

May 19, 2016

Clark County Board of Councilors
Clark County Planning Commission
P O box 5000
Vancouver, Washington, 98666



Dear Councilors and Commissioners,

On February 21, 1997, the Court rendered an oral decision upholding Petitioners challenge to the decision by the Western Washington Growth Management hearing Board on Clark County's Growth Management Plan. The Court's oral decision focused principally on the WWGMHB's erroneous assessment of the agriculture, forest, rural and agn-forest land classifications. The court Order reversed the WWGMHB decision in two (2) additional respects. In both instances, the conclusions embodied in the Order flow from the rationale expressed by the Court in its oral decision.

First, it is evident from the lack of substantive evidence in the record that the WWGMHB had an end in sight when it affirmed the designation of resource lands without regard for their long-term commercial significance and production. Though there was some effort at the outset to identify lands currently in some kind of resource use, the GMA's definitional requirement for long-term commercial significance was ignored in the rush to obstruct reasonable growth in rural areas.

Second, use of an arbitrary and unsupportable formula for determining appropriate land use densities, and most importantly, the proposed order once and for all would put an end to the WWGMHB use of an arbitrary and unsupportable formula for determining appropriate land use densities. The notion that the allocation of population to urban and rural areas, as determined by zoning densities must to exceed the OFM population projection is the root of many of the evils which the court has identified. This formula must be rejected by the Court if its decision on-forest lands is to be effective. Otherwise the WWGMHB will find a way to affect the same "takings" under some other label.

The designation of resource lands and the zoning densities for rural land do not comply with the Growth Management Act (GMA).

1. Agricultural Resource Lands. As the court noted in its oral decision, the GMA provides a specific definition for agricultural resource lands RCW 36 70A030, 170. According to the statutory definition, "Agricultural land" meant land primarily devoted to the commercial production of agricultural products and that has long term commercial significance for agricultural production.

It is not sufficient under the GMA to review aerial maps and existing conditions to determine current use. The designation of resource land requires something more. It requires, as the Court correctly noted, an assessment of the "lands proximity to population areas," and the "possibility of more intense uses of the land."

The Board's decision neglects this critical component of the resource land designation process - neglects to specify even a single piece of such evidence. The fact is this assessment of long term economic viability - i.e. the consideration of predictive capacity, market conditions, the effect of growth in current use, etc. - never took place. The proposed order embodies this failing of the Board's decision.

Land Use Densities - In its oral decision, the Court noted the board's recent invalidation of the proposed land use densities for rural lands. The Court will recall that the Board based its decision

on a formula which it fabricated in an earlier decision that is: The population allocations for urban areas plus the population allocation for non-urban areas must total

the (OFM) population projection

the uniform, 5 acre lot sizes in rural areas were at least in part the result of the County's reading of the Board's mandated formula. This formulaic vision of future growth in Clark County is the "end in sight" which the Board has held out as the objective of the County's Plan.

The evil of the Board approach to rural land use planning is evident. The GMA requires counties to use OFM population projections as a basis for planning to accommodate urban growth during the 20 year comprehensive planning period. RCW 36 70A 110 (2). The intent of the GMA mandate is to ensure existing and future urban areas are designed and planned to accommodate higher density growth. This technique of population allocation must be contrasted with the GMA's goals for rural areas. The GMA does not mention refer to, or even suggest the use of OFM population projections in planning for growth in rural areas.

The county's Framework Plan, which was adopted at the outset of the GMA planning process, identified and sought to maintain the existing rural character and the rural activity centers which develop over time in response to the need of rural residents. The Board's implementation of a population allocation formula, however, caused the County to eliminate this planning strategy for rural areas. Instead, the County was compelled to enlarge the area of resource lands, i.e., by designating otherwise undeveloped rural lands as resource land, to justify large lot and uniform residential densities through the County. If the Board's formulaic approach in land use planning is not soundly rejected, the "taking", embodied in the agricultural and forest land use designations will be perpetuated under some other label.

DIVISION II, COURT OF APPEALS OF THE STATE OF WASHINGTON -

the decision of the Clark County Superior Court striking down the Western Washington Growth Management Hearings Board's self created formula for zoning rural land under the GMA RCW 36 70A RCW

36 70A 070 Mandatory elements of comprehensive plan, including requirements for "adequate provisions for existing and projected needs for all economic segment of the community", appropriate land uses"

County Wide Planning Policies. The first step in the GMA planning process is the adoption of county -wide planning policies. These are defined by the GMA as a policy statement "for establishing a county-side framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. RCW 36-70A 210 (1). The GMA comprehensive plans for the county and cities within it must be consistent with one another; the CPs are the framework that ensures such consistency.

adopted county - wide planning policies are intended to be policy statements with an agreed upon framework and vision for the future.

Urban Growth and Rural areas - By directing growth within urban Growth areas, the GMA anticipates local communities can better reserve other land for rural uses, resource conservation and environmental protection. The GMA is to designate urban growth areas that are to accommodate the urban growth projected for the county over the next twenty years, based on the growth management population projections made by the state Office of financial Management. The OFM population projection, provides a yardstick for sizing the GMAs.

Local governments exercise more discretion in developing plans for rural areas. The GMA does not specifically define what rural areas are, but instead defines what they are not. The mandatory rural element of a county's comprehensive plans is to address, land that are not designated for urban growth, agriculture, forest or mineral resource. Prior to 1997 the GMA provided little guidance to counties for rural areas.

Codified at RCW 36 70a 030 (3), 070 (5) new provisions reiterate the importance of balancing the goals of the GMA with local circumstances, specifically providing for a variety of rural densities and uses the GMA does not dictate a particular plan or vision for real areas provisions for rural area planning do not refer to the OFM population projections Rural area planning, will vary from one locale to another depending on local conditions and sentiments RCW 36 70A 070 (5), RCW 36 70A 140

Clark County Growth Management Plan - Clark County's CPPs and Framework Plan - On July 22, 1992, Clark County adopted county-wide planning policies (CPs) pursuant to RCW 36 70A 210 to establish "a county-wide framework from which county and city comprehensive plans are developed The Plan encouraged clustering residential development within designated rural centers Specific framework plan policies supported these overall goals communities, urban and rural, should contain a diversity of housing types "Specific policies also addressed the overall plan for non resource lands in rural areas, The county shall recognize existing development and provide land which allow rural development areas which are developed or committed to development of a rural character " There was no challenges to the CPPs

In March 1993, the County published the Final EIS for the Community Framework Plan

In June 1994 Clark County Published a Draft Supplemental EIS (DSEIS) Each of the alternatives for rural areas recognized the existing rural towns and villages and the small-lot residential areas

The county released the Final Supplemental EIS in September 1994 The range of alternatives did not differ in any respect The first public hearing on the plan were specifically intend to solicit comments from rural-area residents copies of the plan were not available to the public until several days after public hearings had begun Recommended minimum lot sizes were significantly larger in rural areas than even the most environmentally preferable alternative in the EIS

Despite protests of hundreds of rural area residents the County Commissioners made virtually no changes to the land use maps

It appears from the record that Clark County planners may have felt compelled to substantially downzone rural areas because of earlier growth hearings board decision more that 70% of Clark County's rural land was downzone and became non-conforming

The claims of most of the individual petitioner were dismissed without any meaningful discussion See Final Decision WWGMHB

At the same time, the Board found for CCNRC on several issues and remanded the plan to the County In particular, the Board determined that the County plan for rural areas was not restrictive enough seventy percent (70%) of all rural land had been down zoned, the Board order the County to downzone more rural lands and to develop mechanisms to restrict use of existing parcels the Board based these determinations, at least in part on a formula, population allocations for the urban areas plus the population for non-urban areas must total the OFM population projection the Board's decision related to resource and rural lands

The Superior Court reversed By trying to comply with the Board's errant decision, the County violated a GMA planning goal

The written decision of the trial court is considered the court's intimate understanding of the issues presented The final order was presented in open court

The Board engaged in unauthorized law-making when it created a formula requiring that OFM population projections dictate land use densities in rural areas The GMA does not remotely suggest that OFM population projections be used in this manner, and no such use should in implied

The Board and CCNRC confuse the purpose and use of the various tools involved in GMA planning They fail to distinguish between the land capacity and disaggregation processes The disaggregation process is used to allocate the OFM population projection to urban and rural areas The land capacity analysis is

then used to ensure that urban growth areas include land and densities sufficient to permit the urban growth that is projected to occur RCW 36 70A 110 92) The GMA does not include, nor was the Board entitled to mandate, an land capacity analysis in rural areas Growth in rural areas, according to the GMA is permissible so long as it is non-urban growth, providing "for a variety of rural densities" and uses, and "consistent with the rural character"

The Board is not entitled to deference when it engages in lawmaking The growth management board have no authority to legislate, nor were they given rule-making authority to devise or supplement the GMA's substantive requirements

The growth management hearing boards are administrative tribunals, and make agent adjudications Agency adjudications are reviewable under the Washington Administrative Procedures Act RCW ch 34 05 The standards for judicial review are set forth in RCW 34 05 570 (3) (d),

The Court shall grant relief from an agency order in if it determines that, The agency has erroneously interpreted or applied the law

The legislature even rejected proposed GMA provision that would have given substantive rule-making authority to the Department of Community, Trade and Economic Development, The state agency with responsibility for overseeing GMA implementation DCTED was directed to adopt only procedural criteria to guide local implementation of the GMA RCW 36 70A 190 (4) (b)

Here, the statute is clear - the Growth Management Act does not require use of OFM population projections to determine land use densities in rural areas The board has erroneously interpreted unambiguous language requiring the use of OFM population projection in the designation or urban growth areas to create an unauthorized mandate for rural area land use planning In these circumstances, no deference is afforded the Board's decision

Even is the statutes of found to be ambiguous, the courts retain ultimate authority to render an interpretation The interpretation of the statute is a question of law The courts, not administrative agencies, are the final arbiters of the law it is ultimately for the court to determine the purpose and meaning the statute even when the court's interpretation may be contrary to that of the agency Deference is particularly inappropriate in this case because the decision is not based on factual matters the Board has imputed to the statutes a mandate which does not exist

The Superior Court correctly determined the Board made an erroneous interpretation of the GMA The Trial Court correctly determined OFM population projections are not the defining element of rural land use densities

There is no mention of rural areas in this or any other provision of the GMA referring to OFM population projections The inclusion by the legislature of specific and repeated references to urban areas, coupled with the absence of any reference to rural areas, implies that growth management planning in rural area is not dependent upon OFM population projections

The fact that OFM provides each county with a county-wide population projection, however does not translate into a GMA mandate for rural areas

There is nothing in the GMA, which even remotely suggests that growth in rural areas be "capped" to include only areas and densities suggested to accommodate the projected rural population

If the legislature intended these population projections to provide a cap on rural growth, one would expect to find some reference to this theory in the GMA itself The absence of any reference to rural lands in the same breath as population projections is evidence of the legislature's intention not to use these forecasts as a cap on rural growth The GMA requires the use of OFM population projections in the formulation or urban growth areas, nothing more

The disaggregation of OFM population projections must be distinguished from the land capacity analysis used to plan in urban growth areas The process of breaking down the OFM population projection for a

county into anticipated urban and rural growth has been coined disaggregation by the Central Puget Sound Growth Management hearing Board. Upon completion of the population disaggregation process, counties and cities use land capacity and market supply analyses to designate and plan for growth in urban growth areas. The population disaggregation process from the land capacity analysis used to develop land use plans in urban, not rural areas."

the Board addresses population allocation, but neglects to cite any authority for its conclusion that rural land use densities must be tied to OFM population projection. The Central Board concludes that the OFM population projection is a limitation, but only on the formulation of UGA boundaries.

The Central Board held that the GMA does not require the potential population or land capacity in the rural area to equal the rural portion of the OFM population projection. The Central Board expressly distinguished the population disaggregation process from the land capacity analysis.

The central Board reached a similar result, "OFM's population projections are to be used for designating UGAs (RCW 36 70A 110 (2), not necessarily for planning one the boundaries of GMAs have been established."

The GMA does not authorize the board to reach back in time to "cure" what it perceives to be inappropriate patterns of growth. To the contrary, the GMA explicitly requires counties and cities in developing growth management plans to accommodate future growth without impeding or repressing vested property rights.

the Central Board states in *Gig Harbor v Pierce County*, "It must be recognized that a county cannot undo past development or future development that has already vested." Yet that is precisely what the board had ordered Clark County to do before the Superior Court ruled otherwise.

In short, the purpose of the OFM population projections is to ensure that counties and cities make appropriate provision for urban growth. If the legislature had intended to mandate a growth management strategy calling for a drastic down zoning in rural areas in order to accommodate only the population projected for the next 20 years, it would have said so. It did not.

The Rural Element of the Comprehensive Plan involves a balancing of the GMA's goals and consideration of local conditions, it is not dependent on OFM population projections.

the GMA provides much more general direction to counties for development the rural element of the comprehensive plan. "The rural element shall permit rural development. The rural element shall provide for a variety of rural densities, uses, essential public facilities and rural governmental services needed to serve the permitted densities and uses."

The GMA does not specify maximum standards of development density or intensity for areas outside UGAs. (See *Settle & Gavigan, The Growth Management Revolution in Washington, Past, Present and Future*, ...) "no specific density in rural areas, rather they must be a variety of rural densities that are compatible with the rural character."

the GMA allows growth in rural areas. Through growth management, rather than no-growth, was always the Legislature's mandate, the 1997 amendments to the GMA dispel the notion that development in rural areas is prohibited under GMA 36 70A 030 915).

"The legislature recognizes the importance of rural lands and rural character but seeks to recognize regional differences in rural-based economies. Counties should develop a local vision of rural character and land use patterns that will help preserve rural-based economies and traditional rural lifestyles and enhance the rural sense of community and quality of life." The legislature authorized "fully contained communities," it required counties to take those land use designations into account in the formulation of urban growth populations and boundaries. RCW 36 70A 350 (2). The provision for rural activity centers, do not contain any such requirement. There is not the slightest suggestion that these pockets of more

intensive rural development should cause adjustment of densities in other rural areas RCW 36 70A 070 (5) (d)

This is precisely why the legislature chose not to require a formulaic approach to land use densities in rural areas, but instead relied on more general objectives

CCNRC and the Board is that reducing sprawl is the ultimate priority of the GMA This arrogance ignores the purpose of the GMA RCW 36 70(planning goals not listed in order of priority)

The Board decision does not mention economic opportunity in rural areas, but instead leaps without forethought to a formulaic approach to zoning The Board's formula-based limitation so misplaced There are far too

many consideration in the development of the rural element of a comprehensive plan to require that exercise be driven by a formula contrived to dictate large-lot zoning and nothing more RCW 36 70A 070 (5) RCW 36 70A 110 - Comprehensive Plans - Urban growth areas

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in area already characterize by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities

(4) In general, cities are the units of local government most appropriate to provide urban governmental service, In general it is not appropriate that urban governmental services be extended to or expanded in rural except in those limited circumstances

RCW 36 70A 210 County wide planning policies (3) (g) Policies for county wide economic development and employment and (h) An analysis of the fiscal impact

Hundreds of rural areas resident reacted strongly to the proposed plan In general the public complained that the proposed plan, including resource lands and rural land development standards Also, the public demanded to know how the county had designated agricultural resource lands No additional analysis of resource lands was ever conducted Despite the protests of hundreds of rural area residents, the final plan adopted by the County made virtually no changes to the land use designation from that record prior to the commencement of public hearings

Clark County violated the GMA by improperly designating resource lands The County failed to follow the framework for resource land designation under the GMA, failed to base its resource land designations on a deliberated, well-reasoned process and ultimately designated resource lands in an arbitrary and capricious manner The designation of a majority of the agricultural resource land is not supported by the evidence in the record Clark County land use policies and development regulations for rural land resource areas violate the GMA The County failed to balance the goals and policies in the GMA, failed to recognize the existing development pattern and failed to preserve and protect the rural character The plan fails to comply with the previously adopted CFP Clark County failed to comply with the substantial public participation requirements of the GMA regarding public participation in a meaningful manner Clark County failed to comply with SEPA The County failed to disclose, discuss and substantiate an adequate analysis of the environmental effect of the CCCP and development regulations The EIS failed to respond to public comments

In general, Clark County's growth management plan and development regulations for rural land resource areas do not evidence the deliberative and well-reasoned process required by the GMA The actions taken by the County in enacting the comprehensive plan and development regulations were arbitrary, capricious and not support by substantial evidence and the law

All records of Clark County and the GMHB which relate to the proceedings described above, including, but not limited to all documents, statements, exhibits, recordings, minutes, verbatim transcripts of all meeting and public hearings in connection therewith memoranda and written correspondence pertinent to the review

of application be reproduced in order to review the County's action
Clark County must review and revise its rural and resource land designations and rural and resource land development regulations to conform with all requirements of the GMA

In July 1992, Clark County adopted its county-wide planning policies (CPP) community visioning process
March 5, 1993 the County then adopted a "community framework plan"

The term arbitrary connotes actions that are ill conceived, unreasoned, or ill considered The term discriminatory involves actions that single out a particular person or class of persons for different treatment without a rational basis upon which to make the designation

Petitioners attacked the use of aerial photographs by the County to specifically locate agriculture and forest designations

The CFP specifically encourage clustering residential development within the designated rural centers
specific policies also addressed the overall plan for non-resource lands in rural areas,

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

Outside of one specific area, the farm focus group could not reach consensus on the designation of agricultural resource lands No further assessment of agricultural resource lands is documented in the planning process

Recommended minimum lot sized were significantly larger in rural areas that even the most environmentally preferable alternative in he EIS

Hundreds of rural area residents have reacted strongly to the plan

The Farm Focus Group classified Clark County's agricultural lands, a significant portion of which were located in the Vancouver Lake lowlands areas Outside of that, the farm focus group could not reach consensus on whether there were any agricultural land in Clark County fitting the requisite 'long term commercial significance' element of resource lands under the GMA

The FSEIS recited only the following analysis of "long term commercial significance" "although there are physical soils properties and climatic condition to support commercial resource use, much of the area had been subdivided into smaller parcels that typical for resource uses" and goals are present, county must make a choice based on economic viability Quality soils was a primary factor

A majority of the farm focus group, concluded there was very little, if any, commercially significant agricultural land in Clark County There is not one shred of evidence in the record to explain how the County reached a contrary conclusion

Where these condition County's rural land resource development regulations violate many of the GMA,s requirement are not supported by the record in this case As a result of the new plan, more than 70% of rural Clark County has been down-zoned and is now nonconforming Though the plan would allow development on pre-existing parcels, the degree of nonconformity is glaring evidence of the County's failure to balance the goals of the GMA

Agriculture, forest and mineral resource lands under the GMA have a decidedly economic component, lands so designated must have "long term commercial significance "

Land must be primarily devoted to the commercial production of the resource, as well as long term commercially significant for the production of that resource Because the GMA defines the two elements on the conjunctive, rather than the disjunctive, the resource land must meet both elements, not one or the other

Clark County did not review and perform an economic analysis when designating resource lands

The record does not support the Agricultural resource land designations

There are only four items in the entire record which describe some of the County's resource work They include a "Resource document", a farm focus group report, a forest focus group report and an "Agriculture

notebook" Neither the staff reports nor the committee reports contain any evidence supporting the economic elements of the resource designations

Staff identifies soils as the critical aspect Staff determined resource land to have tree cover and agricultural practices as determined by reviewing aerial photographs Aerial photographs, 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 element of resource designation

The county had assigned the task of classifying and recommending areas for resource designation to the Rural and Natural Resource committee, which had failed to agree on whether there was any economically viable agricultural resource and in Clark County although the staff suggests the resource land designation were the product of the Committee, the recommendation contains not the slightest mention of the lack of consensus of the committee The county simply acknowledges the difficulty of resolving the issue and states "quality soils was a primary factor

Virtually the only discussion of economic factors and resource lands occurs in response to a question about minimum lot sizes in resource areas Though apparently not considered in the County's designation process, the evidence is telling This highlights the Counties misplaced reliance on resource land designation as a means to restricting development on rural lands

The county was required to balance the Goals of the GMA when development in the Comprehensive Plan This means that each element of a comprehensive plan must be in compliance not only with the more specific provision of the GMA, associated with that element, but also must be in compliance with the planning goals of the GMA These lands are designated and conserved, "not for the sake of their ecological role, but to ensure the viability of the resource-based industries that depend on them " Richard L Settle and Charles GaGavigan

The GMA requires counties to promote a wide variety of residential densities, not accidental variety by default, A planning goal contained in the GMA is to promote a variety of residential densities and housing types The GMA also requires that all comprehensive plans contain housing element which ensures the vitality and character of established residential neighborhoods In rural Clark County The Framework Plan adopted at the beginning of the GMA planning process identified pre-existing small development patterns The GMA requires planned growth, not accidental development The county should be compelled to identify current development patterns preserving the rural character Providing for planned growth does not translate into precluding all land division where a wide variety of parcelization currently exists

The GMA requires public participation be continues and consistent throughout the planning process The GMA contains a stringent public participation requirement,

"Each county shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and adoption of comprehensive land use plans"

singled out lands previously not the subject of public comment for resource designation does not comply with the Gas public participation requirements Clark County singled out and GMA prohibits this haphazard and arbitrary action There simply was not time for meaningful comment to occur since February 19, 2016 and for the last three months period Copies of the Comprehensive plan were not available to the public until April 24, 2016 There are few remaining hearings dedicated to final comment on the entire plan Moreover, the comments were not given meaningful analysis, as evidenced by Planning Commission minutes adoption the staff recommendations Public participation goals of the GMA were not met by this late date bad haphazard public comment process undermine the grass roots slant of the GMA

The program here is a virtual revolution of land use planning for the entire county For agricultural areas, in particular, there would be no additional environmental analysis The alternatives considered in the environmental documents contemplate a plan designating approximately 46,000 acres as agricultural resource lands The county failed to assess the environmental impacts of this designation

A UGA is simply the boundaries of an area in which urban levels of density will be allowed. The GMA still allows rural growth and shall permit rural development. Severe restrictions on rural growth are not required or even sanctioned by the GMA. The statute provides for rural development and a variety of rural densities, both of which are impossible under very large minimum lot sizes.

Unnecessarily high minimum lot sizes exacerbate the affordable housing crisis. The legislature had declared that the lack of affordable housing is a serious concern and that making housing more affordable is a recognized government function RCW 43.180.010. The GMA also recognized the importance of affordable housing and made affordability one of the mandatory goals of a county's comprehensive plan. In court, the fewer homes which can be built means the housing supply will go down. As supply goes down and demand goes up, housing prices will soar.

The county's severe restriction on rural development increases housing costs, especially for rural residents. The legislature has declared how important affordable housing is.

October 13, 1994 memorandum - Resource designations - "A critical aspect of the minimum guidelines for resource designations is soil classifications.

Agricultural soils suitability - Capability Classes I and II have been used to classify prime soils and capability CI II is generally good soils.

The Douglas Fir was used as the indicator species for Clark County. Prime forest soils are Land Grades 1 and 2. Good forest soils are Land Grade 3.

They also have a mix of tree cover and agricultural practices as determined by reviewing aerial photographs.

Aerial photos also illustrated that much of the parcelization shown on the map did not actually have buildings constructed. Based on this work and the need to support the population projections forecasted for the rural areas.

As part of the GMA process, several focus groups were formed to address various issues. One such group was the Rural and Natural Resource Lands Focus Group which was divided into an agricultural group, a forest group and a mineral group. Those groups then made recommendations to the county staff, which in turn made recommendations to the Planning Commission and the BOCC. On October 13, 1994, Craig Greelleaf issued a staff report to the Planning Commission. In that report he concluded that aerial photos also illustrated that much of the parcelization shown on the map did not actually have buildings constructed. Based upon this work and the need to support the population projection.

When the Court's decision is read in its entirety, it is evident the County will have to re-examine a substantial portion of its plan for rural areas.

Proper scrutiny of the county's process exposes the agricultural and forest resource designations are not based on the GMA's mandatory definitions and are not supported by evidence in the record. Clark County cannot hide behind a mountain of documents. The decision-making process related to the agriculture and forest resource land designations simply was not proper, making the result of that flawed process also improper. Clark County's actions were and are still invalid because they were arbitrary and capricious.

Agricultural resource land is not forest resource land. Conservation under the GMA is not preserving rural lands for resource production with evidence such land meets the GMA's definitions. As to the specific term, agricultural and forest lands are decided separately and differently in the GMA. Forest grade land does not have the same characteristics as prime soil for growing agricultural products. Clark County failed to properly classify resource lands. The County disregarded the necessary analysis of long-term commercial significance for agricultural and forest resource land completely. The need to analyze all of the relevant CTED factors, as well as the commercial significance of potential resource land cannot be ignored. This does not mean that 80% of the land in Clark County is appropriately designated forest resource and under the GMA.

resource land must be primarily devoted to the commercial production of the resource in question and have long term commercial significance for that resource. How the agricultural and forest resource designation relate to initial studies and data gathered is conspicuously absent from the County's analysis.

The farm and forest focus group reports, along with the resource land maps, are the only evidence of the County resource designation process. These records simply do not show how the land designated by staff comply with the GMA. The county asserts it balanced the goals of the GMA and designated marginal lands even if they did not fit within the GMA's definition for resource lands. One cannot assess whether productive resource industries are being maintained and enhanced without first identifying those lands according to the criteria set forth in the GMA. Staff contends land already designated resource land was examined to identify surrounding parcels that had not been designated but could be 'blocked up' with resource lands to concentrate and envelop larger tracts of areas.

The planning Commission transcripts reflect nothing more than staff's self-serving testimony which is built upon an uneasy foundation, the absence of facts.

What is missing from the record is evidence of exactly how the County was guided by policies in making its comprehensive plan agricultural and forest land designations. There is no evidence in the record demonstrating commercial productivity of resource lands was a guiding factor.

With regard to housing goals, the county erroneously interpreted and applied the GMA. The GMA provided that counties shall be guided by the goal of promoting a variety of residential densities. The procedural criteria identified by the DCET for fulfilling this goal states "the rural element shall permit land uses that are compatible with the rural character of such lands and provide for a variety of residential densities. The goal for a variety of residential densities in rural areas is also closely linked to the goal of preserving the existing rural character of the area. The County wants to minimize the effect of sprawling development by sublimating an important GMA planning goal. This may mean there is an actual variety of housing densities in rural areas - but it does not conform to pre-existing development patterns. The pre-existing rural character found in Clark at the beginning of the planning process had been forfeited because Clark County failed to act to maintain the status quo from the onset of the planning process.

The county needs to adopt a variety of residential densities to conform to the rural development patterns consistent with pre-existing rural character.

Sincerely,



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