

**Leslie Clark**

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**Subject:** Memo from Oliver over CCCU formal request

**From:** Carol Levanen  
**Sent:** Tuesday, April 19, 2016 1:05 AM  
**To:** Susan Rasmussen; Carol Levanen  
**Subject:** Memo from Oliver over CCCU formal request



MEMORANDUM

TO: Board of County Commissioners  
FROM: Oliver Orjiako, Director  
DATE: June 26, 2014  
SUBJECT: Resource land designation

INTRODUCTION

The Board of County Commissioners' office has received numerous e-mails from Clark County Citizens United (CCCU) with regard to zoning in rural Clark County. CCCU has raised arguments indicating that the county should revisit the Agriculture and Forest resource land designations and the smaller minimum parcel sizes of 1 and 2.5 acres that were in effect prior to the adoption of the first comprehensive plan under the Growth Management Act (GMA) in 1994.

Staff has revisited records dating to the adoption of the 1994 comprehensive plan and subsequent appeals. This memo tracks separately the historical context from approximately 1993-1998 related to each of the two issues: designation of resource land and rural parcel size. For each issue the chronology includes the lead up to adoption of the comprehensive plan followed by appeal to the Growth Management Hearings Board (GMHB), followed by appeal to Superior Court and Clark County's responses to the appellate rulings.

Designation of Resource Land

In 1993, the Board of County Commissioners convened a Rural and Natural Resource Lands Advisory Committee. Two sub-committees were formed, the Farm Focus Group and the Forest Focus Group, and were charged with classifying and designating farm resource lands and forest resource lands, respectively. The work of the Advisory Committee was based in large part on the minimum guidelines required by the growth management legislation as found in Chapter 365-190 of the Washington Administrative Code (WAC). In their respective reports they cite guidelines issued by the Washington State Department of Community Development; these are the same guideline that are in the WAC 365-190.

The Farm Focus Group issued its report December 9, 1993. The report includes the delineation methodology that was used by the group. The group used the criteria as set 008409

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out by the Washington State Department of Community Development (DCD) to designate agricultural land. The agency criteria required use of the land capability classification system of the U.S. Department of Agriculture Soil Conservation Service as a prime factor. WAC 365-190-050 also provides ten indicators to use in the designation assessment. This is addressed in an October 25, 1994 memo to the Planning Commission from Jeri Bohard, GMA Section Supervisor.

The Forest Focus Group issued its report December 5, 1993. Forest lands designation also had specific criteria to be used, including quality soils. However, to classify forest land the DCD criteria required the use of the private forest land grading system from the Department of Revenue. In addition, WAC 365-190-060 had seven other indicators to consider in designating forest land.

The Rural and Natural Resource Lands Advisory Committee began the process of designating Agri-Forest for areas north of the East Fork of the Lewis River. The process was completed by staff subsequent to the issuance of the draft supplemental environmental impact statement (DSEIS). The Agri-Forest designation was added for the following reasons per memo from Craig Greenleaf, Planning Director, to the Planning Commission dated October 13, 1994:

- The committee separated the selection process into independent determinations of agriculture and forestry characteristics, leaving some land inappropriately considered;

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- The farm focus group did not include heavily forested lands; some of those lands were commingled with agricultural lands and were overlooked by both focus groups;
- Factors which are not objective tended to carry less weight (e.g. Settlement patterns and their compatibility with agricultural practices).
- The forest focus group discounted the role of soils as a factor because they were found to be uniformly of high quality;
- The farm focus group's failure to agree on "long term commercial significance" lead to severe difficulty in defining agricultural lands on a consensual basis and narrowed the committee's outcome to things over which agreement was reached.

#### Growth Management Appeals

CCCU was one of 67 appellants that filed appeals of the adopted comprehensive plan with the Growth Management Hearings Board in 1994. CCCU raised the following issues in its petition to the Hearings Board:

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- Did the County's designation of agricultural resource lands comply with the GMA?
  - Did the County's designation of ag-forest resource lands comply with the GMA?
  - Did the County's designation of forest resource lands comply with the GMA?
- In its Final Order and Decision dated September 9, 1995 the GMHB affirmed the County's designation of agricultural, forest and agri-forest resource lands. "Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were lands of 'long-term commercial significance' Petitioners have failed to carry their burden of proving the decision was an erroneous application of goals and requirements of the GMA. The County chose a decision that was within the reasonable range of discretion afforded by the act."

#### Superior Court Appeals

CCCU and others appealed the GMHB decision to Superior Court. The court ruled on April 4, 1997 that the Agri-Forest designation was invalid but it upheld the GMHB decision on resource land. The order found:

- The EIS issued by the County was in violation of SEPA because the Agri-forest designations were disclosed subsequent to the publication of the Final EIS;

The court also stated:

"There is substantial evidence in the record to support the County's designation of agricultural resource lands."

The County did not appeal the Superior Court decision and instead began a process to comply with the Court's order on remand to the Hearings Board. The County put together two task forces, one to deal with Agri-Forest and the other with Rural Centers.

#### Rural Parcel Size

The adopted 1994 comprehensive plan had established only one rural (non-resource) zone, R-5. The staff recommendation to the Planning Commission had been 5-acre minimum south and west of the Rural Resource line (East Fork of the Lewis River) and 10 acres north and east of the rural resource line. Staff had also recommended eliminating the rural centers due to GMHB decisions in which the OFM forecasts were determined to be both a floor and a ceiling.

#### Growth Management Appeals

CCCU raised issues identified below related to the parcel sizes in the rural area.