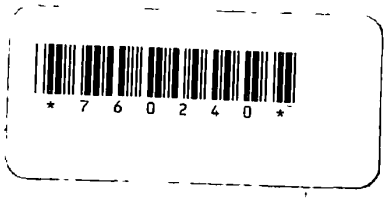


December 30, 2015

Dear Councilor Olson and Boldt,

With the proposed changes to the 2016 Comprehensive Plan, CCCU, Inc. would like you to seriously consider the duties you have pledged to uphold. In order to determine what is fair and equitable for all of the people living in the county, we ask you to put yourself in the people's place. Please consider this.

Since records were kept, the rural and resource areas of Clark County have been a variety of small parcel sizes with most being 10 acres or less. The 1950 agriculture census said farms were predominantly small parcels. Larger parcels were created when landowners wanted more land and bought it from neighbors through a boundary change. Some landowners inherited larger parcels from ancestors who homesteaded the area. But, the option to divide land and their development rights were always available when needed.

1. Prior to 1960 - There was no zoning in rural and resource areas. - People divided land when they needed. They knew they had the option and their development rights to do so, if and when that need arose

2. 1960 to 1980 - The county placed a FX 1 acre zone on rural and resource land - For 20 years this zoning was in place. People divided their land when they needed to. The majority of parcels were larger than this zone. The people knew they had development rights and the option to divide land when needed.

3. 1980 - 1994 - The county placed 2.5, 5. 10, and 20 acre zones on all rural and resource areas. - For 14 years this zoning was in place. People only divided their land when needed, but for many that option and their development rights were gone, because their parcels were smaller than these zones. There was a housing shortage in the 80's and more parcels were created to meet that demand for homes.

4 1994 - 2015 - The county placed 5, 10, 20, 40, and 80 acre zones on all rural and resource areas. For 22 years this zoning has been in place. The development rights and the option for dividing land was gone for most of the landowners. Their ability to produce an income from their land via development rights, or add and subtract land, was gone. This imposed a great financial and cultural burden on these landowners.

What would you do, if this happened to you? .....This is what happened.
* The people rebelled and hundreds came to county meetings to protest. The county ignored their pleas.
What would you do if this happened to you?.....This is what happened.
* The people appealed the zoning with over 100 appellants, individually or as a group or organization. The county continued to ignore their pleas.
What would you do if this happened to you?.....This is what happened.
* The people took their cases to the Superior Court and the Court of Appeals. The people won in court. The county continued to ignore their pleas.
What would you do if this happened to you? .....This is what happened.

You, as councilors have the ability to help these rural and resource people who lost so much since the erroneous plan of 1994, using a GMA unauthorized formula, was adopted. Even in 1980 the people were very patient with their local government, expecting as time went by, they would again return what was taken from them, when land would be upzoned in the future. No one expected the county would do a massive downzone, dictated by one city, a small environmental group and a rogue environmental attorney

What are you going to do now, to correct this illegal travesty to the people?
Choosing Alternative 4 is the right thing to do, and Clark County Citizens United, Inc. will fully support that decision.

EXHIBIT 8

PLANNING COMMISSION MINUTES
MINUTES OF MEETING
WEDNESDAY, JUNE 22, 1994

Foster Hall Auditorium
Ft. Vancouver Way
Vancouver, Washington

6:00 p.m.

CALL TO ORDER

The meeting of the Clark County Planning Commission was called to order at 6:00 p.m. by Acting Chair, Darrell Badertscher, at the Foster Hall Auditorium, Vancouver, Washington.

ROLL CALL & INTRODUCTION OF GUESTS

Commissioners Present: Darrell Badertscher, Wally Hornberger, Chris Orman, Marilyn Koenninger, Ben Shafton, and Elena Risto-Robson.

Commissioners Absent: Vaughn Lein, Chairman; Cliff Cauble, Vice Chairman; and Jack Burkman.

Staff Present: Craig Greenleaf, Planning Director; Jerri Bohard, Section Supervisor, Growth Management; Brian Carrico, Planning Intern; Monty Anderson, Senior Planner; Peggy Scolnick, Planner II, Oliver Orjiako, Planner II; and Sonja Wiser, Administrative Assistant.

Other: Cindy Holly, Court Reporter.

PUBLIC MEETING ITEM

Draft Growth Management Comprehensive Plan for Clark County and the land use alternatives being analyzed for both the County and the various urban growth areas. The proposed Comprehensive Plan for the County contains policies for accommodating expected growth over the next twenty years as mandated by the Growth Management Act.

BADERTSCHER: I'd like to call the Clark County Planning Commission meeting to order for June 22, 1994. This is a hearing for the draft Growth Management Comprehensive Plan. Mr. Craig Greenleaf, the director, is going to say a few opening comments.

GREENLEAF: Thank you. I wanted to first of all thank you all for coming this evening. I know there are a number of competing events and we will certainly have additional opportunities for additional public comment about the plan and certainly we'll look forward

JOHN S. KARPINSKI
Attorney at Law
2612 E. 20TH STREET
VANCOUVER, WA 98661
(206)690-4500
FAX (206)695-6016

March 16, 1994

VIA FAX 699-2011

Peggy Scolnick
Clark County Planning
P.O. Box 9810
Vancouver, WA 98666-9810

Re: CCNRC Green Alternative Details

Dear Peggy:

Thank you for your inquiry regarding details of CCNRC's Green Alternative, and the County's apparent consideration of including this alternative as a full and complete alternative in the Growth Management DEIS. 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. Here is a brief outline of the elements that we consider key to any Green Alternative:

I. **URBAN GROWTH BOUNDARIES**

A. Shrink all Urban Growth Boundaries from approved Interim Boundaries.

B. Shrink Vancouver UGB based on map I presented at recent meeting with County staff, except exclude all of Felida west of McCann Road.

C. Shrink Washougal UGB by area inside Columbia Gorge National Scenic Area.

D. I would be more than happy to take a few minutes and sit down with you and other staff, to go into more detail on each of these UGBs. Please call and schedule a time if you are interested.

II. **INCREASED AG/FOREST PROTECTIONS.**

A. Increase lands designated for Agriculture by removing parcelization criteria; paramount factor should be soil type.

B. Lands currently useable as both Ag/Forest but currently fall into neither category should be categorized as Ag/Forest with appropriate minimum acreages.

C. Minimum acreages described in Internal Draft 3-11-94 Alternative C are acceptable for SEPA purposes for Ag and Forest minimum lot sizes.

III. **RURAL DEVELOPMENT SCENARIOS.**

A. Minimum lot sizes suggested in 3-11-94 Internal Draft acceptable, but should be re-labeled to: 10 acres: Rural; 15 acres: Rural Conservancy.

B. Clear and specific policies limiting development on currently valid but soon to be substandard lots must be include Potential solutions include: 1) a lottery for building permits that will ensure that no more than approximately 1/20th of the rural residential growth

EXHIBIT A

projection is implemented per year; 2) required amalgamation of rural lots; and 3) an aggressive program of transferrable development rights, excise tax increase to buy development rights, etc. to obviate any major takings concerns.

C. Substantially reduced or eliminated "rural activity centers".

IV. INCREASED CRITICAL AREA PROTECTIONS.

A. Broad extension of strong wetland regulations including, but not limited to, rural areas and Category 5 wetlands.

B. A broad program of sensitive wildlife habitat protection beyond the Washington Department of Wildlife PHS program as to be recommended by the scientist Citizens Wildlife Habitat Committee.

C. Substantial new development limitations in Critical aquifer recharge areas, floodplains, steep slopes, etc.

I hope this outline provides you sufficient detail as to be able to include, analyze and model a Green Alternative in the Draft EIS. If you have any questions regarding any of these issues, or wish more details (for example, like on Urban Growth Boundaries), I will gladly meet with you to discuss these issues. Please be advised that I will be on vacation from April 1 through April 14. Also please be advised that CCNRC is willing to accept combining the Rural Clark County Preservation Association Rural Alternative with CCNRC's Green Alternative. Although there are minor differences between CCNRC and the rural group's plan (CCNRC opposes family compounds, requests larger lot sizes for Forest zones), the Internal Draft of 3-11-94, combined with the comments herein, should help to accurately present a comprehensive course of action that is both consistent with CCNRC and the Rural Clark County Preservation Association's interests, and is the best course of action for the community.

Thank you again for your continued consideration of including a Green Alternative as a full and complete alternative in the Growth Management Plan EIS.

Sincerely yours,

John S. Karpinski

JSK/dmk

cc: Jim Seeley
Craig Greenleaf
Ed Gallagher
Onofre Contreras
CCNRC Chair
RCCPA

scolnick.ga

This is the Comprehensive Plan we have today, in its intirety we need more alternatives in the 2016 Comp Plan that demonstrate reality.

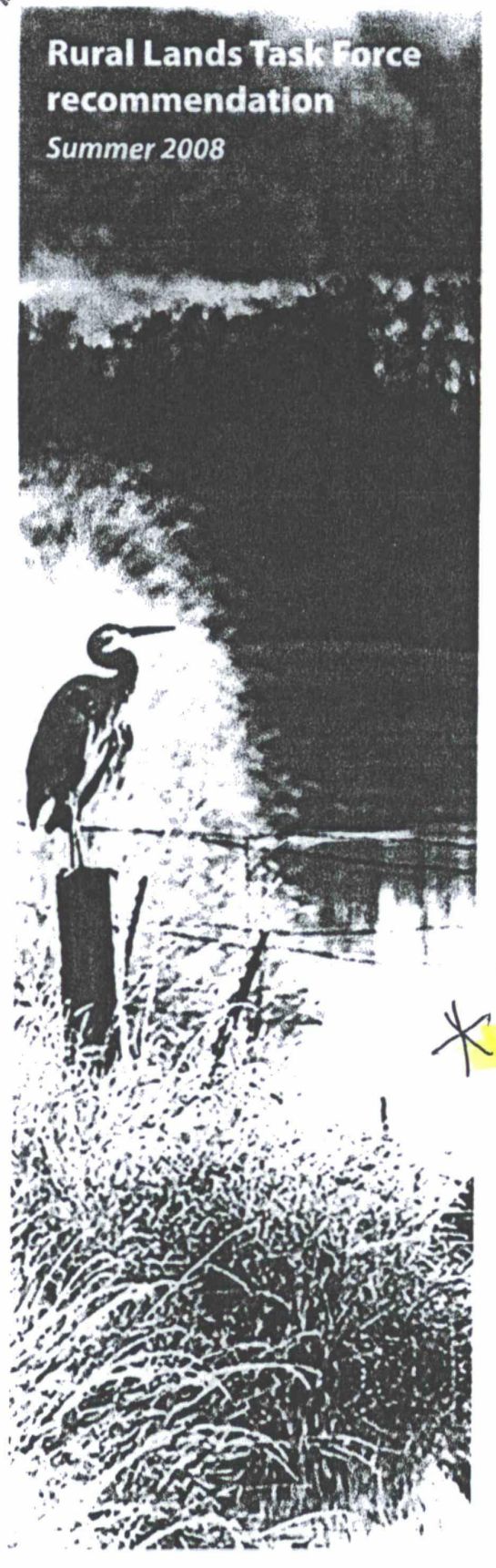
Large lot sizes resulting in low densities are the main reason these four subareas are described as rural. Table I-E is a breakdown of housing in these areas by lot size. By comparing this table with Table I-C, the rural nature of Camas/Washougal, Ridgefield/La Center, Battle Ground and Yacolt is apparent. The Vancouver/Evergreen area has a majority of lots which are between *5,500* and *43,559* square feet. In the other subareas the lot sizes are fairly evenly distributed between *5,500* and *43,559* square feet, *1* to *4.99* acres, and *5* acres and over; with *1* to *4.99* areas the most common lot size. A map detailing existing land uses is available at the Regional Planning Council office and offers a more complete description of the distribution of these residential categories. The size and complexity of the map prohibits reproduction for this report.

As the County continues to grow, people seeking a rural life style will want to live in these four areas. Rising costs of land and the demand for it will threaten their rural character. The community must decide whether to create a desirable living environment inside existing urban areas or to allow continued encroachment into rural forest and farm land. Creating a desirable urban environment means a thoughtful consideration of open space, building design, lot layout, landscaping, access, and all other factors which give a neighborhood a feeling of warmth and community. By attracting people to existing urban areas and only allowing low density development outside urban service areas, an option for a rural lifestyle can be preserved.

Industrial Areas

There is a large supply of land currently zoned or designated by an adopted comprehensive plan for industry in Clark County. Unfortunately, as a recent report, Industry in Clark County, (published by the Regional Planning Council) points out, only *32* percent of the total undeveloped land designated for industrial use is suitable for future development. Copies of the Industry in Clark County report are available in the Regional Planning Council office.

The majority of the developed industrial sites, totaling *8,753* acres, are located inside adopted urban service areas. Exceptions are sand and gravel mining operations located on the East Fork of the Lewis River and Columbia River, the Evergreen area and a forest products mill in Chelatchie Prairie. Of all the developed districts, the SR *14*/Columbia, Highway *99*, St. Johns, Camas/Washougal and Ridgefield districts are the most completely developed.



The Clark County Comprehensive Growth Management Plan includes a Rural Element. In early 2008, the Board of Clark County Commissioners began a review of rural planning issues by appointing a Rural Lands Task Force. The task force of rural residents is recommending a local definition of rural character and a vision to guide an update to the Rural Element of the growth plan. Below is the recommendation, followed by more information about the project.

For Clark County, rural character is:

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

Rural vision statement

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

- Ease regulations and provide tax incentives for encouraging small scale agriculture and forestry;
- Expand cluster development in agricultural and forest zones;
- Create 5-acre agriculture and forestry homestead zones;
- Expand uses of rural centers to enhance their economic viability and community identity;
- Graduate lot sizes radiating from rural centers;
- Create a Zoning Fairness Board;
- Protect wetland and wildlife habitats;
- Allow and encourage alternative energy projects;
- Facilitate creation of local utility districts in and around rural centers;
- Expand recreational opportunities.

The Rural Lands Task Force was appointed by the Board of Clark County Commissioners in May 2008. The task force members were from unincorporated areas near Amboy, Battle Ground, Camas, La Center, Vancouver, Woodland and Yacolt. All are long-time residents of rural Clark County.

Members

Ginger Burr
Sharon Bussler
Dan Dupuis
Russ Grattan
Doug Hagedorn
David Halme
Rocque Merritt
Monty Multanen
Danny Walsh
Byron Woltersdorf
Robert Zumstein

More information

- www.clark.wa.gov/longrangeplan/projects/rural-lands-review.html
- Growth Management Act (Washington State RCW Chapter 36.70A)
- Clark County Comprehensive Plan, Chapter 3 Rural Element

Sign up for future news and announcements

E-mail: Marilee.McCall@clark.wa.gov

Project contact

Gordy Euler, Clark County Community Planning
(360) 397-2280 ext. 4968
E-mail: gordon.euler@clark.wa.gov

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3.1.3.3 Public Water Supplies

The GMA requires each jurisdiction to include Capital Facilities and Utilities elements in its comprehensive plan. This element must include an inventory of existing facilities, including identification of existing deficiencies. The information in this section was taken from the Capital Facilities and Utilities elements of each city and the County.

Approximately 92 percent of the County is served by public water suppliers. These agencies adopted a *Coordinated Water System Plan* in 1992 to ensure that water service is available to meet the needs of expected development. The water utility service areas defined by the plan include Public Utility District Number 1 of Clark County (CPU) and the cities of Vancouver, Camas, Washougal, Battle Ground, Ridgefield, and Yacolt. In remote areas of the County where water service is not readily available, CPU manages "satellite systems" which serve small developments and clusters of homes. Figure 22 shows the water service areas in the County.

Virtually all of the water used in Clark County, supplied by both private wells and public systems, comes from groundwater sources. Although adequate water supplied for individual domestic or small-consumption commercial wells can be found in most parts of the County, aquifers capable of providing large amounts of water for long periods of time are few. The principal aquifers are in the southern part of the County along the Columbia River. Section 3.1.3.2 contains a discussion of the critical aquifers and recharge areas in the County.

Providing an adequate supply of water to meet future demand is essential to ensure the continued growth and economic viability of Clark County. Because many of the most readily available sources have been developed, new supplies will need to be found. Potential future supplies include various surface water sources, water from deeper aquifers, and additional pumping of existing wells.

Provision of public water service involves not only identifying an adequate source (groundwater or surface water) but also construction of treatment plants and pump stations and water lines to deliver the water to development. Each of the cities (except La Center) and CPU operates a water utility with user charges established to cover the cost of operating and maintaining the system.

In the past, water lines were extended to serve development with little consideration of the expected ultimate density of development in an area. As a result, there are areas with water service which will need to be upgraded in order to support additional development. This is particularly the case when water for fire suppression is considered.

Under the GMA, water service is one of the public facilities/utilities which is subject to the concurrency requirement--that is, development may not be approved unless plans are in place and financing secured to provide the necessary water service at the time that the development comes on line. In addition, the water service must be sized to accommodate planned development densities in an area. Section 3.3.5 discusses proposed concurrency management measures.

Impacts on Public Water Supplies

Continued growth in Clark County will increase demand for water for domestic and industrial uses. Based on current consumption rates, the expected growth will result in an increased demand for water from approximately 11.5 billion gallons per year to 25.5 billion gallons per year. Existing groundwater sources, when combined with new wells, are expected to be able to meet this need. New wells will be located primarily along the Columbia River. Surface water is not a desirable source of water because it requires more extensive treatment prior to use than groundwater does.

Up until the passage of the GMA, the State of Washington required counties to prepare only two elements (land use and circulation) in their comprehensive plans, although other elements were permitted. In addition to mandated comprehensive plans, Clark County established the Boundary Review Board to assist in the management of public services to developing areas. The Boundary Review Board established USAs which manage the provision of urban services to developing areas in a more coordinated fashion. These service areas were created not to confine growth to specific portions of the County, but to assure that urban services could be provided to new development and to reduce conflicts among service providers.

While these two pieces of legislation provided some guidance to land development in Clark County, specific growth management strategies were not developed. As a result, actual development patterns and land use designations throughout Clark County have been decided primarily through zoning ordinances, area-specific plans, or state and federal mandates including the Shoreline Master Program, the Parks and Open Space Plan, the Bikeways and Trails Plan, the Coordinated Water System Plan, the Groundwater Management Plan, the Solid Waste Management Plan, the Zoning Ordinance, the Subdivision Ordinance, and SEPA.

As a result of this uncoordinated approach to growth management, Clark County and the seven cities within the County have a variety of parcelization and development patterns. Development standards and local policies related to growth are not consistent throughout the County. There is an example of virtually every approach to land use management in the County--from integrated pockets of higher density, mixed-use areas (industrial, commercial, and residential) like downtown Camas, to developments near Felida or Meadow Glade that separate uses, minimize compatibility issues, and maximize personal privacy. The County also has a few remaining large parcels of land (300 or more acres) and a large number of small lots (less than 10 acres) in rural areas. Figure 26 shows existing parcelization and Figure 27 shows existing land uses.

Growth in Clark County has occurred in cycles, affected by national and regional trends. Most of the County's population growth over the last 25 years has occurred outside incorporated cities in unincorporated communities (such as Hazel Dell, Felida, and Cascade Park) and rural areas. In 1990, only about 27 percent of the County's population (63,689 people) lived in incorporated cities. Table III-11 presents historic population data for the County.

Table III-11
Historic Population Trends (1970-1990)

Jurisdiction	1970	1980	*Change*	1990	*Change*
Clark County Total	128,454	192,227	*63,773*	238,053	*45,826*
Incorporated	54,267	57,218	*2,951*	63,609	*6,391*
Unincorporated	74,187	135,009	*60,822*	173,844	*38,835*
Battle Ground	1,438	2,744	*1,306*	3,758	*1,014*
Camas	5,790	5,681	*-109*	6,798	*1,117*
La Center	300	439	*139*	483	*44*
Ridgefield	1,004	1,062	*58*	1,332	*270*
Vancouver	41,859	42,834	*975*	46,380	*3,546*
Washougal	3,388	3,834	*446*	4,764	*930*
Woodland (part)	n.a.	80	*n.a.*	94	*14*
Yacolt	488	544	*56*	600	*56*

Source: U.S. Bureau of the Census.

Agricultural lands—Legislative directive of growth management act: See note following RCW 7.48.305.

Building permits—Evidence of adequate water supply required: RCW 19.27.097.

Expediting completion of projects of statewide significance—Requirements of agreements: RCW 43.157.020.

Impact fees: RCW 82.02.050 through 82.02.100.

Population forecasts: RCW 43.62.035.

Regional transportation planning: Chapter 47.80 RCW.

Subdivision and short subdivision requirements: RCW 58.17.060, 58.17.110.

36.70A.010 Legislative findings. The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth. [1990 1st ex.s. c 17 § 1.]

36.70A.011 Findings—Rural lands. The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural counties must have the flexibility to retain existing businesses and allow them to expand. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit.

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life. [2002 c 212 § 1.]

36.70A.020 Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance. [2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

36.70A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

soil composition

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36 70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36 70A 110(4).

(18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(19) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A 170. A pattern of more intensive rural development, as provided in RCW 36 70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(20) "Urban growth areas" means those areas designated by a county pursuant to RCW 36 70A 110.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [2012 c 21 § 1. Prior: 2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9; prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

Reviser's note: *(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

**(2) RCW 36.70A.1701 expired June 30, 2006.

Intent—2005 c 423: "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

Effective date—2005 c 423: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005]." [2005 c 423 § 7.]

Prospective application—1997 c 429 §§ 1-21. See note following RCW 36 70A 3201.

Severability—1997 c 429: See note following RCW 36 70A 3201.

Finding—Intent—1994 c 307. "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36 70A 020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36 70A 030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36 70A 170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36 70A 060(3)." [1994 c 307 § 1.]

Effective date—1994 c 257 § 5: "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

Severability—1994 c 257: See note following RCW 36 70A 270.

Additional notes found at www.leg.wa.gov

36.70A.035 Public participation—Notice provisions. (1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Posting the property for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

Honorable Edwin J Poyfair
PRESENTATION: Friday, April 4, 1997, at 10:30 AM

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLARK COUNTY CITIZENS UNITED, INC.; MICHAEL ACHEN and CATHERINE ACHEN, husband and wife, et al., Petitioners and Additional Parties of Record, v. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, a Washington agency, Respondent.	NO. 96-2-00080-2 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came on for hearing before the above-entitled Court on October 16, 1996, upon the Petition for Review of Petitioners. Clark County Citizens United, Inc., Michael and Catherine Achen (collectively referred to herein as "Petitioners"), appearing by and through their attorneys of record, Lane Powell Spears Lubersky LLP and Glenn J. Amster; and Respondents, Western Washington Growth Management Hearings Board (hereinafter referred to as "WWGMHB"), appearing by and through the Office of the Attorney General and Marjorie T. Smitch, Assistant Attorney General; Clark County, appearing by and through the Office of

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

the Prosecuting Attorney, and Richard S. Lowry, Chief Civil Prosecuting Attorney; additional parties of record Clark County Natural Resources Council, Vancouver Audubon Society; Loo-Wit Group Sierra Club, Coalition for Environmental Responsibility and Economic Sustainability and Native Footprints, appearing by and through their attorney, John S. Karpinski; David R. Becker and Joan Becker, et al., appearing by and through their attorneys, Richard T. Howsley and Lisa M. Graham; William W. Saunders and Clark County Home Builders Association, appearing by and through their attorneys, Landerholm, Memovich, Lansverk & Whitesides, P.S. and Randall B. Printz; Rural Clark County Preservation Association, appearing by and through its representative Robert Yoesle, pro se; and W. Dale DeTour, appearing pro se; and the Court, having considered the complete record before the WWGMHB, and the pleadings and exhibits herein, having heard argument of counsel and taken the matter under advisement, and having rendered an oral decision on February 21, 1997, now enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. This case was brought before this Court on Petitioners' Petition for Review pursuant to the Growth Management Act ("GMA"), RCW 36.70A.300. Petitioners challenged several elements of the Clark County Comprehensive Plan, which was adopted by the Clark County Board of County Commissioners in December 1994. Petitioners brought this appeal following the Western Washington Growth Management Hearings Board's ("the Board") final decision on December 6, 1995, denying Petitioners' claim that the Clark County Comprehensive Plan violated the GMA.

2. Clark County began its comprehensive planning process, pursuant to the GMA, RCW Ch. 36.70A, in 1991. The County adopted County-Wide Planning Policies, under RCW 36.70A.210, and then a Community Framework Plan, to form a vision of Clark County's future. Following adoption of this Plan, the County formed a Rural and Natural Resource Committee ("RNRAC"). This committee was delegated the task of identifying lands within the County to

be designated natural resource lands, as required by RCW 36.70A.050. The designated resource lands would become part of the County's 20-year growth plan, the Clark County Comprehensive Plan.

3. In addition to designating agricultural and forest resource lands, Comprehensive Plan adopted by Clark County designated 36,000 acres of "agri-forest" resource land. This classification was a hybrid of two GMA resource lands, agricultural and forest resource land. This hybrid resource category and the lands designated in this category were never considered by RNRAC.

4. The agri-forest lands were also not a part of the County's environmental review process completed in conjunction with the County's comprehensive planning. The County issued an Environmental Impact Statement ("EIS") prior to the release of the draft Comprehensive Plan in September 1994. However, none of the alternatives for planning addressed in the environmental review document discussed the 36,000 acres of agri-forest resource land.

5. The adopted Plan also eliminated an element of the Community Framework Plan, the concept of rural town centers, known as "villages" and "hamlets." These rural activity centers were focussed on identified pre-existing development patterns and designed to maintain the existing character of rural growth. The centers were eradicated and replaced with a county-wide uniform lot density in the final Comprehensive Plan. Clark County issued a policy memo stating that the reason the rural activity centers were removed from the plan was that previous Growth Management Board decisions appeared to prevent the County from allowing any growth in rural areas. Specifically, according to Board decisions, the sum of the urban and rural population was required to equal the population projection developed by the State Office of Financial Management (OFM). Given the population growth allocated to Clark County's urban growth areas, the Plan would violate this requirement if virtually any growth was allowed in the rural areas.

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

6. Any Findings of Fact which is more properly a Conclusion of Law shall be deemed a Conclusion of Law.

CONCLUSIONS OF LAW

1. Jurisdiction. This Court has jurisdiction over this case pursuant to RCW 36.70A.300 and RCW 34.05.514.

2. Standard of Review. This Court reviews the Board's decision concerning questions of law de novo to determine whether the Board erroneously interpreted or applied the GMA. RCW 36.70A.320(1); RCW 34.05.570(3)(d). As for questions of fact, this Court reviews the entire record before the Board to determine whether its decision is supported by substantial evidence in the record. RCW 36.70A.270, .320; WAC 365-195-640(10); RCW 34.05.570(3).

3. Statutory Mandate. In reviewing Clark County's Comprehensive Plan, the Board was required to comply with the statutory mandates and guidelines set forth in the GMA. The legislature created the Board in the GMA. The Board is not above the law which gave it its existence. The Board must not only comply with express statutory mandates, but, in reviewing a County's record, must also assess whether the planning goals set forth in the GMA were utilized and consider those goals when deciding whether a county complied with the GMA.

4. Agri-Forest Lands. The agri-forest resource designations violate the GMA. Although it is arguably within a county's administrative discretion to create a new hybrid resource classification, Clark County's method of designating "agri-forest" resource lands does not comport with the definition of either agricultural or forest resource lands and is therefore invalid. The Board had an end in sight (restricting growth in rural areas), but failed to develop the factors from the record and the GMA necessary to support its decision. The Board erroneously interpreted and applied the GMA when it failed to require the agri-forest resource lands meet the statutorily mandated definitional criteria for resource lands. Furthermore, there

is no substantial evidence in the record to support the designation of agri-forest lands as resource lands under the GMA

Additionally, the failure to solicit meaningful public input for the agri-forest resource lands violated the public participation provisions of the GMA requiring early and continuous public participation in the development and adoption of comprehensive plans.

5. Agricultural Resource Lands. There is ~~not~~ substantial evidence in the record to support the County's designation of agricultural resource lands. ~~In particular, there is not substantial evidence to demonstrate how those lands designated satisfy the GMA definitional~~ criteria, that is, that those lands are primarily devoted to agricultural production and are of long-term commercial significance for the production of agricultural products. The only explanation provided regarding the designation of agricultural resource lands is contained in a staff report prepared after the RNRAC had completed its work which states, "soils was a critical factor." This is not to suggest the County was incapable of analyzing the required statutory criteria: the County undertook a comprehensive analysis of resource land designations in urban reserve areas when it was compelled by the Board to re-examine these designations. The County should have undertaken a similar analysis before designating any agricultural resource lands.

~~Because there is not substantial evidence in the record that satisfies the GMA's definitional criteria, the agricultural resource land designations are invalid~~

6. Comprehensive Plan EIS. The Comprehensive Plan EIS issued by the County violates the State Environmental Policy Act ("SEPA"), RCW Ch. 43.21C. The agri-forest resource land designations were disclosed subsequent to the publication of the final Plan EIS and were not disclosed or discussed in any way in the EIS alternatives. The removal of rural activity centers also was not addressed in the EIS. The County did not require additional environmental review and did not solicit additional public comments. The County failed to comply with SEPA's requirement for additional environmental review when a proposal changes substantially from the one addressed in the initial EIS. The Board's decision to uphold the adequacy of the

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101-2338
(206) 223 7000

EIS absent additional environmental analysis regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous

7. Rural Land Densities. The County's rural and resource development regulations are inconsistent with the GMA. The GMA requires counties to determine that planning goals are utilized and are a part of the consideration supporting its decisions. One of the planning goals requires a variety of residential densities and housing types, which the Clark County Community Framework Plan met by identifying pre-existing small development patterns in rural areas and creating rural activity centers with a variety of rural densities. The eradication of the centers and their replacement with a uniform lot density violates the planning goal requiring a variety of residential densities.

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. See Exhibit 5, p. 15 to Petitioners' Opening Brief, Box. No. 2 to Record, Clark County Exhibit No. 93. This formulaic view of the GMA requirements 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 Board's 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 a 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's 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY:

ORDERED, ADJUDGED AND DECREED that the Clark County Comprehensive Plan and Development Regulations adopted in Ordinance 1994-12-47 on December 20, 1994 are remanded to the Western Washington Growth Management Hearings Board with direction to enter a decision in accord with this Order mandating County action to correct the violations of the GMA identified herein; ~~and IT IS HEREBY:~~

~~FURTHER ORDERED, ADJUDGED AND DECREED that Petitioners shall be awarded costs against Respondent WWGMHB pursuant to RCW 34.05.566 and RCW 4.84.010 in the amount of $468.50, pursuant to the Cost Bill filed herein.~~

DONE IN OPEN COURT this 4th day of April, 1997.

The Honorable Edwin J. Poyfair
SUPERIOR COURT JUDGE

Presented by:

LANE POWELL SPEARS
LUBERSKY LLP

By _____
Glenn J. Amster
WSBA No. 8372
Attorneys for Petitioner Clark
County Citizens United, Inc and
Michael and Catherine Achen

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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. See Exhibit 5, p. 15 to Petitioners' Opening Brief, Box. No. 2 to Record, Clark County Exhibit No. 93. This formulaic view of the GMA requirements 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.

A central requirement for rural areas in the GMA is that growth in rural areas not be urban in character. By trying to comply with the Board's errant decision, the County violated a 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's 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

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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 PUBLISHED OPINION Filed: MAR 12 1999

MORGAN, J. – 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.[1]

A county subject to the GMA is required to adopt county-wide planning policies, development regulations and, in most cases, a comprehensive plan.[2] Such a county must

[1] *See* RCW 36.70A.040(1), (2).

[2] RCW 36.70A.040(3).

designate urban growth areas,[3] as well as agricultural lands, forest lands mineral resource lands, and critical areas.[4] By operation of law, such a county designates as "rural" any land "not designated for urban growth, agriculture, forest, or mineral resources."[5]

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."[6] In doing this, a county must consider "the growth management population projection made for the county by the office of financial management [OFM]."[7] 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.[8] "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 . . . ."[9]

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[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(?), (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

Notwithstanding the designation of urban growth areas, a county may allow *non-urban* or "rural" growth outside those areas.[10] "Non-urban" or "rural" growth encompasses "a variety of uses and residential densities, including clustered residential development,"[11] provided that such uses and densities are "not characterized by urban growth," and are "consistent with rural character."[12]

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."[13]

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.[14] Legally, the Board

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[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.

[12] 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.

[13] Clerk's Papers at 38.

[14] The Board also made many other holdings that we are not asked to review

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."[15] 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.[16]

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.[17]

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[15] Clerk's Papers at 39-40.

[16] Clerk's Papers at 79

[17] 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

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."[18] This contention involves a question of law[19] that we review without deference to the trial court,[20] but arguably with deference to the Board.[21] 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."[22] 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:

> 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

[18] Appellant's Brief at ii.

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

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

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

[22] Respondent's Brief at 22

> (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.[23] 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."[24] 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

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[23] 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.

[24] Appellant's Brief at 19.

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 [25]

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,[26] "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."[27] 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.

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[25] *Snohomish County v Anderson*, 123 Wn 2d 151, 157, 868 P.2d 116 (1994), quoting *Washington Natural Gas Co. v. PUD 1*, 77 Wn.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 Wn.2d 829, 836, 864 P.2d 380 (1993); *State v Roadhs*, 71 Wn.2d 705, 707, 430 P.2d 586 (1967).

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

[27] *Overton*, 96 Wn.2d at 555 (citation omitted); *see also Cowiche*, 118 Wn 2d at 815

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.

Morgan, J.

We concur:

Bridgewater, C.J.

Reynolds, J. P.T.

BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ACHEN, et al., Petitioners, v. CLARK COUNTY, et al., Respondents, and CLARK COUNTY SCHOOL DISTRICTS, et al., Intervenors.	Case No. 95-2-0067c **ORDER TO SHOW CAUSE RE: COMPLIANCE**

THIS Matter is brought by the Western Washington Growth Management Hearings Board upon its own motion for parties in this case to show cause why compliance should not be found on the remaining issues in this case, and the case closed.

Compliance for several issues in this case has not been found and 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 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,*

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P O Box 40953
Olympia, Washington 98504-0953
Phone 360-664-8966
Fax 360-664-8975

Oct 16
Court date
all days

Honorable Edwin J Poyfair

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

CLARK COUNTY CITIZENS UNITED, INC.; MICHAEL ACHEN and CATHERINE ACHEN, husband and wife,

Petitioners,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, a Washington agency,

Respondent.

NO. 96-2-00080-2

PETITIONERS' OPENING BRIEF

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

TABLE OF CONTENTS

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SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

resource interests on working committees, and testified at public hearings For almost three years, these Clark County citizens maintained their faith in the process and believed the County's announced intention of maintaining the character of rural areas and the quality of life for all of its citizens.

As the planning process drew to a close, however, it became evident their faith in the County's public pronouncements had been misplaced. The rural character could not be maintained, according to County planners, because the Growth Management Act dictated otherwise. Rural towns and villages, a fundamental component of the County's Framework Plan for rural areas, were eliminated by the stroke of a pen Thousands of acres of rural lands were deemed to be "commercially significant" resource lands when their only unique quality appeared to be their vacant, undeveloped state. When County planners announced their recommendations, more than 70% of the land in rural Clark County was destined to become nonconforming In just a few short months, with the planning process spinning out of control, CCCU came to represent more than 3,500 Clark County citizens.

This is a case of first impression in the State of Washington and presents significant issues that affect thousands of people living in Clark County. The legal and factual issues presented below arise in the context of a complex and relatively new law mandating land use planning. The results of this mandate are represented by the Clark County Comprehensive Plan The Comprehensive Plan is intended to guide all development in Clark County for the next twenty years. Therefore, Clark County's responsibilities under the GMA should not be taken lightly.

The GMA can only result in the managed growth which is its central purpose if each city and county engaged in GMA planning complies with all of its provisions. Clark County has not done so, nor has the Western Washington Growth Management Hearings Board ("the Board" herein) fulfilled its responsibility to substantively review the actions of Clark County. This

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SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

The Framework Plan specifically envisioned "a diversity of housing types to enable citizens from a wide range of economic levels and age groups to live within its boundaries and to ensure an adequate supply of affordable and attainable housing." Exh. 4, pp. 7-8 The Plan encouraged clustering residential development within designated rural centers. Exh. 4, p. 10 Specific policies also addressed the overall plan for non-resource lands in rural areas:

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

Exh. 3, p. 9. In identifying rural areas, the Framework Plan recognized some areas provided opportunities for small scale farming and forestry that did not qualify for resource land designation. Id. These lands, therefore, were not chosen for designation in the Framework Plan.

Following adoption of the Community Framework Plan, the County began to formulate its Growth Management Plan. To assist in the identification and designation of resource lands, the County formed a Rural and Natural Resource Advisory Committee ("RNRAC"), composed of land owners, developers, environmentalists and agency personnel from the rural areas. Exh. 5, p. 4. The RNRAC divided itself into three focus groups; farm, forest, and mineral.

The focus groups subsequently issued reports outlining their respective recommendations. Exhs. 6-8. The farm focus group classified Clark County's agricultural lands, a significant portion of which were located in the Vancouver Lake lowlands area. Exh. 6, p. 3. Outside the Vancouver Lake lowlands, the farm focus group could not reach consensus on whether there were any agricultural lands in Clark County fitting the requisite "long term commercial significance" element of resource lands under the GMA. Exh. 6, p. 7. This result was understandable. According to the available information,

> Agriculture in Clark County has been characterized as part-time (used as second income) and operating on small parcels. From 1982 to 1991 there has been no indication that this trend has changed. In 1982, 56 percent of the farms made less than $2,500. In 1987, 50 percent made less than $2,500. Additionally, in 1982, 52 percent of the farm operators reported working off the farm 200 days

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

utilizing the information obtained through county-specific land use research RCW 36.70A.060, WAC 365-190-050, -060. In this case, Clark County's own description of the designation of 36,000 acres of "Agri-forest" resource lands underscores the arbitrary nature of the County's designation process.

The "Agri-forest" resource designation first appeared in the September 23, 1994 staff recommended plan. Exh. 20, p. 1. In a memorandum to the Board of Commissioners and Planning Commission, the staff attempted to explain its designation process:

> The 20-year Plan map also includes a third combination designation, Agri-Forest, which was initiated in part by the advisory committee but not resolved. A total of 36,000 acres of Agri-Forest are indicated on the 20-year Plan map, of which 3,000 acres were recommended by the advisory committee under an earlier Agriculture Tier III classification, 8,000 acres were identified without formal recommendation by the committee as Agri-Forest, and the remaining 25,000 acres were later identified by staff. This additional joint classification is recommended in order to account for lands which were originally overlooked from consideration for inclusion in either the agricultural or forest category because they exhibited characteristics common to both, such as a property being used for both farm and forest activities, or a parcel suited to farming located adjacent to a group of forested lands.

Exh. 5, p. 5. This explanation fails to justify the County's action.

First, to suggest the advisory committee identified lands for "Agri-Forest" resource classification is a gross overstatement. Someone apparently made the suggestion, and the committee rejected it. Exh. 21, p. 6. Second, although the committee apparently did identify approximately 3,000 acres of Agriculture Tier III lands, this classification was applied to lands the Committee ultimately concluded did not meet the GMA resource lands definition. Exh. 6, pp. 13-14, 22-23. Finally, there is no analysis whatsoever of the remaining 25,000 acres of land "identified" by the staff. This superficial justification, even if it were true, does not evidence the deliberative, well-reasoned process mandated by the GMA.

County staff reports, conveniently prepared at the same time as the last minute agri-forest designations, purport to reference designation analysis. Exh. 5. In actuality, there are 4 items in the entire record which describe some of the County's resource work but only tangentially

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

could be said to relate to the agri-forest designations. They include a "Resource Document," a farm focus group report, a forest focus group report, and an "Agricultural Notebook." Exhs. 6,7,9,10. Neither the staff reports nor the committee reports contain any evidence supporting the economic elements of the agri-forest resource designations.

First, the staff reports are misleading. For example, a key staff report states "[t]hose areas identified as agri-forest have high quality soils for the growing and harvesting of timber." Exh. 5, p. 3. But on the very preceding page, the staff report indicates nearly 80% of the soils in Clark County are capable of growing trees. Id.. In response to public testimony demanding an explanation for the agricultural and "agri-forest" resource land designations, the staff again identifies soils as the "critical" aspect. Id.

The staff goes on to explain that "Agri-forest" lands "have a mix of tree cover and agricultural practices on the same or adjacent sites as determined by reviewing aerial photographs." Id. Viewing aerial photographs, depending upon their quality and vintage, can obviously provide some useful information. Aerial photographs, however, will not provide evidence of the availability of public facilities, land values, proximity of markets for resource production, local economic conditions, or parcel sizes, all elements of resource designation. See WAC 365-190-050, -060, -070. Nor will the photographs indicate whether the land is in commercial production.

When the County staff presented the recommended plan to the Board of Commissioners and Planning Commission, it acknowledged rural and resource land planning presented the most significant and controversial issues. Exh. 5, p. 4. The County had assigned the task of classifying and recommending ares for resource designation to the Rural and Natural Resource Committee, which had failed to agree on whether there was any economically viable agricultural resource land in Clark County. Exh. 6, p. 7. Although the staff suggests the resource land designations were the product of the Committee, the recommendation contains not the slightest

LANE POWELL SPEARS LUBERSKY LLP
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

BEFORE THE WESTERN WASHINGTON GROWTH PLANNING HEARINGS BOARD
STATE OF WASHINGTON

CLARK COUNTY CITIZENS UNITED, INC. Petitioner, v. CLARK COUNTY Respondent.	NO. 95-2-0010 **MOTION AND MEMORANDUM IN SUPPORT OF CLARK COUNTY CITIZENS UNITED, INC.'S MOTION TO CLARIFY AND SUPPLEMENT THE RECORD, PERMIT DISCOVERY AND TO ALLOW ADDITIONAL EVIDENCE**

I.

MOTION

Clark County Citizens United ("CCCU") requests the Board enter an order requiring Clark County to clarify and supplement the record as more fully described in Section VI. below.

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

II.

GROUNDS

This motion is based on RCW Chapter 36.70A, the record on file herein, the subjoined memorandum and the Declarations of Lonnie Moss and Cynthia Straatman filed herewith.

III.

TIME REQUIRED FOR HEARING

We understand this motion will be heard on April 26 or 27, 1995 and request the board set aside one hour for argument. The names and telephone numbers of the parties served are listed in the affidavit of service accompanying this motion.

IV.

INTRODUCTION

Clark County Citizens United seeks clarification and supplementation of the Record because (1) the County has failed to index and produce all material relied upon in the comprehensive plan process; (2) CCCU challenges the County's classification of resource lands and thus should be allowed to present evidence regarding the long term commercial significance of agricultural and forest lands in Clark County; (3) CCCU challenges the adequacy of the environmental impact statement and must be allowed to present evidence about environmental impacts; and (4) the information presented by the County fails to describe accurately its public participation procedures, which were inadequate and flawed.

The Index to the Record fails to comply with the requirements of WAC 242.02.820 because (1) it does not identify

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

documents with sufficient specificity to enable them to be found; (2) the index has undergone several revisions and even at the time of CCCU's appointments at the GMA library, the available record did not include certain transcripts and staff memoranda listed on the Index; and (3) some documents are not only not available, but have not been identified or indexed. CCCU is thus unable to determine what material might have been relied upon by the County in reaching certain decisions, and must request relief from the Board in the form of an order requiring the County to fully specify materials relied upon and to allow CCCU to depose staff who might shed light on what those materials may be and the reason for their absence

V.

FACTS

The Clark County comprehensive plan and development regulations at issue severely restrict the potential use of vast acres of rural land. The severity of these restrictions represented an eleventh-hour shift in the County's planning direction for rural and resource lands. In one stroke of the pen, for example, the County created a new category of resource lands, "Agri-Forest." This designation, which appeared for the first time in September 1994, affects more than 35,000 acres of land. Yet according to the index, the County did not produce any information or material during the six months preceding this announcement. The record does not contain a single document stating objective criteria for the "AG-Forest" classification or any analysis justifying the designation of these 35,000 acres of land.

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

Cynthia Straatman, a paralegal at Lane Powell Spears Lubersky, traveled to Clark County to review the record on April 4 and 5, 1995. [Declaration of Cynthia Straatman attached hereto.] On her arrival, Ms. Straatman discovered Exhibit B to the Index had been revised. Since then, two additional iterations have been forwarded by the County. Each index has been sorted differently from the previous version, making it impossible to determine what has been added to or deleted from each one.

The Index does not effectively lead to material on specific issues. Many documents are so sketchily described it is impossible to tell what topics they cover without reviewing them in their entirety. For example, Section III refers to "Legal Notices." No dates are given. Section IV.B refers to "Form letters" without any further identification. Individual maps cannot be found without looking through all maps. As more fully described in the Argument below, Ms. Straatman's review of the Index indicates that pertinent staff memos for the period March 11, 1994 through September 22, 1994 concerning resource lands, are not listed at all, nor is any correspondence from the County in response to citizen inquiries. Some documents are improperly identified; for example a number of letters received by the County early in 1994 are dated, according to the index, December 12, 1994.

VI.

RELIEF REQUESTED

1. The County should be required to specifically identify all materials used in reaching its decisions concerning the rural

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

centers, the Agri-Forest designation, and its designation of other resource lands, including but not limited to any studies, public testimony, field inspection notes, other staff notes, correspondence, telephone memoranda, individual maps, draft maps, photographs, drafts, or computer disks or files. This material should include:

a. A full description of each Map identified in the Index at X.N.

b. A full and accurate description of all correspondence bearing upon the question of the Agriculture and Agri-Forest land classifications, including site-specific change requests.

c. Draft maps identified by date and title.

d. Memoranda, staff reports or notes concerning rural and resource lands prepared between December 5, 1993, and September 22, 1994.

e. Aerial photos of all areas that indicate designated resource lands.

f. Any staff or consultant studies or reports or other documents on the commercial significance of resource lands.

g. A description of the data base and criteria used in generating the G.I.S. maps.

h. Any documentation of the work done by the consulting firm of Daggert and Simpson.

2. CCCU should be permitted to depose all County employees and/or officials who have knowledge of the process used to create

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101-2338
(206) 223-7000

the Rural and Resource designations and to determine what lands are subject to them, so that all materials, meetings, hearings and conversations leading to the designations can be identified.

3. The hearing schedule should be modified to enable CCCU to determine what record, if any, exists to support the County's decisions, and to prepare its case appropriately.

4. CCCU should be allowed to supplement the record with testimony on the probable adverse impacts of (1) agricultural resource land designations and (2) the long-term commercial significance of agricultural lands in Clark County.

5. CCCU should be allowed to supplement the record with testimony on the procedures for public review and comments.

VII.

LEGAL ARGUMENT

A. The Record Must be Supplemented and Clarified Because It Fails to Identify Materials Used in the Growth Management Planning Process and Insufficiently Identifies Others.

The Board's rules require the County to file and serve an Index, the function of which is to enable Petitioners to locate and identify the material in the record they intend to use as exhibits. The requirements for the Index are explicit:

> [T]he respondent shall file with the board and serve a copy on petitioner(s) of an index of all material used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished.

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
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(206) 223-7000

The Index fails to meet these requirements. For example, it is inconceivable that it lists "all material" used to create Agri-Forest parcels. It contains references to almost no correspondence and no staff reports for the six-month period between March 11 and September 22, 1994, the period during which Clark County staff designated 35,000 acres Agri-Forest.

Finding virtually no pertinent material in the Index, Ms. Straatman asked Jerri Bohard of the Planning Department where the basis for the Agri-Forest decision could be found. Ms. Bohard replied there were three sources: The work of the focus groups, maps compiled from the GIS data base, and aerial photos. (Straatman Declaration). The Index specifically lists six items that seem to refer to the materials Ms. Bohard described: Farm Focus Group Final Report; Forest Focus Final Report; the Agricultural Capability map; the Forest Capability map; Notebook of Agriculture Candidate Areas-Evaluation Forms; and Working Maps.

The two listed Focus Group reports are dated 1993 and contain nothing about the Agri-Forest designation. No notes, minutes, studies or additional reports are listed on the Index. Nor do there appear to be any transcripts, minutes, agendas or recordings memorializing the work of the groups. The Notebook of Agriculture Areas contains nothing about Agri-Forest areas. The Notebook contains a sheet of questions for large areas proposed in 1993 to be candidates for Agricultural Resource (not "Agri-Forest") classification. Very few of the questions on the sheets have answers inserted. Each sheet is stamped either "Approved" or,

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
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inexplicably, "Past Due," but there is no explanation why each worksheet is so stamped. No similar Notebook is listed for Agri-Forest or Forest parcels.

Ms. Bohard identified maps as the third source for the resource land designation. In its Index, the County lists two critically important sets of working maps--apparently the only record of the work of the Focus Groups. They are described as follows:

> N. Resource Working Maps.
>
> 1. Series of working maps used by each of the focus groups (mineral, agricultural and forestry) in the development of recommendations regarding resource designations. Each focus group divided the County into a number of planning areas and within those planning areas evaluated information on soils, cover, available infrastructure, parcel size, current use tax status, slopes and other environmental issues such as wetlands, flood plains, etc.
>
> 2. There were also working maps utilized for the rural resource area in which the County was divided into rural planning areas.

There are more than thirty working maps, and they are not listed on the Index with sufficient specificity to allow designation. The maps themselves bear both titles and dates, but this information has not been transferred to the Index. It would have been impossible in the four hours allotted to even identify the pertinent maps, let alone study them.

The aerial photographs which apparently provided the only basis for determining whether a parcel had "agricultural cover" are not listed at all. The County's astonishing rationale for this serious gap in the available information is that the cost of

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
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reproduction, if possible, would be $2,000. (Straatman Declaration.) Copies of these photos must be provided; they provide the only evidence of what was actually on the ground on these now severely restricted parcels.

In addition, CCCU members have identified numerous letters they sent to various Clark County agencies during the planning process, none of which can be located in the Index. C. Straatman Declaration.

The index itself reveals the shortcomings of the County's record production to date. One letter, from Mr. John Karpinski is dated May 16, 1994, but listed in the Index as dated 12/12/94. See Exhibit A to Straatman Declaration. Another item attributed to Mr. Karpinski also is incorrectly dated and is described in the index as "Response to Staff Memo 4/21/94 on the 'CERES Unified Alternative.'" See Exhibit B to Straatman Declaration. The memorandum, however, is not listed on the Index, nor is there any listed record of any response to any of Karpinski's letters.

B. <u>CCCU Should be Allowed Discovery to Identify the Rest of the Record.</u>

With the exception of staff memos, CCCU cannot determine from the material they have so far been able to cull from the County's mass of paper why or how the Agri-Forest designation was created and why or how it was used to severely restrict the use of vast areas of rural Clark County. Insofar as the County attempted to rely on aerial photographs or maps, these must be specifically identified and produced. Under the circumstances present here, the

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101-2338
(206) 223-7000

burden to identify evidence must be with the County. CCCU has identified every document it can identify in the record as bearing upon the Agri-Forest and Agricultural Resource issue. Insofar as the County's own Index makes it impossible to identify the others, the County must supplement that Index. Given the startling paucity of documentation, petitioners should be permitted an opportunity to depose everyone in any way involved in the decision-making process and to demand production of every piece of material used in that process. The fact that the Index discloses no material of any kind prepared during the six-month period in which the Agri-Forest designation was created, for example, raises serious questions about the comprehensive plan that resulted from this process. CCCU should be allowed to fill this information gap.

C. Supplemental Evidence is Necessary for a Decision.

The Board's rules allow new or supplemental evidence as follows:

> A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. A board may at any time prior to, during, or after the hearing order that new or supplemental evidence be provided.

WAC 242.02.540. Additional evidence is necessary on a number of issues raised by CCCU.

1. The Record Contains Insufficient Information on the Impacts of Increased Agriculture on the Quantity and Quality of Water.

Agriculture, a heavily chemical-dependent industry, can have significant adverse impacts on groundwater and surface water.

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SUITE 4100
1420 FIFTH AVENUE
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Neither the Environmental Impact Statement nor any other identified study or report accompanying the plan has any discussion about these impacts. The EIS discussion is limited to recognition that animal wastes applied to fields can move through the soil to the groundwater. But there is no discussion whatever of the potential impacts of chemical sprays and treatments upon tens of thousands of acres of land being dedicated to agricultural use for at least the next twenty years. The Board cannot make an informed decision on the adequacy of the EIS without such information. Without expert testimony to point to the deficiencies in the EIS, petitioners would be deprived of their opportunity to make an effective case. Nor does the record anywhere discuss the impact of the quantity of water that must be used to grow crops on such extensive acreage.

The Board clearly has authority to permit additional evidence on this issue both under its own rules and pursuant to the rule enunciated in Leschi v. Highway Comm'n., 84 Wn.2d 271, 286, 525 P.2d 774 (1974), that even in a writ of review proceeding, otherwise limited to the record, "[t]rial courts may conduct additional fact finding in order to rule on the adequacy of an impact statement . . . . "

2. The record contains insufficient information about the long-term commercial significance of agricultural lands in Clark County.

Serious questions have been raised about the long-term commercial significance of agriculture in Clark County. The Agricultural Focus group was unable to reach consensus on this

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101-2338
(206) 223-7000

issue. There is nothing in the record to support the County's determination of long-term commercial significance of vast areas of land identified as agricultural resource land, a critical element of resource land designation under the GMA. Of course, there also are no facts or studies in the record to support the County's designation of "Agri-Forest" resource lands. There is nothing in the record to indicate that the County gave any consideration to the economic viability of the only use to which it permits these lands to be put. CCCU therefore requests the Board permit testimony to fill this void.

3. Testimony Should Be Allowed Describing the Public Process. The County's documentation suggests a wide and far-reaching public process leading to its determinations. In fact, many of the public forums were not designed or used to gather information. Draft documents were often not available to the public until hours before hearings intended to consider them, and public comment was ignored. [Declaration of Lonnie Moss attached hereto.] Throughout the course of this process, staff's oral representations to many citizens differed markedly from the discussion going on behind the scenes. Id. Testimony by citizens who attempted to make themselves heard throughout the planning process will provide important information to the Board about the inadequacy of the County's public participation process.

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE WASHINGTON 98101-2338
(206) 223-7000

VIII.

CONCLUSION

If there is a record supporting many of the County's actions concerning resource and rural lands, the Index fails to disclose it. If there is no record, the County must now show how its decisions were reached and how land was chosen to be designated as resource land. Where no evidence exists in the record--e.g., (1) concerning the impacts of increased agriculture resouorce designation and (2) considering the commercial viability of agricultural uses--testimony on these issues should be allowed.

Petitioners thus request that the Board grant the relief described in Section VI above.

RESPECTFULLY SUBMITTED this 17th day of April, 1995.

LANE POWELL SPEARS LUBERSKY

By Joyce C Klug, WSBA No 7062 for
Glenn J. Amster
WSBA No. 8372
Attorneys for Petitioner Clark County Citizens United, Inc.

LANE POWELL SPEARS LUBERSKY
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WASHINGTON 98101-2338
(206) 223-7000

No mention of NRC's Soils manual

CLARK COUNTY Washington

----Department & Programs----------

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Annexation Tracker

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Photography
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Contacts
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Metadata Information Browser

Search by layer name, keywords or display layers grouped alphabetically.

Layer Name: Layer Keyword(s): Attribute Keyword(s):

limit results: Data Types: 10 Newest Layers

limit results: Layer Name Beginning with:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Layer Name: **Layer dbsID #:**

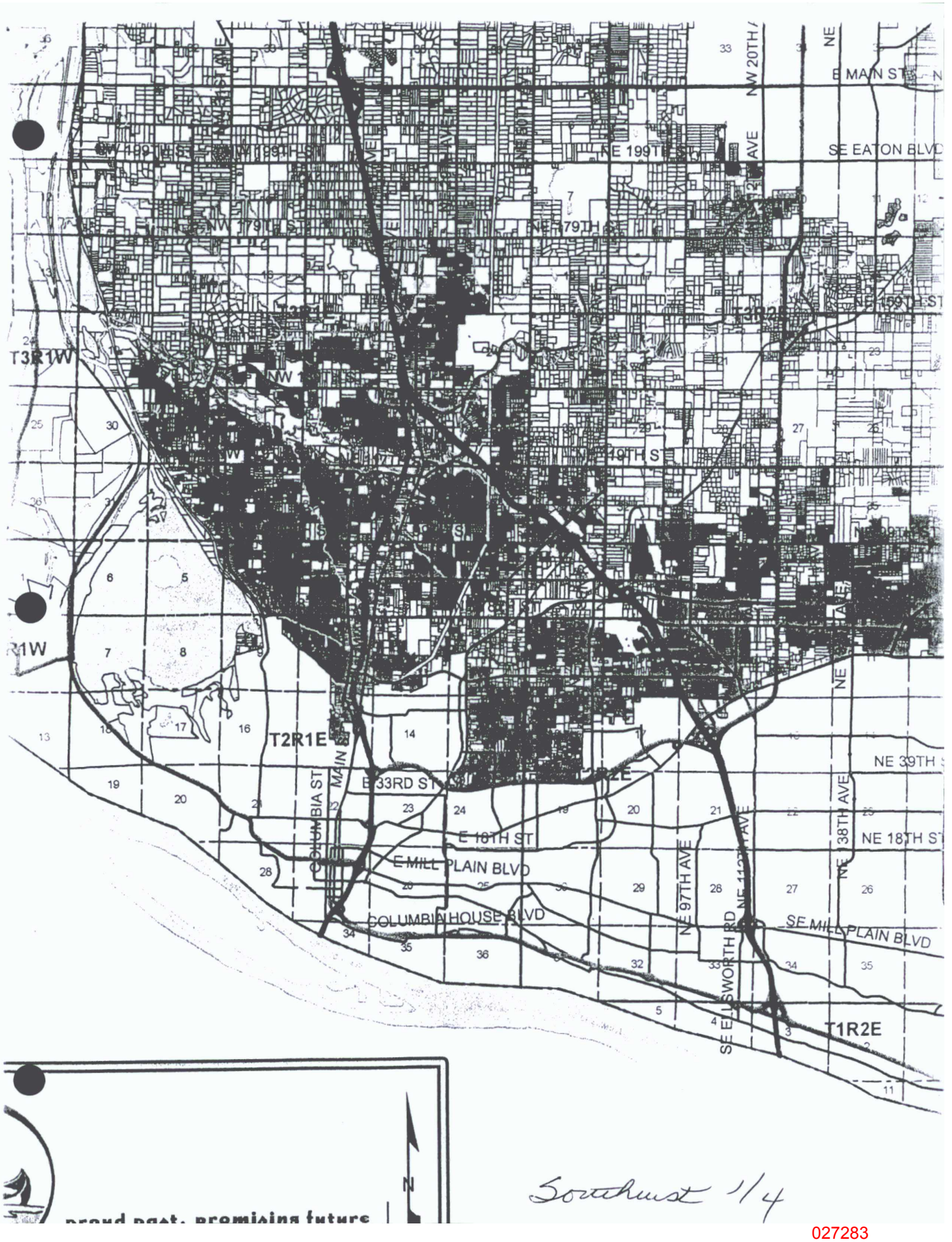
Overview Summary

Title:	GMA Landuse
Layer Name:	Landuse
Status:	Active
Library:	clark
Schema:	
Dataset:	
Description:	Landuse polygons created for 1994 GMA Depicts land uses within Clark County as determined by the Planning Department. It is a combination of the Assessors Landuse (Primary Property Type) and the mapping departments Photo Interpretation.
History:	Assessor's PT1 code was aggregated into approximately 25 land use categories. Parcels > 1 acre were classified using photo-interpretation. Vancouver and Clark County Planning also used limited field surveys to update the database.
Other Links:	
Data Type:	ShapeFiles
Derived From:	Landuse - Arc/Info Coverages
Intended Use:	Growth Management and Land Use Planning The Photo Interpretation coverage is from 1:24000 Aerial Photos, this is makes the product unsuitable for display with the parcels coverage.
Intended Scale:	24,000
Metadata Restrictions:	No
Data Restrictions:	None
Maintenance:	Not Maintained
Keywords:	landuse gma growth management
Other Data Types:	Arc/Info Coverages

Technical & Source Data

Documented:	12-May-93
Image Reference:	No
Source Title:	
Source Projection:	
Source Description:	Assessor's database on the HP3000 as corrected from limited area field surveys by the City of Vancouver, Clark County Planning and photo- interpretation.
Source Date:	12-May-93
Source Organization:	
Completion Date:	12-May-93
Source Scale:	4,800
Source Contact:	

027282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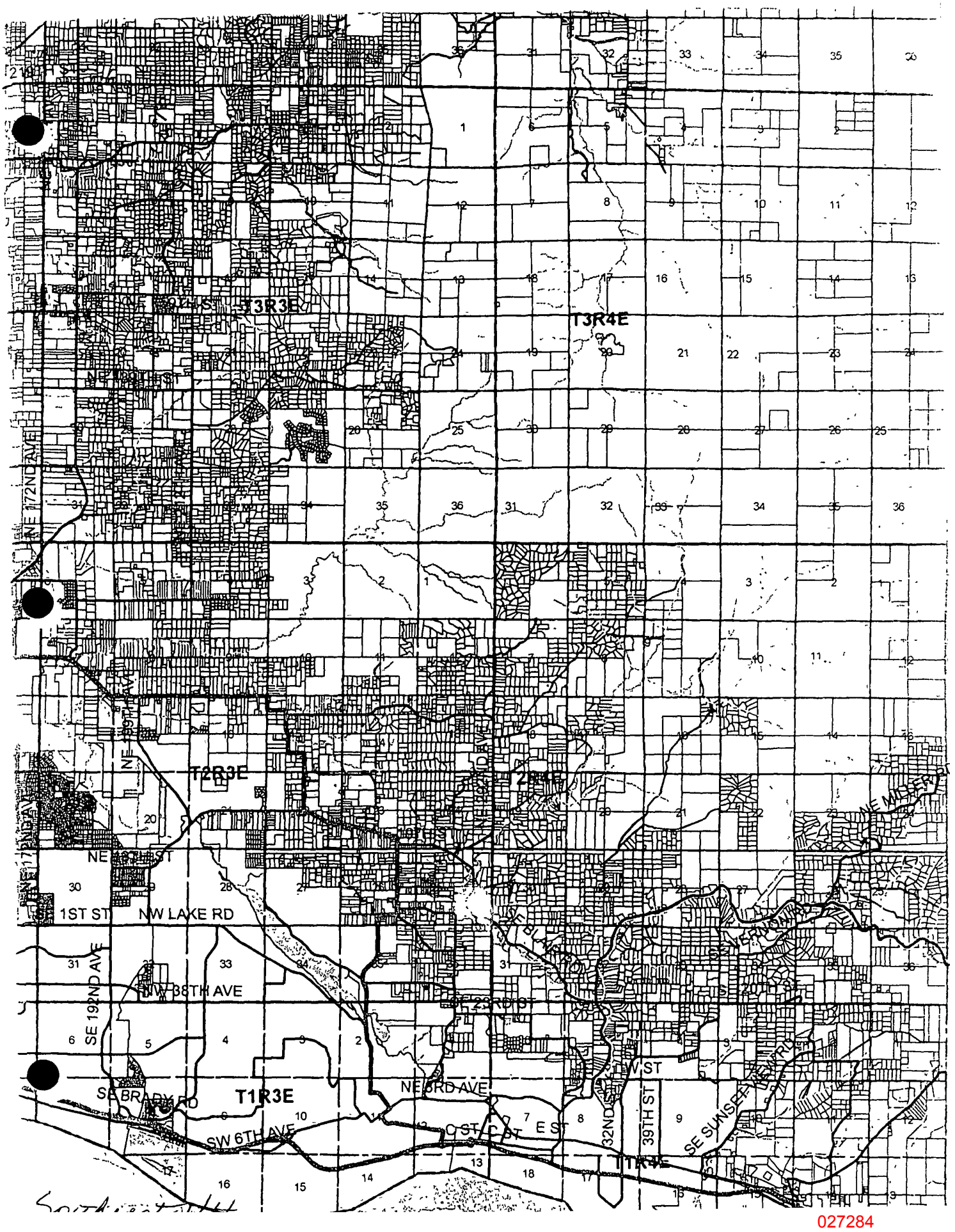
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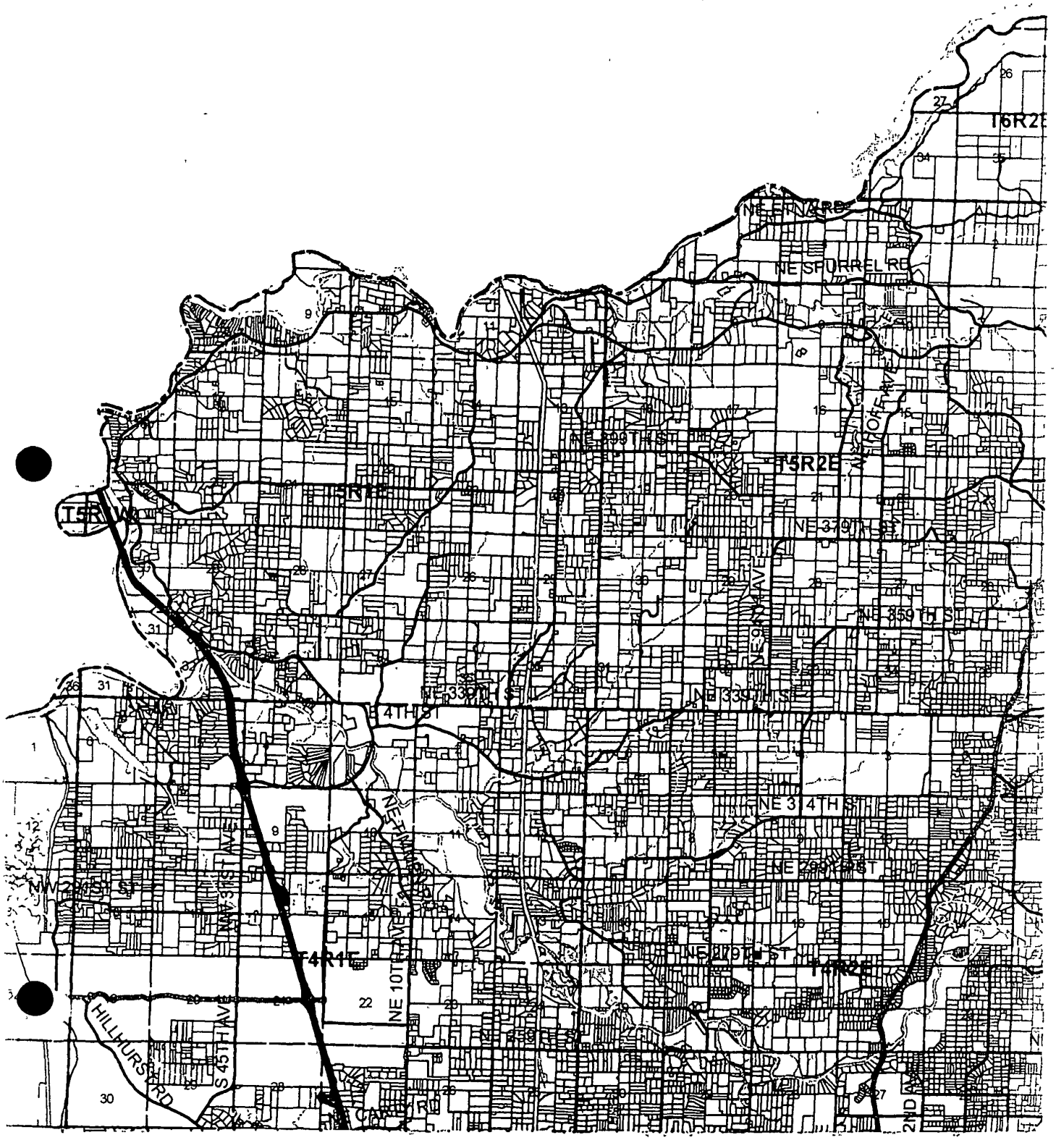

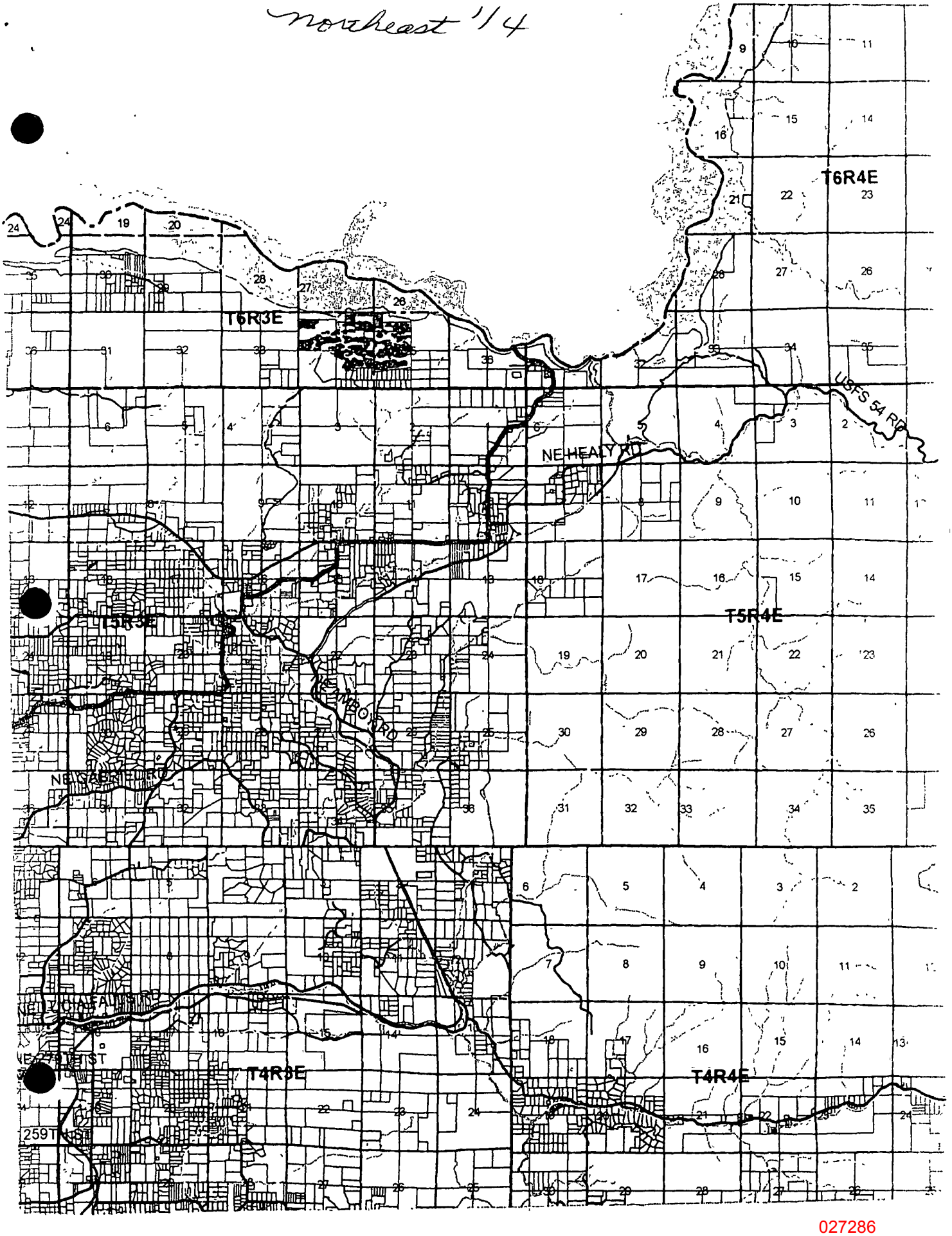
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USFS 54 RD
259TH ST

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No mention of NRCS Soils manual

CLARK COUNTY Washington

----Department & Programs----------

GIS Home SIGN IN

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Property Info Center
GIS MapsOnline
Subdivision Browser
Quarter Sections
Auditor Records
Parcel Alteration Forms

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Socioeconomic Data
Census 2010 Profiles

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GIS Metadata
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Annexation Tracker

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Photography
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Metadata Information Browser

Search by layer name, keywords or display layers grouped alphabetically.

Layer Name: Layer Keyword(s): Attribute Keyword(s):

limit results: Data Types: 10 Newest Layers

limit results: Layer Name Beginning with:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Layer Name: **Layer dbsID #:**

Overview Summary

Title:	GMA Landuse
Layer Name:	Landuse
Status:	Active
Library:	clark
Schema:	
Dataset:	
Description:	Landuse polygons created for 1994 GMA Depicts land uses within Clark County as determined by the Planning Department. It is a combination of the Assessors Landuse (Primary Property Type) and the mapping departments Photo Interpretation.
History:	Assessor's PT1 code was aggregated into approximately 25 land use categories. Parcels > 1 acre were classified using photo-interpretation. Vancouver and Clark County Planning also used limited field surveys to update the database.
Other Links:	
Data Type:	ShapeFiles
Derived From:	Landuse - Arc/Info Coverages
Intended Use:	Growth Management and Land Use Planning The Photo Interpretation coverage is from 1:24000 Aerial Photos, this is makes the product unsuitable for display with the parcels coverage.
Intended Scale:	24,000
Metadata Restrictions:	No
Data Restrictions:	None
Maintenance:	Not Maintained
Keywords:	landuse gma growth management
Other Data Types:	Arc/Info Coverages

Technical & Source Data

Documented:	12-May-93
Image Reference:	No
Source Title:	
Source Projection:	
Source Description:	Assessor's database on the HP3000 as corrected from limited area field surveys by the City of Vancouver, Clark County Planning and photo- interpretation.
Source Date:	12-May-93
Source Organization:	
Completion Date:	12-May-93
Source Scale:	4,800
Source Contact:	

CHAPTER II

EXISTING CONDITIONS

CHARACTER OF THE AGRICULTURE INDUSTRY IN CLARK COUNTY

Agriculture is an important part of Clark County's heritage. The face of this industry, however, has been going through a gradual change as the region experiences growth pressures. The typical Clark County farmer in 1983 operates on a relatively small scale and relies on this activity as a secondary source of income. Still, as will be seen below, many farms operate at large scales. This section gives a description of this rather diverse industry through an explanation of the results of a survey of farmers in seven Western Washington counties* conducted jointly by Washington State University and the Washington Department of Agriculture.

Table 1 presents a breakdown of farms by size of ownership and/or operation. Many farmers in Clark County farm on leased land; therefore, data on acres owned presents only part of the picture.

TABLE 1

FARMS BY SIZE OF OWNERSHIP AND/OR OPERATION

Size of Farm (Acres)	Percent Responding as Ownership	Percent Responding as Operations
1- 10	30.9	27.0
11- 20	13.4	13.3
21- 30	7.9	6.9
31- 40	9.9	6.9
41- 50	3.8	4.4
51- 75	9.0	6.9
76-100	7.6	10.1
101-200	9.6	12.5
201-300	4.1	5.6
301-400	1.7	3.2

44.3% 20A. or less

Two points seem most obvious from the above table. First, nearly one-third of the respondents are small farmers (10 or less acres per farm), and second, a greater percentage of those farming large acreages (100 or more acres per farm) lease farmland rather than own the land.

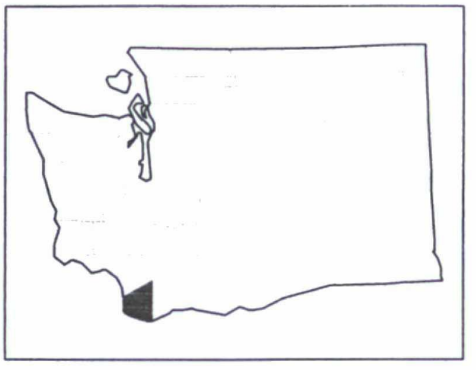
*Clark, Skagit, Thurston, Lewis, Snohomish, Kitsap, and Whatcom Counties.

USDA Ag. Census 2012; Clark Cty ave. farm 39 acres
median size 10 acres
44% 9 acres or less

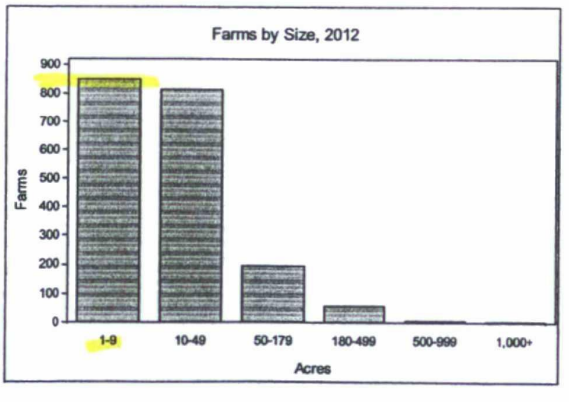
2012 CENSUS OF AGRICULTURE

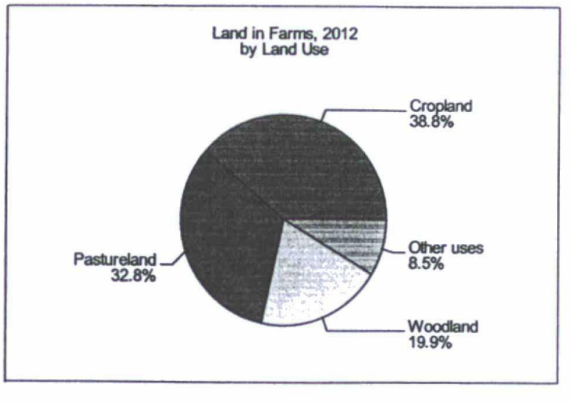
COUNTY PROFILE

Clark County
Washington



	2012	2007	% change
Number of Farms	1,929	2,101	- 8
Land in Farms	74,758 acres	78,359 acres	- 5
Average Size of Farm	39 acres	37 acres	+ 5
Market Value of Products Sold	$50,861,000	$52,691,000	- 3
Crop Sales $18,856,000 (37 percent) Livestock Sales $32,005,000 (63 percent)			
Average Per Farm	$26,367	$25,079	+ 5
Government Payments	$293,000	$115,000	+ 155
Average Per Farm Receiving Payments	$6,359	$3,397	+ 87





USDA US Department of Agriculture
National Agricultural Statistics Service
www.agcensus.usda.gov

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2012 CENSUS OF AGRICULTURE

COUNTY PROFILE

Clark County – Washington

Ranked items among the 39 state counties and 3,079 U.S. counties, 2012

Item	Quantity	State Rank	Universe [1]	U.S. Rank	Universe [1]
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD ($1,000)					
Total value of agricultural products sold	50,861	23	39	1,757	3,077
Value of crops including nursery and greenhouse	18,856	24	39	1,738	3,072
Value of livestock, poultry, and their products	32,005	16	39	1,248	3,076
VALUE OF SALES BY COMMODITY GROUP ($1,000)					
Grains, oilseeds, dry beans, and dry peas	489	27	34	2,401	2,926
Tobacco	-	-	-	-	436
Cotton and cottonseed	-	-	-	-	635
Vegetables, melons, potatoes, and sweet potatoes	(D)	(D)	39	(D)	2,802
Fruits, tree nuts, and berries	6,838	14	39	171	2,724
Nursery, greenhouse, floriculture, and sod	5,691	12	38	394	2,678
Cut Christmas trees and short rotation woody crops	(D)	3	33	(D)	1,530
Other crops and hay	2,735	19	39	1,062	3,049
Poultry and eggs	7,774	9	39	659	3,013
Cattle and calves	8,002	18	39	1,471	3,056
Milk from cows	14,525	12	30	403	2,038
Hogs and pigs	(D)	(D)	37	(D)	2,827
Sheep, goats, wool, mohair, and milk	309	9	39	536	2,988
Horses, ponies, mules, burros, and donkeys	749	9	39	345	3,011
Aquaculture	(D)	26	34	(D)	1,366
Other animals and other animal products	361	14	39	532	2,924
TOP CROP ITEMS (acres)					
Forage-land used for all hay and haylage, grass silage, and greenchop	17,541	14	39	1,112	3,057
Corn for silage	2,181	8	24	733	2,237
Land in Berries	1,086	5	39	42	2,339
Cut Christmas trees	696	3	33	69	1,557
Wheat for grain, all	570	25	32	1,835	2,537
TOP LIVESTOCK INVENTORY ITEMS (number)					
Broilers and other meat-type chickens	420,614	2	36	410	2,723
Cattle and calves	16,169	19	39	1,523	3,063
Layers	13,548	9	39	654	3,040
Pullets for laying flock replacement	3,565	8	38	464	2,637
Horses and ponies	3,104	6	39	187	3,072

Other County Highlights, 2012

Economic Characteristics	Quantity
Farms by value of sales:	
Less than $1,000	718
$1,000 to $2,499	373
$2,500 to $4,999	306
$5,000 to $9,999	216
$10,000 to $19,999	112
$20,000 to $24,999	55
$25,000 to $39,999	47
$40,000 to $49,999	15
$50,000 to $99,999	37
$100,000 to $249,999	22
$250,000 to $499,999	3
$500,000 or more	25
Total farm production expenses ($1,000)	54,736
Average per farm ($)	28,375
Net cash farm income of operation ($1,000)	2,398
Average per farm ($)	1,243

8% of Clark Cty. Farms had sales below $10,000.

Operator Characteristics	Quantity
Principal operators by primary occupation:	
Farming	682
Other	1,247
Principal operators by sex:	
Male	1,483
Female	446
Average age of principal operator (years)	59.0
All operators by race [2]:	
American Indian or Alaska Native	33
Asian	33
Black or African American	-
Native Hawaiian or Other Pacific Islander	5
White	2,953
More than one race	29
All operators of Spanish, Hispanic, or Latino Origin [2]	82

65% relies on another primary occupation

See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes, explanations, definitions, and methodology.
- Represents zero. (D) Withheld to avoid disclosing data for individual operations.
[1] Universe is number of counties in state or U.S. with item. [2] Data were collected for a maximum of three operators per farm.

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and Douglas-fir are encroaching into the unmanaged areas. (Capability unit IIIe–2; woodland suitability group 3oM3; wildlife site 7)

Bear Prairie silt loam, 8 to 15 percent slopes (BpC).—This soil is similar to Bear Prairie silt loam, 0 to 8 percent slopes, except that the surface layer tends to be thinner, varying from 11 to 15 inches in thickness. Runoff is medium, and the erosion hazard is moderate. Included in mapping were a few areas where the slope is more than 15 percent.

This soil is used primarily for timber. Cleared areas are used for hay and pasture.

Conservation practices, such as cross-slope tillage, are needed to help control loss of soil. Douglas-fir, grand fir, and red alder are suitable trees. (Capability unit IIIe–2; woodland suitability group 3oM3; wildlife site 7)

Cinebar Series

The Cinebar series consists of deep, well-drained, gently sloping to very steep soils. These are medium-textured soils that formed in material derived from volcanic ash. In places angular basalt rock is scattered throughout the profile. These soils occur in the northeastern part of the county on hilly uplands and old terraces, which are dissected by many creeks and drainageways. The native vegetation is a heavy growth of Douglas-fir and scattered cedar and hemlock. The understory consisted principally of ferns, salal, Oregon-grape, red huckleberry, and vine maple. Much of the timber has been logged or burned over, and now the soils support stands of second-growth Douglas-fir. Large areas have been invaded by red alder, but much of the native understory persists. The annual precipitation ranges from 60 inches to more than 90 inches.

Cinebar soils are among the highest producing timber soils in Clark County. Where cleared and cultivated, they are used mostly for hay and pasture. The principal cultivated areas are near View, Fargher Lake, and Amboy. Hay and pasture are commonly grown, but pole beans, grain, and strawberries are also grown.

Cinebar silt loam, 8 to 20 percent slopes (CnD).—This soil is dominant in the lower foothills of the northeastern part of the county. The slopes are generally long but are dissected by many drainageways, which give the area a rolling relief.

In a typical profile the surface layer is very dark brown silt loam about 6 inches thick. The subsurface layer is dark-brown, friable silt loam about 7 inches thick. Below this is friable, dark yellowish-brown silt loam about 35 inches thick. The underlying material, to a depth of 65 inches, is dark yellowish-brown loam.

Included in mapping were a few small areas that contain up to 20 percent angular gravel and cobblestones. Also included were a few small stony areas.

This soil is well drained, moderately permeable, and easily tilled. The available water capacity is very high. The fertility is moderate. Surface runoff is medium, and the erosion hazard is moderate.

Representative profile of Cinebar silt loam in woodland, 2½ miles southeast of Amboy, 600 feet east of creek on south side of road, southeast corner of NE¼SW¼ sec. 28, T. 5 N., R. 3 E.

O1—1½ inches to 1 inch, needles, twigs, and leaves.
O2—1 inch to 0, partly decomposed, brown to dark-brow needles, twigs, and leaves.
A1—0 to 6 inches, very dark brown (10YR 2/2) silt loar dark grayish brown (10YR 4/2) when dry; mode ate, fine, granular structure; soft, very friable, no sticky and nonplastic; many roots; about 40 perce reddish-brown concretions, 1 to 5 millimeters in siz very strongly acid. (5 to 7 inches thick)
A3—6 to 13 inches, dark-brown (10YR 3/3) silt loam, brow (10YR 5/3) when dry; weak, fine, subangul blocky structure; slightly hard, friable, slight sticky and slightly plastic; many roots; common, fi pores; about 30 percent concretions, 1 to 5 mill meters in size; strongly acid. (6 to 8 inches thick
B21—13 to 24 inches, dark yellowish-brown (10YR 4/4) si loam, yellowish brown (10YR 5/4) when dry; wea medium, subangular blocky structure; slightly har friable, slightly sticky and slightly plastic; ma roots; many fine pores; common concretions, 1 to millimeters in size; strongly acid. (10 to 12 inch thick)
B22—24 to 48 inches, dark yellowish-brown (10YR 4/4) si loam, light yellowish brown (10YR 6/4) when dr weak, medium, subangular blocky structure; slight hard, friable, slightly sticky and slightly plasti few roots; many fine pores; medium acid. (20 to inches thick)
C—48 to 65 inches, dark yellowish-brown (10YR 4/4) loa light yellowish brown (10YR 6/4) when dry; ma sive; slightly hard, friable, slightly sticky a slightly plastic; few roots; many fine pores; ma transparent silica crystals less than 1 millimeter size; medium acid.

The A1 horizon ranges from very dark brown to very da grayish brown in color. The texture of the B2 horizon rang from silt loam to loam. In places this horizon feels like cl loam. The B2 horizon ranges from yellowish brown to da yellowish brown in color. Concretions, 1 to 5 millimeters diameter, make up 10 to 40 percent of the A horizon a are common in the upper part of the B2 horizon.

Most of this soil is used for Douglas-fir. Hay and pa ture are grown on the cleared areas. Oats, barley, stra berries, and pole beans are sometimes grown in rotatio with hay and pasture. (Capability unit IIIe–2; woodla suitability group 2oH3; wildlife site 7)

Cinebar silt loam, 3 to 8 percent slopes (CnB).—Th soil is similar to Cinebar silt loam, 8 to 20 percent slope except that the surface layer is 2 to 3 inches thick (fig. 2). Surface runoff is slow, and the erosion haza is slight.

This is the most extensively cultivated soil of t Cinebar series. The main use is for hay and pasture. T row crops are strawberries and pole beans. Oats a barley are also grown. (Capability unit IIe–3; woodla suitability group 2oH3; wildlife site 7)

Cinebar silt loam, 20 to 30 percent slopes (CnE).—Th soil is similar to Cinebar silt loam, 8 to 20 percent slope except that the slopes are shorter. Surface runoff medium to rapid, and the hazard of erosion is modera to severe when the surface is left bare. In places cobb stones and gravel are scattered throughout the profi Included in mapping were small, stony areas.

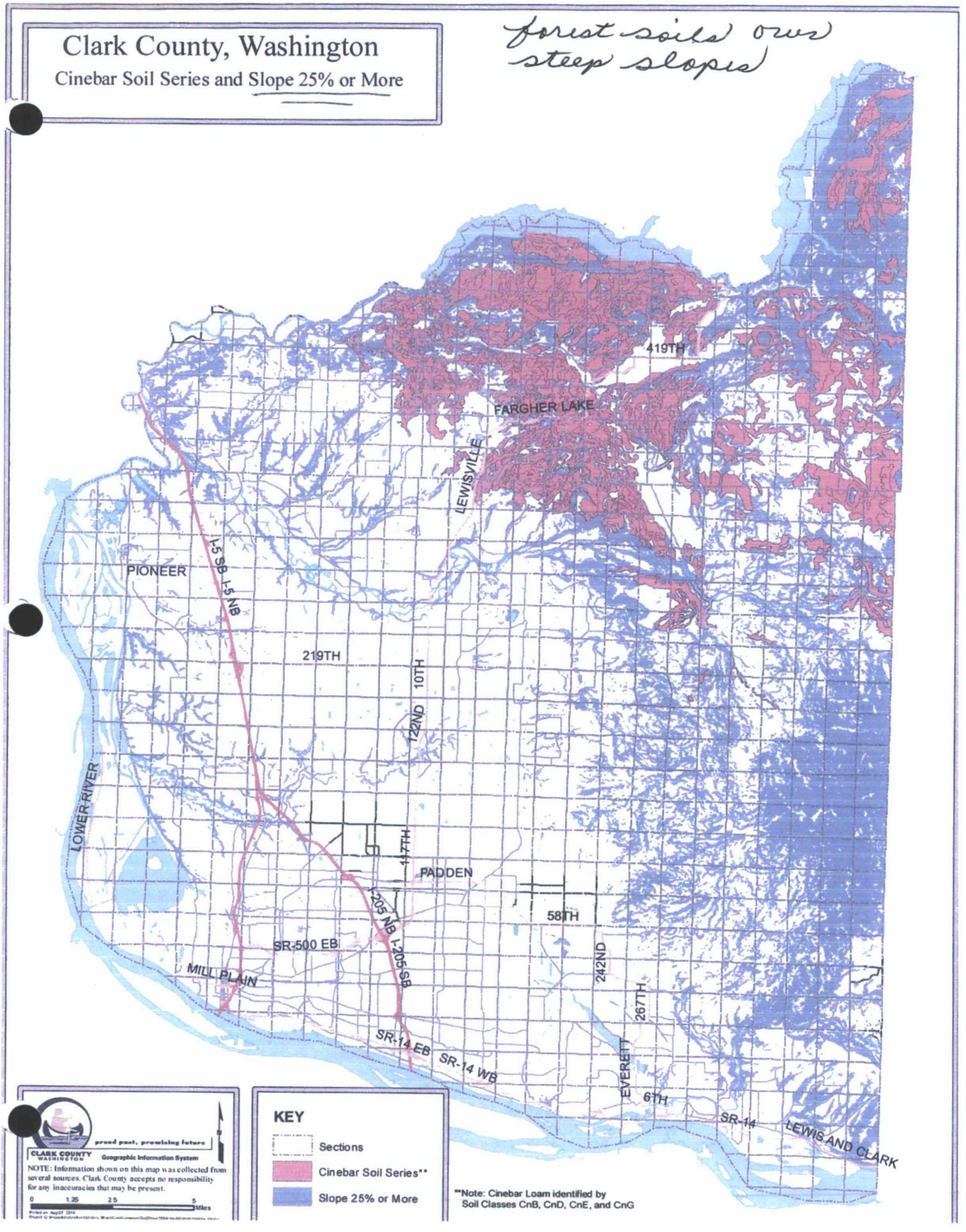
This soil is used for Douglas-fir, but a few small are are seeded to pasture grasses and legumes. (Capabili unit IVe–4; woodland suitability group 2oH3; wildli site 7)

Cinebar silt loam, 30 to 70 percent slopes (CnG).—Th soil is similar to Cinebar silt loam, 8 to 20 percent slop except that the thickness of the surface layer ranges fr

Clark County, Washington

Cinebar Soil Series and Slope 25% or More

forest soils over steep slopes



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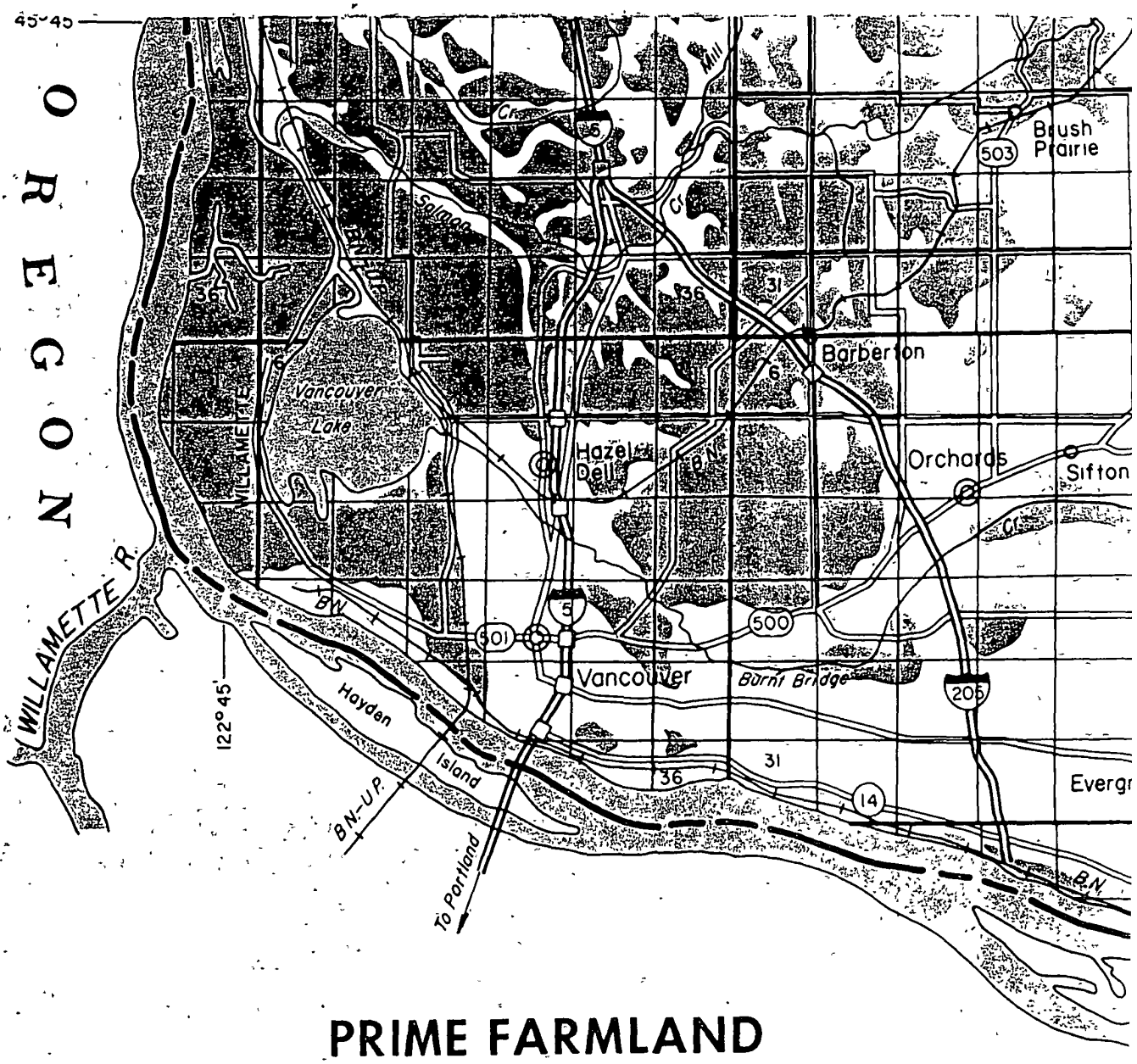


PRIME FARMLAND

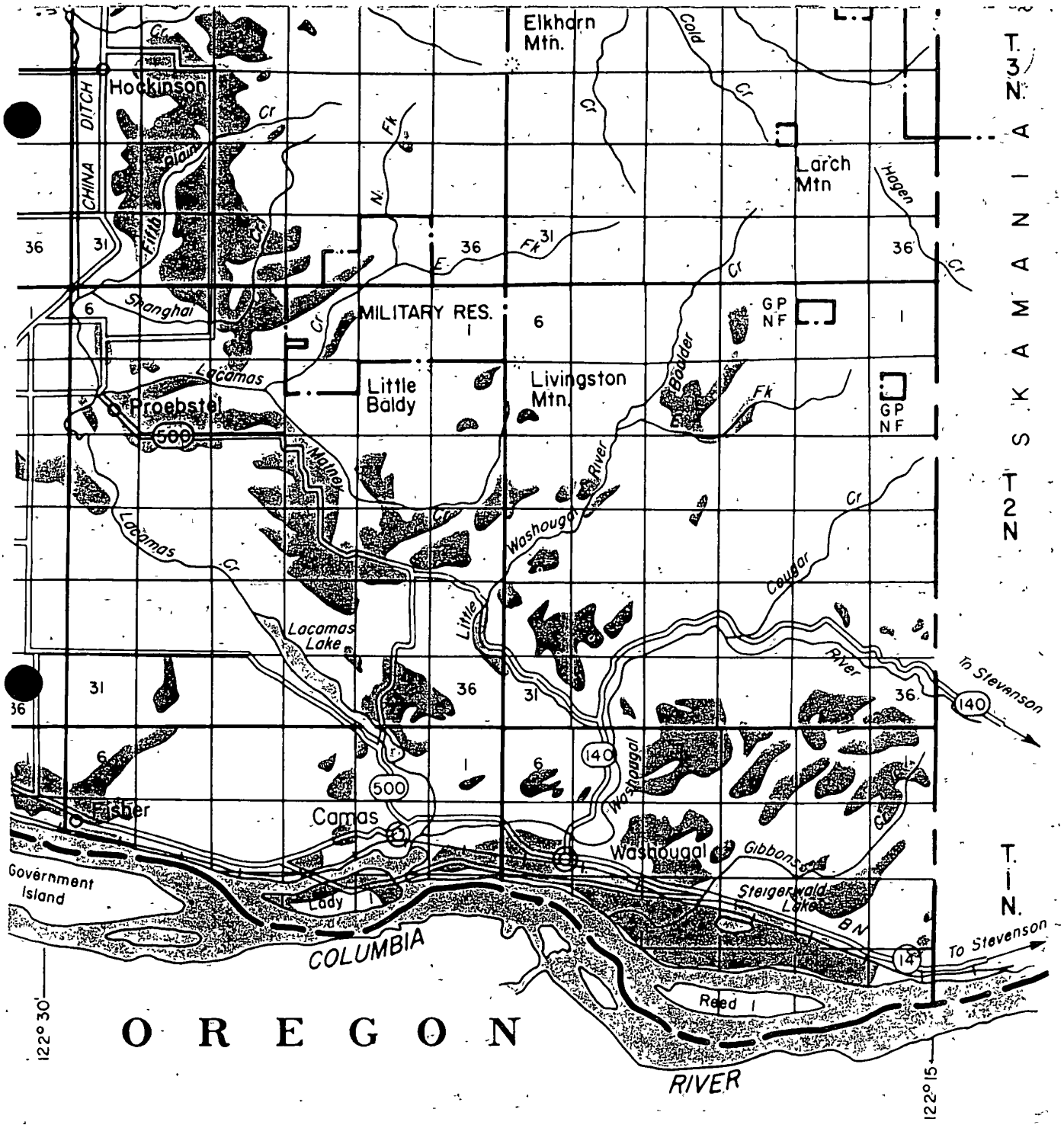
CLARK COUNTY, WASHINGTON

APRIL 1980

1 0 1 2 3 4 5 MILES

SCALE 1:100,000

Source:
Base map prepared by SCS, WTSC Carto Unit from 1:126,720 General Highway maps.
Thematic detail compiled by state staff.
U.S. DEPARTMENT OF AGRICULTURE. SOIL CONSERVATION SERVICE USDA-SCS-PORTLAND OR 1980



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Chelatchie
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Lewis
River
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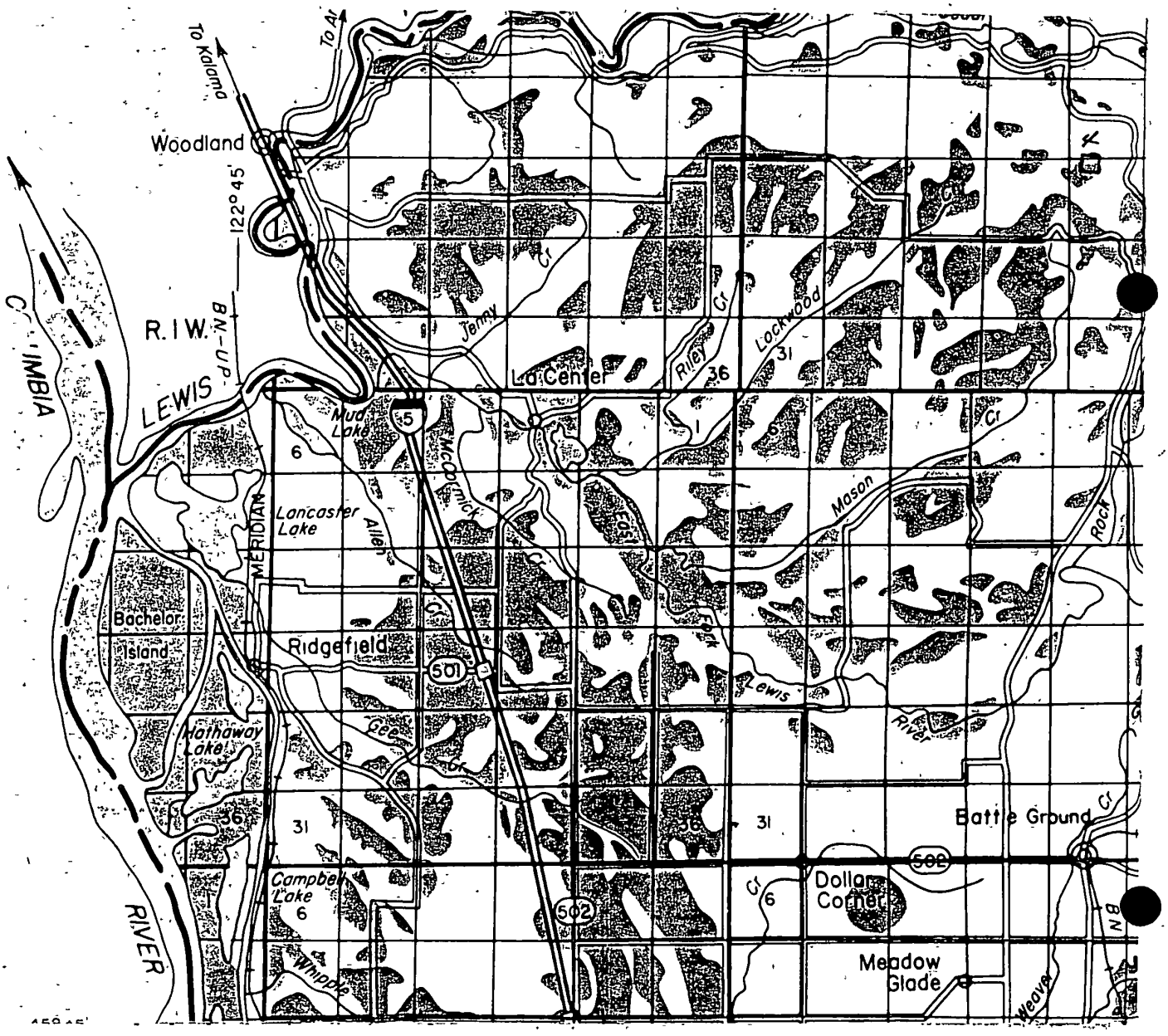
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Bachelor Island
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Gee
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Whipple
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Battle Ground
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Draft SEIS 2016 Comp. Plan Update

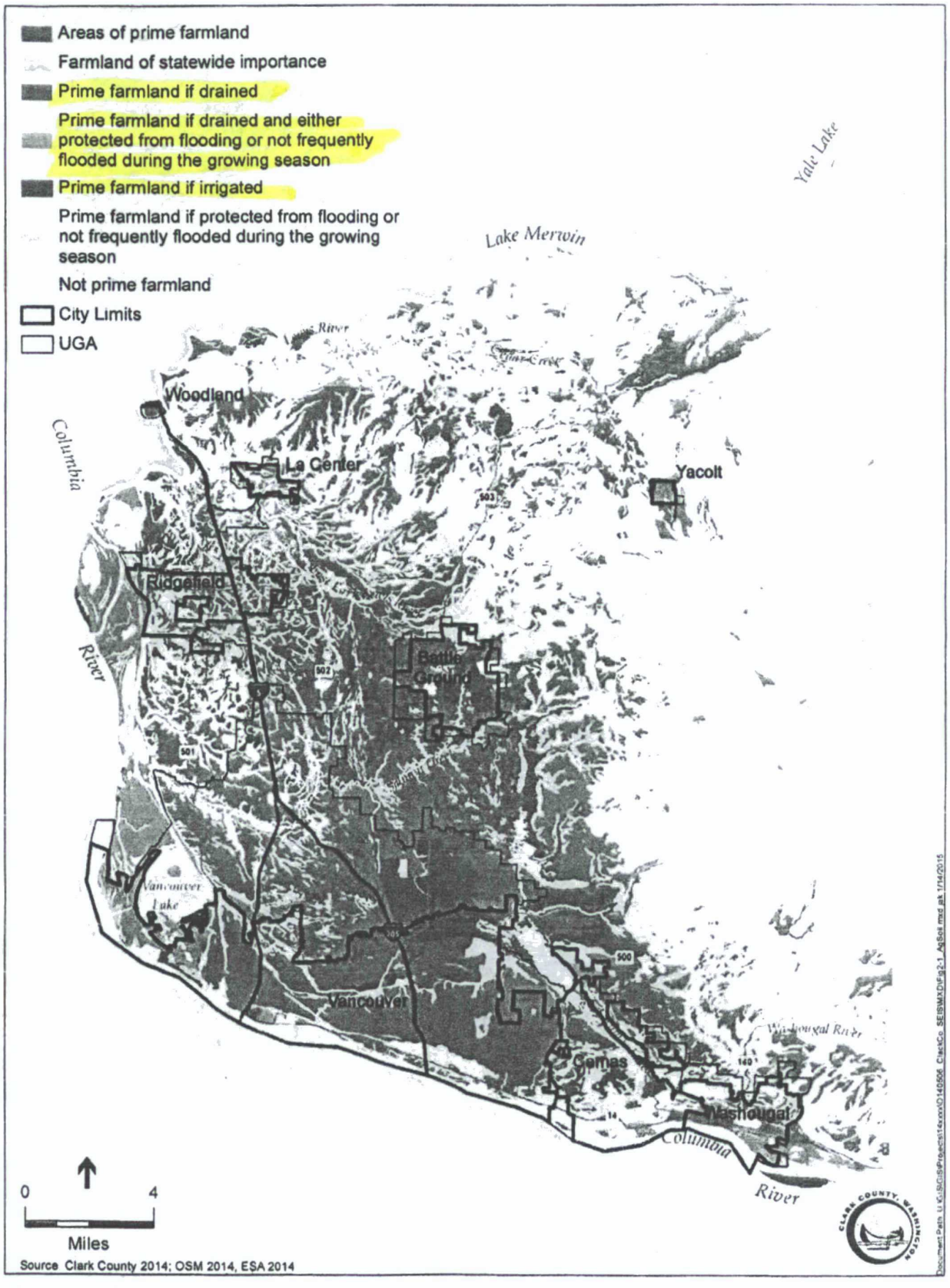

Figure 2-1: Soil Capabilities for Agricultural Use

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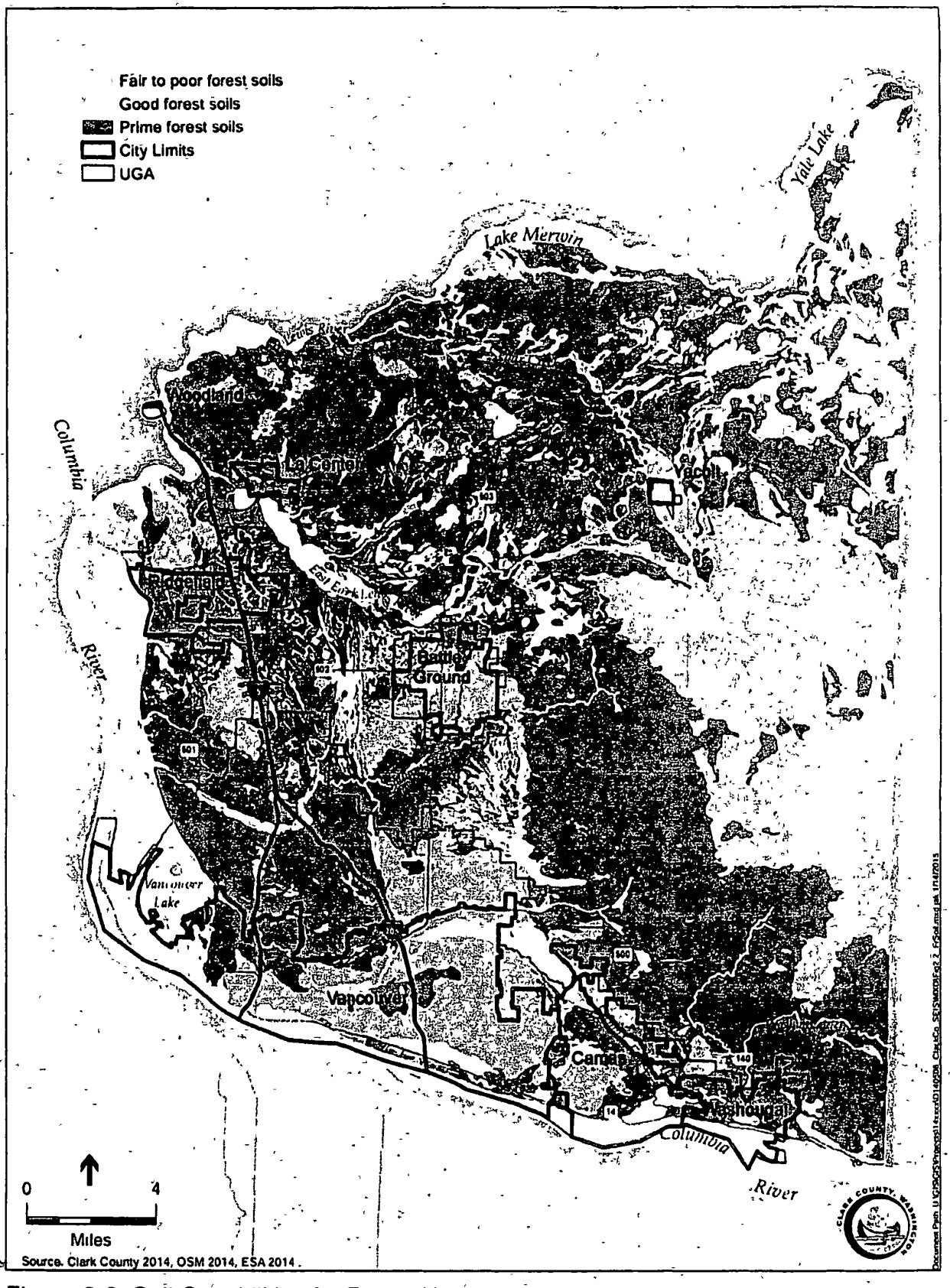
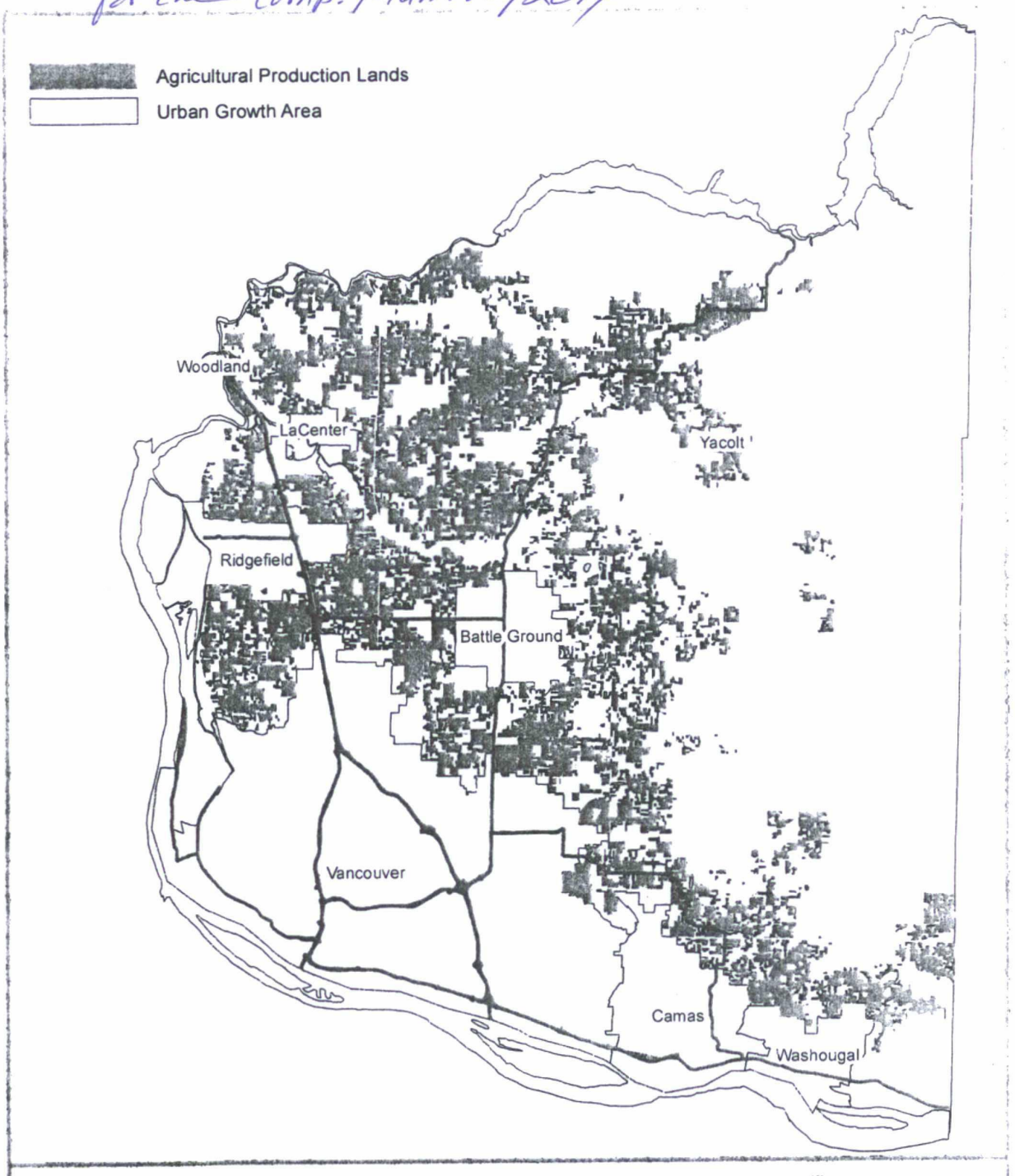


Figure 2-2: Soil Capabilities for Forest Use

Presented by the CC. Health Dept., Food Systems Corrid, Vancouver open house for the Comp. Plan. 10/2014



Clark County's Best Farm Land

Source: Clark County GIS

For further information contact Clark County
Public Health Assessment & Evaluation
brendon.haggerty@clark.wa.gov or (360) 397-8000 ext. 7281