

Thursday  
Feb 18

February 18, 2016

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

For the Public Record and the 2016 Comprehensive plan update

Dear Councilors,

The attached documents consist of ~~six~~ <sup>7</sup> pages of the Superior Court Case # 96-2-00080-2, Findings of Facts - Conclusions of Law and Order - April 4, 1997, Honorable Edwin J. Poyfair.

and

The attached documents consisting of eight pages of the Court of Appeals Division II - Published Opinion - Case # 22164-1-II, Honorables Morgan, Bridgewater and Reynolds

Clark County Citizens United, Inc. believes the information that attorney Christine Cooke gave the councilors on February 16, 2016 regarding the "Poyfair Remand" was incorrect and incomplete. In addition she stated that the only items to be addressed in the Orders were the Agri-forest designation and the Rural Centers designation. This is not true. But, it is true that the Western Washington Growth Management Board confined their remand review to only portions of items 4 and 7 while disregarding the rest of items 4 and 7 and all of items 2,3, and 6 of the Poyfair and later, Court of Appeals decisions. This was erroneous and the Board must be taken to task by the courts for doing so. In addition, the Board did not give the Superior Court, or the Court of Appeals any documentation or indication that Clark County was indeed in compliance to the court Orders, and yet they issued a "Compliance Order" 95-2-0067 to the county

According to 36.70A.300, Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 which states, "This chapter established the exclusive means of judicial review of agency action..." or 36.01.050 which states, "All actions against a county may be commenced in the superior court of such county..." at which time the superior court takes precedence over the jurisdiction of the hearing board.

The attached reports are highlighted in bright pink to indicate the importance of the statement highlighted. These show what the intent of the Orders were and what compliance was to be expected. Further research is being done to determine why the Hearing Board and the County ignored portions and all of these court orders and directives and why no reports were forwarded to the courts

Sincerely,

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

RECEIVED

APR 09 1997

LPSL

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

FII FN

APR 04 1997

JOANNE M... CLARK CO.

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

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 1

LPSEA1 K VCG1PLK11110PLK PLD

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE WASHINGTON 98101 2138  
(206) 221 7000

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

14 **FINDINGS OF FACT**

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

22 2. Clark County began its comprehensive planning process, pursuant to the GMA,  
23 ~~RCW Ch. 36.70A, in 1991. The County adopted County-Wide Planning Policies, under RCW~~  
24 ~~36.70A.210, and then a Community Framework Plan, to form a vision of Clark County's future.~~  
25 ~~Following adoption of this Plan, the County formed a Rural and Natural Resources Committee~~  
26 ~~("RNRAC"). This committee was delegated the task of identifying lands within the County to~~

FINDINGS OF FACT.  
CONCLUSIONS OF LAW AND ORDER - 2  
LPSEAIK ICGIPLK11110PLK PLO

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101 2338  
(206) 333 7133

024

Handwritten: 1/20/97

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

4 3. In addition to designating agricultural and forest resource lands, Comprehensive  
5 Plan adopted by Clark County designated 36,000 acres of "agri-forest" resource land. This  
6 classification was a hybrid of two GMA resource lands, agricultural and forest resource land.  
7 This hybrid resource category and the lands designated in this category were never considered  
8 by RNRAC. 1993

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

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

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

3 CONCLUSIONS OF LAW

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

6 2. Standard of Review. This Court reviews the Board's decision concerning  
7 questions of law de novo to ~~determine whether the Board erroneously interpreted or applied the~~  
8 ~~GMA~~ RCW 36.70A.320(1); RCW 34.05.570(3)(d). As for questions of fact, this Court  
9 reviews the entire record before the Board to determine whether its decision is supported by  
10 substantial evidence in the record. RCW 36.70A.270, .320; WAC 365-195-640(10); RCW  
11 34.05.570(3).

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

18 4. Agri-Forest Lands. The agri-forest resource designations violate the GMA  
19 Although it is arguably within a county's administrative discretion to create a new hybrid  
20 resource classification, Clark County's method of designating "agri-forest" resource lands does  
21 not comport with the definition of either agricultural or forest resource lands and is therefore  
22 invalid. ~~The Board had an end in sight (restricting growth in rural areas) but failed to develop~~  
23 the factors from the record and the GMA necessary to support its decision. ~~The Board~~  
24 ~~erroneously interpreted and applied the GMA when it failed to require the agri-forest resource~~  
25 ~~lands meet the statutorily mandated definitional criteria for resource lands.~~ Furthermore, there  
26

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

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

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

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

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

*Ogri-Forest Land mass had no EIS*

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 5  
LPSEA1 K ICGINPI K I I I I OPI K PLD

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





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

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

11 It is evident the rural land use density regulations were driven in part by earlier Growth  
12 Management Hearing Board decisions requiring urban population plus rural population to equal  
13 Office of Financial Management population forecasts. See Exhibit 5, p. 15 to Petitioners'  
14 Opening Brief, Box No. 2 to Record, Clark County Exhibit No. 93. This formulaic view of  
15 the GMA requirements is fatally flawed. There is no requirement in the GMA that the OFM  
16 projections be used in any manner other than as a measure to ensure urban growth areas are  
17 adequately sized and infrastructure in those growth areas is provided for. This Board decision,  
18 however, compelled the County to downzone substantial portions of the rural areas in order to  
19 meet the Board's apparent requirements.

20 The only requirement for rural areas in the GMA is that growth in rural areas not be  
21 urban in character. While the GMA contains no restrictions on rural growth, it does require a  
22 variety of residential densities. By trying to comply with the Board's errant decision, the  
23 County violated a GMA planning goal.

24 Through no fault of the County's, the Board had an end in sight and disregarded the  
25 GMA's mandate in applying an unauthorized formula to the review of the Clark County  
26 Comprehensive Plan's land use densities. The Board's interpretation was erroneous, and the

\*  
Comprehensive Plan

1 County's decision to follow the Board's lead was unfortunate. The result is a plan that gives  
2 little regard for the realities of existing rural development in direct contradiction of the terms  
3 of the GMA.

4 **ORDER**

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

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

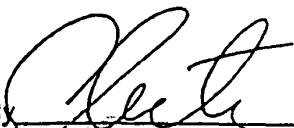
11 ~~FURTHER ORDERED, ADJUDGED AND DECREED~~ that Petitioners shall be awarded  
12 costs against Respondent WWGMHB pursuant to RCW 34.05.566 and RCW 4.84.010 in the  
13 amount of \$468.50, pursuant to the Cost Bill filed herein.

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

15   
16 The Honorable Edwin J. Poyfair  
17 SUPERIOR COURT JUDGE

18 Presented by:

19 LANE POWELL SPEARS  
20 LUBERSKY LLP

21   
22 By  
23 Glenn J. Amster  
24 WSEA No. 8372  
25 Attorneys for Petitioner Clark  
26 County Citizens United, Inc. and  
Michael and Catherine Achen

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER - 7  
LPSEAI K VGINPLK.11110PLK PLD

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE WASHINGTON 98101 2338  
(206) 221 7000



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.<sup>1</sup>

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

<sup>1</sup> See RCW 36.70A.040(1), (2).

<sup>2</sup> RCW 36.70A.040(3).

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

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

<sup>3</sup> RCW 36.70A.040(3)(c); RCW 36.70A.110(1).

<sup>4</sup> RCW 36.70A.040(3)(b), RCW 36.70A.170(1); RCW 36.70A.030(2), (5), (8), (11), (17), (18), (19), (20) In 1994, subsections 17-20 were numbered 14-17, respectively.

<sup>5</sup> RCW 36.70A.070(5).

<sup>6</sup> RCW 36.70A.110(2); see RCW 43.62.035.

<sup>7</sup> RCW 36.70A.110(2).

<sup>8</sup> RCW 36.70A.110(1); RCW 36.70A.010(1), (2)

<sup>9</sup> 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.<sup>10</sup> "Non-urban" or "rural" growth encompasses "a variety of uses and residential densities, including clustered residential development,"<sup>11</sup> provided that such uses and densities are "not characterized by urban growth," and are "consistent with rural character."<sup>12</sup>

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."<sup>13</sup>

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.<sup>14</sup> ~~Legally, the Board~~

---

<sup>10</sup> 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.")

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> Clerk's Papers at 38.

<sup>14</sup> 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."<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

<sup>15</sup> Clerk's Papers at 39-40.

<sup>16</sup> Clerk's Papers at 79.

<sup>17</sup> 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."<sup>18</sup> This contention involves a question of law<sup>19</sup> that we review without deference to the trial court,<sup>20</sup> but arguably with deference to the Board.<sup>21</sup> 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."<sup>22</sup> 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.

<sup>18</sup> Appellant's Brief at ii.

<sup>19</sup> *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).

<sup>20</sup> *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."

<sup>21</sup> We discuss due deference to the Board later in this opinion.

<sup>22</sup> 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.<sup>23</sup> 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."<sup>24</sup> 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~~

<sup>23</sup> 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.

<sup>24</sup> 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.~~<sup>25</sup>

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,<sup>26</sup> ~~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.~~<sup>27</sup> 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.~~

<sup>25</sup> *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).

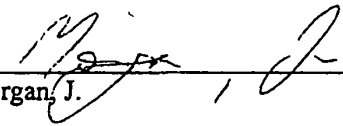
<sup>26</sup> *City of Redmond*, 136 Wn.2d at 46, *City of Pasco*, 119 Wn.2d at 507; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813-14, 828 P.2d 549 (1992); *Overton v. Economic Assistance Auth.*, 96 Wn.2d 552, 555, 637 P.2d 652 (1981)

<sup>27</sup> *Overton*, 96 Wn.2d at 555 (citation omitted); see also *Cowiche*, 118 Wn.2d at 815

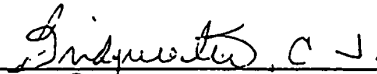
22164-1-II

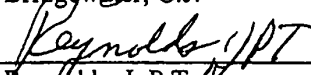
~~Based on the foregoing, we conclude that the GMA does not require counties to use OFM's projections as a cap on non-urban growth. The Board exceeded its authority, and the trial court did not err by reversing the Board's ruling.~~

~~Affirmed.~~

  
Morgan, J.

We concur:

  
Bridgewater, C.J.

  
Reynolds, J. P.T.

**Schroader, Kathy**

---

**From:** Tilton, Rebecca  
**Sent:** Wednesday, February 24, 2016 11:59 AM  
**To:** Orjiako, Oliver, Schroader, Kathy  
**Subject:** Comp Plan Comments  
**Attachments:** Sydney Reisbick\_02-16-16 Comp Plan Comments pdf, Levanen\_Carol\_021616CompPlanComments pdf, Hammon\_021616CompPlanComments pdf, West\_Thomas\_021616CompPlanComments pdf, Eustis\_021616CompPlanComments pdf, Koktas\_021616CompPlanComments pdf, Kokta, Theresa\_021616CompPlanComments pdf, Jensen\_Lee\_021616CompPlanComments pdf, Zavanelli-Morgan\_Barbara\_021616CompPlanComments pdf, Morgan\_James\_021616CompPlanComments pdf, Ek\_Nathan\_021616CompPlanComments pdf, Light\_Megan\_021616CompPlanComments pdf, Boynton\_Steve\_021616CompPlanComments pdf, Levanen\_Carol\_022316CompPlanComments pdf

Hello,

For your records, please see the attached written testimony received on Feb 16, Feb 18, & Feb. 23, 2016.

Thank you!  
Rebecca

Rebecca Tilton, Clerk of the Council  
Board of County Councilors  
1300 Franklin Street  
PO Box 5000  
Vancouver, WA 98666-5000  
PHONE 360-397-2232, ext 4305 | E-MAIL [Rebecca.Tilton@clark.wa.gov](mailto:Rebecca.Tilton@clark.wa.gov)