

# Clark County

## 20-Year Comprehensive Management Plan Update 2015-2035



# Agenda

- 1. Overview of Appeals**
- 2. Legal Issues and Analysis**
- 3. Growth Management Hearing Board (GMHB) Order**
- 4. Questions and Answers**



# Overview of Appeals

1. Clark County Citizens United (CCCU) alleged that the county had violated Growth Management Act (GMA) in 12 separate issues.
2. Friends of Clark County and Futurewise (FOCC) alleged GMA violations in 13 issues.
3. To prevail the petitioners were required to demonstrate the county's actions were clearly erroneous under GMA.

# Legal Issues and Analysis

## **Public Participation and Public Involvement**

Issue 1: Public Participation Plan not timely adopted; and county failed to provide access to the plan update process. (CCCU)

Issue 2: Plan update process routinely and systematically excluded rural and resource landowners. (CCCU)

- Both issue #1 and #2, alleging violations of WAC 365-196-600 and RCW 36.70A.140, are dismissed.

# Legal Issues and Analysis

## **Private Property Rights**

Issue 3: County failed to adequately consider property rights impacts of Plan Update on rural and resource land owners; and, arbitrarily and discriminatorily failed to adopt smaller parcel sizes. (CCCU)

- Issue #3, alleging violations of RCW 36.70A.020(6) (GMA Goal #6), is dismissed.

# Legal Issues and Analysis

## **Comprehensive Plan Adoption**

Issue 4: County adopted Plan Update on June 21, 2016 which was fewer than 60 days after forwarding notice to the Department of Commerce in violation of WAC 365-196-630 and RCW 36.70A.106. (CCCU)

- Issue #4, alleging violations of RCW 36.70A.106 and WAC 365-196-630, is dismissed.

# Legal Issues and Analysis

## Urban Growth

Issue 7: Annexation of expanded UGB territories by Ridgefield and La Center violated GMA. (FOCC)

- The Board has no subject matter jurisdiction over city annexation ordinances. Issue #7 is dismissed.

# Legal Issues and Analysis

## Urban Growth

Issue 5: UGA Expansion by the cities of Battle Ground, La Center and Ridgefield were not needed to accommodate planned growth, and Buildable Lands Report (BLR) reasonable measures were not adopted, and created internal Comp Plan inconsistencies. (FOCC)

- County actions violated RCW 36.70A.110, RCW 36.70A.115, and RCW 36.70A.215 because additional land was not needed for urban growth in those cities and the county and cities failed to take “reasonable measures” to accommodate growth. County actions were clearly erroneous.
- County did not violate RCW 36.70A.070 by creating internal plan inconsistency.



# Legal Issues and Analysis

## Urban Growth

### Issue 6: Urban Reserve Overlay (FOCC)

- The county violated RCW 36.70A.060, RCW 36.70A.070, and RCW 36.70A.110, by adopting an urban reserve overlay that allows urban growth outside the UGA. County action was clearly erroneous.

# Legal Issues and Analysis

## Urban Growth

Issue 8: County violated RCW 36.70A110(2) by using the medium OFM Population Projections and Buildable Lands Report which did not take into account the population influences of the Portland metro area. (CCCU)

- Issue 8 is dismissed because the county has discretion to select a population projection within the range given by OFM.

# Legal Issues and Analysis

## Urban Growth

Issue 9: Inclusion of remainder parcels in UGA allows them to develop.  
(CCCU)

- CCCU moved to withdraw this issues and the motion to strike Issue 9 was granted.

# Legal Issues and Analysis

## **Resource and Rural Lands**

Issue 10: De-designation of agricultural lands for the cities of La Center and Ridgefield violated GMA. (FOCC)

- The county violated RCW 36.70A.050 and RCW 36.70A.060 and WAC 365-190-050 because the county failed to conduct an area- or county-wide analysis focusing on the economic viability of the agricultural industry in the county over the long term. The county's actions were clearly erroneous.



# Legal Issues and Analysis

## Resource and Rural Lands

Issue 11: The AG-20 to AG-10 and FR-40 to FR-20 changes failed to conserve farm and forest land, protect the quantity and quality of ground water and were inconsistent with the comp plan. (FOCC)

- The county violated RCW 36.70A.060 and RCW 36.70A.070 nor does it assure the conservation of agricultural lands or assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products. The county's actions were clearly erroneous

# Legal Issues and Analysis

## **Resource and Rural Lands**

Issue 12: The agricultural and forest lands designations in the Plan Update were unlawful, and improperly relied on Issue Paper 9. (CCCU)

- Issue 12, alleging violations of WAC 365-190-050 or WAC 365-190-060, is dismissed.

# Legal Issues and Analysis

## **Resource and Rural Lands**

Issue 13: Plan Update violated GMA when it failed to provide a variety of rural densities in the comp plan. (FOCC)

- The county violated RCW 36.70A.070(5) by providing one rural comp plan designation. The comp plan should provide for a variety of rural densities. The county action was clearly erroneous.

# Legal Issues and Analysis

## **Resource and Rural Lands**

Issue 14: Plan Update violates GMA and case law by using a rural vacant buildable lands model to cap rural growth. (CCCU)

- Issue 14, alleging violations of RCW 36.70A.110(2), is dismissed. CCCU misstated the applicable case law.



# Legal Issues and Analysis

## **Resource and Rural Lands**

Issue 15: Plan Update violated GMA, when it failed to create R-1 and R-2.5 zoning districts because it disregarded and misapplied predominant parcel size, density, and rural character. (CCCU)

- Issues 15 alleging violations of WAC 365-196-425 is dismissed.

# Legal Issues and Analysis

## Resource and Rural Lands

Issue 16: Plan Update violated GMA, when it relied on projection that split the future 20-year population growth at 90% urban and 10% rural. The county should have used the historical population split of 85% urban and 15% rural. (CCCU)

- Issue 16, does not establish violations of WAC 365-196-425 and WAC 365-196-210. Issue 16 is dismissed.

# Legal Issues and Analysis

## **Rural Industrial Land Banks**

Issue 17: County missed the deadline for establishing a rural industrial land bank. (FOCC)

- Issue 17, alleging violation of RCW 36.70A.367 and RCW 36.70A.130, is dismissed.

# Legal Issues and Analysis

## **Rural Industrial Land Banks**

Issue 18: The county made procedural and substantive errors in rural industrial land bank designation. (FOCC)

- The county failed to identify the maximum size of the rural industrial land bank area. In this respect, the county's action was clearly erroneous. Other allegations that the county had violated RCW 36.70A.365 and RCW 36.70A.367 were not upheld.



# Legal Issues and Analysis

## **Rural Industrial Land Banks**

Issue 19: De-designating agricultural land for the rural industrial land bank violated GMA by failing to meet RCW 36.70A.060 and WAC 365-190-050. The RILB lands continue to be agricultural lands of long-term commercial significance. (FOCC)

- The county failed to conduct an area-wide analysis for this RILB site and therefore violated GMA. The county action was clearly erroneous.

# Legal Issues and Analysis

## **Challenges to Specific Elements of the 2016 Plan Update**

Issue 20: The county violated RCW36.70A.070 when it adopted a 20-year transportation facility plan with a deficit of \$158 million. (FOCC)

- Issue 20, the county did not violate GMA because there is no requirement to show full funding for a 20-year period. The county did identify funding over 6 years.

# Legal Issues and Analysis

## **Challenges to Specific Elements of the 2016 Plan Update**

Issue 21: The Plan Updated violated RCW 36.70A.070 because its capital facilities plan did not include all GMA requirements. (FOCC)

- Issue 21, alleging violation of RCW 36.70A.070(3), is dismissed.

# Legal Issues and Analysis

## **Challenges to Specific Elements of the 2016 Plan Update**

Issue 22: The Plan Update violated GMA by amending countywide planning policies (CPP) and the community framework plan (CFP), without adopting a process to amend or update the CPPs or CFP, or holding a public hearing. (CCCU)

- Issue 22, alleging violation RCW 36.70A.210, is dismissed.

# Legal Issues and Analysis

## **Environmental Issues**

Issue 23: The Plan Update failed to review shoreline and critical areas ordinances as required by RCW 36.70A.130. (FOCC)

- Issue 23, the county did not violate RCW 36.70A.130.

# Legal Issues and Analysis

## Environmental Issues

Issue 24: Plan Update violated RCW 43.21C.031 by failing to conduct SEPA review of the Growing Healthier Report, Aging Readiness Plan, Agriculture Preservation Strategy Report, and Clark County Bicycle and Pedestrian Plan. (CCCU)

- The county did not violate RCW 43.21C.031, and therefore Issue 24 is dismissed.

# Legal Issues and Analysis

## **Environmental Issues**

Issue 25: Plan Update violated RCW 43.21C.031 by failing to conduct SEPA review on 3,500 acres of rural lands which had been remnants of the county's 1994 agriculture/forest zone. (CCCU)

- The county did not violate RCW 43.21C.031.

# GMHB Order

- Clark County Amended Ordinance No. 2016-06-12 fails to comply with RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.215, RCW 36.70A.367 and WAC 365-190-050.
- Clark County Amended Ordinance No. 2016-06-12 is remanded to Clark County to achieve compliance with the Growth Management Act.
- The expanded Urban Growth Area Boundaries of Battle Ground, La Center, and Ridgefield are determined to be Invalid.
- **Compliance Due: September 19, 2017**



# Options

## **Potential Responses to the GMHB Order:**

1. Ask the GMHB to reconsider its Final Decision and Order (FDO) by April 2.
2. Ask the GMHB to clarify, modify, or rescind the order of invalidity before adopting legislation in response to the order.
3. Appeal FDO to Clark or Thurston County Superior Court by April 24.
4. Ask the GMHB to stay the effectiveness of the FDO.
5. Initiate county legislation to comply with the FDO and GMA.

# Questions?