006, providing that the parties must respond no later than May 22, 2006 or the case would be dismissed. No response was received from any party.
>
> Although compliance was shown on some issues, compliance for several remaining issues in this case has never been found in a Board order. This case has been open for a number of years without action by any party. However, on September 7, 2004, Clark County adopted a revised comprehensive plan. Several aspects of this revised comprehensive plan were challenged in a Petition for Review and eventually found compliant. See *Building Association of Clark County, et al, v. Clark County*, WWGMHB Case No 04-2-0038c (Amended Final Decision and Order, November 23, 2005). The unchallenged portions of the revised comprehensive plan are presumed valid and deemed compliant. RCW 36.70A.320(1).Therefore, with the adoption of a revised comprehensive plan and the issuance of the November 23, 2005, Amended Decision and Order in *Building Association of Clark County, et al, v. Clark County*, WWGMHB Case No. 04-2-0038c, the Board determines that any compliance issues remaining in this case have most likely been resolved.
>
> For that reason, the Board issued its show cause order of May 8, 2006. With the absence of any response by any party, the Board concludes that compliance should be found and this case closed.
>
> **ORDER**
>
> Based on the foregoing, COMPLIANCE on the remaining issues in this case is found and the case is CLOSED

> As some of the remand issues from our original compliance order of October 1, 1996, as modified by an order on reconsideration dated November 20, 1996, are presently on appeal to Superior Court[6], a stipulated order was entered limiting the issues for this hearing. Various petitioners sent letters, dated July 29, 1997, and August 26, 1997, that expressed satisfaction with Clark County's compliance which further narrowed the scope of this hearing. The issues that were presented for the hearing on October 9, 1997, involved the size of the Camas urban growth area (UGA), UGA movement in general, resource lands (RL) that had been included in urban reserve areas (URA) instead of being designated, the capital facility plan (CFP), and stormwater. Briefing and oral argument were held contemporaneously with the compliance case of *Clark County Natural Resources et al., v. Clark County*, et al., #96-2-0017, (CCNRC II)[7].

Judge Nichols eventually ruled that the WWGMB had improperly placed the burden of showing compliance upon the local government and remanded the case to assign the burden of proof to the petitioners to show lack of compliance and that the Order of Invalidity had to be reconsidered. He also found that Clark County's appeal of issues determined in the original FDO of September 20, 1995, was untimely. *See Clark*

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[6] The Nichols' appeal

[7] That order was issued December 2, 1997 and held that: In this case, the WWGMHB held that "Clark County is not in compliance with the Act with regard to designation and protection of critical aquifer recharge areas. The existing protections are not consistent with Clark County's CP and or CFP. In order to comply with the Act, Clark County must adequately identify critical aquifer recharge areas and adopt development regulations that protect those identified areas. Clark County is not in compliance with the Act with regard to geological hazard area designations and has not adopted development regulations to protect those areas. In order to comply with the Act, Clark County must designate geological hazardous areas and adopt appropriate development regulations for their protection. Clark County is not in compliance with the Act because of its failure to designate fish and wildlife habitat conservation areas of local importance, its failure to establish a "review trigger" area surrounding priority habitat and species areas, its failure to apply development regulations to all priority habitat and species areas involved in conversion of forest lands to pasture lands, the exemption of subsection 2(a)(c) and (d) application to all priority habitat and species areas and its failure to provide adequate buffers for Type 1 through 5 waterways including Type 5 waterways in rural areas and its failure to provide a specific measuring standard for establishment of those buffer areas. In order to comply with the Act the County must make the appropriate FWH designations and adopt DRs that protect FWH."

County v. Western Washington Growth Management Hearings Board, Superior Court Case No.96-2-05498-8 Dated December 31, 1997[8](Nichols I).

On February 5, 1998, the WWGMHB issued a new Compliance Order and Order of Invalidity in response to Judge Nichols' ruling using Judge Nichols' burden allocation. In that Compliance Order and Order of Invalidity, the WWGMHB held that the County was out of compliance on the following four issues:

> 1. Policies and development regulations (DRs) relating to future adjustments to UGAs (if different issue than the December 17, 1997, order) are not in compliance;
>
> 2. Policies and DRs to eliminate non-prime industrial designations in urban reserve areas as set forth in the November 22, 1996, order on reconsideration are not in compliance;
>
> 3. Failure to increase of the minimum density in rural areas north of the east fork of the Lewis River to an appropriate size that is greater than 5 acres[9] is in violation of the GMA;
>
> 4. Failure to develop policies and DRs designed to buffer resource lands and limit encroaching development in rural and resource areas is not in compliance.

In addition, the Order also reaffirmed the Order of Invalidity as to CCC 18.302, 18.303, 18.305, and those sections of Ordinance 1996-05-01 relating to resource lands and rural lands as they substantially interfered with goals 1, 8, 9, and 10 of the Act[10]. The WWGHMB affirmed that decision in an Order on Reconsideration issued April 30, 1998.

Clark County took an appeal from that February 5, 1998 Order and April 30, 1998 Order on Reconsideration (and, again, CCCU participated in that appeal). The case was again assigned to Judge Nichols (Nichols II). *Clark County v. Western Washington Growth Management Hearings Board*, Superior Court Case No. 98-2-02032-0. On August 20, 1999, the Court issued a "Partial Judgment" solely as to the Order of Invalidity and stated that the Partial Judgment "overturned and overruled" the WWGMHB's Order of Invalidity that was part of the February 5, 1998 and April 8, 1999 WWGMHB Orders. The "Partial Judgment" was based on an Opinion by Judge Nichols dated July 1, 1999 that held that the County had discretion under GMA to use a 5 acre minimum rural lot size (1 unit per minimum 5 acres). The "partial judgment" was entered, the Order of Invalidity lifted as to

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[8] Judge Nichols also issued a letter opinion on December 10, 1997, which formed the basis for the Remand Order dated December 31, 1997.

[9] As set forth below, the original FEIS recommended 10-15 acre minimums in the rural zones

[10] I have no records of what happened after this Order. There is not any further opinions that I have found addressing the issues that were subject of Judge Nichols' ruling

all of the issues on the appeal and the 5 acre minimum lot size in the rural area remained intact, and remains to this day. No parties took further action on this appeal.

While the CCNRC appeal of the OFM issue from the Poyfair's ruling was pending in the Court of Appeals, and the other cases were pending in front of Judge Nichols, the County went to work to achieve compliance with Judge Poyfair's Order[5]. As a result of the Poyfair Remand, the County engaged in an extensive public participation process as to both the Rural Activity Centers issue (which had been stripped from the original CP) and the Agri-Forest designation issue. These two components of the Remand involved 38,000 acres of land in the rural area that were eventually ***upzoned*** in order to obtain the variety of rural densities required by the Poyfair rulings.

The WWGMHB held a compliance hearing on the Poyfair Remand on March 10, 1999[11], two days ***before*** the Court of Appeals issued its decision in the CCNRC appeal of Judge Poyfair's order regarding the use of the OFM number. CCCU filed a motion to dismiss the compliance proceeding on March 2, 1999 challenging the jurisdiction of the WWGMHB to hear CCNRC allegations that the County was still non-compliant because it had eliminated the Agri-Forest Zone and created the Rural Centers.

In order to meet the public participation component that Judge Poyfair said was lacking in the original process, the County convened two separate Task Forces, one to evaluate the Agri-Forest[12] designation and one to evaluate the Rural Centers designation. These task forces were made up of a variety of individuals and met multiple times. Both task forces wrestled with the myriad of issues involved. Ultimately, the Task Forces provided reports (majority reports and minority reports) to the Planning Commission and the Board of County Commissioners.

Most importantly, the Findings of the Agri-Forest Task Force were as follows:

- "Generally recognized and maintained consistency with immediately surrounding lot sizes, referred to as "what is" in task force deliberations.

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[11] This writer does not know why the hearing was held in March 1998 instead of March 1997 but as set forth in the body of the May 11, 1999 Compliance Order, the delay was attributed to the Petitioners *Achen et al*

[12] The County appointed a 13-member task force composed of a variety of stakeholders with interest in this issue. The public participation process involved 17 different task force meetings at which public comment was solicited and received, four separate open house meetings resulting in written comment, two separate direct mailings to all property owners within the 35,000 acres, newsletters, press releases, ads and use of the County website. After the task force issued its final report to the planning commission (PC), the PC held a public hearing and issued a recommendation to the BOCC. The BOCC then held two public hearings on May 19, 1998, and May 28, 1998, and held four separate deliberative open meeting sessions. The public participation in this record was shown to be not only "early and continuous" but also extensive The County should be justifiably proud of the manner in which it conducted this public participation process.

- Recognized pre-GMA designations, and limit (sic) associated down zoning
- Generally utilize larger lot designations in the northern portions of the County than in the southern portion.
- Predominantly applied transitional designations, typically Rural 10, to properties which form a transition from resource designations to rural designations.
- Predominantly apply a Rural 10 designate (sic) to parcels adjacent to urban growth boundaries, in recognition that CTED documents suggest 10 acres as the minimum parcel size which can be easily converted to future urban use
- Avoid isolated small areas of spot zoning.
- Consider on site uses, topography, and natural conditions.
- Avoid future land division on remainder lots from previous cluster developments."

See WWGMHB Compliance Order "Poyfair Remand" dated May 11, 1999.

The above Findings were based on what was available to the Task Force members including the following:

> The task force had been supplied with a series of maps (Ex. 235-247) and other materials noted in Ex. 84. The maps showed parcel size, agricultural or forest soil suitability, current and pre-GMA zoning designations, current use taxation status, aerial photographs, pending plat or segregation requests, recent lot creation status, habitat areas, wetlands, steep slopes and utility lines. Ex.80 demonstrated that the task force also considered post-1990 parcels, land values under alternative uses and eco-system importance. Ex. 80 set forth the criteria (statutory, WAC, BOCC and task force,) that were considered by the individual members. Included was a staff report dated May 4, 1998 (Ex. 12), which pointed out that prior to GMA approximately 80% of the 35,000 acres had been designated in non-resource classifications. ***None of the approximately 7,000 acres of pre- GMA resource designation (35,000 x 20%) survived to become GMA-RL-designated areas.***

See WWGMHB Compliance Order "Poyfair Remand" dated May 11, 1999.

At this point, I want to point out that in the present case, CCCU is complaining that the process undertaken above never happened. Rural property owners and stakeholders had a big seat at the table and were provided a plethora of documents, maps, and information that were used to make the final decision. Rural stakeholders were not cut out of the process and there was considerable consideration of the nature of the

rural area both pre, and post, the passage of the GMA in 1990. As can be seen from the above, the current claims by CCCU are simply unsupportable. One prime example is that 7,000[13] acres that had been designated as resource land ***prior*** to the passage of GMA was now being excluded from resource designation based upon objections and or analysis that was conducted by rural property stakeholders. Moreover, as detailed below, CCCU did not challenge the County's determinations on these issues. In fact, as will be seen, CCCU was in accord with the final determination of the BOCC after it completed its work in late May 1998.

Prior to the March 10, 1999 Compliance Hearing on the Poyfair Remand, not only did CCCU not make ***any*** claim that the County was not in compliance with Judge Poyfair's order, CCCU's filed a motion to dismiss that sought ***to prevent the WWGHB from reviewing the County's decisions to eliminate the Agri-Forest Zone and to create the Rural Centers***.[14] CCCU placed nothing in the record at the Compliance Hearing, either in pleadings or at the hearing, that the County was not in compliance with Poyfair's Order, much less the GMA[15]. Yet, CCCU acted affirmatively to prevent the County's actions in response to the Poyfair Remand to be reviewed by the WWGMHB for compliance.

Also, and despite Ms. Levanen's protestations to the contrary, CCCU was not hamstrung at all in litigating any matter and had plenty of opportunity to pursue the matter as evidenced by the fact that CCCU appealed a portion of this Compliance Order to Clark County Superior Court. *See CCCU v. WWGMHB*, Clark County Superior Court Case No. (99-2-02394-7)(Bennett Appeal). During this appeal, CCCU asked Judge Bennett for an Order requiring that the County to comply with the *City of Redmond*'s decision. *See* Clark County Superior Court Case # 99-2-02394-7 dated August 9, 1999 (filed August 27,1999). Again, during this appeal, CCCU never claimed that the County failed to comply with Poyfair's Order in any respect. To be clear, CCCU was present

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[13] If one takes the 36,000 acres out of the Agri-Forest zone, that allowed for approximately 7,200 rural 5 acre minimum residential lots.

[14] As evidenced by CCCU's actions and the language in the Compliance Order, CCCU was pleased with these two determinations by the County, were distrustful of the WWGMHB and did not want the WWGMHB to review out of a concern that they might not find the County's actions in compliance with the GMA. CCCU participated in this compliance hearing and did not raise any issues that alleged the County had not complied with Judge Poyfair's Order. Given the dissent, there was some basis to believe the WWGMHB might have found non-compliance. *See* Dissent by William Neilsen.

[15] In fact the Compliance Order specifically states:

> "As a result of the remand, the County engaged in an extensive public participation process as to both the rural activity centers issue and the agri-forest designation issue. There was no challenge to those processes. Petitioners Clark County Natural Resource Council, et al, (CCNRC) directed their challenges to the substantive outcome of both issues. Original petitioners N Lackamas and ***CCCU supported the County's actions***. Participant Lewis River Land Company, LLC (LRLC) also supported the County's actions in designating its property other than RL. Those 4 groups will hereafter generally be referred to as respondents." (emphasis supplied)

with legal counsel in all four Clark County Superior Court Appeals, as well as the Poyfair Remand Compliance hearing, but never did CCCU ever request the WWGMHB to find that the County was not in compliance with the Poyfair Remand. They cannot now credibly claim the contrary.

The May 11, 1999 Order was the second to last Order on any request, by any party, to find that the County had, or had not, complied with any WWGMHB Order on the original *Achen et al* appeals. The last Compliance hearing that the parties had a right to participate in was in 2000 regarding the transportation component. Only CCNRC and the County participated in that hearing.

On May 8, 2006, 2 years after the County issued its new 2004 Comprehensive Plan, the WWGMHB issued an Order to Show Cause Re: Compliance in *Achen*. Specifically, the OSC had a provision that the parties must respond no later than May 22, 2006 or the case would be dismissed. No response was received from any party including CCCU. The WWGMHB issued an ***Order Finding Compliance and Closing Case***.[16] Therefore, the County is legally compliant with the Poyfair Remand.

Ms. Levanen's Claims/E-mail

The County is also factually compliant with the "Poyfair Remand". Ms. Levanen asserts that because the Compliance hearing in March 1999 only addressed the

[16] The Order stated:

> Although compliance was shown on some issues, compliance for several remaining issues in this case has never been found in a Board order. This case has been open for a number of years without action by any party. However, on September 7, 2004, Clark County adopted a revised comprehensive plan Several aspects of this revised comprehensive plan were challenged in a Petition for Review and eventually found compliant. See *Building Association of Clark County, et al., v. Clark County*, WWGMHB Case No 04-2-0038c (Amended Final Decision and Order, November 23, 2005). The unchallenged portions of the revised comprehensive plan are presumed valid and deemed compliant. RCW 36.70A.320(1) Therefore, with the adoption of a revised comprehensive plan and the issuance of the November 23, 2005, Amended Decision and Order in *Building Association of Clark County, et al., v Clark County*, WWGMHB Case No. 04-2-0038c, the Board determines that any compliance issues remaining in this case have most likely been resolved.
>
> For that reason, the Board issued its show cause order of May 8, 2006. With the absence of any response by any party, the Board concludes that compliance should be found and this case closed.
>
> **ORDER**
>
> Based on the foregoing, ***COMPLIANCE on the remaining issues in this case is found*** and the case is CLOSED (emphasis supplied).

Agri-Forest and Rural Centers issues, it failed to address whether the County was now in compliance with all portions of the issues remanded to the County as part of the Poyfair Remand. Nothing could be farther from the truth.

The foundation of Poyfair's Orders was that because the county added in the Agri-Forest designation and excised the rural centers at the 11th hour of the process, it skewed the rural designations and failed to comply with the GMA. By going back and meticulously and painstakingly going through a very contentious process, for all intents and purposes, the County eliminated the Agri-Forest Zone and created larger Rural Centers than had been initially contemplated.

Ms. Levanen says that because the other issues were not addressed by the WWGMHB, they are presumed non-compliant. Her claim is legally false and ignores the fact the CCCU did ***not*** want the WWGMHB to review the County's compliance because it was in favor of CCCU. If CCCU felt that the County was non-compliant at that time, instead of trying to prevent the WWGMHB from determining compliance, CCCU could have easily, as they were doing in multiple appeals, ***they could have raised all of those issues at that time.*** CCCU cannot now claim no compliance after forfeiting the rights to request the WWGMHB to find non-compliance and attempting to stymie the WWGMHB from hearing the compliance issues that were raised by CCNRC.

The basic principle is that the burden is on the party claiming non-compliance to show the County is non-compliant. *See* Order date December 31, 1997 (Nichols I) and Compliance Order and Order of Invalidity dated February 5, 1997 (holding that Superior Court held that burden is on party asserting non-compliance to prove County is non-compliant-precursor to Nichols II). However, once a finding of Invalidity has been made by the WWGMHB, the burden is on the party challenging Invalidity to prove that Invalidity is not appropriate.

Therefore, all CCCU had to do was to assert and prove that the County was not in compliance with Poyfair's Order at any Compliance hearing (and the March 10, 1999 would have been the logical one because all parties were present and the WWGMHB was trying to determine if the Comp Plan was now in compliance with the GMA by striking the Agri-Forest Designation and creating the Rural Activity Centers). As stated, the elimination of the Agri-Forest designation, and creation of the Rural Centers, were two of the main components of the Poyfair Order. Judge Poyfair's Order states "The eradication of the centers (rural centers) violates the planning goal requiring a variety of residential densities." So, the County put the Rural Centers back in, and expanded the boundaries of those Centers. The County's position in front of the WWGMHB was that the removal of the Agri-Forest designation along with creation of the Rural Centers brought them into compliance with Judge Poyfair's Order and CCCU agreed implicitly and explicitly.

Ms. Levanen also claims that the County is out of compliance with the Poyfair Remand regarding SEPA. She is again, factually and legally incorrect. Although, it is not clear if the County did a supplemental FEIS on Remand, there was no need for the County to conduct such a review because the FEIS was *only* found to be

inadequate because the analysis: 1) failed to include an analysis of the Agri-Forest designation and 2) failed to address the exclusion of the Rural Centers. Once the County eliminated the Agri-Forest designation, and put the rural centers back into the Comprehensive Plan, there was no longer a SEPA violation. Moreover, the County's Comprehensive Plan has had to comply with SEPA since the Remand in 2004 and 2007. There have been no challenges to the SEPA analysis of which I am aware and therefore, it has complied with SEPA.

Ms. Levanen states that "'They'[17] timed the Compliance decision to happen just after the Court of Appeals decision of 1999, counting on CCCU's attorney not being available to protest the remand action". This statement is not only factually incorrect, the record shows the opposite occurred and CCCU and their attorneys participated fully in all of the proceedings.

No one outside the Court of Appeals knows when the Court is going to release its opinions. Therefore, the WWGMHB would not have known when the Court of Appeals was going to release its opinion in the CCNRC appeal of Judge Poyfair's Conclusion of Law. Even if the WWGMHB had that knowledge, it is irrelevant because the Compliance Hearing occurred on March 10, 1999, two days ***before*** the Court of Appeals released its opinion. Moreover, any claim that the CCCU attorney's ability to act was compromised in anyway is unsupportable given that CCCU's attorney filed the motion to dismiss on March 2, 1999, 8 days ***before*** the Compliance Hearing and 10 days ***before*** the Court of Appeals issued its decision. In addition, CCCU's attorney appealed the Order from the March 10, 1999 Compliance Order.

Therefore, Ms. Levanen's claim that the timing of the Compliance hearing was compromised by the issuance of the Court of Appeals' opinion is totally unsupportable since CCCU filed motions to dismiss the compliance hearing, and participated in the compliance hearing, ***before*** the Court of Appeals rendered its decision.

Ms. Levanen states that, "The Plan in place today, is the same plan that was adopted in the rural and resource land in 1994. It has never been changed and after over twenty years, legitimate changes must be made." This is patently false. The 1994 plan had 35,000 acres of Agri-Forest land designated. After the Poyfair Remand, all but 3,500 acres of that land was removed from Resource Land[18]. The 1994 plan eliminated Rural Centers, which were reinstated as part of the Poyfair remand and are now part of the current Comprehensive Plan that has been found compliant.

There are now a variety of rural densities in the Comprehensive Plan as evidenced by 3000 acres in the Rural Centers and the elimination of the Agri-Forest

[17] This writer believes that she is referring to the WWGMHB.

[18] The WWGMHB decision which disallowed the 3500 acres was appealed to the Superior Court by CCCU whose attorney filed a Motion For Judgment on the pleadings (Bennett Appeal) that the Court granted and then remanded to the Growth Board to consider in light of the Supreme Court case in *Redmond*. This writer is still unclear if the 3500 acres remained in resource land designation or reverted to 5 acre rural designation.

Resource lands. Moreover, in 2007, thousands of acres of resource land was de-designated and put into the Urban Growth Areas and/or annexed into city boundaries. New development regulations changed the way that the County dealt with timber lands[19] and, in some cases, allowed conversion of those lands to non-resource development. All of these changes, among others, have occurred over the 21 years since the original passage of the 1994 plan.

Finally, any claim that the voices of the rural residents have not been heeded since the inception of the GMA process is factually unsupportable. The County originally planned for 10-15 acre rural minimum lot sizes (not for resource lands but for just the rural zone). If one goes back and looks at the original FEIS[20] that Ms. Levanen mightly claims should have been redone, it is apparent that the rural people eventually convinced the county and the courts to reduce those minimums to the 5-acre minimum that the County ultimately imposed that minimum lot requirement[21].

The County staff had originally recommended either 10 or 15-acre minimum rural residential lot sizes north of the Resource Line (East Fork Lewis River) but that was ultimately rejected. In addition, the original Wetlands Ordinance was

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[19] The County convened a Forest Conversion Task Force that consisted of myself, three local tree farmers, a representative of DNR and a representative of WDFW and that Task Force developed a comprehensive set of regulations for protection and conversion of forest lands.

[20] The Final EIS for the County's Growth Management plans focuses its attention on Alternatives B and C. Alternative B provided for 10 acre minimum lot sizes north of the East Fork of the Lewis River, and Alternative C provided for 15 acre minimum lot sizes north of the East Fork of the Lewis River *See*, FEIS at II-11, 15. In support of the 15 acre rural lot size, the FEIS states at II-16 "minimum lot sizes in rural areas (15 acres) and for resources land would be larger and reflect the recommendation of the Washington State Department of Natural Resources (DNR)) and DCTED for minimum lot sizes in resource lands.

The FEIS also included an Alternative A, which was a continuation of the County's existing policies, including 5 acre lots. However, the FEIS concluded that continuation of the County's then current Rural Land Use Policies would not be consistent with the County's Community Framework Plan, nor the intent of the GMA As the FEIS indicates at II-8 under Alternative A the policies of the adopted Comprehensive Plans would remain in effect "This alternative may not meet the intent of the CFP (Community Framework Plan), and would be difficult to reconcile with the intents of the GMA to concentrate urban development in cities"

The FEIS goes on to note the virtues of large rural lot sizes north of the East Fork of the Lewis River. As it states at III-9:

> Alternative B would protect rural and resource lands from urban types of development Areas outside of designated UGAs would not receive urban levels of service. Lots in rural areas would be a minimum of five acres in size in the southwestern portion of the County, and 10 acres north of the East Fork of the Lewis River and east of 182nd Street This would allow residents to keep animals and engage in small-scale farming and resource-based industries such as commercial forestry, Christmas tree operations, dairying, berry farming, orchards, and mining . Supporting commercial and public uses would be concentrate d in designated Villages or Hamlets Rural lands would also serve as buffers between resource lands and urban areas.

[21] Although the WWGMHB found the 5 acre rural zone non-compliant and issued an Order of Invalidity, Judge Nichols reversed that Order (Nichols II).

dramatically changed after an outcry from organized groups from the rural area led by Chuck Cushman. Moreover, there were many rural stakeholders on the Task Forces[22] that were appointed as part of the Poyfair Remand and those voices spoke in the various reports that were issued.

Public hearings went long into the night and, in an effort to have more rural stakeholders present at those hearings, some public hearings were held at LaCenter High School rather than in downtown Vancouver. Certainly, there were many, many issues with the development of the original plan. Citizens, the County, the WWGMHB and the Courts were all trying to interpret what the real requirements of the GMA were, and how to comply. In addition, as the County was going through its processes, amendments were being made to the GMA in the legislature and after almost 6 years, the 1994 plan was compliant with all of the directives of the courts and with the tacit or explicit assent of all the parties.

Thank you for allowing me to comment on the history of the County's actions and the claims being made by CCCU. Please submit these comments to the record on both the Comprehensive Plan update and the DSEIS. I hope staff, the Planning Commission Members and the Board of County Councilors find this to be of assistance as they weigh the issues in front of them.

Sincerely,

David T. McDonald
On Behalf of Friends of Clark County

[22] Lonnie Moss, one of the founders of CCCU was also a member of the County Planning Commission during the remand period.

FRIENDS OF CLARK COUNTY
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Clark County Councilors
Comprehensive Plan Update Record
% Dr. Oliver Orjiako, Clark County Community Planning Director
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

Via pdf and e-mail to Oliver.Orjiako@clark.wa.gov

Please place in the record for the Comprehensive Plan update and, if still open, the SEPA Record

Councilors:

This matter comes before the Councilors on Tuesday, February 16, 2016 for a hearing on review of the previously adopted Preferred Alternative commonly known as Alternative 4B. Unfortunately, prior to this hearing being set, I had two matters set in court in Oregon that I cannot change. There is a chance I may be able to be present in the morning but will definitely be absent if the hearing goes beyond 12:00 noon. Therefore, please accept these comments on the DSEIS and Comprehensive Plan update for the record on behalf of FOCC and me, a citizen

At least one current councilor frequently likes to espouse that he only wants objective truths to drive the policies and rules governing this Board and this county. The following are objective truths that are fact based.

1. Councilor Madore created Alternative 4 and then, after it's efficacy was called into question by the DSEIS and the Planning Commission rejected it by a 5-1 vote, he created Alternative 4B. In creating both, he neither sought nor accepted input from legal staff or planning staff[1];

[1] As seen by exhibit 757465, Bob Pool and GIS staff assisted Councilor Madore in running the GIS program during his creation of Alternative #4 in February and March 2015 and during his creation of Alternative 4B in October 2015 but GIS staff did not give any direct or indirect input as to the validity of Councilor Madore's work but simply assisted him in running the models that he wanted to run It is this assistance that Councilor Madore has touted as GIS validating his Alternative 4B numbers GIS staff has consistently stated that they have not validated his work, much less the underlying assumptions he used to create his model.

2. According to Public Record disclosures, e-mail exchanges between Councilor Madore and Dr Oliver Orjiako in early October 2015 reveal that Councilor Madore was told that he had the opportunity to work with staff on changes to Alternative 4 after the DSEIS and the Planning Commission called Alternative 4 into question[2]. Instead, he chose to create Alternative 4B without input from legal staff, planning staff or any other councilor. However, public records further reveal that he did meet with, and receive input from, CCCU members [3]

3 Councilor Madore used his position as Chair to bring forward Alternative 4B at the October 20, 2015 hearing with no prior notice to any other councilor, the public, planning staff or legal counsel He did not share any of his proposal prior to that hearing date[4],

4. Over the next month, Councilor Madore created multiple versions of Alternative 4B with the final version (version 9) not published to public, or the other councilors or staff, until Councilor Madore posted it on the Grid the weekend before the November 24, 2015 hearing. Therefore, whereas the public had almost two years to participate in the development and evaluation of the first three alternatives, and to a lesser extent Alternative 4, the public had less than a month to evaluate the new Alternative 4B which is based upon a completely

[2] The Planning commission rejected ***every*** aspect of Alternative 4 by a vote of 4-1. ESA found, in its preliminary DSEIS that Alternative 4 did not comply with GMA on several aspects Although ESA's opinion regarding Alternative 4's lack of compliance with the GMA was not included in the DSEIS, all of the facts that led to that opinion remained in the SEPA document.

[3] It is also important to note that Peter Silliman, who has no listed background in land use planning or issues, was the only staff person working with Councilor Madore on Alternative 4 in early 2015 In an e-mail to Department of Commerce (the state agency that oversees the Growth Management Act compliance by local jurisdictions) Mr Silliman stated that he was having a great deal of contact with Ms. Rasmussen and Ms Levanen regarding Alternative #4. By allowing only one group, CCCU, to participate in the development of Alternative 4 and/or 4B, Councilor Madore appears to have violated Resolution 2014-01-10 which requires that "no single group or interest dominate the process" *See Also*, exhibit 735393.

[4] So much for collaboration and transparency.

different set of assumptions, none of which had been adopted by resolution at a public meeting[5] prior to November 24th,

5 During 35 days between October 20th and November 24th, both legal staff and planning staff reviewed and analyzed Councilor Madore's November 3rd and 4th versions. *See https //www clark wa gov/sites/all/files/community-planning/Planning%20Commission/2015%20Meetings/PlanningAssumptionChoicesdated2015-11-04-redline pdf*

6. It is important to note that staff's redline/greenline versions of Councilor Madore's November 3rd and November 4th versions were not posted by Councilor Madore to the councilor's Grid, were not provided to community members at the 2 Open Houses[6] and were not provided to the public at the November 24, 2015 hearing;

7 Prior to the November 24, 2015 hearing, Councilor Madore unilaterally made contact with RW Thorpe consultants and unilaterally determined that the county should hire these consultants to review his "B Assumptions". Some members of the public argued that this procedure was an "end around" ESA, whose evaluation of Councilor Madore's Alternative 4B was rejected by Councilor Madore and CCCU;

8. Alternative 4B has not been subjected to any environmental review process,

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[5] The planning and legal staff made some attempts in the short time allotted to them to vet the assumptions but all of those actions were rejected and/or ignored by Councilor Madore. *See https //www clark wa gov/sites/all/files/community-planning/Planning%20Commission/2015%20Meetings/PlanningAssumptionChoicesdated2015-11-04-redline.pdf,* the Staff Report of the Planning Commission and the PowerPoint and Staff Presentation to the Planning Commission on November 19, 2015. It should also be noted that Councilor Madore came to the Planning Commission on November 19, 2015, spoke as an elected official and told the PC to adopt his new alternative 4B. The Planning Commission rejected his request and voted 5-1 to re-adopt the Preferred Alternative that they voted for on September 17, 2015

[6] FOCC brought copies of the redline/greenline versions done by staff to both Open Houses and tried to hand them out but were not able to have copies for everyone and, the validity of the documents was challenged by CCCU members at the Open House in Ridgefield which led to confusion in the public regarding their validity despite the fact that they had been posted to the Planning Commission's Grid.

9. RW Thorpe evaluated Councilor Madore's new assumptions ("B" column) and with two exceptions found them invalid;

10. Councilor Madore challenged RW Thorpe's determinations at a work session in January 2016 and asserted that their use of the term "invalid" should be "indeterminate";

11. RW Thorpe responded that it used the term "invalid" because "[A]ssumptions, therefore, would either need to be valid and ***based in truth*** or not valid at all"(emphasis supplied). Under the contract guidelines, RW Thorpe & Associates, Inc. was responsible to determine which assumption "***were based in truth***", and therefore valid. *See* Exhibit 757000 (emphasis supplied) The RW Thorpe final report confirmed its preliminary report finding the majority of the assumptions to be invalid or partially invalid.

12. CCCU is claiming in public testimony that the RW Thorpe analysis is flawed but long time board member Lonnie Moss, when asked by CCCU board member Susan Rasmussen to review RW Thorpe's conclusions, stated "I thought it was poorly written and hard to follow Having said that, however, I hate to admit that most of the conclusions are probably correct"[7]. *See* Exhibit 755820 (e-mail communication between CCCU board members); and

13. RW Thorpe's report reinforces and affirms the analysis done by staff in their redline/greenline versions of Councilor Madore's assumptions and the determinations made by staff and presented to the Planning Commission on November 19, 2015;

In stark contrast to the above, the fact that Alternative #1 and/or the Planning Commission Preferred Alternative are based on the following:

1. The planning assumptions that form the foundation of Alternative 1 have either a) have been upheld by the hearings board during prior litigations and/or b) have been vetted by the public through public hearings and adopted by resolution by the former Board of County Commissioners (Boards that included Councilor Madore and Councilor Mielke voting in favor);

[7] In the e-mail exhibit, Mr Moss goes through a few examples of how the report's conclusions are correct

2 All of the cities have testified that they can accommodate the projected growth within the existing UGAs and none support either Alternative 4 or Alternative 4B. Many citizens, and prominent land use attorneys, have called into question both Alternative 4 and Alternative 4B[8]. The Planning Commission, during deliberations, continually questioned the County's ability to economically support the explosive growth that would occur under Alternative 4 and Alternative 4B;

3. The Planning Commission, after an initial 4 and ½ hours of deliberation, approved Alternative 1 with some minor additions from Alternatives 2 and 3 as the Preferred Alternative on September 17, 2015 by a vote of 5-1. After the introduction by Councilor Madore of Alternative 4B, the PC held one work session, one joint work session with the Councilors and one full hearing on the new proposal and then reaffirmed the same 5-1 vote against Alternative 4 by reaffirming their original recommendation and rejecting Alternative 4B by a 5-1 vote,

4. Neither Alternative 4, nor Alternative 4B, differentiates between legally developable lots and segregated tax lots Therefore the maps provided by Councilor Madore actually misrepresent the legal developable lots and fail to accurately reflect "what is on the ground";

5. There is no fiscal analysis of what the cost would be for the population increase that could occur under Alternative 4B. Morevoer, given the invalidity of the assumptions that form the foundation of Alternative 4B, one can only assume that its population projections far underestimate the actual population increase that it would authorize;

[8] During a public hearing on the Comprehensive Plan update, Steve Hornenstein stated "I have been struck by the fact that for perhaps the first time since the Act became law, the experienced land use attorney's - on both the environmental and the development side, are all of one mind All of us know from extensive experience that Alternative 4 violates the Act and will not be upheld". Mr. Hornestein has been involved in land use work for almost 3 decades and is one of, if not the, most respected land use attorney on the development side in the County. So for him to make this statement speaks volumes.

6. CCCU's own board member stated the following with regards to the Thorpe (and staff's) opinion re the urban/rural split: "Even the conclusion about urban-rural split being closer to 90-10 (as staff has stated and the Councilors approved via resolution) than 86-14 ***is correct***, the population growth (looking at any individual year) is closer to 90-10". *See* Exhibit 755820 (emphasis supplied), and

7. There is no analysis in the record that justifies Councilor Madore's "B" assumptions that are the foundation of his Alternative 4B and, in fact, all the analysis is to the contrary.

Based upon the above facts, FOCC and I assert that there is no legal or factual justification for the county to move forward with any Comprehensive Plan Preferred Alternative other than Alternative #1 or the Preferred Alternative adopted by the Planning Commission Both Alternative #1 and the hybrid components of the Preferred Alternative adopted by the Planning Commission are both based upon objective facts and established and affirmed legal principles. Staff, the community, two independent consultants and the Planning Commission have vetted the Alternatives. Most importantly, both suggested Alternatives have been subjected to SEPA review and, thus, would require little effort and time to bring to a Final SEIS.

In order to justify a policy, one must show their work. In this case, those who support Alternative #1 and/or the PC Preferred Alternative have shown their work in the record, in front of the Planning Commission and in the SEPA record. The work shown by advocates for Alternative #1 and/or the Planning Commission Preferred Alternative includes showing firm and established growth patterns, debunking the allegation that any of the ***legal*** lots in the rural area, including ***legal*** non-conforming lots, cannot be developed, and establishing that no land owner has ever been denied a development permit on constrained lands[9]

We also want to share the following observations:

1. Until the Charter was approved, and Councilor Madore apparently contemplated running for Chair in a county-wide election, he showed only passing interest in the Comprehensive Plan update

[9] I want to add here that if the Council decides to exclude those 3000+ lots from the matrix, identifies those lots as non-developable and passes an ordinance that none of those lots on constrained land can be developed as stated by Councilor Madore, then I will be the first person to stand up and support those findings and regulations. However, I am aware of no landowner who has been denied a development application on any constrained land as much as I wish I could say to the contrary.

process He was presented with staff reports on all of the planning assumptions, OFM numbers, work with the cities and basis for the update that eventually were adopted by rule and/or resolution and, presumably, reviewed by him. He never registered one objection. In the final work session in October 2014, staff presented the 3 alternatives and Councilor Madore had no objections to those three alternatives, and those three alternatives only, going to the DSEIS process[10];

2. Less than a month after the Charter passed, in a Board Work session, Councilor Madore raised the issue of rural landowners for the first time and suggesting a need to review whether or not changes should be made to the Alternatives Coincidentally, this determination came concurrently with the Planning Director, Dr. Orjiako, leaving for a month long trip out of the country;

3. Breaking precedent in a January 2015 work session, and without prior notice to the public or staff, Councilor Madore allowed representatives of a special interest group, CCCU, to come to a work session, sit at the table and express their grievances[11].

4. The creation of Alternative 4, and Alternative 4B, were the anti-thesis of transparency. Rather they were created in the dark, and probably in the home of Councilor Madore on his computer that he had loaded GIS software, without input from anyone but one special interest group. They were then shoved through public hearings on incredibly short notice and voted for by two of the councilors with one councilor continually protesting the lack of appropriate process.

5. Both Alternative #4 and Alternative 4B were rejected by every cities, and

6. Councilor Madore is now using political rallying techniques and tactics to try and politically box the four other councilors into supporting what is politically good for him but what we assert, and

[10] A cynic would suggest that Councilor Madore began this quest with an eye on capturing the rural vote for his run for county chair

[11] For a man who continually touts "transparency", this act was antithetical to that concept

what the independent consultants have determined, is non-compliant with the GMA

CCCU representatives have made much of the unsupportable allegation that the Poyfair opinion has never been complied with by the County I am not sure what else can be done other than the expansive and detailed legal history of the Comprehensive Plan in this county that I have created and submitted to the record along with copies of all of the opinions. Although I have previously placed it into the record, it is attached to this e-mail for the Councilors for easy reference if they believe it necessary or helpful.

I anticipate a contentious hearing. According to those who attended the CCCU town hall, the current board will be challenged personally, professionally and politically. Even if the facts and law are not on their side, I expect those in favor of Alternative 4B to chastise and threaten any councilor who would consider supporting any Alternative other than Alternative 4B

Despite protestations to the contrary, all of the independent and factual analysis of the county's comprehensive plan update support this Council approving Alternative #1 or, in the Alternative, the Preferred Alternative referred to the Council by the Planning Commission on two separate occasions by two separate and independent 5-1 votes Support for this position includes but not limited to staff's analysis, the analysis of all the city planners, the analysis conducted by ESA, the analysis conducted by RW Thorpe and the analysis (and votes) of the Planning Commission

Based upon all of the above, FOCC and myself respectfully request that this council reject the creations of Councilor Madore and adopt the legally and factually supportable Alternative #1, or the PC's Preferred Alternative, allow the final SEPA analysis to occur and then start the process of developing a Capital Facilities Plan and development regulations that implement that choice.

Our members look forward to appearing in front of the Council on February 16, 2016.

Sincerely,

/s/ David T. McDonald

David T. McDonald
On Behalf of Friends of Clark County