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Orjako  
Orjennell

Rec'd 8/12/14  
Public Comment

Clark County Board of Commissioners  
P. O. Box 5000  
Vancouver, Washington 98666

August 11, 2014

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**Re: 2007 Comprehensive Land Use Maps and the Rural Economy - For the**

\* 7 0 4 5 4 5 -  
CP16#0212

Clark County Citizens United, Inc. is concerned for the economic future of rural County and strongly suggest a small increase of developable lots on agriculture and forest land to maintain the rural economy. Non-conforming lots and county ordinances have reduced options for many long term citizens at a detriment to maintaining their important family farms, as they pay increased tax revenue. Statistics show that new construction in Fire District 3 has high value for the local tax system per capita, with very little new services required. Rural land values increase while there is less individual cost and more value to the community. Rural housing invests in the community and asks very little in return. Existing infrastructure as additional public costs cannot be counted, when the property tax value far outweighs multi-housing options on a per person, per year basis.

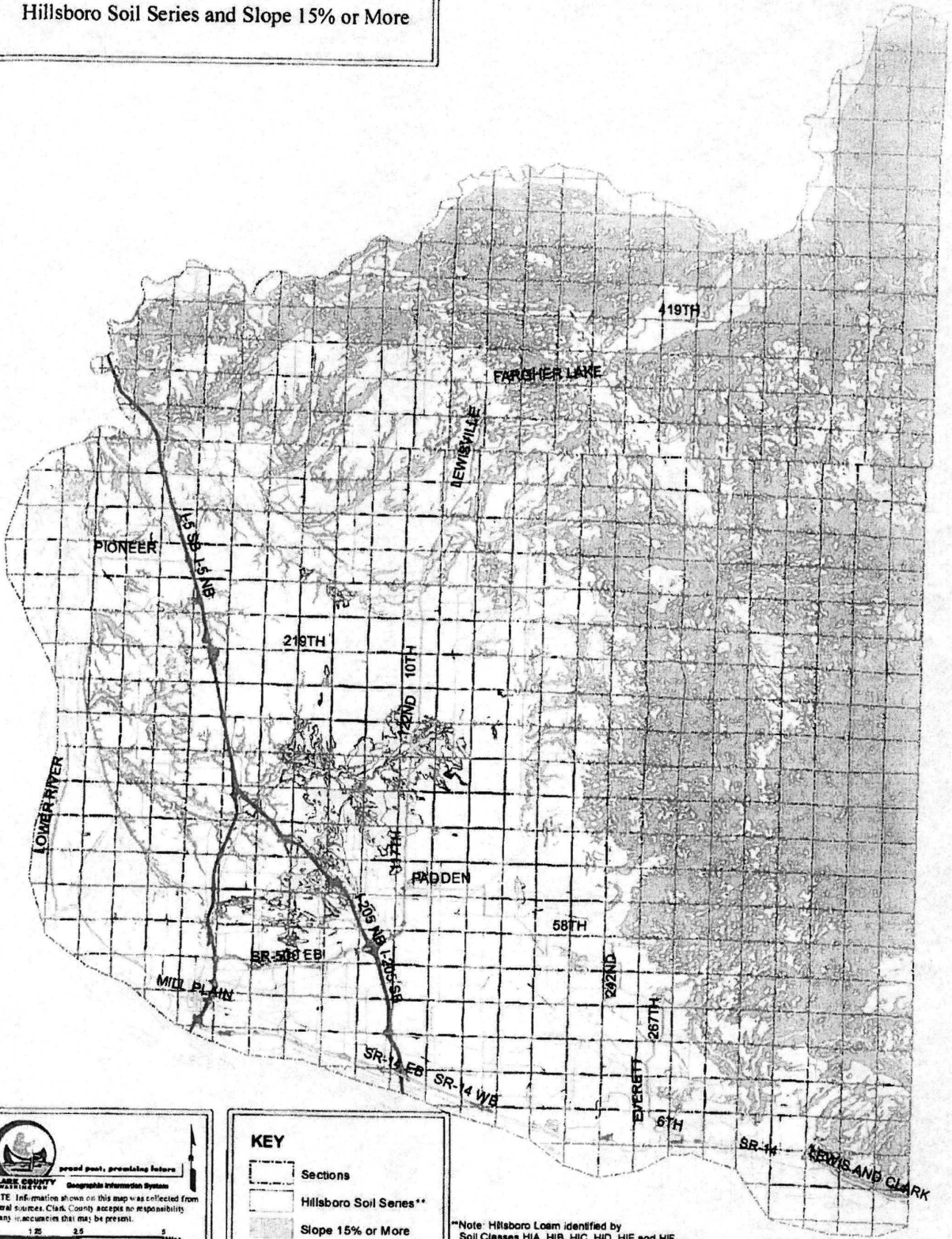
The USDA Economic Research Service has a series of data maps that give important information for land use planning. These maps indicate that the percent of sales less than \$10,000 for farms in Clark County in 2007 was 85.4% and 40% of the farmers worked off the farm. The population change rate and net migration rate for 2000 to 2010 was 10 to 25% and the density per square mile was 10,000 to 69,468, similar to King county. The natural population change rate from 2000 to 2010 was 8 to 26% Where is Clark County going to put the people? The largest increase of migration, according to the BERK study was in the rural lands and historically the ratio has been a 80/20 split.


According to USDA, The County Classification in 2013 for Clark County was Metro, with an Urban Influence Code of large Metro. This indicates that Clark County is an urban county, not a rural county. There was 0 to 4% employed in agriculture, 8-13% in manufacturing, 51-55% in services and 5-6% in government. Unemployment was 8.8 to 11.2%. The per capita income in 2008 to 2012 was \$25,000 to \$30,000. Good paying jobs need to be increased in all areas of the county, both urban and rural.

If you compare these numbers with designated resource lands in Clark County, it demonstrates that a major change needs to be made to the rural areas to compensate for these figures. But first the erroneous resource land maps need to be corrected and a true reflection of rural Clark County needs to be made. The current 2007 maps indicate that agricultural land is in the same location as forest land. Hillsboro Loam and Cinebar Loam cannot be in the same location at the same time. Clark County's maps indicate prime forest Class I-II and prime Agriculture Class I-II in areas where there are none. The maps look alike with just the colors changed. This is not a true reflection of resource lands according to the Soils of Clark County Manual. Changes and corrections need to be made because the economic future of rural Clark County depends on it.




Carol Levanen, Ex Secretary  
Clark County Citizens United, Inc.  
P.O. Box 2188, Battle Ground, Washington 98666

**Clark County, Washington**  
**Hillsboro Soil Series and Slope 15% or More**



 **CLARK COUNTY**  
 WASHINGTON  
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 Geographic Information System  
 NOTE: Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.  
 0 100 200 300  
 Feet Miles  
 Made by: P&G, Inc.  
 Revised: 12/15/2010  
 Contact: Clark County GIS Department, 1000 1st Avenue, Vancouver, WA 98660

**KEY**


-  Sections
-  Hillsboro Soil Series\*\*
-  Slope 15% or More




\*\*Note: Hillsboro Loam identified by Soil Classes H1A, H1B, H1C, H1D, H1E and H1F

# Clark County, Washington

## Cinebar Soil Series and Slope 25% or More

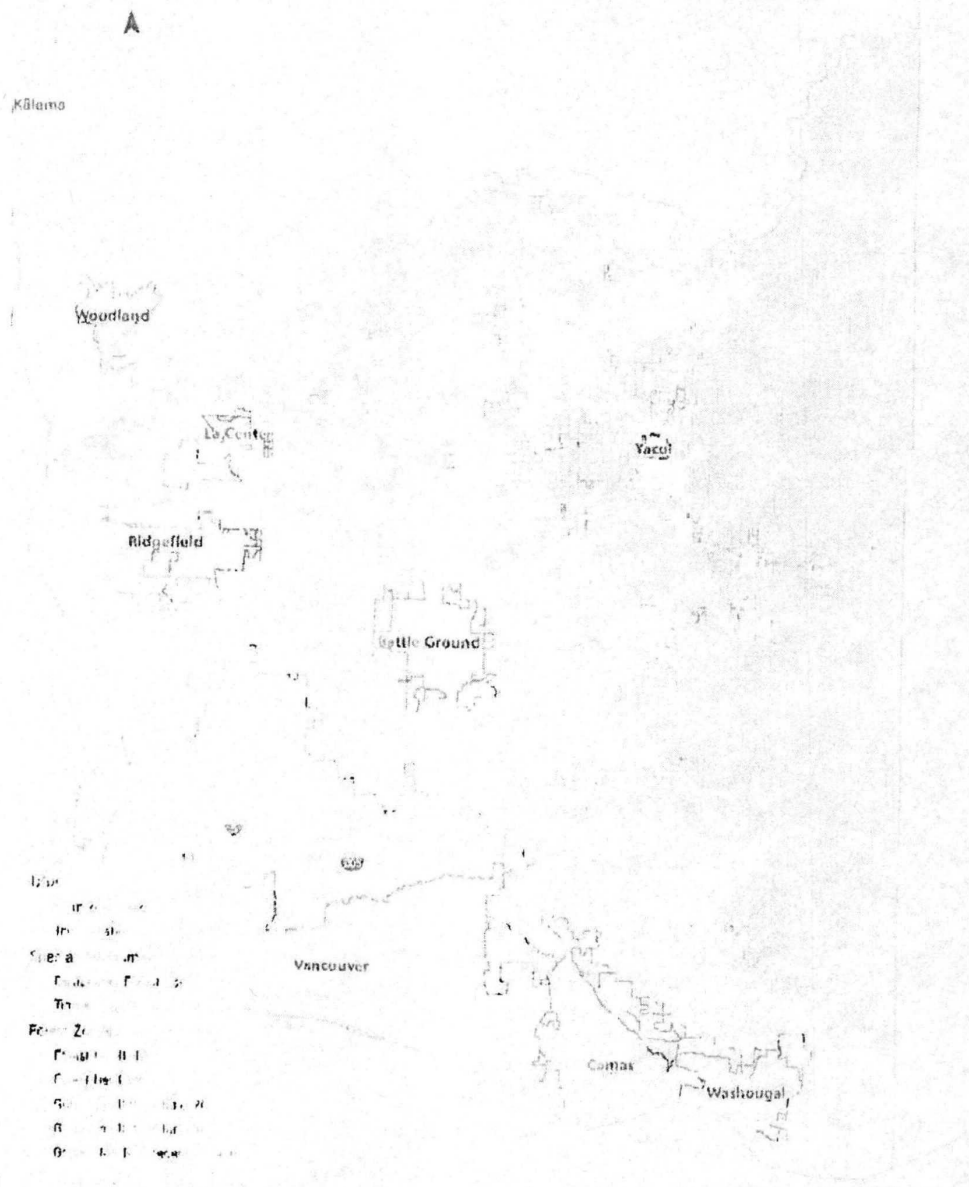



 proud past, promising future  
**CLARK COUNTY** Geographic Information System  
 NOTE: Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.  
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**KEY**  
 Sections  
 Cinebar Soil Series\*\*  
 Slope 25% or More

\*\*Note: Cinebar Loam identified by Soil Classes CnB, CnD, CnE, and CnG

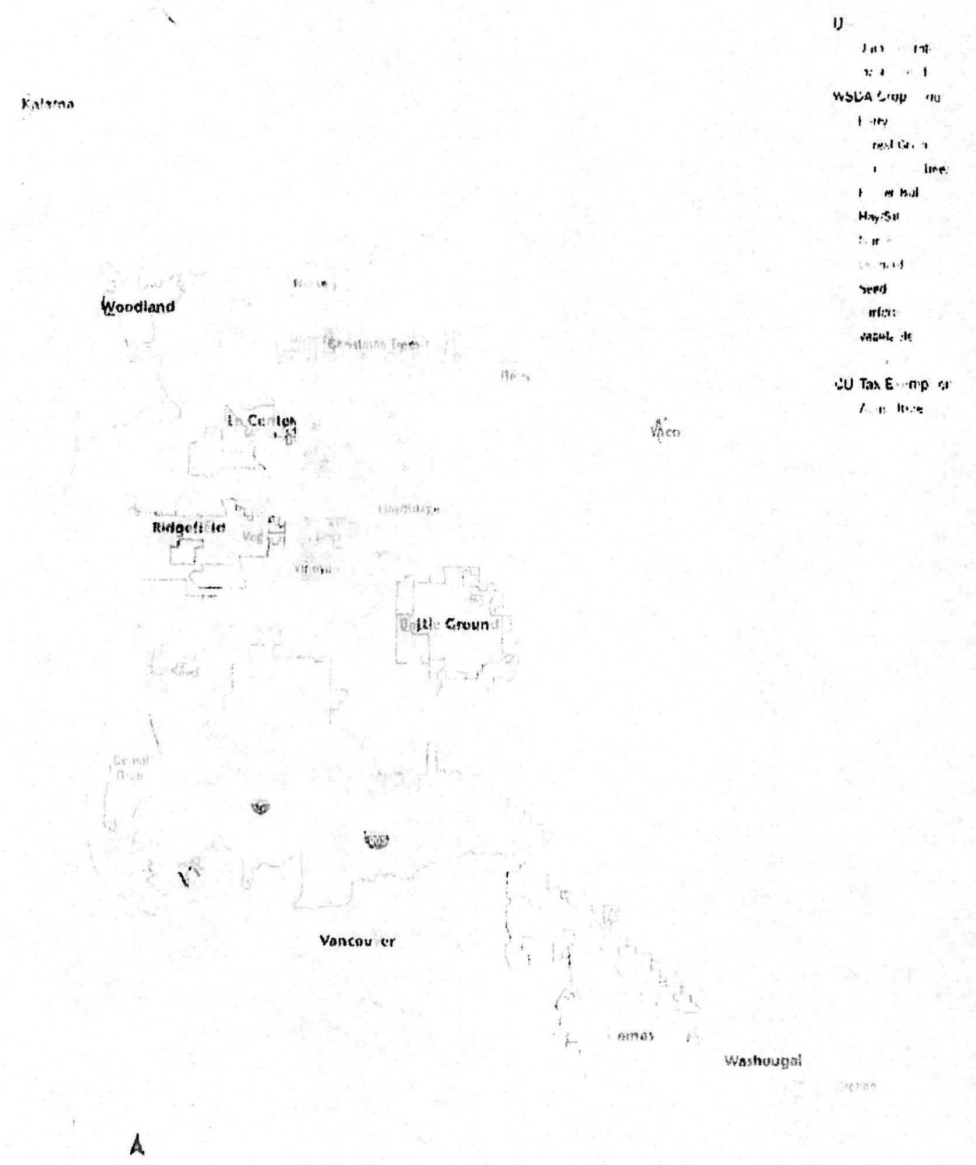
Exhibit 22: Location of Clark County Timberlands



Source: Clark County Assessor, 2011; BERK, 2012.

*Handwritten notes:* E.S. of the ...  
**RURAL LANDS STUDY: ASSESSMENT OF AGRICULTURE AND FORESTRY IN CLARK COUNTY**  
*Handwritten notes:* ... 11 ...

**Exhibit 16 Crop Type by Current Use Agriculture Designation**



A

Source: BERK, 2011.

Net farm-related income is the sum of farm sales, sales of farm byproducts, and services related to the principal functions of the farm before taxes and expenses. In many cases, farmers also have income from non-farm related

*The Payfair Remand*

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*Concepts of both previously decided to, & long-term commercial significance*

*Decided 3/12/1999*

CLARK COUNTY NATURAL RESOURCES COUNCIL CERES RCCPA v. CLARK COUNTY CITIZENS UNITED INC  
CLARK COUNTY NATURAL RESOURCES COUNCIL  
CERES RCCPA v. CLARK COUNTY CITIZENS UNITED  
INC

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**Court of Appeals of Washington, Division 2.**

**CLARK COUNTY NATURAL RESOURCES COUNCIL, Vancouver Audubon Society, Coalition for Environmental Responsibility and Economic Sustainability (CERES), Rural Clark County Preservation Association (RCCPA) and Loo-wit Group Sierra Club, Appellants, v. CLARK COUNTY CITIZENS UNITED, INC., Respondents.**

**No. 22164-1-II.**

**Decided: March 12, 1999**

John S. Karpinski, Vancouver, Jennifer Jean Peet, Portland, OR, for Appellants. Glenn J. Amster, Linda B. Clapham, Lane Powell Spears Lubersky, Seattle, for Respondents. John Tayloe Washburn, Richard L. Settle, Foster, Pepper & Shefelman, Seattle, Richard Steven Lowry, Clark County Deputy Pros. Atty., Richard T. Howsley, Randall Bryan Printz, Williams, Kastner & Gibbs, Vancouver, for Defendants. Stephen Harold G. Overstreet, General Counsel-Building Industry Ass'n of Wash., Olympia, for Amicus Curiae Building Industry of Washington.

The Clark County Natural Resources appeals a superior court determination that the Growth Management Act does not empower the Western Washington Growth Management Board to order a county to use as a cap on non-urban growth, population projections made by the Office of Financial Management. We affirm.

The Growth Management Act (GMA) is codified as RCW 36.70A. It was enacted in 1990. It applies in many but not all counties.

A county subject to the GMA is required to adopt county-wide planning policies, development regulations and, in most cases, a comprehensive plan. Such a county must designate urban growth areas, as well as agricultural lands, forest lands, mineral resource lands, and critical areas. By operation of law, such a county designates as "rural" any land "not designated for urban growth, agriculture, forest, or mineral resources."

When designating urban growth areas, a county must include land and densities "sufficient to permit the urban growth that is projected to occur in the county for the succeeding twenty-year period." In doing this, a

county must consider "the growth management population projection made for the county by the office of financial management [OFM]." OFM makes its projection pursuant to RCW 43.62.035.

Having designated urban growth areas, a county may not allow urban growth outside those areas. "Urban" growth is "growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands."

Notwithstanding the designation of urban growth areas, a county may allow non-urban or "rural" growth outside those areas. "Non-urban" or "rural" growth encompasses "a variety of uses and residential densities, including clustered residential development," provided that such uses and densities are "not characterized by urban growth," and are "consistent with rural character."

*encompasses a variety of uses e.g. residential densities including clustered residential development "consistent w/ rural character"*

Clark County is subject to the GMA. It has about 500,000 acres, many of which are urban or suburban in character. In December 1994, it adopted a comprehensive plan that designated about 83,500 acres as rural. The plan stated "that all rural lands would have a minimum lot size of 5 acres."

Numerous parties appealed the plan to the Western Washington Growth Management Board ("the Board"), including the Clark County Natural Resources Council (CCNRC) and Clark County Citizens United, Inc. (CCCU). CCNRC sought stricter controls on land use, while CCCU sought less strict controls on land use.

In September 1995, after weeks of hearings, the Board ruled, among other things, that Clark County's plan did not adequately restrict rural growth. Legally, the Board rested its ruling on two premises allegedly drawn from the GMA: (1) that population projections and allocations are not solely for use in urban areas, and (2) that the population projections for urban areas plus the population projections for non-urban areas must total the population projection for the entire county. Factually, the Board observed (1) "that the County allocated 15,000 of the population projection number for non-urban growth;" (2) that the County had "an excess of 13,500 preexisting undeveloped tax lots;" and (3) that the County had based its planning on an average of 2.33 persons per household. As a result, according to the Board, "there would be more than twice the number of lots available to house the allocated 15,000 population projection, even without additional divisions of land that would likely occur over the next 20 years." Based on this view of the law and facts, the Board ruled that the GMA precluded 5-acre lots in rural areas, and it ordered the County to "increase the minimum lot sizes" in such areas.

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

*GMA doesn't require the county to use OFM's pop. projections as a fixed cap on rural growth*

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

The GMA requires a county to consider OFM population projections when sizing urban growth areas. Thus, RCW 36.70A.110 provides in pertinent part:

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

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

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

Attempting to forestall a holding based on the GMA's plain meaning, CCNRC argues that "the conclusion that the OFM population projection is a hard cap not to be exceeded is supported by a review of the Growth Management Act ("GMA") as a whole." It is our view, however, that such a review tends to detract from, not support, CCNRC's position. As already observed, the GMA requires counties to use OFM's projections when planning for urban growth. It omits any reference to counties using OFM's projections when planning for non-urban growth. The implications are (1) that the legislature considered how OFM's projections should be used; (2) that the legislature decided to require that counties use OFM's projections when planning for urban growth; and (3) that the legislature decided not to require that counties use OFM's projections when planning for non-urban growth.

CCNRC argues that the trial court was required to defer to the Board's interpretation of the GMA, and that this court must also. Although a court will defer to an agency's interpretation when that will help the court achieve a proper understanding of the statute, "it is ultimately for the court to determine the purpose and meaning of statutes, even when the court's interpretation is contrary to that of the agency charged with carrying out the law." Here, in our view, the Board misread the statute and exceeded its authority. If we were to defer to its ruling, we would perpetuate, not correct, its error. Under these circumstances, we hold that deference is not due.

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

Affirmed.

#### FOOTNOTES

- 1. See RCW 36.70A.040(1), (2).
- 2. RCW 36.70A.040(3).
- 3. RCW 36.70A.040(3)(c); RCW 36.70A.110(1).
- 4. RCW 36.70A.040(3)(b); RCW 36.70A.170(1); RCW 36.70A.030(2), (5), (8), (11), (17), (18), (19), (20). In 1994, subsections 17-20 were numbered 14-17, respectively.
- 5. RCW 36.70A.070(5).
- 6. RCW 36.70A.110(2); see RCW 43.62.035.
- 7. RCW 36.70A.110(2).
- 8. RCW 36.70A.110(1); RCW 36.70A.010(1), (2).
- 9. RCW 36.70A.030(17). In 1994, this subsection was numbered 14 rather than 17.
- 10. RCW 36.70A.110(1) ("Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. ").
- 11. RCW 36.70A.030(15). We use this subsection as a present indicator of legislative intent, even though it was not enacted until 1997. See Wash. Laws 1997, ch. 429, § 3.



RCW 36.70A.070(5)(b), as amended in 1997. In 1994, the GMA allowed "uses that are compatible with the rural character of such lands," and "a variety of rural densities." Former RCW 36.70A.070(5); Wash. Laws 1990, ch. 17, § 7.

Clerk's Papers at 38.

The Board also made many other holdings that we are not asked to review.

Clerk's Papers at 39-40.

Clerk's Papers at 79.

The superior court said in part: It is evident the rural land use density regulations were driven in part by earlier Growth Management Hearing Board decisions requiring urban population plus rural population to equal Office of Financial Management population forecasts. [Citation omitted.] This formulaic view of the GMA requirement is fatally flawed. There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for. The Board's requirement to, in essence, require a vacant buildable lands analysis for the rural area was erroneous. This Board decision, however, compelled the County to downzone substantial portions of the rural areas in order to meet the Board's apparent requirements. Clerk's Papers at 739-740.

Appellant's Brief at ii.

*City of Pasco v. Public Employment Relations Comm'n*, 119 Wash.2d 504, 507, 833 P.2d 381 (1992) (construction of statute is question of law).

*City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wash.2d 38, 46, 959 P.2d 1091 (1998). In other words, we review the trial court's ruling "de novo."

We discuss due deference to the Board later in this opinion.

Respondent's Brief at 22.

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. That question is not presented by this appeal.

Appellant's Brief at 19.

*Snohomish County v. Anderson*, 123 Wash.2d 151, 157, 868 P.2d 116 (1994), quoting *Washington Natural Gas Co. v. PUD 1*, 77 Wash.2d 94, 98, 459 P.2d 633 (1969) ("Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature"); *Bour v. Johnson*, 122 Wash.2d 829, 836, 864 P.2d 380 (1993); *State v. Roadhs*, 71 Wash.2d 705, 707, 430 P.2d 586 (1967).

*City of Redmond*, 136 Wash.2d at 46, 959 P.2d 1091; *City of Pasco*, 119 Wash.2d at 507, 833 P.2d 381; *Cowiche Canyon Conservancy v. Bosley*, 118 Wash.2d 801, 813-14, 828 P.2d 549 (1992); *Overton v. Economic Assistance Auth.*, 96 Wash.2d 552, 555, 637 P.2d 652 (1981).

*Overton*, 96 Wash.2d at 555, 637 P.2d 652 (citation omitted); see also *Cowiche*, 118 Wash.2d at 815, 828 P.2d 549.

MORGAN, J.

BRIDGEWATER, C.J., and REYNOLDS, J.P.T., concur.