

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

CLARK COUNTY CITIZENS UNITED, INC.,
FRIENDS OF CLARK COUNTY AND
FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent,

and

3B NORTHWST LLC, CITY OF LA CENTER,
RDGB ROYAL FARMS LLC, RDGK REST
VIEW ESTATES LLC, RDGM RAWHIDE
ESTATES LLC, RDGF RIVER VIEW
ESTATES LLC, RDGS REAL VIEW LLC,
CITY OF BATTLE GROUND, CITY OF
RIDGEFIELD, LAGLER REAL PROPERTY
LLC AND ACKERLAND LLC,

Intervenors.

Case No. 16-2-0005c

FINAL DECISION AND ORDER

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SYNOPSIS

Petitioners Clark County Citizens United (CCCU) and Friends of Clark County and Futurewise (FOCC) challenged Clark County’s 2016 Comprehensive Plan Update as adopted in Amended Ordinance 2016-06-12. Friends also challenged Ordinance 2016-04-03 and Ordinance 2016-05-03 establishing Rural Industrial Land Banks. The Board concluded Clark County (County) did not err on its public participation process, private property rights procedures, population projections, remainder parcels claims, transportation or capital facilities or environmental claims. However, the Board found the County did not meet RCW 36.70A requirements on urban growth expansions, buildable lands, urban reserve overlays, agricultural land de-designations, up-zoning agriculture and forest resource lands, variety of rural densities, and industrial land banks. The Board remands those issues to the County and imposes invalidity on the County’s action to expand urban growth area boundaries of Battle Ground, La Center, and Ridgefield.

1 **I. BACKGROUND**

2 As is required by the Growth Management Act (GMA) in RCW 36.70A.130 (5)(b),
3 Clark County updated its Comprehensive Land Use Plan (CP) by adopting Amended
4 Ordinance No. 2016-06-12 on June 28, 2016.¹ Petitioners FOCC appealed claiming the
5 County violated the GMA by expanding urban growth boundaries, annexing land within
6 urban growth boundaries, de-designating agricultural lands, increasing and impacting rural
7 densities and natural resource lands, failing to meet requirements for capital plans and
8 transportation elements, failing to meet critical area and shoreline requirements and
9 violating requirements for industrial land banks.²

10
11 Petitioner CCCU also appealed the County’s CP Update claiming the County violated
12 GMA’s requirements regarding public participation, protecting private property rights, Office
13 of Financial Management’s population projections, designation of land within urban growth
14 areas (UGAs), designation of and densities in natural resource lands, buildable lands
15 models, and reviews required under the State Environmental Policy Act (SEPA).³ Several
16 parties intervened on behalf of the County: the cities of La Center, Battle Ground, and
17 Ridgefield; 3B Northwest, LLC; RDGB Royal Farms, LLC; RDGK Rest View Estates, LLC;
18 RDGM Rawhide Estates, LLC; RDGF River View Estates, LLC; and RDGS Real View, LLC
19 (the last five, collectively “Brown Properties”).
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22 Prior to filing the two petitions concerning the CP Update, FOCC also appealed Clark
23 County Ordinance 2016-04-03 enacting policies, regulations and designating two rural
24 industrial land bank sites on agricultural lands of long-term commercial significance
25 (ALLTCS) and Ordinance 2016-05-03 expanding the industrial land bank sites on ALLTCS.
26 This petition regarding two Clark County ordinances was assigned GMHB No. 16-2-0002.⁴
27 Although the County’s action in Case No. 16-2-0002 was not part of the County’s CP
28 Update, FOCC reiterated the same issues regarding industrial land banks in its Petition for
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32 ¹ IR 3085 6/28/2016 Public BOCC Amended Ordinance No. 2016-06-12.

² Friends of Clark County & Futurewise (FOCC), Petition for Review (July 22, 2016).

³ Clark County Citizens United, Inc. (CCCU), Petition for Review (August 25, 2016).

⁴ FOCC v. Clark County (Petition for Review, June 20, 2016).

1 Review of Clark County Ordinance No. 2016-06-12.⁵ (See Issue # 17 below) The Board
2 consolidated Case No. 16-2-0002 with the two subsequent appeals regarding the CP
3 Update. Thus, Case No. 16-2-0005c consolidates three appeals from GMHB Nos. 16-2-
4 0002, 16-2-0004, and 16-2-0005.

5 In case No. 16-2-0005c, FOCC and CCCU request the Board find the County non-
6 compliant with RCW 36.70A and RCW 43.21C and impose invalidity on the County's CP
7 update.
8

9 **II. BURDEN OF PROOF AND STANDARD OF REVIEW**

10 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
11 and amendments to them, are presumed valid upon adoption. This presumption creates a
12 high threshold for challengers as the burden is on the petitioners to demonstrate that any
13 action taken by the City is not in compliance with the GMA.
14

15 The Board is charged with adjudicating GMA compliance and, when necessary,
16 invalidating noncompliant plans and development regulations.⁶ The scope of the Board's
17 review is limited to determining whether a County has achieved compliance with the GMA
18 only with respect to those issues presented in a timely petition for review.⁷ The GMA directs
19 that the Board, after full consideration of the petition, shall determine whether there is
20 compliance with the requirements of the GMA. The Board shall find compliance unless it
21 determines that the County's action is clearly erroneous in view of the entire record before
22 the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In
23 order to find the County's action clearly erroneous, the Board must be "left with the firm and
24 definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1, 121 Wn.2d*
25 *179, 201 (1993)*.
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31 ⁵ GMHB No. 16-2-0002 FOCC v. Clark County (Order Denying Partial Summary Judgment on Issue 17 and
32 Consolidating Case No. 16-2-0002 into Case No. 16-2-0005c).

⁶ RCW 36.70A.280, RCW 36.70A.302.

⁷ RCW 36.70A.290(1).

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III. BOARD JURISDICTION

The Board finds the Petitions for Review were timely filed, pursuant to RCW 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6). The Board finds it has jurisdiction over the remaining subject matter of the petition pursuant to RCW 36.70A.280(1).

IV. PRELIMINARY MATTERS

The Hearing on the Merits was held February 8, 2017, in Vancouver, Washington. The following parties were present: Heather Burgess/Leslie Clark- CCCU, Christine Cook- Clark County, Sarah Mack/Bradford Doll- Intervenor City of La Center, Daniel Kearns (co-counsel)-Intervenor City of La Center, James Howsley- Intervenor RDGM, et al., Stephen Horenstein- Intervenor 3B Northwest, LLC, and Lagler Real Property, LLC, and Ackerland LLC, Tim Trohimovich- Futurewise, Janean Parker- Intervenor City of Ridgefield, and Susan Drummond- Intervenor City of Battle Ground.

Presiding Officer Carter reviewed preliminary matters already addressed by the Board as shown in Appendix A. Next, the Board heard oral arguments from the parties regarding:

1. Clark County’s submission of the Harman Declaration as part of their December 22, 2016 prehearing brief ⁸;
2. Friends of Clark County’s & Futurewise’s Motion to Strike the Declaration of Charles Harman (January 4, 2017);
3. Clark County’s Motion to Supplement the Record with Maps and Response to Motion to Strike Declaration of Charles Harman.⁹

During oral arguments, the County explained the Harman declaration describes the County’s past and on-going practices regarding managing and monitoring water availability in the County. The County requested the Declaration be added to the record. FOCC

⁸ IR 3098 at 041369.

⁹ Respondent Clark County Motion to Supplement the Record and Response to Motion to Strike (January 6, 2017).

1 objected to adding the declaration stating it was inconsistent with WAC 242-03-565(2) and
2 argued the declaration was created and submitted to the Board after the County adopted
3 Amended Ordinance 2016-06-12.¹⁰ Following oral argument, the Board issued an oral
4 ruling denying the County's motion to supplement the record with the Harman Declaration
5 because the Declaration was not necessary or of substantial assistance to the Board in
6 making its decision for this case.
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8 For other preliminary matters, the Board granted requests that Intervenor RDGB
9 Royal Farms illustrative exhibits and FOCC's Powerpoint slides be admitted to the record.
10 Finally, the Board accepted CCCU's motion to withdraw Issue 9.
11

12 V. LEGAL ISSUES AND ANALYSIS

13 PUBLIC PARTICIPATION AND PUBLIC INVOLVEMENT PROCESS

14 **Issue 1: PUBLIC PARTICIPATION PLAN (PPP) NOT TIMELY ADOPTED OR USED**

15 Did the County's adoption of the 2016 Plan Update violate RCW 36.70A.020(11), RCW
16 36.70A.035, RCW 36.70A.106(3)(a), RCW 36.70A.130(2), and RCW 36.70A.140 and WAC
17 365-196-600 when the County began work on the 2016 Plan Update before the County
18 adopted its public participation program in January 2014 and, subsequently, failed to
19 provide open and timely access to the 2016 Plan Update process and underlying analysis?
20 [CCCU No. A]

21 **Issue 2: PUBLIC PARTICIPATION EXCLUDED RURAL LANDOWNERS**

22 Does the 2016 Plan Update violate public participation requirements of the GMA (including
23 RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.106(3)(a), RCW 36.70A.130(2), and
24 RCW 36.70A.140 and WAC 365-196-600) in routinely and systematically excluding rural
25 and resource landowners? [CCCU No. D]

26 Under Issues 1 and 2, Petitioners CCCU failed to brief RCW 36.70A.035, RCW
27 36.70A.106(3)(a), and RCW 36.70A.130(2)— those unbriefed legal arguments are deemed
28 abandoned.¹¹
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31 ¹⁰ WAC 242-03-565 Motion to supplement the record. (2) Evidence arising subsequent to adoption of the
32 challenged legislation is rarely allowed except when supported by a motion to supplement showing the
necessity of such evidence to the board's decision concerning invalidity.

¹¹ "Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-03-590(1).

1 **Applicable Law**

2 **RCW 36.70A.140 Comprehensive plans—Ensure public participation.**

3 Each county and city that is required or chooses to plan under RCW 36.70A.040 shall
4 establish and broadly disseminate to the public a public participation program
5 identifying procedures providing for early and continuous public participation in the
6 development and amendment of comprehensive land use plans and development
7 regulations implementing such plans. The procedures shall provide for broad
8 dissemination of proposals and alternatives, opportunity for written comments, public
9 meetings after effective notice, provision for open discussion, communication
10 programs, information services, and consideration of and response to public
11 comments. In enacting legislation in response to the board's decision pursuant to
12 RCW 36.70A.300 declaring part or all of a comprehensive plan or development
13 regulation invalid, the county or city shall provide for public participation that is
14 appropriate and effective under the circumstances presented by the board's order.
Errors in exact compliance with the established program and procedures shall not
render the comprehensive land use plan or development regulations invalid if the
spirit of the program and procedures is observed.

15 **WAC 365-196-600 Public participation**

16 (4) Each county or city should try to involve a broad cross-section of the community,
17 so groups not previously involved in planning become involved.

18 (5) Counties and cities should take a broad view of public participation. The act
19 contains no requirements or qualifications that an individual must meet in order to
20 participate in the public process. If an individual or organization chooses to
participate, it is an interested party for purposes of public participation.

21 (8) Continuous public involvement.

22 (a) Consideration of and response to public comments. All public comments should
23 be reviewed. Adequate time should be provided between the public hearing and the
24 date of adoption for all or any part of the comprehensive plan to evaluate and
25 respond to public comments. The county or city should provide a written summary of
26 all public comments with a specific response and explanation for any subsequent
action taken based on the public comments. This written summary should be
included in the record of adoption for the plan.

27 (b) Ending the opportunity for comment prior to deliberation. After the end of public
28 comment, the local government legislative body may hold additional meetings to
deliberate on the information obtained in the public hearing.

29 (c) Additional meetings may be necessary if the public hearings provided the county
30 or city with new evidence or information they wish to consider. If during deliberation,
31 the county or city legislative body identifies new information for consideration after
32 the record of adoption has been closed, then it must provide further opportunity for
public comment so this information can be included in the record.

1 **Positions of the Parties**

2 CCCU makes several claims that the County violated statutory requirements in the
3 GMA regarding public participation.¹² CCCU argues the County failed to apply its Public
4 Participation Program (PPP) to “foundational reports” used in the CP Update because these
5 reports were adopted several years prior to the CP Update.¹³ Without public comments on
6 those reports, CCCU argues the County violates “GMA’s mandate for continuous public
7 participation” as required in RCW 36.70A.020 and RCW 36.70A.140.¹⁴ Next, CCCU
8 complains the County completed Issue Paper #9 on agricultural and forest lands “a mere
9 five days prior to formal adoption of the 2016 Plan Update—effectively denying the public
10 any opportunity to comment [and other] Issue papers are listed in the PPP as an
11 essential element of the update process **requiring** public participation.”¹⁵ CCCU argues
12 without public review of Issue Paper #9 and other issue papers referenced during the CP
13 Update, the County violated RCW 36.70A.140. CCCU next claims WAC 365-196-600(8)(a)
14 requires a “written summary and specific responses to all public comments” and that the
15 County did not follow this requirement.¹⁶ Specifically, CCCU argues the County did not
16 respond to comments by rural and resource landowners, some of whom have difficulty
17 accessing the Internet and County websites, and thus the County violated WAC 365-196-
18 600(4-5).¹⁷
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26 ¹² RCW 36.70A.020(11), RCW 36.70A.035 and RCW 36.70A.140.

27 ¹³ Petitioner Clark County Citizens United, Inc. Prehearing Brief (December 1, 2016) at 5 “Here, the County
28 adopted the PPP for the 2016 Plan Update on January 21, 2014. *Id.* (at 006417). Nevertheless, almost five
29 years prior to adoption of the PPP, the County began finalizing reports and plans that formed the basis of the
30 2016 Plan Update, namely (1) the Agriculture Preservation Strategies Report, finalized March 2009; (2) the
31 Clark County Bicycle and Pedestrian Plan, finalized December 2010; (3) the Aging Readiness Plan, finalized
32 February 2012; and (4) the Growing Healthier Report, finalized June 2012.¹³ **IR 3017** (Agriculture
Preservation Strategies Report); **IR 2938** (Bicycle and Pedestrian Plan); **IR 2943** (Aging Readiness Plan); **IR
2945** (Growing Healthier Report).”

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 12.

1 The County responds stating CCCU has not alleged specific procedural violations of
2 the County's PPP.¹⁸ The County argues there were no GMA violations when it "adopted its
3 PPP two and one-half years before completion of its Update."¹⁹ The County explains that in
4 addition to public hearings and a variety of other public involvement strategies employed by
5 the County and required in its PPP, members of CCCU met with certain County Board
6 members, planning staff, GIS staff and Prosecutor's staff to hear CCCU's views.²⁰ In
7 regards to issue papers, the County cites WAC 365-196-600(2)(a) which provides that
8 "Whenever a provision of the comprehensive plan or development regulation is based on
9 factual data, a clear reference to its source should be made part of the adoption record."
10 The County argues this WAC provision does not require "that each report be opened up for
11 public input on revising it."²¹ The County explains each issue paper referenced by CCCU
12 went through the County's public participation process at the time the issue papers were
13 originally completed; specifically, the County employed County Code (CCC) 40.510.040 to
14 publicly review these earlier reports.²² In regards to Issue Paper #9, the County explains
15 that "Written public comment on the [CP] Update came into the County through June 23,
16 2016, and the public had an opportunity to comment orally on the Update, including Issue
17 Paper #9 and the Amended Ordinance itself, at the BOCC public hearing on June 28,
18 2016."²³
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23 **Issue 1 and 2 Board Analysis**

24 CCCU alleges violations of RCW 36.70A.140. That statute requires jurisdictions to
25 adopt a public participation program.²⁴ There is no allegation or argument that the County
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27 ¹⁸ Respondent Clark County Prehearing Brief (December 23, 2016) at 3. The County adopted its PPP on
28 January 21, 2014, in addition to having codified public participation requirements in Clark County Code
29 40.510.040.

30 ¹⁹ *Id.* at 8.

31 ²⁰ *Id.* at 5.

32 ²¹ *Id.* at 9.

²² *Id.* at 9-10.

²³ *Id.* at 11.

²⁴ RCW 36.70A.140 "Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing

1 failed to adopt such a program.²⁵ In fact, CCCU acknowledges in their prehearing briefs
2 that the County has adopted such a program.²⁶ **Allegations of violations of RCW**
3 **36.70A.140 raised by CCCU shall be dismissed.**

4 Next, CCCU allege violations of WAC 365-196-600(4-5) by claiming the County
5 “actively excludes the subset of the community without the requisite computer skills” and
6 thus excluded portions of the rural population.²⁷ However, WAC 365-196 acts as guidance
7 to counties and cities and compliance with the procedural criteria is not a prerequisite for
8 compliance with the GMA.²⁸ Specifically, WAC 365-196-600(4) and (5) are permissive and
9 advise local governments that they “should try to involve a broad cross-section of the
10 community” and that no requirements or qualifications should impair an individual’s
11 participation in CP updates.²⁹ The record contains public comments on the CP from a wide
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15 for early and continuous public participation in the development and amendment of comprehensive land use
16 plans and development regulations implementing such plans. The procedures shall provide for broad
17 dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective
18 notice, provision for open discussion, communication programs, information services, and consideration of and
19 response to public comments. In enacting legislation in response to the board's decision pursuant to RCW
20 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city
21 shall provide for public participation that is appropriate and effective under the circumstances presented by the
22 board's order. Errors in exact compliance with the established program and procedures shall not render the
23 comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is
24 observed.”

25 ²⁵ The County adopted its PPP on January 21, 2014, and has codified public participation requirements in
26 Clark County Code 40.510.040.

27 ²⁶ See CCCU Prehearing Brief at 3 “The County Violated the Public Participation Requirements of the Growth
28 Management Act **when the County Adopted its Mandatory Public Participation Plan** Almost Five Years
29 After the County Began the 2016 Plan Update, and Subsequently Failed to Follow the Public Participation
30 Plan. (Issue No. 1 [CCCU #A]). (Emphasis added)

31 ²⁷ CCCU Prehearing Brief at 10 and 11.

32 ²⁸ WAC 365-196-030 Applicability (1) Where these guidelines apply.... (2) Compliance with the procedural
criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the
requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take.
Counties and cities can achieve compliance with the goals and requirements of the act by adopting other
approaches. (3) How the growth management hearings board use these guidelines. The growth management
hearings board must determine, in cases brought before them, whether comprehensive plans or development
regulations are in compliance with the goals and requirements of the act. When doing so, board must consider
the procedural criteria contained in this chapter, **but determination of compliance must be based on the
act itself. (Emphasis added)**

²⁹ WAC 365-196-600 (4) Each county or city should try to involve a broad cross-section of the community, so
groups not previously involved in planning become involved. (5) Counties and cities should take a broad view
of public participation. The act contains no requirements or qualifications that an individual must meet in order

1 variety of individuals throughout the County, in various formats and not just web-based
2 formats. **The Board finds and concludes that CCCU fails to carry its burden of proof**
3 **demonstrating the County violated WAC 365-196-600(4-5).**

4 Finally, CCCU claims the County violated WAC 365-196-600(8)(a) because the
5 County did not respond to each public comment during the public involvement process.
6 WAC 365-196-600(8)(a) suggests to a local jurisdiction they **should** allow adequate time to
7 hear public comments and **should** respond to public comments.³⁰ This administrative code
8 is permissive, not mandatory. It is well-settled that the public participation program required
9 by RCW 36.70A.140 and WAC 365-196-600(8) does not mandate that a jurisdiction provide
10 a specific answer to each public comment.³¹ The GMA imposes no duty on jurisdictions to
11 respond to specific citizen comments in the public process surrounding consideration of
12 regulations.³² **The Board finds and concludes CCCU fails to carry its burden of proof**
13 **demonstrating the County was clearly in error regarding public participation and**
14 **public involvement. Allegations of violations of WAC 365-196-600 raised by CCCU**
15 **shall be dismissed.**
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20 to participate in the public process. If an individual or organization chooses to participate, it is an interested
21 party for purposes of public participation.

22 ³⁰ WAC 365-196-600(8)(a) All public comments **should** be reviewed. Adequate time **should** be provided
23 between the public hearing and the date of adoption for all or any part of the comprehensive plan to evaluate
24 and respond to public comments. The county or city **should** provide a written summary of all public comments
25 with a specific response and explanation for any subsequent action taken based on the public comments. This
26 written summary **should** be included in the record of adoption for the plan.

27 ³¹ *Snohomish County Farm Bureau v. Snohomish County*, GMHB No. 12-3-0010 (SCFB II Order on Motions,
28 January 31, 2013). "...the Board finds the Farm Bureau's contention that the County did not respond to its
29 comments is without merit. It is well-settled that the public participation program required by RCW 36.70A.140
30 does not mandate that a jurisdiction provide a specific answer to each public comment. In *Bremerton/Alpine v.*
31 *Kitsap County*, the Board found the most appropriate definition of "respond" within the context of RCW
32 36.70A.140 is "to react in response." Applying this definition means only that citizen comments must be
considered, and where appropriate, jurisdictions must take action in response to those comments and
questions... "Response" may, but need not, take the form of an action, either a modification to the proposal
under consideration, or an oral or written response to the [citizen] comment or question. See also CPSGMHB
No. 95-03-0039c/98-3-0032c (FDO, February 8, 1999) at 24.

³² 2005 GMHB LEXIS 82, *30 *Macangus Ranches, Michael Leung and Dennis Daley v. Snohomish County*,
CPSGMHB No. 99-3-0017 (FDO, March 23, 2000) at 12. ("Respond to" **public comments** does not mean that
counties and cities must react in **response** to all citizen questions or **comments** . . . means only that citizen
comments and questions must be considered. . .).

1 **PRIVATE PROPERTY RIGHTS**

2 **Issue 3: PROPERTY RIGHTS**

3 Does the 2016 Plan Update violate GMA goal number 6 when Clark County failed to
4 adequately consider the property rights impacts the Ordinance would have on the County's
5 rural and resource landowners? See RCW 36.70A.020(6) (GMA goal number 6: "Private
6 property shall not be taken for public use without just compensation having been made. The
7 property rights of landowners shall be protected from arbitrary and discriminatory actions").
[CCCU No. K1]

8 **Applicable Law**

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10 **RCW 36.70A.020 Planning goals** GMA Planning Goals "shall be used exclusively
11 for the purpose of guiding the development of comprehensive plans and
12 development regulations: . . . "(6) Property rights. Private property shall not be taken
13 for public use without just compensation having been made. The property rights of
landowners shall be protected from arbitrary and discriminatory actions."

14 **WAC 365-196-725 Constitutional provisions** (1) Comprehensive plans and
15 development regulations adopted under the act are subject to the supremacy
16 principle of Article VI, United States Constitution and of Article XI, Section 11,
17 Washington state Constitution.

18 (2) Counties and cities planning under the act are required to use a process
19 established by the state attorney general to assure that proposed regulatory or
20 administrative actions do not unconstitutionally infringe upon private property rights.
21 As set forth in RCW 36.70A.370, the state attorney general has developed a
22 publication entitled "*Advisory Memorandum: Avoiding Unconstitutional Takings of*
23 *Private Property*," which is updated frequently to maintain consistency with changes
in case law. Counties and cities should contact the department or state attorney
general for the latest edition of this advisory memorandum.

24 **Positions of the Parties**

25 CCCU claims the County's CP Update violates GMA's Goal 6 Private Property Rights
26 because the County used growth allocations at odds with actual population allocation, used
27 an "illegal rural vacant buildable lands model," and "arbitrarily and discriminatorily chose not
28 to adopt smaller rural and resource land parcel sizes" which discriminated against rural land
29 owners and did not correct the "parcel-size non-conformity" in the County.³³ CCCU cites
30 *Achen* to define "property rights" and *Peste* for the Court's definition of the fundamental
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³³ CCCU's Prehearing Brief at 12.

1 attributes of property ownership. CCCU argues that the Court determined the right to use
2 one's property by stating the "fundamental attribute of property ownership affected here is
3 Peste's right to make some economically viable use of the...property."³⁴ CCCU concludes
4 the Court of Appeals recognized that when a zoning designation prohibits landowners from
5 subdividing their land and building structures in the way they had envisioned, then this
6 "impacts a fundamental attribute of property ownership."³⁵ Thus, when the County failed to
7 allow more density and subdivisions in rural areas, this impacted the property rights of rural
8 and resource land owners.³⁶ CCCU further argues the County improperly relied upon
9 FOCC's Prehearing Brief to defend the County's decision to not allow density in rural and
10 resource land areas.

11
12 The County first asks the Board to clarify which version of Issue 3 is under review
13 because CCCU's Prehearing Brief includes the phrase "arbitrary and discriminatory"
14 whereas the Board's Amended Prehearing Order for Issue 3 does not contain this phrase.³⁷
15 Next, the County argues it considered how property rights may be impacted by the CP
16 Update. To bolster their claim, the County included records from the Index showing how the
17 County responded to each person concerned about property rights.³⁸ The County
18 incorporated by reference Petitioner FOCC's Response Brief³⁹ on this issue and concludes
19 CCCU has not carried its burden of proof to show the County violated Goal 6 of the GMA.
20 FOCC's argues no court decision has recognized that a zoning designation prohibiting
21 subdivision has impacted private property ownership and that CCCU misinterprets *Peste*.
22 FOCC cites *Bayfield*, *HJS Development* and *Isla Verda* as further evidence to show the
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26 ³⁴ *Achen v. Clark Cnty.*, Case No. 95-2-006, (FDO, September 20, 1995) at 7. See also *Petse v. Mason*
27 *County*, 133 Wn. App. 456, 462–63, 471, 136 P.3d 140 (2006).

28 ³⁵ *Id.* at 13.

29 ³⁶ *Id.* at 16.

30 ³⁷ GMHB No. 16-2-0005c (Amended Pre-Hearing Order, October 21, 2016) at 4. See **Issue 3** Does the 2016
31 Plan Update violate GMA goal number 6 when Clark County failed to adequately consider the property rights
32 impacts the Ordinance would have on the County's rural and resource landowners. See RCW 36.70A.020(6)
(GMA goal number 6: "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").
[CCCU No. K1]

³⁸ Clark County Prehearing Brief (December 23, 2016) at 20-23.

³⁹ Friends of Clark County's & Futurewise's Respondents' Prehearing Brief on CCCU Issues (December 22,
2016) at 1-3.

1 courts did not hold there is a right to subdivide and did recognize that local governments
2 can place reasonable conditions on subdivisions.⁴⁰

4 **Issue 3 Board Analysis**

5 As to the substance of the issue, the Board refers to RCW 36.70A.020(6) and WAC
6 365-196-725 to guide the discussion of property rights.⁴¹ Previously, in *Mahr v. Thurston*
7 *County, Weyerhaeuser Co. v. Thurston County* and *Laurel Park v. City of Tumwater*, we
8 stated the Board's jurisdiction, granted under GMA, does not include resolution of violations
9 of the U.S. and/or Washington State Constitution.⁴² Rather the "takings prong," or the first
10 sentence of Goal 6, is to be reviewed to determine if adequate consideration of that prong
11 has been given by the decision makers. The record in this case demonstrates that
12 significant time and consideration were given to the potential for taking property rights
13 throughout all levels of the decision-making process.

15 _____
16 ⁴⁰ *Id.*

17 ⁴¹ RCW 36.70A.020 Planning goals. (6) Property rights. Private property shall not be taken for public use
18 without just compensation having been made. The property rights of landowners shall be protected from
19 arbitrary and discriminatory actions.

20 RCW 36.70A.370 Protection of private property. (1) The state attorney general shall establish by October 1,
21 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies
22 and local governments to evaluate proposed regulatory or administrative actions to assure that such actions
23 do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or
24 reduce the scope of private property protections provided in the state and federal Constitutions. The attorney
25 general shall review and update the process at least on an annual basis to maintain consistency with changes
26 in case law. (2) Local governments that are required or choose to plan under RCW 36.70A.040 and state
27 agencies shall utilize the process established by subsection (1) of this section to assure that proposed
28 regulatory or administrative actions do not result in an unconstitutional taking of private property. (3) The
29 attorney general, in consultation with the Washington state bar association, shall develop a continuing
30 education course to implement this section. (4) The process used by government agencies shall be protected
31 by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring
32 compliance with the provisions of this section.

WAC 365-196-725 Constitutional provisions. (2) Counties and cities planning under the act are required to use
a process established by the state attorney general to assure that proposed regulatory or administrative
actions do not unconstitutionally infringe upon private property rights. As set forth in RCW 36.70A.370, the
state attorney general has developed a publication entitled "*Advisory Memorandum: Avoiding Unconstitutional*
Takings of Private Property," which is updated frequently to maintain consistency with changes in case law.
Counties and cities should contact the department or state attorney general for the latest edition of this
advisory memorandum.

⁴² GMHB No. 94-2-0007 (Dispositive Order, August 7, 1994). GMHB No.10-2-0020c. *Weyerhaeuser*
Company, et al v. Thurston County (Amended Final Order, June 17, 2011). *Laurel Park v. City of Tumwater*,
WWGMHB No. 09-2-0010 (FDO, October 13, 2009). See also *Gudschmidt vs. Mercer Island*, CPSGMHB No.
92-3-0006.

1 It is evident the County considered this first prong of Goal 6 when it adopted
2 Ordinance 2016-06-12 because the Ordinance includes: "The rights of private property
3 owners and the avoidance of any taking of private property without just compensation have
4 been given due consideration in the development of the 2016 Plan Update policies and
5 implementation measures."⁴³ This policy statement is in line with the first sentence in GMA
6 Goal 6. In addition, the County's Prehearing Brief contains considerable evidence in Tables
7 1, 2 and 3 of contacts with private property owners either by letter or in public hearings
8 "setting forth the author's views on private property rights impacts of the Update...oral
9 testimony from landowners ... verbatim minutes of public hearings" regarding private
10 property rights.⁴⁴

11
12 In this case, the County has chosen to zone rural and resource land areas with
13 densities chosen after analyzing the population projections for the County and after much
14 public involvement. Thus, the Board finds and concludes the County's action to not
15 increase density in rural or resource lands did not deprive property owners of all uses to
16 their lands. Like the *Peste* case, the land owners may not be able to do anything they want
17 with their land and at densities they believe possible, but they do have the ability to use and
18 economically prosper from their land. **The Board finds and concludes CCCU fails to**
19 **carry its burden of proof demonstrating the GMA Planning Goal 6 did not guide the**
20 **development of Clark County Ordinance No. 2016-06-12. Allegations of violations of**
21 **RCW 36.70A.020(6) shall be dismissed.**

22 **COMPREHENSIVE PLAN ADOPTION**

23 **Issue 4: TIMING TO ADOPT COMPREHENSIVE PLAN UPDATE**

24
25
26 Did the County violate RCW 36.70A.106 and WAC 365-196-630 when it approved the 2016
27 Plan Update fewer than 60 days after forwarding the 2016 Plan Update to the Washington
28 Department of Commerce (Commerce)? [CCCU No. L]
29
30
31
32

⁴³ Ordinance 2016-06-12, Recitals and Findings, 1.7.12, at 5.

⁴⁴ Respondent Clark County Prehearing Brief at 20-23.

1 **Applicable Law**

2 **RCW 36.70A.106 Comprehensive plans—Development regulations—**
3 **Transmittal to state—Amendments—Expedited review.**

4 (1) Each county and city proposing adoption of a comprehensive plan or
5 development regulations under this chapter shall notify the department of its intent to
6 adopt such plan or regulations at least sixty days prior to final adoption. State
7 agencies including the department may provide comments to the county or city on
8 the proposed comprehensive plan, or proposed development regulations, during the
9 public review process prior to adoption.

9 **WAC 365-196-630 Submitting notice of intent to adopt to the state.**

10 (1) State notification and comment. (a) The act requires each county or city proposing
11 adoption of an original comprehensive plan or development regulation, or
12 amendment, under the act, must notify the department of its intent at least sixty days
13 prior to final adoption. Counties and cities may request expedited review for changes
14 to the development regulations pursuant to RCW [36.70A.106](#) (3)(b).

15 **Positions of the Parties**

16 CCCU argues the County violated RCW 36.70A.106 and WAC 365-196-630 when it
17 held public meetings and made decisions on June 21, 2016, to adopt the Comprehensive
18 Plan Update. They point to newspaper articles stating the County completed its update:
19 “The County’s press release, dated June 21 (and tellingly entitled “County Council Adopts
20 20-Year Growth Management Plan Update”) asserts that the Board “adopted a plan that will
21 guide growth in Clark County over the next 20 years.”⁴⁵ CCCU further argues the County
22 Commissioner meeting minutes reflect “...there is no question that the BOCC action on
23 June 21, 2016 was the final decision on the 2016 Plan Update.”⁴⁶

25 The County replies that CCCU’s own Petition for Review references June 28, 2016,
26 as the date the County adopted their CP Update. The County states “In order to find that
27 Clark County violated RCW 36.70A.106 and WAC 365-196-630(1)... the Board would need
28 to determine that CCCU had proven the County’s action in adopting the Update on June 21,
29 2016 was clearly erroneous.”
30
31
32

⁴⁵ CCCU Prehearing Brief at 17 and IR 3091.

⁴⁶ *Id.* at 18 and IR 3086 at 040785.

1 **Issue 4 Board Analysis**

2 RCW 36.70A.106 and WAC 365-196-630(1) require local jurisdictions to notify the
3 Department of Commerce of its intent to adopt or update its comprehensive plan at least
4 sixty days prior to final adoption.⁴⁷ The Board finds the County submitted its “Notice of
5 Intent to Adopt Amendment” to Commerce on April 28, 2016.⁴⁸ Next, the Board finds the
6 County adopted and signed into law Amended Ordinance No. 2016-06-12 updating the
7 Comprehensive Land Use Plan on June 28, 2016 – sixty days after the County’s notice to
8 Commerce.⁴⁹ The Board would like to point out that it did find a June 21, 2106, Ordinance
9 No. 2016-06-12 in the record, but this ordinance was never signed into law, and thus the
10 **Amended** Ordinance is the actual adoption of the CP update.⁵⁰ **The Board finds and**
11 **concludes CCCU fails to carry its burden of proof demonstrating the County was**
12 **clearly in error when it adopted Amended Ordinance No. 2016-06-12 on June 28, 2016.**
13 **Allegations of violations of RCW 36.70A.106 and WAC 365-196-630 shall be**
14 **dismissed.**
15
16
17

18 **URBAN GROWTH**

19 **Issue 5: UGA EXPANSION and BUILDABLE LANDS REPORT**

20 Did the adoption of Amended Ordinance 2016-06-12 expanding the Battle Ground [sic], La
21 Center, and Ridgefield urban growth areas violate RCW 36.70A.020(1), (2); RCW
22 36.70A.070 (internal consistency); RCW 36.70A.110(1), (2), (3); RCW 36.70A.115; RCW
23 36.70A.130(1), (3), (5); RCW 36.70A.210(1); or RCW 36.70A.215(1)(b) because the
24 expansions were not needed to accommodate the planned growth and Buildable Lands
25 reasonable measures were not adopted and implemented? See Amended Ordinance 2016-
26 06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive Growth*
27 *Management Plan 2015-2035* pp. 11 –13, pp. 14 – 15, pp. 26 – 29, pp. 41 – 46, pp. 267 –
68, Figure 12, Figure 14, Figure 15, and Figure 24A; Exhibit 2 County/UGA Comprehensive

28 ⁴⁷ RCW 36.70A.106 Comprehensive plans—Development regulations—Transmittal to state—Amendments—
29 Expedited review. (1) Each county and city proposing adoption of a comprehensive plan or development
30 regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least
31 sixty days prior to final adoption. State agencies including the department may provide comments to the
32 county or city on the proposed comprehensive plan, or proposed development regulations, during the public
review process prior to adoption.

⁴⁸ IR 3090 4/28/2016 Department of Commerce, Community Planning (April 28, 2016).

⁴⁹ IR 3085 6/28/2016 Public BOCC Amended Ordinance No. 2016-06-12.

⁵⁰ IR 3084 6/21/2016 Public BOCC Ordinance No. 2016-06-12.

1 Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County,
2 Washington [map]. [FOCC/FW No. 1]

3 **Issue 7: ANNEXATION**

4 Does the annexation of land within an urban growth area expansion under appeal violate
5 RCW 36.70A.020(1), (2), (8); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal
6 consistency), (1); RCW 36.70A.110; RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW
7 36.70A.170; RCW 36.70A.215(1), (2), (3), (4); or any other applicable provision of state
8 law? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year
9 Comprehensive Growth Management Plan 2015-2035 pp. 11 –13, pp. 14 – 15, pp. 26 – 29,
10 pp. 41 – 46, pp. 267 – 68, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan
11 Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County,
12 Washington [map]. [FOCC/FW No. 12]

12 Under Issue 5, Petitioners FOCC failed to brief RCW 36.70A.020(1), (2); RCW
13 36.70A.130(1), (3), (5); RCW 36.70A.210(1) -- those unbriefed legal arguments are deemed
14 abandoned.⁵¹ Under Issue 7, FOCC failed to brief RCW 36.70A.020(1), (2), (8); RCW
15 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency), (1); RCW 36.70A.110; RCW
16 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW 36.70A.215(1), (2), (3),
17 (4), which constitute all of the alleged statutory violations under Issue Statement 7 -- those
18 unbriefed legal arguments are all deemed abandoned.⁵² Issue 7 is dismissed.
19

20 The Board agrees with Clark County and Intervenor Cities that the Board has no
21 subject matter jurisdiction over city annexation ordinances. Accordingly, the Board will
22 confine its analysis of Issue 5 to only the allegations that Clark County Ordinance 2016-06-
23 12 violated specific requirements of the Growth Management Act.
24

25 **Applicable Law**

26
27 **RCW 36.70A.070 (preamble):** “The comprehensive plan of a county or city that is
28 required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
29 and descriptive text covering objectives, principles, and standards used to develop
30

31 ⁵¹ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-
32 590(1).

⁵² “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-
590(1).

1 the comprehensive plan. The plan shall be an internally consistent document and all
2 elements shall be consistent with the future land use map.”

3 **RCW 36.70A.110(1)** states in pertinent part: “Each county that is required or chooses
4 to plan under RCW 36.70A.040 shall designate an urban growth area or areas within
5 which urban growth shall be encouraged and outside of which growth can occur only
6 if it is not urban in nature.”

7 **RCW 36.70A.110(2)** states in pertinent part: “Based upon the growth management
8 population projection made for the county by the office of financial management, the
9 county and each city within the county shall include areas and densities sufficient to
10 permit the urban growth that is projected to occur in the county or city for the
11 succeeding twenty-year period”

12 **RCW 36.70A.115:** “Counties and cities that are required or choose to plan under
13 RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments
14 to their comprehensive plans and/or development regulations provide sufficient
15 capacity of land suitable for development within their jurisdictions to accommodate
16 their allocated housing and employment growth, including the accommodation of, as
17 appropriate, the medical, governmental, educational, institutional, commercial, and
18 industrial facilities related to such growth, as adopted in the applicable countywide
19 planning policies and consistent with the twenty-year population forecast from the
20 office of financial management.”

21 **RCW 36.70A.215(1):** Subject to the limitations in subsection (7) of this section, a
22 county shall adopt, in consultation with its cities, countywide planning policies to
23 establish a review and evaluation program. . . . The purpose of the review and
24 evaluation program shall be to:

- 25 (a) Determine whether a county and its cities are achieving urban densities within
26 urban growth areas by comparing growth and development assumptions, targets,
27 and objectives contained in the countywide planning policies and the county and city
28 comprehensive plans with actual growth and development that has occurred in the
29 county and its cities; and
30 (b) Identify reasonable measures, other than adjusting urban growth areas, that will
31 be taken to comply with the requirements of this chapter.
32

RCW 36.70a.215(4): *If the evaluation* required by subsection (3) of this section
demonstrates an inconsistency between what has occurred since the adoption of
the countywide planning policies and the county and city comprehensive plans and
development regulations and what was envisioned in those policies and plans and
the planning goals and the requirements of this chapter, as the inconsistency relates
to the evaluation factors specified in subsection (3) of this section, ***the county and
its cities shall adopt and implement measures that are reasonably likely to***

1 **increase consistency during the subsequent five-year period.** If necessary, a
2 county, in consultation with its cities as required by RCW 36.70A.210, shall adopt
3 amendments to countywide planning policies to increase consistency. The county
4 and its cities shall annually monitor the measures adopted under this subsection to
5 determine their effect and may revise or rescind them as appropriate.

6 **Positions of the Parties**

7 FOCC alleges when the County expanded urban growth areas for Battle Ground, La
8 Center, and Ridgefield, the County violated consistency requirements in RCW 36.70A.070
9 and requirements for reasonable measures in RCW 36.70A.215(1)(b).⁵³ FOCC argues the
10 County's current urban growth boundaries could have accommodated the County's 20-year
11 population projections because the County has not reached the density to which it
12 previously planned.⁵⁴ FOCC cites the County's *Buildable Land Report* data showing that
13 the County's planned densities are less than actual permitted densities, thus creating
14 inconsistencies in planned and actual growth.⁵⁵

15 The County responded to FOCC's Issue 5 by adopting and incorporating responses
16 from Intervenors and by citing *Panesko* claiming the Board does not have jurisdiction over
17 annexations.⁵⁶ Intervenor City of La Center explains it has already annexed 56.55 acres
18 within its newly expanded UGA, has zoned the land for commercial uses and argues Issue 5
19 and Issue 7 are moot because the Board does not have jurisdiction over annexations.⁵⁷
20 Intervenor City of Ridgefield, like La Center, argues when it annexed 111 acres within its
21 newly expanded UGA, their action rendered Issues 5 and 7 moot. Intervenor RDGB Royal
22
23
24

25 _____
26 ⁵³ FOCC Prehearing Brief (December 1, 2016) at 2-5.

27 ⁵⁴ FOCC Prehearing Brief at 2 Index of Record (IR) 1121 pp. 014418 – 23 in Tab IR 1121 of FOCC's Motion
28 for Summary Judgment (hereafter FOCC SJM), *Clark County Buildable Lands Report* pp. 9 – 14 (June 2015).

29 ⁵⁵ FOCC Prehearing Brief at 2 and *Buildable Lands Report* at IR 1121 pp. 014418 – 23.

30 ⁵⁶ Respondent Clark County Prehearing Brief at 43. "Clark County hereby adopts and incorporates as its own
31 the responses to these issues of the Cities of Battle Ground [sic], La Center and Ridgefield, of 3B Northwest,
32 River View Estates, LLC; and of RDGB Royal Farms, LLC; RDGK Rest View Estates, LLC; RDGM Rawhide Estates, LLC; RDGF
33 County's Prehearing Brief at 45 "Because the Board is not authorized by its governing statutes and regulations
34 to review annexations in this appeal of the amendment of a county comprehensive plan, as a matter of law,
35 Issue 7 must be dismissed." See *Panesko v. Lewis County*, WWGMHB No. 08-02-0007c (Compliance Order,
36 July 27, 2009) at 9-10.

37 ⁵⁷ City of La Center Prehearing Brief (December 22, 2016) at 2.

1 Farms agrees Issue 5 is moot because Intervenor's 111 acres of land has already been
2 annexed by the City of Ridgefield.⁵⁸

3
4 **Issue 5 Board Analysis**

5 The GMA provides that cities and counties will work together and shall attempt to
6 reach agreement on the correct **size** for a UGA,⁵⁹ which the Supreme Court has held
7 "cannot exceed the amount of land necessary to accommodate the urban growth projected
8 by OFM, plus a reasonable land market supply factor."⁶⁰ The statute expressly provides
9 that cities and counties shall provide "sufficient capacity of land suitable for development,"
10 accommodating the allocated housing and employment growth, consistent with the 20-year
11 population forecast identified by OFM.⁶¹

12
13 The *Clark County Buildable Lands Report (June 2015)* determined that the Cities of
14 Battle Ground, La Center, and Ridgefield all had more vacant, buildable residential land
15 than was needed for the 2035 planning horizon. Battle Ground's UGA had **208 acres** of
16 "surplus" residential land. La Center's UGA had **101 acres** of "surplus" residential land.
17 Ridgefield's UGA had **280 acres** of "surplus" residential land.⁶²

18
19 In 2016 (after issuance of the 2015 *Buildable Lands Report*), Clark County adopted
20 Ordinance 2016-06-12, which expanded the Battle Ground UGA by 82 acres, the La Center
21 UGA by 56 acres, and the Ridgefield UGA by 111 acres. The record shows that the size of
22 Battle Ground, La Center, and Ridgefield UGAs exceeds the amount of land necessary to
23 accommodate the urban growth projected by OFM. The Board is left with the firm and
24 definite conviction that a mistake has been made by the County in enlarging these UGAs
25 that were already oversized. **The Board finds: (1) these UGA enlargements violate RCW**
26 **36.70A.110 and RCW 36.70A.115, and (2) Ordinance 2016-06-12 is clearly erroneous in**
27

28
29
30 _____
31 ⁵⁸ Intervenor RDGB Royal Farms, Prehearing Brief (December 22, 2016) at 5.

32 ⁵⁹ RCW 36.70A.110(2).

⁶⁰ *Thurston County et al. v. W. Wash. Growth Mgmt. Hearings Bd. et al.*, 164 Wn.2d 329, 352 (2008).

⁶¹ RCW 36.70A.115.

⁶² *Clark County Buildable Lands Report*, (Table 3, p. 9, June 2015) [attached as Tab IR 1121 to Friends of Clark County's & Futurewise's Dispositive Motion or Motion for Summary Judgment (October 15, 2016)].

1 **view of the entire record before the Board and in light of the goals and requirements**
2 **of the GMA.**

3 In addition, FOCC argue that the County and Cities failed to adopt “reasonable
4 measures” to remedy inconsistencies in residential, commercial, and industrial densities, as
5 required by RCW 36.70A.215. The County’s 2015 Buildable Lands Review and Evaluation
6 Program posed the following questions, among others:
7

8 The Buildable Lands Program, at minimum should answer the following
9 questions: What is the actual density and type of housing that has been
10 constructed in UGA’s since the last comprehensive plan was adopted or the
11 last seven-year evaluation completed? Are urban densities being achieved
12 within UGA’s? If not, what measures could be taken, other than adjusting
UGA’s, to comply with the GMA? ⁶³

13 To answer these questions, the County used the Vacant Buildable Lands Model
14 (VBLM), a planning and modeling tool, to compare planned and actual building data.⁶⁴ The
15 BLR used County density assumptions from 2007 and the Office of Financial Management
16 population forecast for 2035. According to the County’s RCW 36.70A.215 Review and
17 Evaluation Program, Battle Ground, La Center, and Ridgefield had actual 2015 observed
18 per-net-acre housing densities as follows:
19

20

21 City ⁶⁵	22 2007 Plan Density (Housing Units per Net Acre)	23 2015 Actual Density (Housing Units per Net Acre)
24 Battle Ground	6	4.2
25 La Center	4	1.9
26 Ridgefield	6	5.2

27 This data demonstrates an inconsistency between the densities planned for in 2007 and the
28 actual densities that occurred over the 2007-2015 planning period. As of 2015, the three
29

30 ⁶³ IR 2904 at 034689-90.

31 ⁶⁴ IR 1121 at Bates # 014413-14 and Appendix C VBLM at Bates # 014438.

32 ⁶⁵ IR 1121 p. 014414 & pp. 014418 – 9 in Tab IR 1121 of FOCC SJM, *Clark County Buildable Lands Report* p. 5 & pp. 9 – 10 (June 2015); IR 2904 pp. 034660 – 61, *Clark County 20 Year Comprehensive Growth Management Plan 2015 – 2035* pp. 11 – 12 hereinafter *Comprehensive Growth Management Plan 2015 – 2035*.

1 Cities had densities substantially lower than the density targets set in the 2007
2 Comprehensive Plan. In the aggregate, and taking into account the 2016 UGA expansions,
3 this means the Cities of Battle Ground, La Center, and Ridgefield⁶⁶ are growing more by low
4 density sprawl rather than achieving the higher urban density targets set in the County's
5 Comprehensive Plan. One of the central goals of the GMA is to *reduce* sprawling, low-
6 density development.⁶⁷

7
8 The *Buildable Lands Report* also demonstrated inconsistencies between the Clark
9 County Comprehensive Plan and permitted commercial development -- the 2007 planning
10 assumptions were based on **20 employees** per net acre. However, from 2006 to 2014, new
11 permits show a substantially lower density of **9.3 employees** per net acre.⁶⁸

12 These inconsistencies documented by the County's RCW 36.70A.215 Review and
13 Evaluation Program trigger the County's and Cities' obligation to adopt and implement
14 measures that are reasonably likely to increase consistency during the subsequent five-year
15 period -- "reasonable measures" do not include adjusting urban growth areas.⁶⁹ Clearly, the
16 Cities have experienced lower density residential and commercial growth rather than the
17 planned for higher urban densities. The Board is left with the firm and definite conviction that
18 a mistake has been made by the County in failing to adopt "reasonable measures" to
19 remedy these density inconsistencies. **The Board finds: (1) the County's and Cities'**
20 **failure to adopt "reasonable measures" to remedy density inconsistencies violates**
21 **RCW 36.70A.215, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the**
22 **entire record before the Board and in light of the goals and requirements of the GMA.**

23
24
25 FOCC also asserted an "internal plan inconsistency" in violation of RCW 36.70A.070.
26 FOCC argues the failure to adopt reasonable measures rather than expanding the UGA is
27

28 ⁶⁶The City of Ridgefield documented that a "total of 734 lots" will be created "on over 200 acres of residential
29 land. IR 1121 p. 014454, *Id.* p. 45. This translates into a gross density of less than 3.67 housing units per acre,
30 almost one housing unit per acre less than the 4.5 gross housing units per acre assigned to the City of
31 Ridgefield by the 2007 and 2015 – 2035 Clark County Comprehensive Plans. IR 1121 p. 014414, *Id.* p. 5; IR
2904 p. 034660, *Comprehensive Growth Management Plan 2015 – 2035* p. 11.

31 ⁶⁷ RCW 36.70A.020(2).

32 ⁶⁸ IR 1121 p. 014429 in Tab IR 1121, *Clark County Buildable Lands Report* p. 20 (June 2015). The *Buildable
Lands Report* cautions that the observations "are from a limited set of employment data." *Id.*

⁶⁹ RCW 36.70A.215(1)(b).

1 inconsistent with the *Clark County Comprehensive Plan*, which provides that “[i]f the results
2 of the seven-year buildable land evaluation reveal deficiencies in buildable land supply
3 within UGA’s, Clark County and the cities are required first to adopt and implement
4 reasonable measures that will remedy the buildable land supply shortfall before adjusting
5 UGA boundaries.”⁷⁰ The problem with this argument is that FOCC failed to point to specific
6 language in the challenged ordinance that conflicts with or thwarts the above-quoted
7 language in the *Clark County Comprehensive Plan*. **Accordingly, the Board finds**
8 **Petitioner FOCC failed to satisfy their burden of proof to show an internal plan**
9 **inconsistency in violation of RCW 36.70A.070.**
10

11
12 **Issue 6: URBAN RESERVE OVERLAY**

13 Did Amended Ordinance 2016-06-12’s adoption of the Urban Reserve Overlay and the
14 Urban Reserve-10 (UR-10) and Urban Reserve-20 (UR-20) zoning districts, the repeal of
15 the Urban Reserve-40 (UR-40) zoning district, and the application of the overlay and
16 districts to rural and natural resource lands violate RCW 36.70A.020(2), (8), (10); RCW
17 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (preamble),
18 (1), (5); RCW 36.70A.110(1); RCW 36.70A:115; RCW 36.70A.130(1), (3), (5); or WAC 365-
19 196-815 because the land is not needed to accommodate planned urban growth and the
20 overlay and zoning does not conserve natural resource lands or comply with the
21 requirements for rural areas? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark
22 County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035 pp. 12
23 – 13, pp. 36 – 38, pp. 96 – 97, p. 192, p. 228, p. 239, p. 265, p. 276, Figures 12 – 18, Figure
24 24A; Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and
25 Exhibit 3 County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit
26 8; and Exhibit 23. [FOCC/FW No. 5]

27 Under Issue 6, Petitioners FOCC failed to brief RCW 36.70A.020(2), (8), (10); RCW
28 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.070 (preamble) and (1); RCW
29 36.70A.110(1); RCW 36.70A:115; RCW 36.70A.130(1), (3), (5); and WAC 365-196-815 --
30 those unbriefed legal arguments are deemed abandoned.⁷¹
31

32 ⁷⁰ IR 2904 p. 034689, *Comprehensive Growth Management Plan 2015 – 2035* p. 40.

⁷¹ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).

1 **Applicable Law**

2 **RCW 36.70A.070 Comprehensive plans—Mandatory elements (*Effective until***
3 ***September 1, 2016.*)**

4 (5) Rural element. Counties shall include a rural element including lands that are not
5 designated for urban growth, agriculture, forest, or mineral resources. The following
6 provisions shall apply to the rural element: (a) Growth management act goals and
7 local circumstances. Because circumstances vary from county to county, in
8 establishing patterns of rural densities and uses, a county may consider local
9 circumstances, but shall develop a written record explaining how the rural element
10 harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of
11 this chapter. (b) Rural development. The rural element shall permit rural
12 development, forestry, and agriculture in rural areas. The rural element shall provide
13 for a variety of rural densities, uses, essential public facilities, and rural governmental
14 services needed to serve the permitted densities and uses. To achieve a variety of
15 rural densities and uses, counties may provide for clustering, density transfer, design
16 guidelines, conservation easements, and other innovative techniques that will
17 accommodate appropriate rural densities and uses that are not characterized by
18 urban growth and that are consistent with rural character. (c) Measures governing
19 rural development. The rural element shall include measures that apply to rural
20 development and protect the rural character of the area, as established by the
21 county, by...

18 **RCW 36.70A.060 Natural resource lands and critical areas—Development**
19 **regulations.**

20 (1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and
21 each city within such county, shall adopt development regulations on or before
22 September 1, 1991, to assure the conservation of agricultural, forest, and mineral
23 resource lands designated under RCW 36.70A.170. Regulations adopted under this
24 subsection may not prohibit uses legally existing on any parcel prior to their adoption
25 and shall remain in effect until the county or city adopts development regulations
26 pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands
27 adjacent to agricultural, forest, or mineral resource lands shall not interfere with the
28 continued use, in the accustomed manner and in accordance with best management
29 practices, of these designated lands for the production of food, agricultural products,
30 or timber, or for the extraction of minerals.
31
32

1 **Positions of the Parties**

2 FOCC argues that the County's adoption of an Urban Reserve⁷² Overlay, and the
3 implementation of that overlay with two densities (Urban Reserve-10 (UR-10) and Urban
4 Reserve-20 (UR-20)),⁷³ together with the repeal of a UR-40 zoning district, fails to conserve
5 designated natural resource lands and allows urban growth on rural and natural resource
6 lands. It states that the section violates RCW 36.70A.070(5), which prohibits urban growth
7 and densities in rural areas, as well as RCW 36.70A.060(1)(a), which requires the adoption
8 of development regulations assuring the conservation of natural resource lands. FOCC also
9 contends that the uses authorized within areas where the Urban Reserve Overlay is applied
10 constitute urban uses. FOCC cites appellate court decisions which addressed protection of
11 designated agricultural resource lands from incompatible uses.⁷⁴ Finally, FOCC observes
12 that a total of 307 acres of Rural and Agricultural lands would be covered by the Urban
13 Reserve overlay, although FOCC fails to provide information indicating the amount of rural
14 acreage and the amount of designated agricultural land.⁷⁵

15
16
17 The County states that its action merely changed the title of what had been called UR
18 10 and UR 20 "zoning districts" to "Urban Reserve Overlays". The allowed uses were not
19 changed with the adoption of Amended Ordinance 2016-06-12 and its name change to
20

21
22 _____
23 ⁷² FOCC Prehearing Brief at 6-8 IR 2830 p. 034114 in Tab IR 2830A, Amended Ordinance 2016-06-12 p. 50.
24 The purpose of Urban Reserve is set forth in CCC 40.250.100, IR 2830A at 34114: These lands are identified
25 being possible future additions to Urban Growth Areas and may be added to the urban area as necessary
26 through amendments to the Comprehensive Plan. These lands are on the fringe of the Urban Growth
27 Boundaries. The purpose of the Urban Reserve Overlay is to protect areas from premature land division and
28 development that would preclude efficient transition to urban development. The Urban Reserve Overlay is
29 implemented by Urban Reserve (UR-10) for future urban residential development and Urban Reserve-20 for
30 all other types of future urban development.

31 Urban Reserve-10 (UR-10) The urban reserve-10 overlay is to protect land identified on the fringe of urban
32 growth boundaries from premature land division and development that would preclude efficient transition to
urban development.

Urban Reserve-20 (UR-20) The urban reserve-20 overlay is to protect rural land on the fringe of urban growth
boundaries from premature land division and development that would preclude efficient transition to lame-
scale non-residential development.

⁷³ Amended Ordinance No. 2016-06-12, IR 2830A, CCC Section 40.250.10 p. 34114-34118.

⁷⁴ *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 172, 256 P.3d 1193, 1206
(2011); *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143; *Lewis Cty. v. W. Washington Growth Mgmt.
Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106 (2006).

⁷⁵ FOCC Prehearing Brief at 8, citing IR 2929, at 035378.

1 Urban Reserve.⁷⁶ It states the urban reserve overlay affects the same lands as had
2 previously been subject to the zoning districts. That is, the zoning and comprehensive plan
3 designations were not changed.⁷⁷ As to FOCC's argument regarding repeal of the UR-40
4 district, the County states that while the UR-40 district existed on paper it had never
5 designated any land with that density district.

6
7 The County describes its action as "primarily a housekeeping matter". It concludes
8 that these "housekeeping" amendments are not subject to challenge as neither the allowed
9 uses nor the lands subject to the application of the regulations were changed, citing
10 *Thurston County v. Western Washington Growth Management Hearings Board*.⁷⁸
11 As to FOCC's argument regarding repeal of the UR-40 district, the County states that while
12 the UR-40 district existed on paper, it had never designated any land with that density
13 district.

14
15 **Issue 6 Board analysis and conclusions:**

16
17 In the context of a county's duty under RCW 36.70A.130(1) to periodically "take
18 legislative action to review and, if needed, revise its comprehensive land use plan and
19 development regulations," the Supreme Court has held that a party may challenge a
20 county's "failure to revise" a comprehensive plan only with respect to those provisions
21 directly affected by new or recently amended GMA provisions.⁷⁹ To the extent a county
22 takes legislative action to revise its comprehensive plan or development regulations during
23 the update process, then those amendments must comply with the GMA and are subject to
24 challenge within 60 days of publication of the amendment adoption notice.⁸⁰

25
26 Here, FOCC does not challenge a "failure to revise" but rather FOCC challenges
27 actual amendments to the County's Development Regulations adopted by Ordinance 2016-
28 06-12. This ordinance adopted an "Urban Reserve Overlay" and codified it at new Clark
29

30 ⁷⁶ County Brief at 44. See also Transcript at 107, lines 20-21.

31 ⁷⁷ Transcript at 106 lines 9-21 and 107, lines 3-7.

32 ⁷⁸ 164 Wn.2d 329, 344, 189 P.3d 38 (2008).

⁷⁹ *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 344, 189 P.3d 38 (2008).

⁸⁰ *Id.* at 347.

1 County Code Section 40.250.100. Clark County acknowledged in its prehearing brief that
2 the “2016 Plan Update created Urban Reserve (UR-10, UR-20) and Urban Holding (UR-10,
3 UH-20) as true overlay districts.”⁸¹

4 Clark County asserts that there were no substantive zoning changes and that the
5 County merely changed the title of a code section and moved it to a different location -- but
6 the record does not support that assertion. On page 8 of Ordinance 2016-06-12 states that
7 “A new Clark County Code (CCC) Chapter 40.250.100 Urban Reserve Overlay is adopted.”⁸²
8 Page 13 of the ordinance shows there was a substantive change in the allowed zoning
9 district densities -- UR-40 was eliminated.⁸³ Pages 50-54 of the ordinance show a large
10 amount of underlined new text.⁸⁴ Finally, a comparison between the previous
11 Comprehensive Plan (2004-2024),⁸⁵ page 1-17 and Figures 12, 14, and 15, and the
12 updated Comprehensive Plan (2005-2035),⁸⁶ page 38 and Figures 12, 14, and 15,
13 demonstrates that there were multiple substantive changes in text and mapping. Thus,
14 FOCC’s challenge of new code § 40.250.100 is timely.
15
16

17 The express purpose of CCC § 40.250.100 Urban Reserve Overlay is to “protect
18 areas from premature land division and development that would preclude efficient transition
19 to urban development” or “transition to large scale non-residential development.” CCC §
20 40.250.100 refers multiple times to “urban development,” as well as to the “orderly extension
21 of public roads, water and sewer.” CCC § 40.250.100B.3 requires property owners to submit
22 with the conditional use application a signed agreement “that obligates the property owner
23 to connect to public sewer and water.” Table 40.250.100-1 allows as conditional uses
24 recreational facilities and schools.⁸⁷ CCC § 40.250.100B.4 contemplates the siting of
25 schools outside of the Urban Growth Area when “the proposed site is more suitable than
26 specific sites within the urban growth area.”
27
28

29 ⁸¹ Respondent Clark County’s Prehearing Brief on the Merits (December 23, 2016) at 43.

30 ⁸² IR 2380 at 034072.

31 ⁸³ *Id.* at 034077.

32 ⁸⁴ *Id.* at 034114-18.

⁸⁵ IR 2936 at 035639.

⁸⁶ IR 2904 at 034687.

⁸⁷ Ordinance 2016-06-12, p. 52 (adopted June 28, 2016).

1 These code provisions adopted by Ordinance 2016-06-12 are focused on enabling
2 future urban growth outside the current UGA into rural areas or designated resource lands.
3 This is urban planning not rural or resource land use planning.

4 Under the GMA, it is axiomatic that growth can occur outside of the UGA only if it is
5 not urban in nature. RCW 36.70A.110(1); RCW 36.70A.070(5). Moreover, recent GMHB
6 decisions have held county development regulations to be non-compliant with the GMA
7 because they allowed “schools of an urban nature to be located outside the urban growth
8 area.”⁸⁸

9
10 In the *Soccer Fields* decision the Supreme Court held that outdoor recreational
11 facilities cannot be allowed on agricultural lands because they will remove “designated
12 agricultural land from its availability for agricultural production.”⁸⁹

13 In the *Lewis County* decision, the Supreme Court held that the “County’s ordinance
14 allowing residential subdivisions and other non-farm uses within designated agricultural
15 lands undermined the GMA conservation requirement in RCW 36.70A.060(1)(a).”⁹⁰ In
16 addition to residential subdivisions, these uses were found inappropriate on designated
17 agricultural lands: public facilities; public and semipublic buildings, structures, and uses; and
18 schools, shops, and airports.⁹¹

19
20 In the *Kittitas County* decision, the Supreme Court upheld a Board decision finding
21 that a variety of conditional uses allowed on agricultural lands of long-term commercial
22 significance violated the GMA because “the County has no protections in place to protect
23 agricultural land from harmful conditional uses.”⁹² The conditional uses that violated the
24 GMA in *Kittitas County* included “kennels, day care centers, community clubhouses,
25 governmental uses essential to residential neighborhoods, and schools with no limiting
26
27

28 ⁸⁸ *Summit-Waller et al. v. Pierce County*, GMHB Nos. 15-3-0010c and 12-3-0002c (Order on Compliance,
29 October 6, 2016) at 2-3.

30 ⁸⁹ *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 560-562, 14
31 P.3d 133, 142-143 (2000).

32 ⁹⁰ *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106
(2006).

⁹¹ *Lewis Cty.*, 157 Wn.2d at 507, 526 – 27; 139 P.3d at 1105, 1114 – 15.

⁹² *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 172, 256 P.3d 1193, 1206
(2011).

1 criteria standards.⁹³ The Urban Reserve Overlay adopted by Ordinance 2016-06-12 allows
2 these uses on agricultural lands of long-term commercial significance with no lot coverage
3 limits.⁹⁴ “There are 307 acres of proposed Rural and Agricultural zoning under the Urban
4 Reserve overlay.”⁹⁵

5 The Board is left with the firm and definite conviction that a mistake has been made
6 by the County in adopting the Urban Reserve Overlay that enables future urban growth
7 outside of the current UGA. **The Board finds: (1) these UGA enlargements violate RCW**
8 **36.70A.060, RCW 36.70A.070, and RCW 36.70A.110, and (2) Ordinance 2016-06-12 is**
9 **clearly erroneous in view of the entire record before the Board and in light of the**
10 **goals and requirements of the GMA.**

11
12
13 **Issue 7:** ANNEXATION (Addressed above with Issue 5)

14 Does the annexation of land within an urban growth area expansion under appeal violate
15 RCW 36.70A.020(1), (2), (8); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal
16 consistency), (1); RCW 36.70A.110; RCW 36.70A.115; RCW 36.70A.130(1), (3), (5); RCW
17 36.70A.170; RCW 36.70A.215(1), (2), (3), (4); or any other applicable provision of state
18 law? See Amended Ordinance 2016-06-12 and Exhibit 1 Clark County, Washington 20 Year
19 Comprehensive Growth Management Plan 2015-2035 pp. 11 –13, pp. 14 – 15, pp. 26 – 29,
20 pp. 41 – 46, pp. 267 – 68, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan
21 Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County,
22 Washington [map]. [FOCC/FW No. 12]

23 **Issue 8:** OFM POPULATION PROJECTIONS AND BUILDABLE LANDS REPORT

24 Does the 2016 Plan Update violate RCW 36.70A.110 because the County unlawfully relied
25 on population projections by the Office of Financial Management (OFM) which do not take
26 into account the population influences resulting from Clark County’s proximity to the
27 Portland, Oregon metropolitan area? [CCCU No. I]

28 **Applicable Laws**

29 **RCW 36.70A.110 Comprehensive plans—Urban growth areas.**

30 (1) Each county that is required or chooses to plan under RCW 36.70A.040
31 shall designate an urban growth area or areas within which urban growth shall be
32 encouraged and outside of which growth can occur only if it is not urban in nature.

⁹³ *Kittitas County Conservation v. Kittitas County*, EWGMHB No. 07-1-0015 (FDO, March 21, 2008), at 21.

⁹⁴ IR 2830 pp. 034114 – 17 in Tab IR 2830A, Amended Ordinance 2016-06-12 pp. 50 – 53.

⁹⁵ IR 2929 p. 035378 in Tab IR 2929, FSEIS p. 6-12.

1 Each city that is located in such a county shall be included within an urban growth
2 area. An urban growth area may include more than a single city. An urban growth
3 area may include territory that is located outside of a city only if such territory already
4 is characterized by urban growth whether or not the urban growth area includes a
5 city, or is adjacent to territory already characterized by urban growth, or is a
6 designated new fully contained community as defined by RCW 36.70A.350.

7 (2) Based upon the growth management population projection made for the
8 county by the office of financial management, the county and each city within the
9 county shall include areas and densities sufficient to permit the urban growth that is
10 projected to occur in the county or city for the succeeding twenty-year period, except
11 for those urban growth areas contained totally within a national historical reserve. As
12 part of this planning process, each city within the county must include areas sufficient
13 to accommodate the broad range of needs and uses that will accompany the
14 projected urban growth including, as appropriate, medical, governmental,
15 institutional, commercial, service, retail, and other nonresidential uses.

13 **Positions of the Parties**

14 CCCU argues the County violated RCW 36.70A.110 because the County selected
15 the “medium” OFM population projection without regard to whether the “high” projections
16 included the influx of population from Portland and the County’s most recent population
17 data.⁹⁶ CCCU claims without considering and adopting the “high” population projection, the
18 County did not plan for sufficient land to accommodate urban needs and uses. In response,
19 the County explains the “medium” OFM projections took into account population data from
20 Portland and the County has discretion to select a population projection. The County chose
21 the “medium” population projection and RCW 36.70A.110(2) gives the County discretion to
22 make this decision.⁹⁷

25 **Issue 8 Board Analysis**

26 RCW 36.70A.110 (2) assigns the responsibility to and gives the County discretion to
27 choose from OFM population projections by “...the office of financial management, **the**
28 **county** and each city within the county shall include areas and densities sufficient to permit
29 the urban growth...” The County exercised its discretion in selecting the OFM projected
30
31
32

⁹⁶ CCCU Prehearing Brief (December 1, 2016) at 20 and 2.

⁹⁷ Respondent Clark County.

1 “medium” population projection. **The Board finds and concludes CCCU has failed to**
2 **meet their burden of proof demonstrating the County’s choice violated RCW**
3 **36.70A110(2). Issue 8 is dismissed.**

4
5 **Issue 9: REMAINDER PARCELS IN UGA WILL DEVELOP INSTEAD OF OPEN SPACE**
6 ~~Does the 2016 Plan Update violate RCW 36.70A.030(16), RCW 36.70A.070(5)(b), and~~
7 ~~RCW 36.70A.177 when historical remainder parcels in rural developments are included in~~
8 ~~urban growth areas as potentially developable? [CCCU No. J]~~

9 At the Hearing on the Merits, CCCU moved to withdraw Issue 9 and they filed a
10 Motion to Withdraw Issue 9.⁹⁸ **The Board grants the motion to strike Issue 9.**

11
12 **RESOURCE AND RURAL LANDS**

13 **Resource Lands**

14
15 **Issue 10: AGRICULTURAL LAND DE-DESIGNATION:**

16 Did the adoption of Amended Ordinance 2016-06-12 including the de-designation of 57
17 acres of agricultural land of long-term commercial significance in the La Center urban
18 growth area expansion and 111 acres in the Ridgefield urban growth area expansion,
19 violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.050(3); RCW
20 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.130(1), (3), (5);
21 RCW 36.70A.170; RCW 36.70A.210(1); WAC 365-190-040(10)(b); or WAC 365-190-050 or
22 is the de-designation inconsistent with the Clark County comprehensive plan? See
23 Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year*
24 *Comprehensive Growth Management Plan 2015-2035* pp. 10 – 12, pp. 14 – 15, pp. 43 – 44,
25 pp. 84 – 86, pp. 94 – 95, Figure 14, Figure 15, Figure 22A, Figure 22B, and Figure 24A;
26 Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3
27 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 2]

28 Under Issue 10, Petitioners FOCC failed to brief RCW 36.70A.020(8), RCW
29 36.70A.070 (internal inconsistency), RCW 36.70A.130(1), (3), (5); RCW 36.70A.170; RCW
30 36.70A.210(1); and WAC 365-190-040(10)(b) -- those unbriefed legal arguments are
31 deemed abandoned.⁹⁹

32 ⁹⁸ CCCU Motion to Withdraw Issue 9 (February 7, 2017).

⁹⁹ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).

1 **Applicable Laws**

2 **RCW 36.70A.060(1)(A):** Counties “shall adopt development regulations . . . to assure
3 the conservation of agricultural, forest, and mineral resource lands designated under
4 **RCW 36.70A.170.”**

5 **WAC 365-190-050(1):** In classifying and designating agricultural resource lands,
6 counties must approach the effort as a county-wide or area-wide process. Counties
7 and cities should not review resource lands designations solely on a parcel-by-parcel
8 process.

9 **WAC 365-190-050(3):** Lands should be considered for designation as agricultural
10 resource lands based on three factors:

11 (a) **The land is not already characterized by urban growth.** To evaluate this
12 factor, counties and cities should use the criteria contained in **WAC 365-196-310.**

13 (b) **The land is used or capable of being used for agricultural production.** This
14 factor evaluates whether lands are well suited to agricultural use based primarily on
15 their physical and geographic characteristics. Some agricultural operations are less
16 dependent on soil quality than others, including some livestock production
17 operations.

18 (i) Lands that are currently used for agricultural production and lands that are capable
19 of such use must be evaluated for designation. The intent of a landowner to use land
20 for agriculture or to cease such use is not the controlling factor in determining if land
21 is used or capable of being used for agricultural production. Land enrolled in federal
22 conservation reserve programs is recommended for designation based on previous
23 agricultural use, management requirements, and potential for reuse as agricultural
24 land.

25 (ii) In determining whether lands are used or capable of being used for agricultural
26 production, counties and cities shall use the land-capability classification system of
27 the United States Department of Agriculture Natural Resources Conservation Service
28 as defined in relevant Field Office Technical Guides. These eight classes are
29 incorporated by the United States Department of Agriculture into map units described
30 in published soil surveys, and are based on the growing capacity, productivity and
31 soil composition of the land.

32 (c) **The land has long-term commercial significance for agriculture.** In
determining this factor, counties and cities should consider the following nonexclusive
criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural
Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting
agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax
assessment under chapter **84.34** RCW and whether the optional public benefit rating

1 system is used locally, and whether there is the ability to purchase or transfer land
2 development rights;

3 (iv) The availability of public services;

4 (v) Relationship or proximity to urban growth areas;

5 (vi) Predominant parcel size;

6 (vii) Land use settlement patterns and their compatibility with agricultural
7 practices;

8 (viii) Intensity of nearby land uses;

9 (ix) History of land development permits issued nearby;

10 (x) Land values under alternative uses; and

11 (xi) Proximity to markets.¹⁰⁰

12 **Positions of the Parties**

13 FOCC argues the County violated WAC 365-190-050(1) when it improperly de-
14 designated agricultural lands of long term commercial significance (ALLTCS).¹⁰¹ FOCC
15 claims the de-designated ALLTCS properties were isolated parcels similar to those in a
16 Board decision in *Benton County* and were not part of a county-wide or area-wide ALLTCS
17 de-designation analysis.¹⁰² FOCC contends the County should have applied the same
18 process and criteria in a de-designation analysis as they applied when designating ALLTCS
19 as required in WAC 365-190-050. FOCC enumerated the factors in RCW 36.70A.030(2)
20 and described in *Lewis County*¹⁰³ that should have been reviewed in an area- or county-
21 wide analysis. Those factors included considering whether the property was “characterized
22 by urban growth” or the land was primarily devoted to the commercial production of
23 agricultural products or if public facilities such as water supply were available.¹⁰⁴

24
25
26 ¹⁰⁰ These agricultural resource land designation factors are “minimum guidelines that apply to all jurisdictions,”
27 RCW 36.70A.050(3).

28 ¹⁰¹ FOCC Prehearing Brief at 12 and 13 FOCC bases its claim on RCW 36.70A.050(3) and argues WAC 365-
29 190-050(1) requires that in “designating agricultural resource lands, counties must approach the effort as a
30 county-wide or area-wide process.” This WAC is part of the “minimum guidelines that apply to all jurisdictions”
31 and are to guide the designation of agricultural lands of long-term commercial significance.¹⁰¹ When WAC 365-
32 190-050 uses mandatory language, local governments are required to use that provision. *Clark Cty.*, 161 Wn.
App. at 232 – 33, 254 P.3d at 875

¹⁰² *Futurewise v. Benton County*, GMHB No. 14-1-0003 (FDO, October 15, 2014), at 37 of 38.

¹⁰³ *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

¹⁰⁴ FOCC Prehearing Brief at 13-19 and *Lewis County v. Western Washington Growth Management Hearings
Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

1 In response to this issue, the County incorporates responses from Cities of Battle
2 Ground, La Center and Ridgefield, of 3B Northwest, LLC, and of Brown Properties.¹⁰⁵

3 Intervenor Ridgefield counters FOCC's arguments by explaining its "unique
4 circumstance as it has been experiencing explosive recent growth—more than doubling the
5 growth rates of any Clark County jurisdiction" and "the model used by the County to
6 calculate the amount of vacant buildable land in the City of Ridgefield was not accurate."¹⁰⁶
7 Regarding the agricultural land de-designation, Ridgefield states "the proposed property is
8 not agricultural land under the GMA."¹⁰⁷ Ridgefield concludes that Issue 10 is moot because
9 it annexed the de-designated 111 acres, thus this issue is not in the Board's jurisdiction.¹⁰⁸

10 La Center argued FOCC ignored evidence that its 56.55 acre ALLTCS lands were
11 properly de-designated based on the changed circumstances criteria in WAC 365-190-
12 040(10).¹⁰⁹ La Center explains its UGA is now encircled by urban growth, urban services
13 are available to serve development in an expanded UGA, no recent agricultural use has
14 occurred in La Center's expanded UGA, water rights for irrigation have not been
15 established, the properties in question do not have agricultural tax classifications, and they
16 are physically isolated from farm land and uses.¹¹⁰ La Center claims the de-designation
17 was based "on a comprehensive countywide agricultural trends survey and analysis
18
19
20
21

22 ¹⁰⁵ Clark County Prehearing Brief (December 22, 2016) at 43.

23 ¹⁰⁶ Ridgefield Prehearing Brief (December 22, 2016) at 2-3.

24 ¹⁰⁷ *Id.* at 3 See IR 3022 Bates # 038787-038813, Memorandum of Eric Eiseman and Globalwise Agricultural
25 Resource Land Analysis Report for proposed properties and also IR 039056-57, Supplement to Report

26 ¹⁰⁸ *Id.* at 2.

27 ¹⁰⁹ La Center Prehearing Brief (December 22, 2016) at 9-10.

28 WAC 365-190-040(10) provides: (a) Land use planning is a dynamic process. Designation procedures should
29 provide a rational and predictable basis for accommodating change. (b) Reviewing natural resource lands
30 designation. In classifying and designating natural resource lands, counties must approach the effort as a
31 county-wide or regional process. Counties and cities should not review natural resource lands designations
32 solely on a parcel-by-parcel process. Designation amendments should be based on consistency with one or
33 more of the following criteria:

- (i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation criteria in WAC 365-190-050(3), . . .
- (ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is related to designation criteria in WAC 365-190-050(3), . . .
- (iii) An error in designation or failure to designate;
- (iv) New information on natural resource land or critical area status related to the designation criteria in WAC 365-190-050(3), . . .; or
- (v) A change in population growth rates, or consumption rates, especially of mineral resources.

¹¹⁰ *Id.* at 10, 12, 13.

1 performed by an agricultural economist and published in 2007....and appropriate
2 consideration of changed circumstances affecting the subject property.”¹¹¹ La Center
3 explains:

4 This previous analysis was updated in 2015 for the present Comprehensive
5 Plan revision, to address changed circumstances on the Fudge and 3B
6 Northwest parcels. It was further updated in a letter dated May 25, 2016
7 focused on La Center’s UGA expansion area.¹¹²

8 Ridgefield and La Center conclude Issue 10 is moot because the cities annexed 111 and 56
9 acres respectively, thus this issue is not in the Board's jurisdiction. ¹¹³

10 Intervenor 3B NW and Lagler Properties support the County’s de-designation of
11 their properties in compliance with WAC 365-190-050(3) because the land has no
12 agricultural possibilities, has no prime soils, and is bounded by a Casino, truck stop, and
13 school bus facility. Their property is within 800 feet of a new interchange at I-5 and La
14 Center is building sewer lines near their property. Intervenor claim FOCC ignored
15 evidence “that supports the de-designation of the 3B Northwest property, evidence that is
16 more current and parcel specific than that relied upon by petitioner.” Specifically,
17 Intervenor cite the Globalwise Report which analyzed their property and found it met de-
18 designation requirements under GMA.¹¹⁴

21 Issue 10 Board Analysis

22 RCW 36.70A.020 (8) provides that counties and cities should encourage the
23 conservation of productive agricultural lands and discourage incompatible uses. RCW
24 36.70A.030 defines “Agricultural land” as land primarily devoted to the commercial
25

26
27 ¹¹¹ *Id.* at 14-15.

¹¹² IR 1075; IR 1076 and IR 2735 (033258-70).

28 ¹¹³ La Center Prehearing Brief at 5 The Board cannot afford FOCC the relief it seeks with respect to expansion
29 of the La Center UGA. For the same reasons as in *Panesko* and *Karpinski*, the Board should dismiss as moot
30 FOCC’s claims, including but not limited to those set forth in Issues 5 and 10, insofar as they relate to the
31 lands within La Center’s expanded UGA that have been annexed by the City pursuant to Ordinance No. 2016-
08.

Ridgefield Prehearing Brief at 2 and 4.

32 ¹¹⁴ Intervenor 3B Northwest, LLC (“3B”) and Lagler Real Property, LLC (“Lagler”) Prehearing Brief (December
22, 2016) at 4. See IR1076 Bates # 014115 Agricultural Resource Land Analysis of the 3B NW LLC Property
Near the La Center Junction and also IR.

1 production of “various categories of agriculture” and has long-term commercial significance
2 for agricultural production. “Long term commercial significance” includes the growing
3 capacity, productivity, and soil composition of the land for long-term commercial production,
4 in consideration with the land’s proximity to population areas, and the possibility of more
5 intense uses of the land. RCW 36.70A.050(3) directs the Department of Commerce to
6 establish guidelines under chapter 34.05 RCW to classify and designate agricultural lands
7 which are a category of natural resource lands.¹¹⁵ RCW 36.70A.170 requires cities and
8 counties to designate “agricultural lands that are not already characterized by urban growth
9 and that have long-term significance for the commercial production of food or other
10 agricultural products.”
11

12 Commerce’s guidelines in WAC 365-190-040 apply to **all** natural resource lands and
13 critical areas and establish a two-step process to classify and designate natural resource
14 lands. WAC 365-190-040 provides guidance on how to adopt and amend the overall
15 designation process.¹¹⁶ It is an over-arching description of how a County should approach
16

17 _____
18 ¹¹⁵ RCW 36.70A.170 Natural resource lands and critical areas—Designations. (1) On or before September 1,
19 1991, each county, and each city, shall designate where appropriate: (a) Agricultural lands that are not already
20 characterized by urban growth and that have long-term significance for the commercial production of food or
21 other agricultural products;

22 WAC 365-190-030 (15) "Natural resource lands" means agricultural, forest and mineral resource lands which
23 have long-term commercial significance.

24 ¹¹⁶ WAC 365-190-040 Process (1) The classification and designation of natural resource lands and critical
25 areas is an important step among several in the overall growth management process. These steps outlined in
26 subsections (4) and (5) of this section comprise a vision of the future, and that vision gives direction to the
27 steps in the form of specific goals and objectives. Under the act, the timing of the first steps coincided with
28 development of the larger vision through the comprehensive planning process...(10) Designation amendment
29 process.

30 (a) Land use planning is a dynamic process. Designation procedures should provide a rational and predictable
31 basis for accommodating change.

32 (b) Reviewing natural resource lands designation. In classifying and designating natural resource lands,
*counties must approach the effort as a county-wide or regional process. Counties and cities should not review
natural resource lands designations solely on a parcel-by-parcel process.* Designation amendments should be
based on consistency with one or more of the following criteria:

(i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation
criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is
related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in WAC
365-190-050(3), 365-190-060(2), and 365-190-070(3); or

1 classifying and designating **all natural resource lands** and critical areas. Intervenor La
2 Center primarily cites WAC 365-190-040 as guidance used by the County to de-designate
3 their agricultural properties, but they were in error in citing that WAC.¹¹⁷ The Board notes
4 WAC 365-190-040 does not apply strictly to agricultural lands; rather it provides the
5 overarching framework for a County to address natural resource lands.
6

7 Instead, the Board looks to *Lewis County* and the factors in WAC 365-190-050 which
8 guide Counties when addressing agricultural lands.¹¹⁸ WAC 365-190-050(1) requires a
9 county-wide or area-wide analysis when classifying and designating agricultural land (not a
10 parcel-by-parcel analysis) to assure conservation of agricultural land. WAC 365-190-050(3)
11 requires agricultural conservation by using three major factors and eleven sub-factors to
12 determine agricultural designation. WAC 365-190-050(5) states that the final outcome of the
13 process should “result in designating an amount of agricultural resource lands sufficient to
14 maintain and enhance the **economic viability of the agricultural industry** in the county
15 over the long term; and to retain supporting agricultural businesses, such as processors,
16 farm suppliers, and equipment maintenance and repair facilities.” (Emphasis added)
17

18 WAC 365-190-050(1) In classifying and designating agricultural resource
19 lands, counties must approach the effort as **a county-wide or area-wide**
20 **process**. Counties and cities **should not** review resource lands designations
21 solely on a **parcel-by-parcel process**.... (Emphasis added)

22 (3) Lands should be considered for designation as agricultural resource lands
23 based on three factors: (a) The land is not already characterized by urban
24 growth.

25 (b) The land is used or capable of being used for agricultural production.

26 (v) A change in population growth rates, or consumption rates, especially of mineral resources. (Emphasis
27 added)

28 ¹¹⁷ Intervenor City of La Center’s Prehearing Brief at 10, 15 and 16.

29 ¹¹⁸ *Lewis Cty. v. Hearings Bd.*, 157 Wn.2d 488, 139 P.3d 1096 (2006) at 502 “In sum, based on the plain
30 language of the GMA and its interpretation in *Benaroya I*, we hold that agricultural land is land: (a) not already
31 characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural
32 products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for
production based on land characteristics, and (c) that has long-term commercial significance for agricultural
production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or
vulnerable to more intense uses. **We further hold that counties may consider the development-related
factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial
significance.**” (Emphasis added)

1(c) The land has **long-term commercial significance for agriculture**. In
2 determining this factor, counties and cities should consider the following
3 nonexclusive criteria, as applicable...(5) When applying the criteria in
4 subsection (3)(c) of this section, the process should result in designating an
5 amount of agricultural resource lands sufficient **to maintain and enhance the**
6 **economic viability of the agricultural industry in the county over the**
7 **long term**; and to retain supporting agricultural businesses, such as
processors, farm suppliers, and equipment maintenance and repair facilities.
(Emphasis added)

8
9 (5) When applying the criteria in subsection (3)(c) of this section, the process
10 should result in designating an amount of agricultural resource lands sufficient
11 to maintain and enhance the economic viability of the agricultural industry in
12 the county over the long term; and to retain supporting agricultural
13 businesses, such as processors, farm suppliers, and equipment maintenance
and repair facilities.¹¹⁹

14 In reviewing the La Center property, the Board refers to La Center's brief in which it
15 explained how the property was de-designated:

16 In fact, the de-designation of the land within the expanded La Center UGA
17 was based on a comprehensive countywide agricultural trends survey and
18 analysis performed by an agricultural economist and **published in 2007**. The
19 Globalwise 2007 report analyzed countywide agricultural trends with a site-
20 specific focus that included the La Center I-5 junction parcels. IR 2735
(033271-340). The record also includes a specific analysis of the area
21 formerly denominated **the "LB-1" annexation area, which includes the**
22 **approximately 56 acres in La Center's expanded UGA challenged in this**
23 **appeal**. IR 2735 (033266 and 033270). This previous analysis was updated
24 in 2015 for the present Comprehensive Plan revision, to address **changed**
25 **circumstances on the Fudge and 3B Northwest parcels**. IR 1075; IR
26 1076. It was further updated in a letter dated May 25, 2016 focused on La
Center's UGA expansion area. IR 2735 (033258-70).¹²⁰ (Emphasis added)

27 To further refine the Board's understanding of how the La Center property was de-
28 designated, it refers to a memorandum from Bruce Pregeluber describing his work:

29 "The Futurewise letter dated May 23, 2016 asserts that my analysis of the
30 proposed La Center urban growth area expansion is not an area-wide
31

32 ¹¹⁹ The Board notes the County's BERK Consulting Issue Paper 9 refers to WAC 365-190-050 in its analysis of
agricultural lands See IR 3092 at Bates # 041144-6.

¹²⁰ Intervenor La Center's Prehearing Brief at 14-15.

1 analysis. ...My work in 2015, which reviewed in detail the **three parcels**
2 **totaling 56.66 acres**, was conducted with consideration of the 2006-2007
3 county-wide analysis of agriculture and with due consideration to the analysis
4 I conducted for **area LB-1**. As part of my ongoing work in 2006 and 2007, I
5 prepared matrices that summaries my assessment of agricultural conditions
6 in subareas of Clark County...see attachments...In the course of my work, I
7 determined that the **current conditions are similar to what I found and**
8 **reported in 2006-2007**. My 2015 report references other properties in the
9 LB-1 area as well as the subject properties proposed for addition to the La
10 Center UGA.”¹²¹ (Emphasis added)

9 The Board reviewed the Globalwise Report Attachment B in which the La Center LB-1
10 properties were analyzed in 2007 for their ALLTCS status.¹²² At that time, the Board
11 concluded La Center’s LB-1 properties were ALLTCS. The Court of Appeals upheld the
12 Board’s decision in *Clark County*:
13

14 “The Growth Board determined that the County's decisions de-designating
15 these parcels from ALLTCS status and incorporating them into UGAs were
16 noncompliant with the GMA. We affirm the Growth Board's decisions for
17 parcels LB-1, LB-2, and LE, but remand to the Growth Board for further
18 consideration on parcels VA, VA-2, and WB.”¹²³

18 Now, a 56.55 acre portion of LB-1 properties has again been de-designated by the County
19 because La Center supplied a 2015 update to the Globalwise Report stating the 56.55 acres
20 qualified for de-designation. But, the County failed to complete an area-wide analysis of the
21 impacts on the agricultural industry demonstrating this property could be removed from
22 ALLTCS. An update on one 56.55 acre parcel does not constitute an analysis to ensure the
23 viability of agricultural economy in Clark County in accordance with WAC 365-190-050(5).
24

25 For the Ridgefield properties, the Eisemann January 6, 2016, memorandum and
26 report to the County stated the Ridgefield properties were no longer suitable for agricultural
27 designation and could convert to urban use.¹²⁴ The report indicates “the **subject parcels**
28
29

30 ¹²¹ IR 2740 at 033397-98.

31 ¹²² IR 2740 at 033400 (June 13, 2007).

32 ¹²³ Clark Cty. v. W. Wash. Growth Mgmt. Hearings Bd., 161 Wn. App. 204, 254 P.3d 862 (2011) at 23 of 33

¹²⁴ Id. 3022 at Bates # 038787 “Agricultural Resource Land Analysis of the **Eighteen Parcels** Adjoining the
City of Ridgefield, Washington: A Determination of De-Designation Under the Washington Growth
Management Act” (Eisemann Memorandum January 6, 2015). (Emphasis added)

1 are not suitable for long-term commercial significance for agricultural production, are subject
2 to intense pressure for conversion to non-agricultural uses and could be easily converted to
3 urban use.”¹²⁵ The Eisemann memorandum does not constitute an area-wide analysis for
4 agricultural industries’ long-term viability in Clark County as required in WAC 365-190-
5 050(5). Further, in Clark County Staff Report to the Board of County Council, “[t]he City of
6 Ridgefield requested that the County remove the agricultural resource designation from
7 approximately 102 acres of actively fanned land north of Ridgefield’s Urban Growth
8 Boundary (UGB), designate that land for residential, urban use, and include it within the
9 city’s Urban Growth Area (UGA)... Answering the city’s request is a relatively uncomplicated
10 application of the Growth Management Act (GMA). In light of the GMA criteria that would
11 govern a decision on this request, staff recommends denial of Ridgefield’s request to
12 urbanize the property.”¹²⁶ The evidence in the record demonstrates that the County did not
13 conduct an area-wide analysis of the effect of removing agricultural lands near Ridgefield on
14 the agricultural industry and the staff report leads the Board to conclude the County
15 improperly de-designated these agricultural lands.
16

17
18 La Center and Ridgefield ALLTCS de-designation decisions did not comply with WAC
19 365-190-050 in which a county-wide or area-wide study creates a “process [that] should
20 result in designating an amount of agricultural resource lands sufficient to maintain and
21 enhance ***the economic viability of the agricultural industry in the county over the long***
22 ***term.***”(Emphasis added). Instead, the Board finds the County requested these cities and
23 property owners to include in their UGA requests:
24

25 “...a map clearly indicating the subject parcels... [and] the jurisdictions are
26 responsible for providing the de-designation analysis of any land that is
27 proposed to be taken out of the agricultural designation. The draft de-

28 ¹²⁵ *Id.*

29 ¹²⁶ IR 596 at 010767. The land consists of 18 tax lots, most of which are approximately 5-6 acres. Staff has not
30 investigated whether these are legal lots of record. The properties can all be traced to a common owner, and
31 only one of the 18 properties contains structures. The land is not characterized by urban growth; it lacks
32 available sewer or a water system, an urban road system, urban schools or utilities, or commercial or industrial
development. No urban development within the city limits immediately adjoins the land. On its other three
sides, it is bounded by agricultural resource land. It has predominantly Class III soils, and has been
commercially fanned at least as recently as last month, at which time it was used as pasture for cows. The
property is assessed at its current use for farmland.”

1 designation analysis of agricultural lands must be provided to County
2 planning staff by May 1, 2015.”¹²⁷

3 Clearly, the County relied upon a parcel-by-parcel update from Globalwise for the La
4 Center¹²⁸ and Ridgefield¹²⁹ and the County does not provide evidence of a county-wide
5 analysis to meet requirements in WAC 365-190-050(5).¹³⁰ **The Board finds and**
6 **concludes that FOCC has carried its burden of proof showing the County failed to**
7 **conduct an area- or county-wide analysis in compliance with RCW 36.70A.050 and**
8 **.060 and WAC 365-190-050.**
9

10
11 **Issue 11: UPZONE AG / FR LAND FOR MORE DENSITY**

12 Did Amended Ordinance 2016-06-12’s amendments to the comprehensive plan including
13 the land use, rural, and capital facility plan elements, amendments to the Agriculture 20
14 (AG-20) District to create the Agriculture 10 (AG-10) District, amendments to the Forest 40
15 (FR-40) District to create the Forest 20 (FR-20) District, related rural rezones, or the allowed
16 uses, densities, or development standards applicable to the AG-10 or FR-40 districts,
17 including but not limited to CCC 40.210.010B and E, violate RCW 36.70A.020(8), (10);
18 RCW 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070
19 (internal consistency); RCW 36.70A.070(1), (3), (5); RCW 36.70A.130(1), (5), WAC 365-
20 196-815 or WAC 365-196-825 because they fail to conserve farm and forest land, protect
21 the quality and quantity of groundwater used for public water supplies, or are inconsistent
22 with the comprehensive plan? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark*
23 *County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035* pp. 18
24 – 19, Chapter 1 Land Use Element, Chapter 3 Rural and Natural Resource Element,
25 Chapter 6 Capital Facilities and Utilities Element, Figure 22A, Figure 22B, and Figure 24A;
26 Exhibit 3 County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit
27 7; Exhibit 8; Exhibit 9; Exhibit 25; Exhibit 26; Exhibit 28; Exhibit 30; Exhibit 31; Exhibit 32;
28 Exhibit 33; Exhibit 34; Exhibit 35; Exhibit 36; Exhibit 37; Exhibit 38; and Exhibit 39.
29 [FOCC/FW No. 3]

127 IR 624 Bates # 011426. Email from Laurie Lebowsky, Clark County Planner III, La Center Ridgefield UGA
requests: follow up (February 17, 2015).

128 IR 2740.

129 IR 3022.

130 WAC 365-190-050 (5) When applying the criteria in subsection (3)(c) of this section, the process should
result **in designating an amount of agricultural resource lands sufficient to maintain and enhance the**
economic viability of the agricultural industry in the county over the long term; and to retain supporting
agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

1 Under Issue 11, Petitioners FOCC failed to brief RCW 36.70A.020(8), (10); RCW
2 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal
3 consistency); RCW 36.70A.070(3); RCW 36.70A.130(1), (5), and WAC 365-196-815 or
4 WAC 365-196-825 -- those unbriefed legal arguments are deemed abandoned.¹³¹
5

6 **Applicable Law**

7 **RCW 36.70A.060:** “Each county... shall adopt development regulations ...to assure
8 the conservation of agricultural, forest, and mineral resource lands designated under
9 RCW 36.70A.170.”

10 **Positions of the Parties**

11 FOCC argues the County violated the GMA when it created smaller parcel sizes for
12 agricultural and forest zoned properties because these changes increase land conversions
13 by creating more parcels leading to less conservation of natural resource lands required in
14 RCW 36.70A.070(1) and (5)(c) and RCW 36.70A.060(1)(a).¹³² FOCC cites a Supreme
15 Court holding that counties are required to “*to assure the conservation of agricultural lands*
16 *and to assure that the use of adjacent lands does not interfere with their continued use for*
17 *the production of food or agricultural products.*”¹³³ FOCC argues 10 acres lot sizes will not
18 meet standards in the GMA nor in Court decisions.¹³⁴ Citing various agricultural, forestry
19 and economic experts, FOCC reiterates findings that minimum lot size of 40 acres will
20 “make substantial progress in protecting farmland...” and the County’s data show that Clark
21 County’s farmland sizes have increased 5.4% from 2007 to 2012.¹³⁵ FOCC also cites forest
22
23
24

25 _____
26 ¹³¹ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-
03-590(1).

27 ¹³² FOCC Prehearing Brief at 27-28.

28 ¹³³ *Id.* and *King County v. Central Puget Sound Growth Management Hearings Bd. (Soccer Fields)*, 142 Wn.2d
543, 556, 14 P.3d 133, 140 (2000) emphasis in original.

29 ¹³⁴ *Id.*

30 ¹³⁵ FOCC Prehearing Brief at 27-29. IR 1418 p. 019613 in Tab IR 1418, Arthur Nelson, *Preserving Prime*
Farmland in the Face of Urbanization: Lessons from Oregon 58 Journal of the American Planning Association
31 467, 471 (1992). The Journal of the American Planning Association is a peer-reviewed journal. IR 1418 p.
019633, Journal of the American Planning Association Aims and Scope webpage p. 3 of 6. See also: IR 1395
32 pp. 018950 in Tab IR 1395, Dennis Canty, Alex Martinsons, and Anshika Kumar, *Losing Ground: Farmland*
Protection in the Puget Sound Region p. 9 (American Farmland Trust, Seattle WA: January 2012). IR 1392 p.
018633 in Tab IR 1392, United States Department of Agriculture, National Agricultural Statistics Service, 2012

1 industry data that “[p]arcel sizes smaller than 40 acres have much lower timber harvest rates and
2 are more likely to be converted to residential land uses.¹³⁶ FOCC refers to the County’s
3 Final Environmental Impact Statement (FEIS) showing smaller parcels may not be as
4 attractive to larger agricultural businesses.¹³⁷ Lastly, FOCC argues smaller parcel sizes will
5 encourage more non-agricultural and non-forestry uses such as residential subdivisions
6 requiring more water supply, but according to FOCC’s citations to Ecology’s WRIA report,
7 water has “already been spoken for” and this “violates the requirement that the land use
8 element must protect “the quality and quantity of groundwater used for public water
9 supplies....”¹³⁸ In sum, FOCC argues the County’s Amended Ordinance risks a failure to
10 “conserve designated agricultural lands” as required by the GMA and *King County* and fails
11 to protect surface and groundwater as required by GMA and *Hirst*.¹³⁹
12

13 The County replies that natural resource lands were not de-designated by reducing
14 parcel sizes nor were allowed uses changed, thus agricultural and forest lands are not in
15 jeopardy of being converted to non-resource lands.¹⁴⁰ The County’s Amended Ordinance
16 contains Findings 1.7.2 citing information from BERK Consulting’s Issue Paper 9 (Paper)
17 that agriculture and forest land trends show more success with smaller lot sizes.¹⁴¹
18

19 “The County has considered a number of resources, including Agricultural
20 Preservation Strategies Report, 2010, Rural Lands Study: Assessment of
21 Agriculture and Forestry in Clark County, BERK 2012, and the 2016 update of
22 the Clark County Agriculture and Forest Land Inventory and Analysis (2016,
23 BERK). Clark County has the second highest percentage of very small farms

24 *Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part 47 AC-*
25 *12-A-47 Chapter 2: County Level Data p. 271 (May 2014).*

26 ¹³⁶ IR 2666 p. 032429 Eric J. Gustafson & Craig Loehle, *Effects of Parcelization and Land Divestiture on*
27 *Forest Sustainability in Simulated Forest Landscapes* 236 *Forest Ecology and Management* 305, 313 (2006).
28 *Forest Ecology and Management* is a refereed scientific journal. IR 2666 p. 032431, *Forest Ecology and*
29 *Management* webpage p. 1 of 2. Also see: IR 2666 p. 032433, p. 032441 in Tab IR 2666, R. Neil Sampson,
30 *Implication for Forest Production in Responses to “America’s Family Forest Owners”* 102 *Journal of Forestry* 4,
31 12 (October/November 2004). The *Journal of Forestry* is a peer-reviewed scientific journal. IR 2666 p. 032444
32 *Journal of Forestry Guide for Authors* webpage at 1 of 5.

¹³⁷ FOCC Prehearing Brief at 27 and IR 2929 at 035377.

¹³⁸ *Id.* at 31-32 RCW 36.70A.070(1); RCW 36.70A.070(5)(c).

¹³⁹ *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106
(2006) and *Whatcom Cty. v. Hirst*, ___ Wn.2d ___, 381 P.3d 1, 11 –18 (2016).

¹⁴⁰ County Prehearing Brief at 51.

¹⁴¹ IR 3092.

1 in the State. Family farming is critical to the continued viability of the
2 agricultural community in the County. The authorization for 10-acre lot size
3 will facilitate more affordable owner-occupied family farms. This continues to
4 reflect the unique structure of farming in Clark County. The BERK Reports
further document support for the Forest Land lot size.”¹⁴²

5 The County brief argues smaller farmers have other rural businesses, they meet the
6 demand for local produce for community supported agriculture and other GMA counties
7 throughout Washington have minimum lot sizes of 10 to 40 acres.¹⁴³ The County explains
8 that in compliance with innovative zoning techniques allowed in RCW 36.70A.177,
9 residential clustering will also be an option to conserve agricultural land.¹⁴⁴ Regarding water
10 supply, the County explained that Clark County’s Instream Flow Rules for WRIA 27 and 28
11 are less than ten years old, “...are much more current. They identify reservations for permit
12 exempt wells and they establish methodology for evaluating impact of wells to surface
13 waters. The applications for permit exempt wells are tracked by both Clark County and the
14 Department of Ecology so as to generate information on remaining water resources” and
15 their Capitol Facilities Policies call for “for proof of public or private domestic water sources,
16 producing sufficient quantity and quality of water before permits can be issued.”¹⁴⁵
17
18
19

20 **Issue 11 Board Analysis**

21 The question before the Board is whether smaller parcel sizes for agriculture and
22 forest resource lands will assure agricultural and forest land conservation as required by
23 RCW 36.70A.060(1), whether these smaller parcel sizes will protect water quality and
24 quantity as required in RCW 36.70A.070(1) and if the County has measures in place to
25 protect the rural character of the area required by RCW 36.70A.070(5). These are
26 mandatory elements in comprehensive plans which have been interpreted by the Courts
27 and give the Board guidance.
28
29

30
31 ¹⁴² IR 2830 Amended Ordinance 2016-06-12 Finding 1.7.2.

¹⁴³ County Prehearing Brief at 51.

¹⁴⁴ IR/Tab 3085, Amended Ordinance 2016-06-12.

¹⁴⁵ HOM Transcript at 100 -102 Clark County Attorney (Ms. Cook): “So, yes, applicants must prove that there is water. They make that proof to the Department of Public Health.” HOM Transcript at 102.

1 In Amended Ordinance 2016-06-12, the County considered a number of studies and
2 land assessments before it reduced parcel sizes on lands zoned for agriculture from 20
3 acres to 10 acres and on lands zoned for forest from 40 acres to 20 acres.¹⁴⁶ The County's
4 Ordinance Finding 1.7.2 explains the County has the second highest percentage of very
5 small farms in the State and smaller farms will "facilitate affordable owner-occupied family
6 farms."¹⁴⁷ The County based its findings on Issue Paper 9 which analyzes the County's
7 agricultural and forestry trends, shares of commodity values and acreage.¹⁴⁸

8
9 However, the County's argument is not compelling. The Board found the Paper's
10 analysis of farms categorized them a "small, very small, mid-sized and large based on
11 value" and showed a graph with the commodity value for each farm size.¹⁴⁹ The Paper
12 demonstrates that small farms have increased in number, but not in commodity value.¹⁵⁰
13 At the same time, the Paper states that while "[l]arge and mid-sized farms both decreased
14 between 1997 and 2007. These two categories represent only 4% of all farms in Clark
15 County in 2007."¹⁵¹ But most persuasive to the Board is that the Paper concludes that while
16 the number of large farms has decreased, **their share of the total commodity output**
17 **stayed nearly constant at around 85-89%** over the same time period.¹⁵² And, although
18 Clark County has the second highest "proportion of such very small farms in the state", the
19 Paper states:
20

21 In terms of **mid-size and large farms**...the County's 2012 Rural Lands Study
22 found **they produce the vast majority of commodity values in the county**
23 with relatively few farms considering the 2007 data. That finding is **still true**
24 **as of the 2012 Census**. However, there are fewer large farms than in 2007
25 and the overall commodity values are lower in 2012 than in prior years.¹⁵³
26 (Emphasis added)
27

28
29 ¹⁴⁶ IR 2830 Bates 034066, 034081, 034085.

¹⁴⁷ IR 2830 Amended Ordinance 2016-06-12 Finding 1.7.2.

¹⁴⁸ IR 3092 at 041130 for farms and 041148 for forestry.

¹⁴⁹ *Id.* at 041128.

¹⁵⁰ *Id.* at 041129 Exhibit A: Graph showing: *Clark County Farms Size by Value of Commodities*.

¹⁵¹ *Id.* at 041129 and 041130.

¹⁵² *Id.* at 041130.

¹⁵³ *Id.*

1 Furthermore, the Paper finds that larger, commercial farms account for the health of the
2 agricultural industry in Clark County:

3 *“Commercial farms are the most productive farm type, with 38 farms*
4 *producing \$39.4 Million as of 2007. Put another way, 3% of Clark County*
5 *farms accounted for 75% of total commodity outputs.”¹⁵⁴*

6 In addition to reviewing commodity values, the Board also reviewed data about the
7 size of farms and their effect on viability of the agricultural industry. Data in the Paper show
8 that farms greater than 50 acres have decreased between 1997 and 2012 and farm sizes
9 between 1-9 acres now constitute 44% of farms in Clark County, with farm sizes between
10 10-50 acres at 42%.¹⁵⁵ The County does have a greater proportion of small farms compared
11 to other counties in Washington State. The Paper finds:

13 *“Farm size reflects urban and suburban land use patterns with agriculture*
14 *dominated by small-scale operations...*

15 The average size of a Clark County farm in 2007 was 37 acres, compared to
16 the Washington average of 381 acres. The Clark County farm average in
17 2012 was slightly higher at 39 acres as was the average for Washington State
18 at 396 acres.

19 Clark County's numbers are comparable to other, primarily urban counties like
20 Pierce (10) and King (8).¹⁵⁶ (Emphasis added)

21 A telling section of Issue Paper 9 about the size and functions of small farms can be found
22 in “Location and Spatial Pattern of Agriculture”:

24 The pattern of small farms being found in both the Rural and AG zoned areas
25 is similar to findings in the 2012 Rural Lands Study. That study identified the
26 diversity in location and type of agriculture across the County, and found that
27 a diverse set of small farms and enterprises are increasingly becoming part of
the rural landscape.

28 Per the Census of Agriculture results, ***very small and small farms that***
29 ***produce little income are mostly supported with non-farm income.***
30

31 _____
32 ¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 041132.

¹⁵⁶ *Id.* at 041133.

1 Many farmers in this category farm for non-market reasons and may be
2 willing to farm at a loss, given unpaid farm labor within these households.
3 The growing demand for local produce and increasing market share of CSAs
4 presents farms in these categories with opportunities to generate additional
5 income. **Many of these farms also host other co-located rural**
6 **businesses that may, or may not, be related to agriculture.** (Emphasis
added).¹⁵⁷

7 This is a commentary on the difficulties of operating small farms and that most are
8 supported by “non-farm income” and, unfortunately, farm at a loss. The bright side of the
9 findings in the Paper are that small farms can contribute to the Community Supported
10 Agriculture (CSA) markets, but as the data above show, the majority of agricultural
11 commodity revenue is from mid- and large size farms. The Board does not find the County’s
12 argument compelling that a smaller farm will enhance and maintain the agricultural industry.
13 Finally, the Paper cites several examples of growing and successful agricultural ventures in
14 Clark County. For example:

16 “Cattle and calves are the agricultural product found on the largest number of
17 Clark County farms. 23% of Clark County farms produce cattle and calves.

18 The number of farms with Poultry and egg products more than doubled
19 between 1997-2007. Though it has dropped by 49 farms, in 2012 it was still
20 more than twice the 1997 or 2002 total.

21 Fruit, tree nuts, and berries and cut Christmas trees make up the largest non-
22 livestock portion of Clark County farms.

24 The number of Clark County farms growing fruit, tree nut, and berry products
25 has doubled since 1997.

26 The number of farms growing cut Christmas trees and short term woody
27 crops has grown by 26%.”¹⁵⁸

28 Regarding forestry, the Paper contained two pages of summary data comparing
29 forestry lots sizes between Clark County and five counties which allow 20 and 80 acre
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¹⁵⁷ *Id.* at 0141139-40.

¹⁵⁸ *Id.* at 041137.

1 forestry parcels.¹⁵⁹ The Paper is replete with data of agricultural commodities and acreage,
2 with limited data about forestry, but no clear reasoning or analysis about the impacts of
3 smaller parcel sizes for agricultural or forestry industries. The Board notes that nowhere in
4 Issue Paper 9 does it comment on or analyze the impacts on the agricultural or forestry
5 industry if parcels sizes are reduced 20 to 10 or 40 to 20 acres, respectively.

6
7 To understand impacts of parcel size reduction, the Board also looked to the
8 County's Final Environmental Impact Statement (FEIS)¹⁶⁰ and found the FEIS similarly did
9 not analyze the environmental or economic impacts of reducing parcel sizes. Instead, it
10 explains that changing agricultural parcel size would "diminish the ability of the County to
11 attract larger scale agricultural operations" and stated impacts would be "minimal."¹⁶¹ The
12 Board notes that according to the FEIS, if the County is required to conserve its agricultural
13 industry, then diminishing the ability to attract those industries is counter to the GMA and
14 Court decisions.

15
16 The Board looked to experts cited in FOCC's prehearing brief to understand the
17 impacts of smaller parcels on agricultural lands.¹⁶² Experts cited by FOCC demonstrate that
18 smaller parcels of rural, agricultural and forest lands lead to more land consumed by non-
19 rural uses which in turn require more infrastructure such as water and roads which lead to
20 higher per acre land costs.¹⁶³ The Board also reviewed reports demonstrating larger lot
21

22 _____
¹⁵⁹ *Id.* at 041158.

23 ¹⁶⁰ IR 2929.

24 ¹⁶¹ IR 2929 Bates # 035382 -83 *Resource Lands* 1) The Preferred Alternative also includes replacing the FR-
25 40 zoning designation with an FR-20 zoning designation. Parcels zoned FR-40 would be rezoned to FR-20,
26 with a new minimum parcel size of 20 acres. An estimated 412 new parcels could be created under full build-
27 out conditions in Forest zones. Only 25 of the 412 potential new parcels are a direct result of the changes
28 proposed in the Preferred Alternative. **Therefore, the impacts of the change in zoning are minimal.** 2) The
29 County proposes to reduce the minimum parcel size for agriculture land from twenty (AG-20) to ten acres (AG-
30 10). This could increase property valuation and **diminish the ability of the County to attract larger scale
31 agricultural operations.** An estimated 1,750 new parcels could be created under full build-out conditions in
32 the Agriculture zone, with the changes under the Preferred Alternative accounting for 842 of the potential
1,750 new parcels. **As a result, impacts of the change in zoning would be moderate.** (emphasis added)

¹⁶² FOCC Prehearing brief at 28-30.

¹⁶³ FOCC Prehearing brief at 28. See: IR 1418 p. 019613 in Tab IR 1418, Arthur Nelson, *Preserving Prime
Farmland in the Face of Urbanization: Lessons from Oregon* 58 Journal of the American Planning Association
467, 471 (1992). The Journal of the American Planning Association is a peer-reviewed journal. IR 1418 p.
019633, Journal of the American Planning Association Aims and Scope webpage p. 3 of 6. IR 1395 pp.
018950 in Tab IR 1395, Dennis Canty, Alex Martinsons, and Anshika Kumar, *Losing Ground: Farmland*

1 sizes prevent conversion of natural resource lands to suburban sprawl. The article from the
2 American Planning Journal states:

3 “[m]inimum **lot sizing at up to 40 acre densities merely causes rural**
4 **sprawl** – a more insidious form of urban sprawl. However, Napa County
5 California uses a 160-acre minimum lot size zoning coupled with very strict
6 review of building permits in agricultural areas...Some eastern Oregon
7 counties created 320 acre minimum lot size districts. Some **western Oregon**
8 **counties attempted 5-acre minimums, but settled for 20 to 40 acre**
9 **minimums**. This approach, while it prohibited nonfarm uses in theory, did not
10 clearly define acceptable uses. **The approach failed largely because many**
11 **counties attempted to gain the smallest minimum acceptable to the**
12 **LCDC [state agency]**. Owners divided farms and sold the parcels as hobby
13 farms or very large suburban lots...resulting in worse land use patterns,
14 because they created rural sprawl and the loss of many times more prime
15 farmland than would have resulted from an unrestricted market.”¹⁶⁴
16 (Emphasis added)

17 The American Farmland Trust report describes “Agricultural Protection Zoning” (APZ)
18 used throughout the United States and found that densities supporting and protecting
19 agriculture range from 20 acre parcels in the Eastern United States (due to high land prices)
20 to 640 acre parcels in the Western United States.¹⁶⁵ Wyoming and Colorado have 35 acre
21 parcels for agriculture and Solano County, California requires 20 acres for “non-essential
22 agricultural land...and 160 acres for extensive, essential agriculture. Overall, the report
23 concludes APZ ordinances “should have no more than one house for every 20 acres.”¹⁶⁶

24 The Board finds this data informative and compelling because it places Clark
25 County’s agricultural zoning change into a regional and national perspective as shown by
26 evidence in the record. The agricultural industry is not only located in Clark County, but
27 must compete on a regional, national and global scale. To allow 10 acre parcels in Clark
28 County will erode the competitiveness of the agricultural industry in Clark County. The

29 *Protection in the Puget Sound Region* p. 9 (American Farmland Trust, Seattle WA: January 2012). See also:
30 IR 1392 p. 018633 in Tab IR 1392, United States Department of Agriculture, National Agricultural Statistics
31 Service, *2012 Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series •*
32 Part 47 AC-12-A-47 Chapter 2: County Level Data p. 271 (May 2014).

¹⁶⁴ IR1418 at 019613-15.

¹⁶⁵ IR 2666 at 032368.

¹⁶⁶ *Id.*

1 County's decision to reduce parcels is contrary to national and regional practices and
2 contrary to our Supreme Court's *King County* decision in which it said: "...the GMA requires
3 the preservation of productive agricultural land and does not allow such land to be diverted
4 to nonagricultural uses.¹⁶⁷ The County's Finding 1.7.2 are not supported by evidence in the
5 record from Issue Paper 9:

- 6 • Smaller parcel sizes in Clark County do not contribute the largest commodity
7 value for agricultural industry.¹⁶⁸
- 8 • Mid-size and large farms produce the vast majority of commodity values in the
9 County.¹⁶⁹
- 10 • Lot sizing for agriculture at up to 40 acre densities merely causes rural sprawl.¹⁷⁰

11
12 **The Board finds and concludes FOCC has carried their burden of proof that**
13 **reducing parcel sizes for agricultural and forestry lands will not meet requirements in**
14 **RCW 36.70A.060 or .070 nor does it meet the standards established in *King County***
15 **where the County is to assure the conservation of agricultural lands and to assure**
16 **that the use of adjacent lands does not interfere with their continued use for the**
17 **production of food or agricultural products.**
18

19
20 **Issue 12: AG/FR DESIGNATION BASED ON FALSE ISSUE PAPER # 9**

21 Does the 2016 Plan Update violate WAC 365-195-050 and -060 in its designations of
22 agriculture and forest lands, and in its amendment of resource-related development
23 regulations and amended zoning maps, when the 2016 Plan Update relies on late-
24 completed Clark County Issue Paper #9 which excluded meaningful public participation
25 regarding soils considerations mandated by the GMA, when the findings and conclusions in
26 Issue Paper #9 are not supported by fact, and when the 2016 Plan Update disregards and
27 misapplies predominant parcel size, use capability, and long-term commercial significance?
28 [CCCU No. E]

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31 ¹⁶⁷ King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 555, 14 P.3d 133, 139
(2000).

32 ¹⁶⁸ IR 3092 at 041130.

¹⁶⁹ *Id.* at 041129 Exhibit A: Graph showing: *Clark County Farms Size by Value of Commodities.*

¹⁷⁰ IR1418 at 019613-15.

1 **Applicable Law**

2 **WAC 365-190-050 Agricultural resource lands**

3 (3) (b) The land is used or capable of being used for agricultural production. This
4 factor evaluates whether lands are well suited to agricultural use based primarily on
5 their physical and geographic characteristics. Some agricultural operations are less
6 dependent on soil quality than others, including some livestock production
7 operations.

8 (ii) In determining whether lands are used or capable of being used for agricultural
9 production, counties and cities shall use the land-capability classification system of
10 the United States Department of Agriculture Natural Resources Conservation Service
11 as defined in relevant Field Office Technical Guides. These eight classes are
12 incorporated by the United States Department of Agriculture into map units described
13 in published soil surveys, and are based on the growing capacity, productivity and
14 soil composition of the land.

15 CCCU argues the County violated WAC 365-196-050(3)[sic] when it failed to use
16 Natural Resources Conservation Service (“NRCS”) soil classification system during the
17 2016 CP Update.¹⁷¹ CCCU contends the County process to amend forest and agricultural
18 lands zones deprived the public from commenting on Issue Paper 9 before making zoning
19 determinations, thereby violating the GMA. Lastly, CCCU complains the County rejected a
20 proposal from CCCU for R-1 and R-2.5 for forest resource zone thereby violating GMA.¹⁷²

21 The County responds that no new natural resource lands were designated and the
22 County only changed the density zoning for existing natural resource lands.¹⁷³ The County
23 provides legal history about CCCU’s long-held complaint about where natural resource
24 lands have been designated, concluding that CCCU’s complaint has been addressed
25 numerous times in the courts.¹⁷⁴ In conclusion, the County claims CCCU does not cite GMA
26 authority for their position regarding unlawful natural resource designations.

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31 ¹⁷¹ CCCU Prehearing Brief at 23-25.

¹⁷² *Id.* at 25.

¹⁷³ County Prehearing Brief at 32.

¹⁷⁴ *Id.* at 33 A detailed history of litigation spawned by the 60 appeals of Clark County’s first GMA plan is set forth in FOCC Comments for the Record, by David McDonald, IR/Tab No. 1483.

1 **Issue 12 Board Analysis**

2 CCCU has not made clear legal arguments about which sections of RCW 36.70A are
3 non-compliant, but CCCU's Footnote 16 states their claim is based on WAC 365-190-050
4 and -060. In Issue 10 above, the Board explained process requirements for WAC 365-190-
5 040 (overall process) and for WAC 365-190-050 (agricultural lands). In Issue 12, CCCU
6 raised complaints that the County used data in addition to the NRCS data layer, the latter
7 required in WAC 365-190-050(3)(B)(ii). The County used the NRCS layer and other data;
8 nothing in the WAC precludes them from using other data, as long as they use NRCS data
9 as well. **CCCU's claim about data layers is dismissed.**

10
11 Next, CCCU argues the new resource land zones do not have as much development
12 density as CCCU would like and that their proposal for more density was not adopted by the
13 County. Nothing in the GMA or its implementing regulations requires the County to adopt a
14 specific proposal by individuals or associations of individuals. The GMA gives the County
15 broad discretion to adopt policies, plans and regulations that meet GMA requirements.¹⁷⁵
16 Finally, CCCU's claim the County did not give the public sufficient time to review the Issue
17 Paper 9 is not a GMA violation. The County held a hearing on the Paper and took public
18 comments and used its discretion to incorporate or not incorporate those comments into
19 their Amended Ordinance 2012-06-12.¹⁷⁶ **The Board finds and concludes that CCCU has**
20 **failed to prove the County violated WAC 365-190-050 or .060. Issue 12 is dismissed.**
21
22

23 **Issue 13: NO "VARIETY" OF RURAL DENSITIES**

24 Did Amended Ordinance 2016-06-12's adoption of a single "Rural," comprehensive plan
25 designation, excluding limited areas of more intense rural development and similar
26 categories, in the land use and rural elements and on Exhibit 2 the "County/UGA
27 Comprehensive Plan Clark County, Washington" map, the county's future land use map,
28 violate RCW 36.70A.020(2), (9), (10); RCW 36.70A.070 (preamble), (1), (5); or RCW
29 36.70A.130(1), (5) because the rural element fails to provide for a variety of rural densities

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31 ¹⁷⁵ King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 14 P.3d 133 (2000); Spokane
32 Cty. v. E. Wash. Growth Mgmt. Hearings Bd., 173 Wn. App. 310, 293 P.3d 1248 (2013); Clark Cty. v. W.
Wash. Growth Mgmt. Hearings Bd., 161 Wn. App. 204, 254 P.3d 862 (2011); Thurston Cty. v. W. Wash.
Growth Mgmt. Hearings Bd., 164 Wn.2d 329, 190 P.3d 38 (2008).

¹⁷⁶ County Prehearing Brief at 10.

1 and rural uses? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County,*
2 *Washington 20 Year Comprehensive Growth Management Plan 2015-2035* p. 10, pp. 14 –
3 16, p. 31, pp. 36 – 45, Chapter 3 Rural and Natural Resource Element, and Figure 24A; and
4 Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]. [FOCC/FW
5 No. 4]

6 Under Issue 13, Petitioners FOCC failed to brief RCW 36.70A.020(2), (9), (10); RCW
7 36.70A.070 (preamble), (1); and RCW 36.70A.130(1)-- those unbriefed legal arguments are
8 deemed abandoned.¹⁷⁷

9 **Applicable Law**

10 **RCW 36.70A.070(5)(B):** The rural element shall permit rural development, forestry,
11 and agriculture in rural areas. The rural element shall provide for a variety of rural
12 densities, uses, essential public facilities, and rural governmental services needed to
13 serve the permitted densities and uses. To achieve a variety of rural densities and
14 uses, counties may provide for clustering, density transfer, design guidelines,
15 conservation easements, and other innovative techniques that will accommodate
16 appropriate rural densities and uses that are not characterized by urban growth and
17 that are consistent with rural character.

18 **Positions of the Parties**

19 FOCC claims the County has only a single “rural” designation rather than a variety of
20 designations as is required in RCW 36.70A.070(5) and in *Thurston County and Kittitas*.¹⁷⁸

21 FOCC cites the *Kittitas* decision holding that “A plain reading of the statute indicates that the
22 Plan itself must include something to assure the provision of a variety of rural densities.”¹⁷⁹

23 FOCC concludes that, similar to the *Kittitas* case, Clark County’s Comprehensive Plan only
24 has one rural designation.¹⁸⁰

25 The County replies their CP Land Use Element “calls out various Rural base zones:
26 Rural 5, Rural 10, Rural 20, Rural Center 1, Rural Center 2.5, Rural Commercial 2, Rural
27

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30 ¹⁷⁷ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-
03-590(1).

31 ¹⁷⁸ *Thurston Cty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 190 P.3d 38 (2008) at 357 See
also *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 167, 256 P.3d 1193, 1204
32 (2011).

¹⁷⁹ *Kittitas Cnty.*, 172 Wn.2d at 169, 256 P.3d at 1205.

¹⁸⁰ FOCC Prehearing brief at 34.

1 Commercial 1, Rural Industrial, and Rural Industrial Land Bank.”¹⁸¹ Thus, the County’s rural
2 designations and variety of densities comply with the GMA.

3
4 **Issue 13 Board Analysis**

5 RCW 36.70A.070 sets forth mandatory elements of a jurisdiction’s comprehensive
6 plan, one of which is the “rural” element. RCW 36.70A.070(5) states that the rural element
7 “shall provide for a variety of rural densities.”¹⁸² The County’s updated 2015-35
8 Comprehensive Plan Chapter 1 on land use establishes 20-Year plan designations and
9 location criteria for four types of lands throughout the County:¹⁸³ urban, rural, resource, and
10 overlay districts. Within each category, the County then establishes a variety of plan
11 designations or categories. For example, in Urban Lands, the County establishes “Urban
12 Low Density Residential (UL)” which is a designation for predominantly single-family
13 residential development with densities between 5 and 10 units per acre; it is implemented
14 through zoning regulations: “The base zones which implement this 20-Year Plan
15 designation are the R1-20, R1-10, R1-7.5, R1-6 and R1-5 zones.”¹⁸⁴ Within the Rural
16 Lands designation, the County has four designations, three of which are implemented
17 through the County zoning regulations.¹⁸⁵ The County has created rural densities based on
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22 ¹⁸¹ See IR/Tab 2904 (Core Document), Land Use Element, pages 23-48.

23 ¹⁸² RCW 36.70A.070 (5) Rural element. Counties shall include a rural element including lands that are not
24 designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to
25 the rural element: (b) Rural development. The rural element shall permit rural development, forestry, and
26 agriculture in rural areas. **The rural element shall provide for a variety of rural densities**, uses, essential
27 public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve
28 a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines,
29 conservation easements, and other innovative techniques that will accommodate appropriate rural densities
30 and uses that are not characterized by urban growth and that are consistent with rural character.

31 ¹⁸³ IR 2904 Core Document - 20-Year Adopted Comp Growth Management Plan 2015-2035 at 034682.

32 ¹⁸⁴ *Id.* at 034682.

¹⁸⁵ *Id.* at 034685 Rural Lands. The Rural (R) designation is intended to provide lands for residential living in the
rural area. Natural resource activities such as farming and forestry are allowed and encouraged to occur as
small scale activities in conjunction with the residential uses in the area. These areas are subject to normal
and accepted forestry and farming practices. **The Rural 5, 10 and 20 base zones implement this
designation....** (Emphasis added)

Rural Center (RC) The rural center residential zones are to provide lands for residential living in the Rural
Centers at densities consistent with the comprehensive plan. These districts are only permitted in the
designated Rural Centers **and are implemented with the RC-1 and RC-2.5 base zones.** (Emphasis added)

1 different zones within the Rural Lands. Each designation (except Rural Industrial Land
2 Banks) is implemented through the County's zoning regulations. The County FSEIS also
3 defines rural character and rural lands, consolidates the designations and implements rural
4 lands densities through zoning regulations:

5 **Rural Lands:** The 2016 Comprehensive Plan proposes to consolidate
6 comprehensive plan land use designations, and create a "Rural Lands"
7 designation which will be **implemented by R-5, R-10, R-20 zones....**¹⁸⁶

8
9 In *Kittitas* the Court ruled that the Kittitas County Comprehensive Plan "...does not
10 directly include a variety of rural densities but instead allows the zoning code to designate
11 densities, which has effectively resulted in a variety of densities in the rural area, including
12 one dwelling unit per 3, 5, and 20 acres." However, the Court posed the question of whether
13 the GMA is satisfied "by reference in the Plan to zoning regulations that have included six
14 possible designations (with three possible densities) and innovative zoning techniques or
15 **whether the Plan itself** must include some designations or other language to **directly and**
16 **prospectively provide for a variety of rural densities.**"¹⁸⁷ (Emphasis added) The Court
17 discussed the question of how counties shall "provide for a variety of rural densities" and
18 they focused on the term "provide for." They concluded "what, if anything, must be in a
19 comprehensive plan regarding a variety of rural densities is now squarely before the court.
20 A plain reading of the statute indicates that the Plan itself must include something to assure
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24 Rural Commercial (CR) This commercial district is located in rural areas outside of urban growth boundaries
25 in existing commercial areas and within designated Rural Centers. These areas are generally located at
26 convenient locations at minor or major arterial crossroads and sized to accommodate the rural population.
27 Rural commercial areas are not intended to serve the general traveling public in rural areas located between
28 urban population centers. Rural commercial areas within designated Rural Centers are implemented with the
29 CR-2 base zone. Existing commercial areas outside of these Rural Centers **are implemented with the CR-1**
30 **base zone.** All new rural commercial applications shall address the criteria for new commercial areas through
31 a market and land use analysis. (Emphasis added)

30 Rural Industrial (R) This industrial designation is to provide for industrial uses in the rural area that are
31 primarily dependent on the natural resources derived from the rural area. The Heavy **Industrial base zone**
32 **implements this designation.** (Emphasis added)

31 Rural Industrial Land Bank (RILB) A rural industrial land bank is a master planned location for major industrial
32 developments established consistent with RCW 36.70A.367. The minimum size of the land bank is 100 acres.

¹⁸⁶ IR 2929 at 035377.

¹⁸⁷ *Kittitas Cty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 256 P.3d 1193 (2011) at 167.

1 the provision of a variety of rural densities.”¹⁸⁸ Their reasoning was based on concerns by
2 some parties that, if not required in the Plan itself, the GMA will be evaded “through site-
3 specific rezones.”¹⁸⁹ The Court was concerned that interested parties could not raise GMA
4 compliance in Land Use Petition Act petitions, so counties could change their zoning
5 regulations, and thus evade GMA process to implement a variety of densities, simply
6 through changes to their zoning codes, rather than GMA Comprehensive Plan
7 amendments.¹⁹⁰

8
9 Here, the County CP chapter on rural lands refers to zoning regulations to implement
10 the rural land designation: “The Rural 5, 10 and 20 base **zones implement** this
11 designation.... These districts are only permitted in the designated Rural Centers and are
12 **implemented with the RC- 1 and RC-2.5 base zones**... Existing commercial areas outside
13 of these Rural Centers are **implemented with the CR-1 base zone**....Heavy Industrial
14 base **zone implements this designation**.”¹⁹¹ (Emphasis added) While the CP includes a
15 policy referencing different densities (Policy 3.2.3 at page 91),¹⁹² it relies on the zoning code
16 for implementation. The CP’s Figure 24-A map shows all “Rural” residential areas as a
17 single color with no densities denoted.¹⁹³ It is clear the Clark County CP does not provide
18 for a variety of rural densities in its plan as required by RCW 36.70A.070(5)(b), but refers to
19 its zoning regulations to implement the variety of densities. In accordance with the *Kittitas*
20 decision, the CP itself must include a variety of rural densities. **The Board finds and**
21 **concludes, FOCC has carried its burden of proof showing the County did not comply**
22 **with RCW 36.70A.070(5) regarding a variety of rural densities.**
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¹⁸⁸ *Id.* at 169.

¹⁸⁹ *Id.* and *Woods v. Kittitas County*, 162 Wn.2d 597, 629-32, 174 P.3d 25 (2007) (Becker, J., concurring).

¹⁹⁰ *Kittitas* at 169. “A comprehensive plan that is silent on the provision of a variety of rural densities (and other protective measures for rural areas) effectively allows rezones that circumvent the GMA.”

¹⁹¹ IR 2904 Bates # 034685.

¹⁹² IR 2904 at 034740.

¹⁹³ *Id.*

1 **Issue 14: RURAL BUILDABLE LANDS REPORT CAPS RURAL GROWTH**

2 Does the 2016 Plan Update violate the GMA and interpreting case law because the County
3 unlawfully applied assumptions from a rural vacant buildable lands model (RVBLM) to cap
4 rural growth projections? RCW 36.70A.110(2); WAC 365-196-425(2)¹⁹⁴; *Clark County*
5 *Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 675-77,
6 972 P.2d 941 (1999). [CCCU No. F]

7 **Applicable Law**

8 **RCW 36.70A.110 Comprehensive plans—Urban growth areas.**

9 (2) Based upon the growth management population projection made for the county
10 by the office of financial management, **the county** and each city within the county
11 **shall include areas and densities sufficient to permit the urban growth** that is
12 projected to occur in the county or city for the succeeding twenty-year period, except
13 for those urban growth areas contained totally within a national historical reserve. As
14 part of this planning process, each city within the county must include areas sufficient
15 to accommodate the broad range of needs and uses that will accompany the
16 projected urban growth including, as appropriate, medical, governmental,
17 institutional, commercial, service, retail, and other nonresidential uses. (emphasis
18 added)

17 **WAC 365-196-425 Rural element.**

18 (2) Establishing a definition of rural character.

19 CCCU argues the County used “non-validated, ever-changing” planning assumptions
20 in its Buildable Land Report in violation of RCW 36.70A.110(2) and WAC 365-196-425(2)
21 causing a cap in rural growth.¹⁹⁵ CCCU enumerates at length the various models used for
22 the BLR and how they were discussed by County officials and staff and appealed to
23 courts.¹⁹⁶ It states that the decision in *Clark County Citizens United*, “decisively settled that
24 the use of population projections developed for urban area planning cannot lawfully be
25 employed to project or plan for rural growth.”¹⁹⁷

26
27 The County responds that it has discretion to decide OFM population projections and
28 planning assumptions to be used in BLR.¹⁹⁸ It corrects CCCU’s misstatement of the holding
29

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31 ¹⁹⁴ WAC 365-196-425(2) is one of the procedural criteria. As such, a challenger cannot establish a violation.

¹⁹⁵ CCCU Prehearing Brief at 30.

¹⁹⁶ *Id.* at 27 – 29.

¹⁹⁷ *Clark County Citizens United v. Clark County Natural Resources Council*, 94 Wn. App. 670, 676.

¹⁹⁸ County Prehearing Brief at 36.

1 in *Clark County Citizens United*. Finally, the County argues the legislature gave it discretion
2 to make planning assumption decisions and they did not violate GMA.

3
4 **Issue 14 Board Analysis**

5 CCCU fails to establish how the County's action violated RCW 36.70A.70A.110(2).
6 That statute only addresses the use of OFM population projections to accommodate
7 projected urban uses and provides "... **the county** and each city within the county **shall**
8 **include areas and densities sufficient to permit the urban growth.**" As part of this
9 planning process, each city within the county must include areas sufficient to accommodate
10 the broad range of needs and uses that will accompany the projected urban growth
11 including, as appropriate, medical, governmental, institutional, commercial, service, retail,
12 and other nonresidential uses. Nothing in RCW 36.70A.70A.110(2) addresses planning for
13 rural growth. As the County observes, CCCU misstates the holding in *Clark County Citizens*
14 *United*. The question of employing OFM population projections when planning for rural
15 growth was not the issue before the Court and, in fact, the Court stated the following in a
16 footnote:
17

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19 Without so holding, we assume that the GMA *permits* a county to use OFM's
20 population projections when planning for lands outside its urban growth area.
21 That question is not presented by this appeal.¹⁹⁹ (Emphasis added)

22 **The Board finds and concludes CCCU has not carried its burden of proof**
23 **showing the County violated RCW 36.70A.110(2). The Board dismisses Issue 14.**

24
25 **Issue 15: R-1 AND R-2.5 vs NEW UPZONED PARCELS**

26 Does the 2016 Plan Update violate WAC 365-196-425 in its designations of rural lands, and
27 in its amendment of rural-related development regulations and zoning maps, when the 2016
28 Plan Update disregards and misapplies predominant parcel size and density and rural
29 character? [CCCU No. G]
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¹⁹⁹ *Clark County Citizens United v. Clark County Natural Resources Council*, 94 Wn. App. 670, at 676, n.23.

1 **Issue 16:** URBAN / RURAL SPLIT OF 90/10 vs 85/15

2 Does the 2016 Plan Update violate WAC 365-196-425(3)(a) and 365-196-210(27) because
3 the County relied on a 90/10 urban to rural population split projection when the historical
4 population allocation has averaged closer to an 85 urban / 15 rural split? [CCCU No. H]

5 **Applicable Law**

6 **WAC 365-196-030 Applicability**

7 (2) Compliance with the procedural criteria **is not a prerequisite for compliance**
8 with the act. This chapter makes recommendations for meeting the requirements of
9 the act, it does not set a minimum list of actions or criteria that a county or city must
10 take. Counties and cities can achieve compliance with the goals and requirements of
11 the act by adopting other approaches. (Emphasis added)

12 **Positions of the Parties**

13 In Issue 15, CCCU argues the County's "procedural and substantive errors regarding
14 resource land designations" means the County's rural land designations also violate WAC
15 365-196-425. CCCU claims "[r]ural land designations are not actual "designations" because
16 they occur by default after urban and resource land designations are made; in other words,
17 rural lands are the leftovers after a county makes its urban and resource designations."²⁰⁰
18 The County responds that they did not designate rural lands in their 2016 CP Update.

19 In Issue 16, CCCU asserts the County did not define rural character in the CP
20 update, thus violating WAC 365-196-425(2)(c).²⁰¹ Further, by adopting an aspirational
21 90/10% urban/rural split for the County's future population densities, the County does not
22 reflect the reality of 85/15% rural/urban population split.²⁰² CCCU argues the County
23 violated WAC 365-196-425(2)(b)(ii) by failing to adopt a rural definition and imposing a
24 90/10 urban/rural split because the County failed to consider how the 2016 Plan Update
25 would "[f]oster [the County's] traditional rural lifestyles, rural-based economies, and
26 opportunities to both life and work in rural areas."²⁰³
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31 ²⁰⁰ CCCU Prehearing Brief at 30.

32 ²⁰¹ *Id.* at 31.

²⁰² IR 2123 Thorp Report.

²⁰³ CCCU Prehearing Brief at 31.

1 For Issue 15, the County replies it “did not designate either resource lands or Rural
2 lands by the 2016 Plan Update. CCCU has not met its burden to prove that the County’s
3 inactions with regard to Rural lands designation were clearly erroneous and violative of
4 GMA.”²⁰⁴ For Issue 16, the County defers to FOCC’s reply brief. FOCC responded that
5 rural character is defined under the heading of “Rural County Area” in the *County 2016*
6 *Comprehensive Growth Management Plan Update Final Supplemental Environmental*
7 *Impact Statement (FSEIS)* Chapter 6.0 Land and Shoreline Use pp. 6-11 – 6-12 (April
8 2016).²⁰⁵ FOCC argues the 90/10% urban/rural population split is achievable based on
9 data from the Buildable Lands Report.²⁰⁶
10

11 12 **Issue 15 and 16 Board Analysis**

13 These issues allege violations of sections of Chapter 365-196 WAC, the Procedural
14 Criteria for Adopting Comprehensive Plans and Development Regulations. That chapter
15 was adopted merely to provide assistance to local governments in interpreting the GMA,
16 and does not add requirements beyond the provisions of the GMA itself.²⁰⁷ Compliance with
17 the procedural criteria is not a prerequisite for compliance with the GMA; the criteria are
18 merely recommendations for meeting GMA requirements. The Board determines whether a
19 jurisdiction is in compliance with the GMA “based on the act itself”.²⁰⁸ Further, underlying
20 goals of the GMA encourage development in urban areas (Goal 1), and reduce sprawl (Goal
21 2). How jurisdictions achieve accomplishment of those goals is within their discretion. Under
22 RCW 36.70A.3201, jurisdictions have a “broad range of discretion.” **The Board finds and**
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27 ²⁰⁴ County’s Prehearing Brief at 37.

²⁰⁵ IR 2929 at 035377.

28 ²⁰⁶ FOCC Respondents’ Prehearing Brief on CCCU Issues (December 22, 2016) at 9 “But the *Buildable Lands*
29 *Report* documents that between 2006 and 2014, 9.1 percent of the building permits were issued in the “rural”
30 areas and 90.9 percent of the building permits were issued in UGAs.²⁰⁶ So the growth allocation is achievable.
31 Most of the numbers that CCCU rely on are not shares of past or future growth, but rather comparisons of the
32 total population in the UGAs with the total population in the rural areas and resources lands.²⁰⁶ This is an
apples to oranges comparison.”

²⁰⁷ WAC 365-196-020(3). See *Strahm v. Snohomish County*, Case No. 15-3-0004 (FDO, January 19, 2016) at
3-4.

²⁰⁸ WAC 365-196-030(2) and (3).

1 concludes, CCCU is unable to establish GMA violations in regards to Issues 15 and
2 16 and those issues are dismissed.

3
4 **INDUSTRIAL LAND BANKS**

5 **Issue 17: DEADLINE MISSED FOR INDUSTRIAL LAND BANKS**

6 See Order Denying Partial Summary Judgment and Dismissing Issue 17 (November, 29,
7 2016)

8 ~~Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.367(6) and RCW~~
9 ~~36.70A.130(1)(d) because the industrial land banks were designated after the deadline in~~
10 ~~RCW 36.70A.367(6) and RCW 36.70A.130(4)? See Amended Ordinance 2016-06-12 and~~
11 ~~Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan~~
12 ~~2015-2035 p. 31, pp. 36 – 37, p. 97, p. 228, p. 402, and Figure 24A; Exhibit 2 County/UGA~~
13 ~~Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning~~
14 ~~Clark County, Washington [map]. [FOCC/FW No. 9]~~

15 **Issue 18: PROCEDURAL ERRORS IN INDUSTRIAL LAND BANK DESIGNATION**

16 Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.130(1), (3), (5);
17 RCW 36.70A.210(2), (3); the applicable provisions of RCW 36.70A.365(2); or RCW
18 36.70A.367(1), (2), (3), (4), (7) by failing to comply with the procedural and substantive
19 requirements for industrial land banks? See Amended Ordinance 2016-06-12 and Exhibit 1
20 *Clark County, Washington 20 Year Comprehensive Growth Management Plan 2015-2035* p.
21 31, pp. 36 – 37, p. 97, p. 228, p. 402, Figure 24A; Exhibit 2 County/UGA Comprehensive
22 Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County,
23 Washington [map]. [FOCC/FW No. 11]

24 **Applicable Laws:**²⁰⁹

25 **RCW 36.70A.210 Countywide planning policies.** (1) The legislature recognizes
26 that counties are regional governments within their boundaries, and cities are primary
27 providers of urban governmental services within urban growth areas. For the
28 purposes of this section, a "countywide planning policy" is a written policy statement
29 or statements used solely for establishing a countywide framework from which county
30 and city comprehensive plans are developed and adopted pursuant to this chapter.
31 **This framework shall ensure that city and county comprehensive plans are**
32 **consistent** as required in RCW 36.70A.100. Nothing in this section shall be
construed to alter the land-use powers of cities. (2) (a) No later than sixty calendar
days from July 16, 1991, the legislative authority of each county that as of June 1,
1991, was required or chose to plan under RCW 36.70A.040 **shall convene a**

²⁰⁹ See Footnote 202 below.

1 **meeting with representatives of each city** located within the county for the purpose
2 of establishing a collaborative process that will provide a framework for the adoption
3 of a countywide planning policy. **(3) A countywide planning policy shall at a**
4 **minimum, address the following: ... (g) Policies for countywide economic**
5 **development and employment, which must include consideration of the future**
6 **development of commercial and industrial facilities...**(emphasis added)

7 **RCW 36.70A.365 Major industrial developments.** A county required or choosing to
8 plan under RCW 36.70A.040 may establish, **in consultation with cities consistent**
9 **with provisions of RCW 36.70A.210**, a process for reviewing and approving
10 proposals to authorize siting of specific major industrial developments outside urban
11 growth areas. A major industrial development may be approved outside an urban
12 growth area in a county planning under this chapter if criteria including, but not limited
13 to the following, are met: (h) An inventory of developable land has been conducted
14 and the county has determined and entered findings that land suitable to site the
15 major industrial development is unavailable within the urban growth area. Priority
16 shall be given to applications for sites that are adjacent to or in close proximity to the
17 urban growth area. (emphasis added)

18 **RCW 36.70A.367 Major industrial developments—Master planned locations.** In
19 addition to the major industrial development allowed under RCW 36.70A.365, a
20 county planning under RCW 36.70A.040 that meets the criteria in subsection (5) of
21 this section may establish, **in consultation with cities consistent with provisions**
22 **of RCW 36.70A.210**, a process for designating a bank of no more than two master
23 planned locations for major industrial activity outside urban growth areas. (1) A
24 master planned location for major industrial developments may be approved through
25 a two-step process: Designation of an industrial land bank area in the comprehensive
26 plan; and subsequent approval of specific major industrial developments through a
27 local master plan process described under subsection (3) of this section.

28 (a) The comprehensive plan must identify locations suited to major industrial
29 development due to proximity to transportation or resource assets. The plan must
30 identify the maximum size of the industrial land bank area and any limitations on
31 major industrial developments based on local limiting factors, but does not need to
32 specify a particular parcel or parcels of property or identify any specific use or user
except as limited by this section. In selecting locations for the industrial land bank
area, priority must be given to locations that are adjacent to, or in close proximity to,
an urban growth area. (b) The environmental review for amendment of the
comprehensive plan must be at the programmatic level and, in addition to a threshold
determination, must include: (i) An inventory of developable land as provided in
RCW 36.70A.365; and (ii) An analysis of the availability of alternative sites within
urban growth areas and the long-term annexation feasibility of sites outside of urban
growth areas.

1 FOCC argues the County failed to meet requirements in RCW 36.70A.210, .365, and
2 .367 by not consulting with cities in designating rural industrial land banks (RILB), by failing
3 to conduct a land inventory suitable for industrial sites or land banks, and failing to include
4 findings that suitable land is not available within a UGA, and thereby locating the industrial
5 site outside the UGA. FOCC refers to Ordinance No. 2016-04-03, an *Addendum* and a
6 *Response to SEPA Comments* as evidence the County did not comply with these
7 statutes.²¹⁰ FOCC also argues the County failed to include RILB infrastructure funding data
8 and how impacts of RILB will be mitigated.²¹¹ FOCC questions whether the loss of 600
9 acres of agricultural lands will be sufficiently mitigated by the County's proposed 100' buffer,
10 claiming the County violated RCW 36.70A.365(2)(f) requiring separate mitigation for impacts
11 on agricultural lands.²¹²

12
13 In response, the County adopted Intervenor Lagler's legal arguments in Intervenor's
14 December 22, 2106, Prehearing Brief.²¹³ Intervenor Lagler responds to FOCC's allegations
15 by clarifying the cities and County did coordinate and points to the Record which "includes
16 copies of letters to both the City of Battle ground and the City of Vancouver ...as well as a
17 series of minutes from meetings between Clark County and all of the cities...regarding the
18 Rural Industrial Land Bank...."²¹⁴ In response to claims about an inventory, Intervenor
19 Lagler explains its RILB Application to Clark County included an inventory of available
20
21

22 ²¹⁰ FOCC Prehearing Brief at 35 See Also IR 143 and IR 158 (Note: Ordinance 2016-04-03 challenged in
23 GMHB Nos. 16-2-0002 and 16-2-0004, both of which were consolidated into this GMHB No. 16-2-0005c).

24 ²¹¹ *Id.* at 36 But the *Addendum's* discussion of mitigation measures includes no information on how the new
25 infrastructure will be provided or how the impact fees the county charges will be updated to include the
26 considerable costs of the needed infrastructure. IR 158 p. 001885 in Tab IR 158, *Addendum Part II: Alternative
27 Sites Analysis* p. 26. IR 143 p. 0010701, *Clark County Rural Industrial Land Bank Responses to SEPA
28 Comments Planning Commission Proposal* p. 6.

29 ²¹² *Id.* at 37 See RCW 36.70A.365(2) A major industrial development may be approved outside an urban
30 growth area in a county planning under this chapter if criteria including, but not limited to the following, are
31 met: (a) New infrastructure is provided for and/or applicable impact fees are paid; (b) Transit-oriented site
32 planning and traffic demand management programs are implemented; (c) Buffers are provided between the
major industrial development and adjacent nonurban areas; (d) Environmental protection including air and
water quality has been addressed and provided for; (e) Development regulations are established to ensure
that urban growth will not occur in adjacent nonurban areas; (f) Provision is made to mitigate adverse impacts
on designated agricultural lands, forestlands, and mineral resource lands;

²¹³ Clark County Prehearing Brief at 55.

²¹⁴ Intervenor 3B NW LLC and Lager Prehearing Brief at 10; Tab 9 to Intervenor's Prehearing Brief and
website: rilb.Clark.wa.gov RILB IR 192, pp. 002689 – 002725.

1 property conducted by the Columbia River Economic Development Council.²¹⁵ Regarding
2 claims about infrastructure funding and mitigation, Intervenor argues²¹⁶ the record contains
3 a conceptual sewer plan prepared by Clark Regional Wastewater District designed
4 specifically for this Rural Industrial Land Bank; ²¹⁷ a report on the availability of utilities for
5 the Rural Industrial Land Bank;²¹⁸ and information about the ability of transportation
6 improvements in the vicinity of the Rural Industrial Land Bank to serve the site.²¹⁹
7

8 Regarding agricultural land de-designation Intervenor states “It is not at all clear that
9 the creation of a Rural Industrial Land Bank (“RILB”) is subject to ...WAC Section 365-190-
10 050(3),”²²⁰ but explains the RILB application fully analyzes the WAC factors and case law
11 requirements.²²¹ For the Lagler property near the City of Vancouver, Intervenor points to
12 FOCC’s lack of current information arguing “Although petitioner’s prehearing brief accurately
13 sets forth the de-designation requirements found in WAC 365–190–050, the petitioner’s
14 analysis of these criteria does not use the most current information in order to get to
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20 ²¹⁵ *Id.* at 11 “That inventory makes it clear that the largest site available within any of Clark County’s urban
21 growth areas is 78 acres. (RILB IR 16, pp. 000131 – 000168) This RILB is being created to serve much larger
22 development than can currently be provided for within the urban growth boundary in Clark County. This is the
23 fundamental purpose of the Rural Industrial Land Bank – to provide for parcels larger than can be found inside
24 urban growth areas. (RCW 36.70A.367(4)(a))

25 ²¹⁶ *Id.* at 11.

26 ²¹⁷ RILB IR 13, p. 000122.

27 ²¹⁸ RILB IR 72, pp. 00675 – 000677.

28 ²¹⁹ RILB IR 79, pp.. 000712 – 000718.

29 ²²⁰ Intervenor 3B NW LLC and Lager Prehearing Brief at 2 at Footnote #1 See: WAC 365-190-050Agricultural
30 resource lands. (3) Lands should be considered for designation as agricultural resource lands based on three
31 factors:

32 (a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should
use the criteria contained in WAC 365-196-310. (b) The land is used or capable of being used for agricultural
production. This factor evaluates whether lands are well suited to agricultural use based primarily on their
physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than
others, including some livestock production operations. (c) The land has long-term commercial significance for
agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria,
as applicable...

²²¹ *Id.* at 3 See IR 2740 Letter from Bruce Prenguber “Areawide Analysis for 2015 Review of AG Lands & De-
designation by La Center” See also: Rural Industrial Land Bank (RILB) Index of Record (IR) 6, pp. 000077 –
000082.

1 petitioner's desired outcome."²²² Intervenor enumerates why the Lagler property meets
2 WAC 365-190-050(3) requirements for agricultural land de-designation.²²³

3 For other aspects of de-designation, such as agricultural land mitigation, Intervenor
4 Lagler stated "for the loss of agricultural land that a certain amount of acreage for small
5 organic (non-dairy) farms be set aside as part of the RILB master plan process for this
6 project."²²⁴ Regarding parcel size and proximity to markets, this Intervenor quotes the
7 Globalwise Report indicating changing conditions have impacted the land required by the
8 County's Agricultural Boundaries.²²⁵ Intervenor concludes the County has complied with the
9 requirements to establish an RILB and many of FOCC's objections are addressed in the
10 record.
11
12

13 **Issue 18 Board's Findings and Conclusions:**

14 Three GMA statutes apply to industrial developments.²²⁶ RCW 36.70A.365 and RCW
15 36.70A.367 both set forth requirements a County must meet to site specific major industrial
16 developments or for the designation of master planned locations for major industrial activity.
17 Both statutes require consultation with cities consistent with RCW 36.70A.210 and .215 and
18 require counties to adopt county-wide planning policies; industrial development is one of the
19 countywide policies.²²⁷ The County's updated Comprehensive Plan defines and has
20 countywide planning policies for Rural Industrial Land Banks (RILB) in the Land Use
21 Chapter.²²⁸ The overarching Countywide Planning Policy goal is:
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25 _____
26 ²²² *Id.* at 4.

27 ²²³ *Id.* at 11-15 for Lagler Property and at 4 for 3B Property de-designation criteria.

28 ²²⁴ *Id.* at 12.

29 ²²⁵ *Id.* at 14-15 See IR 2740 Globalwise Report at 22 "Historically cow dairies were a major part of Clark
30 County agriculture. The county's dairy industry has steadily declined. Dairy farmers in the county indicate that
31 there are seven remaining cow dairies."

32 ²²⁶ RCW 36.70A.210; RCW 36.70A.365; RCW 36.70A.367.

²²⁷ WAC 365-196-305 also speaks to county and city consultation: County-wide planning policies. (1) Purpose
of county-wide planning policies. The act requires counties and cities to collaboratively develop county-wide
planning policies to govern the development of comprehensive plans. The primary purpose of county-wide
planning policies is to ensure consistency between the comprehensive plans of counties and cities sharing a
common border or related regional issues...(4)(g) **County-wide economic development and employment...**
²²⁸ IR 2904 Definition at 034685 and RILB Countywide Planning Policies at 034746.

1 **3.0 Countywide Planning Policies Rural Industrial Land Bank**

2 GOAL: Support the creation of a rural industrial land bank consistent with the growth
3 management act to provide a master planned location for living wage jobs and
4 industries supporting rural communities in an environmentally sensitive manner.²²⁹

5 The countywide planning policies were adopted previous to this instant case and cannot
6 now be challenged by Petitioners. **The Board finds and concludes, FOCC has not**
7 **carried its burden of proof demonstrating the County has not met RCW 36.70A.210**
8 **requirements.**

9 The Board next reviews FOCC’s claim the County did not meet requirements in RCW
10 36.70A.365 applicable to major industrial developments. This statute is limited to “a process
11 for reviewing and approving proposals to authorize siting of **specific major industrial**
12 **developments** outside urban growth areas.” (Emphasis added) In Clark County Ordinance
13 2016-04-03, the County approved two industrial land banks under RCW 36.70A.367 neither
14 of which proposed a specific major industrial development.²³⁰ Thus, RCW 36.70A.365 does
15 not apply in this case. **The Board finds and concludes, FOCC fails to carry its burden of**
16 **proof demonstrating the County violated RCW 36.70A.365.**

17 Lastly, the Board reviews requirements under RCW 36.70A.367, which include a two-
18 step process: 1.) “[d]esignation of an industrial land bank area in the comprehensive plan;
19 and 2.) subsequent approval of specific major industrial developments through a local
20 master plan process described under subsection (3) of this section.” In the first step, a
21 County must:

22 “(a)...identify locations suited to major industrial development due to proximity
23 to transportation or resource assets.
24 ...**identify the maximum size of the industrial land bank area** and any
25 limitations on major industrial developments based on local limiting factors, but
26 does not need to specify a particular parcel or parcels of property or identify
27 any specific use or user except as limited by this section.
28

29
30 ²²⁹ *Id.* at 034746.

31 ²³⁰ FOCC Petition for Review Case No. 16-2-0002 (June 20, 2016) Ordinance No. 2016-04-03 “An ordinance
32 relating to land use, and for establishing two rural industrial land bank sites in Clark County. WHEREAS, Clark
County is allowed to plan for up to two rural industrial land bank sites under the Growth Management Act
(RCW 36. 70A.367); and WHEREAS, the County received an application in February 2014 for establishing two
sites as rural industrial land banks...”.

1 ... priority must be given to locations that are adjacent to, or in close proximity to, an
2 urban growth area.

3 (b) The environmental review for amendment of the comprehensive plan must be at
4 the programmatic level and, in addition to a threshold determination, must include:

5 (i) **An inventory of developable land as provided in RCW 36.70A.365;**

6 (ii) An analysis of the availability of alternative sites within urban growth areas and
7 the long-term annexation feasibility of sites outside of urban growth areas.”²³¹

8 (Emphasis added)

9 The County adopted Ordinance No. 2016-04-03 and 2016-05-03 to establish RILBs
10 and relied upon a Staff Report for the particulars of the RILB.²³² The Ordinances identify two
11 RILB locations near UGAs, establishes 100 acres as the minimum size and adopts findings
12 that the County conducted a land inventory in 2011, an EIS in 2007 with an EIS Addendum
13 in 2015, and a regional, area-wide agricultural land de-designation analysis.²³³ FOCC
14 argues the County did not meet RCW 36.70A.367(2)(b)(i) requirements for findings in
15 Ordinance 2016-04-03 that an inventory of developable lands had been completed.²³⁴
16 FOCC claims the inventory in .367 is linked to .365 and thus the County must have findings
17 in its Ordinance. But, FOCC’s argument fails because the County updated its 2007 EIS with
18 a 2015 Addendum which includes an inventory of RILB environmental requirements. In
19 addition, the requirement for findings in RCW 36.70A.365 applies “to site the major industrial
20 development” which is different than an industrial land bank.²³⁵ **FOCC fails to demonstrate**
21 **that .367 inventory requirements are linked to the .365 inventory.**

22
23 FOCC’s remaining arguments focus on RCW 36.70A.365 violations, but they do not
24 apply here. The County’s action involves RILBs which fall under RCW 36.70A.367. The
25 County is required under RCW 36.70A.367 to establish a maximum size for RILBs.

26
27 ²³¹ RCW 36.70A.(2)(a and b).

28 ²³² FOCC Petition for Review Case No. 16-2-0002 (June 20, 2016) Ordinance 2016-04-03.

29 <https://www.clark.wa.gov/sites/all/files/the-grid/2016-04-03.pdf> See also RILB.

30 [http://rilb.clark.wa.gov/Bates%20Numbered%20Documents/ Bates # 1790 – 1889.](http://rilb.clark.wa.gov/Bates%20Numbered%20Documents/Bates%20#1790-1889)

31 ²³³ FOCC Petition for Review Case No. 16-2-0002 (June 20, 2016) Ordinance 2016-04-03 at 1-3

32 <https://www.clark.wa.gov/sites/all/files/the-grid/2016-04-03.pdf>.

²³⁴ FOCC Prehearing Brief at 35.

²³⁵ RCW 36.70A.365(2)(h) An inventory of developable land has been conducted and the county has
determined and entered findings that land **suitable to site the major industrial development** is unavailable
within the urban growth area. Priority shall be given to applications for sites that are adjacent to or in close
proximity to the urban growth area. (Emphasis added)

1 **RCW 36.70A.367 Major industrial developments—Master planned locations**

2 (2)(a) The comprehensive plan must identify locations suited to major industrial
3 development due to proximity to transportation or resource assets. **The plan must**
4 **identify the maximum size of the industrial land bank area** and any limitations on
5 major industrial developments based on local limiting factors, but does not need to
6 specify a particular parcel or parcels of property or identify any specific use or user
7 except as limited by this section. In selecting locations for the industrial land bank
8 area, priority must be given to locations that are adjacent to, or in close proximity to,
9 an urban growth area. (emphasis added)

10 The County established RILBs in Ordinance 2016-04-03:

11 WHEREAS, by county code (CCC Section 40.560.010 (J)), **the minimum**
12 size for a rural industrial land bank is 100 acres; and

13 WHEREAS, the proposed sites for the rural industrial land bank are
14 currently zoned for agricultural uses, requiring a de-designation analysis; and

15 WHEREAS, the County prepared an inventory identifying locations suited
16 to major industrial use, an analysis of the availability of alternative sites,
17 conceptual master plan, comprehensive plan amendments, and development
18 regulations pursuant to RCW 36.70A.367;²³⁶ (Emphasis added)

19 Subsequently, the County updated its comprehensive plan by adopting Amended Ordinance
20 2016-06-12. The updated CP includes RILBs goals and policies:²³⁷

21
22
23 ²³⁶ FOCC PFR for Case No. 2016-02-0002 Ordinance 2016-04-03. <https://www.clark.wa.gov/sites/all/files/the-grid/2016-04-03.pdf>.

24 ²³⁷ IR 2904 at 034746 **RILB Policies** 3.8.1. Designate a rural industrial land bank that is compatible with
25 surrounding land uses and that creates long term value for both the community and the industrial users. 3.8.2
26 Develop rural major industrial developments within the designated rural industrial land bank that promotes
27 sustainable development by minimizing our environmental impacts, protecting natural resources and reducing
28 waste. 3.8.3 Anticipate changing market and industrial needs and maintain the flexibility required for a variety
29 of light industrial uses within the rural industrial land bank. 3.8.4 Ensure rural major industrial development
30 within the rural industrial land bank respects and preserves critical areas functions and values and develops a
31 stormwater solution that mimics the natural hydrology of the site while developing buffers both internally and
32 externally. Incorporate low impact development strategies. 3.8.5 Ensure infrastructure requirements are met to
allow for phased development based on the market needs. Accommodate rail access. 3.8.7 Promote a level
of predictability for future light industrial developers and the County through the flexibility of standards and
consolidated reviews.

1 **Rural Industrial Land Bank**

2 **GOAL:** Support the creation of a rural industrial land bank consistent with the growth
3 management act to provide a master planned location for living wage jobs and
4 industries supporting rural communities in an environmentally sensitive manner.²³⁸

5 However, the Clark County Comprehensive Plan (2015-2035), Land Use Element Section
6 on “Rural Industrial Land Bank (RILB)” at pages 36-37, adopted by Amended Ordinance
7 2016-06-12 fails to “identify the maximum size of the industrial land bank area,” as required
8 by RCW 36.70A.367(2)(a).²³⁹ The Board is left with the firm and definite conviction that a
9 mistake has been made by the County in designating the industrial land bank area in the
10 Comprehensive Plan without identifying the maximum size of the industrial land bank area.

11 **The Board finds: (1) this action violates 36.70A.367(2)(a), and (2) Ordinance 2016-06-**
12 **12, Ordinance 2016-04-03 Ordinance 2016-05-03 are clearly erroneous in view of the**
13 **entire record before the Board and in light of the goals and requirements of the GMA.**

14
15
16 **Issue 19: DE-DESIGNATING 602 AG LAND ACRES**

17 Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.020(8); RCW
18 36.70A.030(2), (10); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070
19 (internal consistency); RCW 36.70A.130(1), (5); RCW 36.70A.170; WAC 365-190-
20 040(10)(b); WAC 365-190-050; or is the ordinance inconsistent the Clark County
21 comprehensive plan because it de-designated approximately 602.4 acres of agricultural
22 lands of long-term commercial significance? See Amended Ordinance 2016-06-12 and
23 Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan
24 2015-2035 pp. 10 – 12, pp. 14 – 15, p. 31, pp. 36 – 37, pp. 43 – 44, pp. 84 – 86, pp. 94 –
25 95, p. 97, p. 228, p. 402, Figure 22A, Figure 22B, and Figure 24A; Exhibit 2 County/UGA
26 Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning
27 Clark County, Washington [map]. [FOCC/FW No. 10]

28 Under Issue 19, Petitioners FOCC failed to brief RCW 36.70A.020(8); RCW
29 36.70A.030(2); RCW 36.70A.050(3); RCW 36.70A.070 (internal consistency); RCW

30
31
32 _____
²³⁸ IR 2904 at 034746.

²³⁹ *Id.*

1 36.70A.130(1), (5); WAC 365-190-040(10)(b) -- those unbriefed legal arguments are
2 deemed abandoned.²⁴⁰

3 **Applicable Law**

4 **RCW 36.70A.060(1)(A):** Counties “shall adopt development regulations . . . to assure
5 the conservation of agricultural, forest, and mineral resource lands designated under
6 RCW 36.70A.170.”

7 **WAC 365-190-050(1):** In classifying and designating agricultural resource lands,
8 **counties must approach the effort as a county-wide or area-wide process.**
9 Counties and cities should not review resource lands designations solely on a parcel-
10 by-parcel process.

11 **WAC 365-190-050(3):** Lands should be considered for designation as agricultural
12 resource lands based on three factors:

13 (a) **The land is not already characterized by urban growth.** To evaluate this
14 factor, counties and cities should use the criteria contained in WAC 365-196-310.

15 (b) **The land is used or capable of being used for agricultural production.**
16 This factor evaluates whether lands are well suited to agricultural use based primarily
17 on their physical and geographic characteristics. Some agricultural operations are
18 less dependent on soil quality than others, including some livestock production
19 operations.

20 (i) Lands that are currently used for agricultural production and lands that are
21 capable of such use must be evaluated for designation. The intent of a landowner to
22 use land for agriculture or to cease such use is not the controlling factor in
23 determining if land is used or capable of being used for agricultural production. Land
24 enrolled in federal conservation reserve programs is recommended for designation
25 based on previous agricultural use, management requirements, and potential for
26 reuse as agricultural land.

27 (ii) In determining whether lands are used or capable of being used for agricultural
28 production, counties and cities shall use the land-capability classification system of
29 the United States Department of Agriculture Natural Resources Conservation Service
30 as defined in relevant Field Office Technical Guides. These eight classes are
31 incorporated by the United States Department of Agriculture into map units described
32 in published soil surveys, and are based on the growing capacity, productivity and
soil composition of the land.

(c) **The land has long-term commercial significance for agriculture.** In
determining this factor, counties and cities should consider the following nonexclusive
criteria, as applicable:

²⁴⁰ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).

- 1 (i) The classification of prime and unique farmland soils as mapped by the Natural
2 Resources Conservation Service;
3 (ii) The availability of public facilities, including roads used in transporting
4 agricultural products;
5 (iii) Tax status, including whether lands are enrolled under the current use tax
6 assessment under chapter **84.34** RCW and whether the optional public benefit rating
7 system is used locally, and whether there is the ability to purchase or transfer land
8 development rights;
9 (iv) The availability of public services;
10 (v) Relationship or proximity to urban growth areas;
11 (vi) Predominant parcel size;
12 (vii) Land use settlement patterns and their compatibility with agricultural
13 practices;
14 (viii) Intensity of nearby land uses;
15 (ix) History of land development permits issued nearby;
16 (x) Land values under alternative uses; and
17 (xi) Proximity to markets.²⁴¹

18 **Positions of the Parties**

19 FOCC argues RCW 36.70A.170(1) and RCW 36.70A.060(1)(a) require the County to
20 designate and protect agricultural lands and there is no exception for Rural Industrial Land
21 Banks (RILB). Yet, FOCC contends two RILB sites recently de-designated by the County
22 are in the same "Area VB" the County tried to previously de-designate, but the Court of
23 Appeals upheld the Board's decision finding this prior de-designation non-compliant with
24 GMA.²⁴² In other words, FOCC concludes the Court previously mandated these sites remain
25 in agricultural status.

26 Next, FOCC argues the County did not use an area-wide process to de-designate the
27 RILBs and while the "County's analysis did look at other parcels in the vicinity, the County
28 only de-designated the 602.4 acres in the RILBs even though some of the other parcels
29
30
31

32 ²⁴¹ These agricultural resource land designation factors are "minimum guidelines that apply to all jurisdictions,"
RCW 36.70A.050(3).

²⁴² FOCC Prehearing Brief at 37. See also *Clark Cnty*, 161 Wn. App. at 220, 254 P.3d at 868.

1 have a lower percentage of prime soils and de-designating this site isolates the AG-20 lands
2 west of SR 503.”²⁴³

3 FOCC then enumerates the *Lewis County* factors it claims the County improperly
4 analyzed before de-designating the RILB properties:²⁴⁴ the land is not already characterized
5 by urban growth;²⁴⁵ the land is primarily devoted to the commercial production of agricultural
6 products;²⁴⁶ and the land has long-term commercial significance for agricultural
7 production.²⁴⁷ FOCC argues the RILBs, as analyzed in the County’s Agricultural Lands
8 Analysis for Rural Industrial Land Banks *Appendix B*, shows the “602.4 acres of agricultural
9 land continues to meet the factors in WAC 365-190-050 and the County Comprehensive
10 Plan”²⁴⁸ because the land is “outside a sewer service area and that agricultural roads on the
11 properties allow the movement of farm vehicles off of SR 503 in discussing the availability of
12 public facilities;²⁴⁹ “fails to consider the agricultural products enumerated in RCW
13 36.70A.030(2) as the *Lewis County* decision requires;”²⁵⁰ “fails to note... that the
14 designation of agricultural land “should result in designating an amount of agricultural
15 resource lands sufficient to maintain and enhance the economic viability of the agricultural
16
17
18
19

20 ²⁴³ *Id.* IR 159 Agricultural Lands Analysis Rural Industrial Land Bank Candidate Alternative Sites, BERK
21 Consulting, in conjunction with Cairncross & Hempelmann, September 2015 / Revised February 2016 pp.
22 001913 – 38. Hereinafter RILB *Appendix B: Agricultural Lands Analysis*.

23 ²⁴⁴ FOCC Prehearing Brief at 38-40. *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

24 ²⁴⁵ *Id.* IR 171 p. 002501 in Tab 171, “RILB Vicinity Google Earth 2015 Images for Emailing and IR 159 p.
25 001925 in Tab IR 159, ILB *Appendix B: Agricultural Lands Analysis* p. 23.

26 ²⁴⁶ *Id.* IR 1535 pp. 020853 – 54 in Tab IR 1535A of FOCC’s SJM, *Promoting Agricultural Food Production in*
27 *Clark County*, A proposal developed by the Clark County Food System Council p. 4 (November 2013). This is
28 also IR 128 GMHB No. 16-2-0002 record. See also IR 171 p. 002501 in Tab 171, “RILB Vicinity Google Earth
29 2015 Images for Emailing;” IR 159 pp. 001927 – 30 in Tab IR 159, ILB *Appendix B: Agricultural Lands*
30 *Analysis* pp. 25 – 28.

31 ²⁴⁷ *Id.* at 001929 *Appendix B: Agricultural Lands Analysis* p. 27-28. See also IR 1535 p. 020875 in Tab IR 1535
32 of FOCC SJM, USDA Natural Resources Conservation Service Minnesota, *Land Capability Classes* webpage
p. 1.

²⁴⁸ *Id.* IR 159 pp. 001926 – 38 in Tab IR 159, ILB *Appendix B: Agricultural Lands Analysis* pp. 25-36.

²⁴⁹ *Id.* IR 159 p. 001930, ILB *Appendix B: Agricultural Lands Analysis* p. 28; IR 171 p. 002501 in Tab 171,
“RILB Vicinity Google Earth 2015 Images for Emailing;” IR 107 pp. 001515 – 16 in Tab IR 107, Vancouver
Public Works Department from the *City of Vancouver Comprehensive Plan* p. 5-26 & Clark County Regional
Waste Water District map.

²⁵⁰ *Id.* *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103. RCW 36.70A.030(2) is quoted above; IR 159 p.
001933, pp. 001936 – 37 in Tab IR 159, ILB *Appendix B: Agricultural Lands Analysis* p. 31, pp. 34 – 35.

1 industry in the county over the long term.”²⁵¹ In sum, FOCC argues the de-designation of
2 agricultural land for the RILB violated the GMA.

3 The County defers this issue to Intervenor Lagler Real Property, LLC and Ackerland,
4 LLC.²⁵² Intervenor cited WAC 365-190-050(3) explaining the ALLTCS properties meet
5 criteria for de-designation because FOCC has mischaracterized the current state of the
6 properties. Intervenor argues the properties have “been improved to urban standards
7 creating an incompatibility with farming activity and these improvements impede the ability
8 to transport animals and feed between the Lagler and Ackerland parcels.”²⁵³ Their property
9 “has declining value for dairy production according to the Analysis of the Agricultural
10 Economic Trends and Conditions in Clark County Report by Globalwise dated April 16,
11 2007...”²⁵⁴ Intervenor refutes the notion their property meets criteria to qualify as
12 agricultural land.²⁵⁵

15 **Issue 19 Board Analysis**

16 The question before the Board is whether the County properly de-designated Site 1
17 selected for the RILB. FOCC and Intervenor offered extensive materials about the nature
18 of the properties and whether the scope of the de-designation analysis met GMA
19 requirements. *Appendix B* shows the County received an RILB application with the following
20 information:
21

22 In 2014, Clark County received a docket application to establish an RILB on
23 properties that straddle SR 503 north of the Vancouver UGA:

- 24 • Ackerland property west of 117th Avenue, 223.72 acres.
- 25 • Lagler property east of 117th Avenue, 378.71 acres.

29 ²⁵¹ *Id.* IR 2666 p. 032355 in Tab IR 2666A, Globalwise, Inc., *Analysis of the Agricultural Economic Trends and*
30 *Conditions in Clark County, Washington* Preliminary Report p. 48 (Prepared for Clark County, Washington:
31 April 16, 2007).

²⁵² County Prehearing Brief at 54-55.

²⁵³ Intervenor 3B NW and Lagler Prehearing Brief at 12.

²⁵⁴ *Id.*

²⁵⁵ *Id.* 12-16.

1 Presently the zoning for both properties is Agriculture (AG-20). The
2 requested zoning is light Industrial (IL); the IL zone uses are listed in Clark
3 County Code (CCC) Section 40.230.085.²⁵⁶

4 The sites were studied for a variety of agricultural and employment uses,
5 including urban industrial uses, in a 2007 Environmental Impact Statement
6 (EIS). Prior Comprehensive Plan amendments included the properties in the
7 Vancouver UGA, but the expansions were removed after a Growth
8 Management Hearings Board determination and compliance order requiring
9 the County to do so. The sites have not previously been evaluated as part of
10 potential RILB.²⁵⁷

11 An important step in the RILB process is an inventory of developable land and
12 analysis of the availability of **alternative sites** within UGAs and the long-term
13 annexation feasibility of sites outside of UGAs (RCW 36.70A.367(2)) As a
14 result of a draft inventory applying criteria of what makes a good industrial site
15 (available under separate cover, BERK et al September 2015), five sites have
16 been identified as candidate alternative sites for further evaluation, including
17 the docket site. See Exhibit 2. Sites 1 through 4 have been designated as
18 having long-term significance for commercial agriculture. Site 5 does not
19 contain lands designated as long-term significance for agriculture.²⁵⁸

20 The County requested BERK Consulting prepare a county-wide or area-wide analysis
21 as required in WAC 365-190-050.²⁵⁹ The record shows BERK conducted an “Agricultural
22 Lands Analysis” (Analysis) for four RILB sites in which they reviewed hundreds of acres of
23 land for each site. Site 1 contains the Ackerland and Lagler properties and the County
24 reviewed 3,196 acres and then selected 602.4 acres to de-designate from ALLTCS to
25 RILB.²⁶⁰ BERK claims their analysis for this site was an area-wide study.²⁶¹ However, like

26 ²⁵⁶ IR 159 p. 001905, ILB **Appendix B: Agricultural Lands Analysis.**

27 <http://rilb.clark.wa.gov/Bates%20Numbered%20Documents/001890-002117.pdf> and Petitioner FOCC's PFR
28 16-2-0002 with attached Ordinance 2016-04-03.

29 ²⁵⁷ IR 159 at 001909 and at 001905.

30 ²⁵⁸ *Id.* at 001906.

31 ²⁵⁹ FOCC Prehearing Brief at 37 See also WAC 365-190-050 Agricultural resource lands. In classifying and
32 designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide
process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel
process. Counties and cities must have a program for the transfer or purchase of development rights prior to
designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their
agricultural resource lands designations with their county and any adjacent jurisdictions.

²⁶⁰ IR 159 at 001909.

1 the parcel-by-parcel analysis in Issue 10, the Board finds the County did not analyze the
2 county-wide or area-wide impacts on the agricultural industry if it removed the 602 acres
3 from agricultural production.

4 Agricultural land conservation is predicated on RCW 36.70A.020 (8)-the natural
5 resource industries goal:

6 Maintain and enhance natural resource-based industries, including ...
7 agricultural ... industries. Encourage the conservation of productive ...
8 agricultural lands, and discourage incompatible uses.

9
10 RCW 36.70A.170(1) required counties to designate natural resource lands, including
11 agricultural lands. Designation of those natural resource lands was the first step that
12 counties were required to accomplish following adoption of the GMA. That designation
13 preceded the adoption of comprehensive plans and the establishment of urban growth
14 areas. As the Supreme Court stated in *City of Redmond*:

15 "The significance of agricultural land preservation in the GMA can be seen in
16 the very timing of key actions mandated statute."²⁶²

17
18 The *Redmond* court went on to state:

19 Natural resource lands are protected not for the sake of their ecological role
20 but to ensure the viability of the resource-based industries that depend on
21 them. Allowing conversion of resource lands to other uses by allowing
22 incompatible uses nearby impairs the viability of the resource industry.²⁶³

23 As this Board observed in *Clark County Natural Resources Council and Futurewise v. Clark*
24 *County*:

25 The viability of the agricultural industry involves more than the mere
26 conservation of land for production. There must be a significant base of land
27 and production to support all of the agriculturally based businesses that are
28 part of the industry, including processors, suppliers, shippers, cold storage
29 plants, equipment repairers, and so on. In combination, the lands, producers
30 and support businesses constitute the agricultural economy. As stated above

31 ²⁶¹ *Id.* at 001908 "Site 1 and Areawide Study Area" and 001910 Areawide analysis conducted Site 1 3,196 acre
Ag designation area.

32 ²⁶² *City of Redmond v. CPSGMHB*, 136 Wn2d 38.

²⁶³ *Redmond* quoting Richard L. Settle and Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. Puget Sound L. Review 1141, 1145 (1993).

1 "natural resource lands are protected... to ensure the viability of the natural
2 resource-based industry that depends on them". If a jurisdiction fails take a
3 broader view, and chooses to de-designate agricultural lands on a parcel by
4 parcel basis, it is inevitable that the jurisdiction eventually reaches a point
5 where the agriculture production base decreases to such an extent that
6 elements of the support industry cannot survive economically. That process
7 continues as the production side of the industry is unable to obtain services,
8 thus leading to further conversion of agricultural lands to non-agricultural
9 uses. The long-term result is the disappearance of the agricultural industry.²⁶⁴

10 WAC 365-190-050(5) states that the final outcome of a designation process should
11 "result in designating an amount of agricultural resource lands sufficient to maintain and
12 enhance the **economic viability of the agricultural industry** in the county over the long
13 term; and to retain supporting agricultural businesses, such as processors, farm suppliers,
14 and equipment maintenance and repair facilities." (Emphasis added) Here, the County
15 reviewed four sites and selected 602 acres within one site that may or may not have a key
16 role to play in the agricultural industry in Clark County or the area. The County in 2004
17 found this land had long-term significance for agriculture when it designated the land
18 pursuant to the requirements of RCW 36.70A.170.²⁶⁵ Following a subsequent de-
19 designation by the County in 2007, the Board in its Amended Final Decision and Order in
20 Case No. 07-2-0027, found the property (then referred to as Area VB) was improperly de-
21 designated by Clark County. That decision led to the County rescinding its de-
22 designation.²⁶⁶ There no evidence reflected in the record analyzing the effect of de-
23 designation on the economic viability of the agricultural industry in Clark County. Also there
24 has been no documentation of substantial changes in the land. As the Court of Appeals
25 observed:
26

27 Absent a showing that this designation was both erroneous in 2004 and
28 improperly confirmed by the Growth Board, or that a substantial change in the
29 land occurred since the ALLTCS designation, the prior designation should
30 remain. Without such deference to the original designation, there is no land
31

32 ²⁶⁴ Case No. 09-02-0002 (FDO, August 6, 2009) at 21.

²⁶⁵ *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 234 (2011).

²⁶⁶ *Id.* at 227-228.

1 use plan, merely a series of quixotic regulations.²⁶⁷

2 **The Board finds and concludes FOCC has carried their burden of proof**
3 **demonstrating the County failed to conduct an area-wide analysis for this RILB site.**

4 Next, the Board reviews the *Lewis County* "WAC Factors"²⁶⁸ claimed by FOCC to be
5 deficient in the County's Agricultural Lands Analysis in Exhibit 3.²⁶⁹ First, was Site 1
6 characterized by urban growth?
7

- 8
- 9 • RCW 36.70A.030 Definitions (19) "Urban growth" refers to growth that makes
10 intensive use of land for the location of buildings, structures, and impermeable
11 surfaces to such a degree as to be incompatible with the primary use of land for
12 the production of food, other agricultural products, or fiber, or the extraction of
13 mineral resources, rural uses, rural development, and natural resource lands
14 designated pursuant to RCW 36.70A.170. A pattern of more intensive rural
15 development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When
16 allowed to spread over wide areas, urban growth typically requires urban
17 governmental services. "**Characterized by urban growth**" refers to land having
18 **urban growth located on it, or to land located in relationship to an area with**
19 **urban growth on it as to be appropriate for urban growth.**
 - 20 • WAC 365-190-050(3)(a) The land is **not already characterized by urban**
21 **growth.** To evaluate this factor, counties and cities should use the criteria
22 contained in WAC 365-196-310.

23 The Board refers to the description in the Analysis which states "parcels are in dairy,
24 other agricultural or rural residential"²⁷⁰ and it refers to Exhibit 171 in which the property
25 itself has green and brown fields with a white farm building.²⁷¹ Both the description in the
26 Appendix B and the photograph show the property is not characterized by urban growth. It
27 may be that this parcel is adjacent to an urban growth boundary, but the Board has found in
28 Issue 5 above that the County's UGAs are too large. Thus, de-designating these parcels for
29 RILB would be inappropriate for the next 20 year planning horizon because the UGA is
30 already oversized.

31 ²⁶⁷ *Id.* at 234.

32 ²⁶⁸ *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103 and WAC 365-190-050(1), (2) and (3)(a-c).

²⁶⁹ IR 159 at 001909-12.

²⁷⁰ *Id.* at 001909.

²⁷¹ IR 171 p. 002501 in Tab 171, RILB Vicinity Google Earth 2015 Images for Emailing.

1 WAC 365-190-050(3)(c)(v) lists one criteria for designating agricultural land as
2 “[r]elationship or proximity to urban growth areas,” but this does not mean that every piece
3 of land abutting an UGA must be converted to urban uses. The Legislature intended for
4 counties and cities to identify, designate and conserve agricultural land in RCW 36.70A.060
5 and that jurisdictions “shall assure that the use of lands adjacent to agricultural, forest, or
6 mineral resource lands shall not interfere with ...these designated lands for the production
7 of food, agricultural products, or timber, or for the extraction of minerals.” The GMA was not
8 intended to allow a domino effect of urbanization of parcel next to parcel. Carried to its
9 logical end, natural resource lands would never be protected. Without designating and
10 protecting natural resource lands, there is nothing to prevent the continuing loss of these
11 lands. Site 1 in this case is not characterized by urban growth, even though it may be near
12 an urban growth area. **The Board finds Site 1 meets the first WAC factor of “not**
13 **characterized by urban growth” as specified in WAC 365-190-050(3)(a).**

14
15
16 Second, is Site 1 “used or capable of being used for agricultural production”? Several
17 sections in the Analysis for Site 1 state the site is “used for ag dairy and hay/silage...
18 contains Class 1, 2, 3 soils...76% of soils are considered prime farmland.”²⁷² This
19 information shows the properties are still capable of and are now being used for agricultural
20 purposes. **The Board finds Site 1 meets the second WAC factor of “land is used or**
21 **capable of being used for agricultural production” as specified in WAC 365-190-**
22 **050(3)(b).**

23
24 Third, does Site 1 have “long-term commercial significance for agriculture”? Following
25 the non-exclusive criteria WAC 365-190-050(3)(c)(i-ix), the County’s Analysis documents
26 that roads are available for “freight route...and urban traffic... water is available along this
27 road...sewers are located to the south of the property.”²⁷³ Other indicators noted in the
28 Analysis are: the properties are in agricultural current use tax status; Site 1 abuts the
29 Vancouver UGA; property values are less for agriculture than other uses; the Clark County
30 Food System Council promotes locally grown food, but Site 1 dairy products are not sold
31

32

²⁷² IR 159 at Bates # 001909.

²⁷³ *Id.* at 001910.

1 locally.²⁷⁴ In reviewing Site 1 descriptions, the predominant information is that the site has
2 facilities to serve commercial agricultural uses, is classified under current use taxes for
3 agriculture, has rural residential uses surrounding it, and has a close proximity to
4 Vancouver's market. **The Board finds Site 1 meets the third WAC factor of "the land
5 has long-term commercial significance for agriculture" as specified in WAC 365-190-
6 050(3)(c).**

7
8 Finally, WAC 365-190-050(5) requires counties to designate an amount of
9 "agricultural resource lands sufficient to maintain and enhance the economic viability of the
10 agricultural industry in the county over the long term." For all RILB sites reviewed, the
11 County explains:

12 Based on the Rural Lands Study, there has been a "decline in the number of
13 commercial and mid-sized farms in Clark County between 1997 and 2007,
14 and presumably through 2012 (relayed anecdotally from key informants). The
15 long-term outlook for larger farms in Clark County is in transition due to water
16 rights, labor, and access farm supportive services.

17 The cost of running a smaller dairy has increased, as have regulatory
18 requirements such as water quality. Lower land prices, lower rainfall, and the
19 efficiencies gained with a larger operations and management have led many
20 dairies to move from Western Washington to Eastern Washington. Even if
21 there is current use taxation, the cost to purchase the land is based on market
value.²⁷⁵

22 These findings are from the County's Issue Paper 9 which the Board addressed in Issue 11
23 above. Our analysis did not find commercial agricultural industry in immediate decline or
24 that small farms were more successful than medium or large farms. We noted that Issue
25 Paper 9 stated that while the number of large farms has decreased ***their share of the total
26 commodity output stayed nearly constant at around 85-89%*** over the same time
27 period²⁷⁶...In terms of ***mid-size and large farms***...the County's 2012 Rural Lands Study
28 found they ***produce the vast majority of commodity values*** in the county with relatively
29 few farms considering the 2007 data. Placing the RILB Site 1 into the context of the
30
31

32 ²⁷⁴ *Id.* at 001910-11.

²⁷⁵ IR 159 at Bates #001912.

²⁷⁶ IR 3902 at 041130.

1 County's Issue Paper 9, the Board finds that Site 1 will continue contributing to the long-
2 term viability of agricultural commerce in Clark County. **The Board finds and concludes**
3 **FOCC carried their burden of proof demonstrating the County failed to meet RCW**
4 **36.70A.060 and WAC 365-190-050.**

5
6 **Challenges to Specific Elements of the 2016 Plan Update**

7 **Issue 20: DEFICIT IN TRANSPORTATION FUNDING 20-YR PLAN**

8 Did Amended Ordinance 2016-06-12's adoption of the transportation element, including an
9 admitted deficit of \$158,104,000 for the 20-year transportation facility plan, violate RCW
10 36.70A.020(3), (12); RCW 36.70A.070 (preamble), (1), (6); or RCW 36.70A.130(1), (3), (5)
11 See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year*
12 *Comprehensive Growth Management Plan 2015-2035* Chapter 5 Transportation, Appendix
13 A Transportation Issues, Appendix E Capital Facility Plans Review, Appendix G: Capital
14 Facilities Financial Plan, and Figure 24A; Exhibit 2 County/UGA Comprehensive Plan Clark
15 County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County, Washington
16 [map]. [FOCC/FW No. 6]

17 Under Issues 20, FOCC failed to brief RCW 36.70A.020(3), RCW 36.70A.130, those
18 unbriefed legal arguments are deemed abandoned.²⁷⁷

19 **Applicable Law**

20 **RCW 36.70A.070(3) and (6)**

21 (3) A capital facilities plan element consisting of: (a) An inventory of existing capital
22 facilities owned by public entities, showing the locations and capacities of the
23 capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the
24 proposed locations and capacities of expanded or new capital facilities; (d) *at*
25 *least a six-year plan that will finance such capital facilities within projected funding*
26 *purposes...*(emphasis added)

27 (6) A transportation element that implements, and is consistent with, the land use
28 element.

29 (a) The transportation element shall include the following sub-elements:

30 (iv) Finance, including:
31

32 ²⁷⁷ "Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-03-590(1).

- 1 (A) An analysis of funding capability to judge needs against probable funding
2 resources;
- 3 (B) A multiyear financing plan based on the needs identified in the comprehensive
4 plan, the appropriate parts of which shall serve as the *basis for the six-year* street,
5 road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for
6 counties, and RCW 35.58.2795 for public transportation systems. The multiyear
7 financing plan should be coordinated with the *ten-year investment program*
8 developed by the office of financial management as required by RCW 47.05.030;
- 9 (C) If probable funding falls short of meeting identified needs, *a discussion of how*
10 *additional funding will be raised, or how land use assumptions will be reassessed to*
11 *ensure that level of service standards will be met...*
- 12 (c) The transportation element described in this subsection (6), *the six-year plans*
13 required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
14 35.58.2795 for public transportation systems, and the ten-year investment program
15 required by RCW 47.05.030 for the state, must be consistent. (Emphasis added)

16 FOCC claims the County violated RCW 36.70A.070(6)(a)(iv)(C) due to a projected
17 shortfall over 20-year planning period. They state the County does not have a plan to “close
18 this deficit.” The County replies that FOCC misreads subsection (6)(a)(iv), and instead two
19 sections of GMA must be read together: “[t]he six-year [transportation improvement plan]
20 TIP must specifically provide that funding sources will be adequate to ensure public facilities
21 are available to serve development, reading RCW 36.70A.070(3) and 070(6) together.”²⁷⁸

22 **Issue 20 Board’s Findings and Conclusions:**

23 FOCC’s cites the Board’s *Shoreline* decision as a requirement to have financing for
24 both 6 and 20 year time periods, but FOCC failed to include the last sentence of the Board’s
25 order “...[t]he GMA capital facilities and transportation elements require a general financing
26 plan or range of funding sources for the 20-year period and a specific six-year CIP or TIP to
27 ensure public facilities are available to serve development. RCW 36.70A.070(3) and 070(6).”

28 The City asserts its six-year TIP and CFP will begin to incorporate 185th Street
29 Subarea Plan projects in the next few years to be coordinated with right-of-way construction
30 and timed for station opening in eight years. The Board has previously ruled that a specific
31

32 ²⁷⁸ Clark County Prehearing Brief at 56 See *Shoreline Preservation Society v. City of Shoreline*, GMHB No. 15-3-0002 (FDO, December 16, 2015) at 26.

1 funding plan is only required for capital facilities needed in the coming six years.”²⁷⁹ In
2 previous cases, the Board has also ruled that six-year transportation funding plans comply
3 with GMA:

4 The Board stated: “[A] specific funding plan is only required for capital
5 facilities needed in the **coming six years**,” accepting the County’s
6 representation that no immediate amendment to its six-year CIP was
7 required, and assuming “the County in good faith is revising its CFP to
8 incorporate updated water system improvements.”²⁸⁰
(Emphasis added)

9 Neither the GMA nor previous Board decisions require a County to develop a 20-year
10 financing plan. If there is a discrepancy in capital revenues and expenditures over 20-
11 years, as shown in Clark County Updated Comprehensive Plan in Table 5.8,²⁸¹ then the
12 County must comply with RCW 36.70A.070(6)(a)(iv)(C). This statute requires the County to
13 address the shortfall: “If probable funding falls short of meeting identified needs, a
14 discussion of how additional funding will be raised, or how land use assumptions will be
15 reassessed to ensure that level of service standards will be met;”²⁸² The County developed
16 strategies to balance their Capital Facilities Plan over the next 20-Year planning period.²⁸³
17
18

19 _____
20 ²⁷⁹ *Shoreline Preservation Society (SPS) v. City of Shoreline*, GMHB No. 15-3-0002 (FDO, December 16,
2015) at 26 of 55.

21 ²⁸⁰ *KCRP V, Order Finding Compliance*, p. 9. See also *Davidson Serles v. City of Kirkland*, Case No. 09-3-
22 0007c (FDO, October 5, 2009), at 8: “The Board finds no requirement in the capital facilities element for the
City to identify funding for capital projects beyond the six-year window.”

23 ²⁸¹ IR 2904 CORE DOCUMENT 20-Year Adopted Comp Growth Management Plan 2015-2035 - As Adopted
6/28/2016 at 34809.

24 ²⁸² RCW 36.70A.070(6)(a)(iv)(C.)

25 ²⁸³ IR 2904 at =034809-10 **Strategies to Balance the CFP** The Growth Management Act requires the 6-year
26 transportation improvement plan to be financially constrained and balanced. The 20-year transportation capital
27 facilities plan is more speculative and is not required to be balanced. The projected revenue shortfall of \$158.1
28 million represents about 23% of the total projected capital cost, which could be considered significant in the
29 absence of any strategies to close the gap. There are a variety of strategies and policy actions available to the
30 Board of County Commissioners to balance the 20-Year CFP. Options for increasing revenues include
updating Traffic Impact Fees, adopting a motor vehicle excise tax of up to \$20 per vehicle and increasing the
31 local option fuel tax to the statutory limit. Based on recent policy decisions and preliminary work on the Traffic
32 Impact Fee update, it is realistic to assume that an additional \$40 to 50 million could be raised from these fees.
Grant revenue estimates are also very conservative.

Reductions in the capital projects list are also likely. Several projects on the list would not contribute
substantially to mobility on the transportation network in proportion to their estimated cost. Other listed projects
are in areas that are likely to be annexed before county financing is available and would then become the
responsibility of the annexing city.

1 **The Board finds and concludes FOCC failed to demonstrate the County violated RCW**
2 **36.70A.070(6).**

3
4 **Issue 21: CAPITAL FACILITIES PLAN DID NOT INCLUDE ALL GMA REQUIREMENTS**

5 Did Amended Ordinance 2016-06-12's adoption of the capital facilities plan element violate
6 RCW 36.70A.020(1), (12); RCW 36.70A.070 (preamble), (1), (3); or RCW 36.70A.130(1),
7 (3), (5) because it does not comply with the requirements for capital facility plan elements?
8 See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year*
9 *Comprehensive Growth Management Plan 2015-2035* Chapter 6 Capital Facilities and
10 Utilities Element, Appendix E Capital Facility Plans Review and Analysis, Appendix G:
11 Capital Facilities Financial Plan, and Figure 24A; Exhibit 2 County/UGA Comprehensive
12 Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning Clark County,
13 Washington [map]. [FOCC/FW No. 7]

14 Under Issue 21, Petitioners FOCC failed to brief RCW 36.70A.020(1), (12); RCW
15 36.70A.070 (preamble) and (1); and RCW 36.70A.130(1), (3), (5) -- those unbriefed legal
16 arguments are deemed abandoned.²⁸⁴

17 **Applicable Law**

18 **RCW 36.70A.070**

19 Comprehensive plans—Mandatory elements.

20 (3) A capital facilities plan element consisting of: (a) An inventory of existing capital
21 facilities owned by public entities, showing the locations and capacities of the capital
22 facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed
23 locations and capacities of expanded or new capital facilities; (d) at least a six-year
24 plan that will finance such capital facilities within projected funding capacities and
25 clearly identifies sources of public money for such purposes; and (e) a requirement to
26 reassess the land use element if probable funding falls short of meeting existing
27 needs and to ensure that the land use element, capital facilities plan element, and
28 financing plan within the capital facilities plan element are coordinated and

29 The Transportation Capital Facilities Plan will be reviewed on a regular basis, not to exceed every five years,
30 to ensure that the projected gap between costs and revenues is declining. If the potential shortfall increases
31 and becomes critical, the potential courses of action in addition to those identified above would include
32 reduction in the level-of-service standards and reassessment of the land use plan. The transportation needs
33 identified to serve growth in the next 20 years were evaluated by analyzing high volume corridors in the
34 county. Local streets may experience greater volumes of "cut-through" traffic as a result of congestion on the
35 major corridors. The county may rely on the local streets to serve a greater amount of traffic volume when
36 needed projects cannot be funded.

²⁸⁴ "Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-03-590(1).

1 consistent. Park and recreation facilities shall be included in the capital facilities plan
2 element.

3 **Positions of the Parties**

4 FOCC argues RCW 36.70A.070(3) fails to provide information about some elements
5 in the County's capital facilities plan. Specifically, FOCC claims the following are deficient:
6 unclear forecast of demand and supply for capital facilities such as water systems;^{285 286 287}
7 revenues sources and amounts coming from each source are not estimated;²⁸⁸ La Center's
8 sewer system includes debt financing, but no repayment sources are identified;²⁸⁹ Discovery
9 Clean Water Alliance 2016-2021 Capital Plan Summary lists no sources of funding;²⁹⁰ Clark
10 County School Districts six-year capital costs do not show revenues;²⁹¹ and Vancouver's
11 law enforcement training center funding is "unknown."²⁹²

12 The County responds to FOCC's deficiencies with a table showing FOCC's issues
13 and where the County addressed those alleged deficiencies.²⁹³ They explain FOCC's
14 complaints are either addressed in the table or in the text of the Comprehensive Plan. The
15 County explained at the Hearing on the Merits how its water resources are managed and
16 funded.²⁹⁴

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21 ²⁸⁵ IR 2904 pp. 035020 – 58, *Comprehensive Growth Management Plan 2015-2035* Appendix E Capital
22 Facility Plans Review and Analysis pp. 373 – 411.

23 ²⁸⁶ IR 2904 pp. 035021 – 22, *Id.* pp. 374 – 75.

24 ²⁸⁷ IR 2904 pp. 035020 – 22, *Id.* pp. 373 – 75.

25 ²⁸⁸ IR 2904 pp. 035023 – 58, *Id.* pp. 376 – 411.

26 ²⁸⁹ IR 2904 p. 035029, *Id.* p. 382.

27 ²⁹⁰ IR 2904 p. 035031, *Id.* p. 384.

28 ²⁹¹ IR 2904 p. 035038, *Id.* p. 391.

29 ²⁹² IR 2904 p. 035046, *Id.* p. 399.

30 ²⁹³ County Prehearing Brief at 57-59

31 ²⁹⁴ HOM Transcript at 100. The WRIA "Futurewise claims that the Clark County plan failed to protect water
32 resources. In several ways, Clark County certainly does protect surface and groundwater, both quantity and
quality. The two WRIA rules in Clark County, 27 and 28, in contrast to the rule in Whatcom County, are less
than ten years old. The Hirst court specifically spoke to the fact that the Nooksack rule in Whatcom County
was kind of antiquated. It wasn't based on what is now current science, it was based on old knowledge. The
WRIA rules in effect in Clark County are much, much, much more current. They identify reservations for permit
exempt wells, they establish methodology for evaluating impact of wells to surface waters. The applications for
permit exempt wells are tracked by both Clark County and the Department of Ecology so as to generate
information on remaining water resources. ... the Capital Facilities and Utilities Framework Plan Policies at
Bates Numbers 034834 and 5, so these Plan Policies 6.2.7 through 6.2.10 call for proof of public or private
domestic water sources, producing sufficient quantity and quality of water before permits can be issued. This

1 **Issue 21 Board Analysis**

2 The County's Capital Facilities and Utilities Element, Tables 6.2 through 6.7 identify
3 sources of public money for capital facilities. Table E.14 responds to FOCC alleged
4 deficiencies and the County's explanation at the HOM suffices to meet all requirements in
5 RCW 36.70A.070(3). The Board reviewed the County's evidence offered in response to
6 FOCC's claims and finds the County's CFP meets GMA requirements. **FOCC has failed to**
7 **carry its burden of proof demonstrating the County failed to comply with RCW**
8 **36.70A.070(3). Issue 21 is dismissed.**

9 **Issue 22: COUNTY DID NOT HAVE PUBLIC HEARING ON CPPs**

10 Does the 2016 Plan Update violate RCW 36.70A.100, RCW 36.70A.210, and WAC 365-
11 196-305 because the 2016 Plan Update relies, in part, on amended countywide planning
12 policies and an amended community framework plan, without the County first adopting a
13 process to amend or update the CPPs or CFP that were incorporated in the 2016 Plan
14 Update? [CCCU No. B]

15 **Applicable Law**

16 **RCW 36.70A.210(2)(e)**

17 (e) No later than July 1, 1992, the legislative authority of each county that was
18 required or chose to plan under RCW [36.70A.040](#) as of June 1, 1991, or no later than
19 fourteen months after the date the county adopted its resolution of intention or was
20 certified by the office of financial management the county legislative authority of any
21 other county that is required or chooses to plan under RCW [36.70A.040](#), **shall adopt**
22 **a countywide planning policy according to the process provided under this**
23 **section** and that is consistent with the agreement pursuant to (b) of this subsection,
24 **and after holding a public hearing or hearings** on the proposed countywide
25 planning policy. (Emphasis added)

26 Under Issue 22, CCCU failed to brief RCW 36.70A.100 and WAC 365-196-305, those
27 unbriefed legal arguments are deemed abandoned.²⁹⁵

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31 and subsequent provisions in the plan as implemented by the county public health department meet the GMA
32 requirements to protect surface and groundwater.”

²⁹⁵ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).

1 **Positions of the Parties**

2 CCCU argues it does not challenge the CPP but instead challenges the 2016 Plan
3 Update because it is based on CPPs. CCCU alleges a violation of RCW 36.70A.210
4 because the “County never adopted procedures for amendment of the CPP, the County
5 cannot amend the CPP without first “holding a public hearing or hearings.” (RCW
6 36.70A.210(2)(e). CCCU claims “[a]s a result of the County’s failure to hold a public hearing
7 on the CPP amendment, the 2016 CPP amendment is invalid.”²⁹⁶

8
9 The County responds that CCPs are “part of the Clark County 20-Year
10 Comprehensive Growth Management Plan 2105-2035.”²⁹⁷ The CCPs were not amended
11 without public hearings²⁹⁸ and minimal amendments were made such as technical
12 corrections or deletions obsolete sections.²⁹⁹

13
14 **Issue 22 Board Analysis**

15 CCCU’s arguments were difficult to follow, but the basis of their complaint is only a
16 violation of RCW 36.70.210(2)(e) which states a County must adopt countywide planning
17 policies (CCPs) and hold public hearings on those policies. The County originally adopted
18 its CCPs in 2007 and then amended them in 2016 with technical changes.³⁰⁰ When the
19 County held its public hearings on the CP, the policies were open for public discussion at
20 that time. **The Board finds and concludes the County met requirements in RCW
21 36.70A.210(2)(e) because it adopted CCP and held hearings on those policies. Issue
22 22 is dismissed.**
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26 ²⁹⁶ CCCU Prehearing Brief at 32-34.

27 ²⁹⁷ County Prehearing Brief at 38. See also IR/Tab 2936 (throughout Core Document).

28 ²⁹⁸ *Id.* “They were presented in binders (books) to the BOCC and the Planning Commission for public work
29 sessions on May 4 and May 5, 2016, respectively; a joint public hearing of the BOCC and the Planning
30 Commission on May 19 and May 24, 2016; the Planning Commission’s public hearing on June 2, 2016; and
31 the BOCC public hearings on June 21, 2016 and June 28, 2016.”

32 ²⁹⁹ *Id.* “For example, proposed amendments to CPP 1.1.6, which are red-lined. The following were proposed
for deletion: “, at least every seven (7) years,”; “RCW”; and “.215.” The word “Chapter” was inserted.
Amendments of similar significance, in general the deletion of obsolete references, were proposed for CPP
1.18 and 1.19.

³⁰⁰ County Prehearing Brief and see also IR/Tab 2936 (throughout Core Document) and IR/Tab 2904
(throughout Core Document).

1 **Environmental Issues**

2 **Issue 23: SHORELINE/CRITICAL AREAS NOT REVIEWED UNDER GMA**

3 Did Amended Ordinance 2016-06-12's adoption of the comprehensive plan's Chapter 4
4 Environmental Element and the failure to review and if necessary revise Subtitle 40.4 Clark
5 County Code (CCC), Critical Areas and Shorelines, violate RCW 36.70A.020(9), (10); RCW
6 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(2), (3); RCW 36.70A.130(1), (5), (7);
7 RCW 36.70A.170; RCW 36.70A.172(1); WAC 365-190-080; WAC 365-190-090; WAC 365-
8 190-100; WAC 365-190-110; WAC 365-190-120; WAC 365-190-130; WAC 365-195-905;
9 WAC 365-195-915; WAC 365-196-485; or WAC 365-196-830 because they fail to
10 adequately designate and protect critical areas.[sic] See Amended Ordinance 2016-06-12
11 and Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan
12 2015-2035 Chapter 4 Environmental Element and Figures 7 and 8. [FOCC/FW No. 8]

11 Under Issue 23, FOCC failed to brief RCW 36.70A.020;.040; .050; .060; .172; and
12 WAC 365-190-080; WAC 365-190-090; WAC 365-190-100; WAC 365-190-110; WAC 365-
13 190-120; WAC 365-190-130; WAC 365-195-905; WAC 365-195-915; WAC 365-196-485; or
14 WAC 365-196-830, those unbriefed legal arguments are deemed abandoned.³⁰¹

15 FOCC contends the County violated RCW 36.70A.130 as Amended Ordinance 2016-
16 06-12 failed to state that it constituted the required review (and revision if needed) of its
17 comprehensive plan and land use regulations, including its critical area ordinances. The
18 argument is made in support of its allegation that the County failed to revise its geologically
19 hazardous area (a type of critical area) regulations. FOCC references the tragic, lethal Oso
20 landslide in Snohomish County, Washington and cites studies which it states support more
21 stringent critical area regulations than the County has adopted. It cites the *Thurston*
22 *County*³⁰² and *SOSA*³⁰³ decisions in support, observing that Amended Ordinance 2016-06-
23 12 neither includes a "finding" that the Ordinance constitutes a RCW 36.70A.130 update,
24 nor does it state the reasons the County did not update its critical areas regulations.
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31 ³⁰¹ "Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue." WAC 242-
32 03-590(1).

³⁰² *Thurston Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 137 Wn. App. 781, 796 – 98 (2007), *aff'd in part, rev'd in part*, 164 Wn.2d 329 (2008).

³⁰³ *Save Our Scenic Area v. Skamania Cty.*, 183 Wn.2d 455, 466 (2015).

1 While the County suggests FOCC's claim is "perplexing"³⁰⁴, the County's
2 documentation of the fact the Ordinance constituted the required update, including review of
3 its critical area regulations, was less than ideal. Amended Ordinance 2016-06-12 does not
4 include a finding that a review and evaluation had occurred and that revisions were not
5 required.³⁰⁵ On the other hand, it is abundantly clear from the record that the ordinance did
6 constitute the culmination of a years-long comprehensive plan update process, beginning in
7 2013.³⁰⁶ The Ordinance's Findings and Recitals make numerous references to the process,
8 referring throughout to the "2016 Plan Update".³⁰⁷

9
10 Documentation of critical area regulation consideration was similarly lax. While the
11 Ordinance does refer to a prior critical area regulation update, the date of that review is not
12 referenced. The County's counsel observed the County staff began their work by consulting
13 the Department of Commerce checklist which the County describes as a "checklist used by
14 the State agency responsible for matters related to the GMA [and which] states in detail
15 what is required in a comprehensive plan and what changes in governing law [have
16 occurred] since a county's last plan review and update [and which] must be addressed in an
17 Update".³⁰⁸ That checklist includes numerous required CP elements and components, asks
18 whether or not the jurisdiction's current plan addresses them and whether amendments are
19 needed to meet statutory requirements.³⁰⁹ One of those elements/categories are "Policies to
20 designate and protect critical areas", including geologically hazardous areas.³¹⁰ Another
21 involves regulations designating and protecting critical areas,³¹¹ while a third specifically
22 addresses geologically hazardous areas.³¹² To all of those questions, the County indicated
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28 ³⁰⁴ County Brief at 59.

³⁰⁵ RCW 36.70A.130(1)(b).

³⁰⁶ IR 2830A, Bates 34066-34067. See also IR 49 at Bates 6123 (11/04/2013 News Release announcing the start of the Update Process) and IR 1107 (email correspondence re: the update with the Dept. of Commerce).

³⁰⁷ *Id.* Bates 34065-34071.

³⁰⁸ County Brief at 60.

³⁰⁹ IR 3009, Bates 38400 and following.

³¹⁰ *Id.* Bates 38402-38403.

³¹¹ *Id.* Bates 38412.

³¹² *Id.* Bates 38414.

1 near the end of the update process (May 4, 2016) that it had addressed the category in its
2 current plan or regulations and that no further review was needed.

3 SOSA presented a decidedly different situation than FOCC references in this matter.
4 There, the question was whether Skamania County had actually completed its periodic
5 review. As the Court observed:

6 However, the County's characterization of the Resolution as "periodic review"
7 considerably strains the plain meaning of the term and the effect of the Resolution.
8 The Resolution merely designated certain resource lands, pursuant to the County's
9 obligation under RCW 36.70A.170, and declared that the Resolution itself "meets the
10 requirements of the Growth Management Act (RCW 36.70A) for the conservation of
11 forest, agricultural, and mineral resource lands." The Resolution does not purport to
12 satisfy the RCW 36.70A.130(1)(b) obligation, nor does it even contain the word
"review."³¹³

13 There is no question here as to whether or not Clark County undertook and
14 completed its RCW 36.70A.130 periodic review. *Thurston County* is also distinguishable.
15 There the county argued a 2004 update challenge regarding designation of agricultural
16 resource lands under RCW 36.70A.170 was time barred, contending it had designated
17 those lands in 2003, and that no challenge had been filed. The Court upheld the Board
18 decision which concluded the challenge was timely. The basis of the decision was that in
19 passing the 2003 resolution, the county resolution merely provided that the "amendments
20 brought the natural resources lands chapter into compliance with the Act, but it did not refer
21 to RCW 36.70A.130, [and] did not make a finding that it was an 'update' . . .".³¹⁴ As stated,
22 Amended Ordinance 2016-06-12, and the process leading to its adoption, clearly
23 constituted the County's required periodic update. **While a specific finding so stating,
24 including reference to review of its critical area regulations, would have been far
25 preferable, FOCC has not met its burden to establish a violation of RCW 36.70A.130.**
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31 ³¹³ *Save Our Scenic Area & Friends of the Columbia Gorge v. Skamania County*, 183 Wn.2d 455, 465-466
32 (2015).

³¹⁴ *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 137 Wn. App. 781, 797 (2007).

1 **Issue 24: SEPA NOT DONE ON EARLY REPORTS**

2 Does the 2016 Plan Update violate RCW 43.21C.031 because the County never adopted or
3 completed required review under the State Environmental Policy Act of the Growing
4 Healthier Report, the Aging Readiness Plan, the Agriculture Preservation Strategies Report,
5 and the Clark County Bicycle and Pedestrian Plan prior to relying on them in the 2016 Plan
Update? [CCCU No. C]

6 CCCU's Issue 24 only alleges a violation of RCW 43.21C.031 which states as
7 follows:
8

9 (1) An environmental impact statement (the detailed statement required by
10 RCW 43.21C.030(2)(c)) shall be prepared on proposals for legislation and
11 other major actions having a probable significant, adverse environmental
12 impact. The environmental impact statement may be combined with the
13 recommendation or report on the proposal or issued as a separate document.
14 The substantive decisions or recommendations shall be clearly identifiable in
15 the combined document. Actions categorically exempt under RCW
16 43.21C.110(1)(a) and 43.21C.450 do not require environmental review or the
17 preparation of an environmental impact statement under this chapter.

18 (2) An environmental impact statement is required to analyze only those
19 probable adverse environmental impacts which are significant. Beneficial
20 environmental impacts may be discussed. The responsible official shall
21 consult with agencies and the public to identify such impacts and limit the
22 scope of an environmental impact statement. The subjects listed in RCW
23 43.21C.030(2)(c) need not be treated as separate sections of an
24 environmental impact statement. Discussions of significant short-term and
25 long-term environmental impacts, significant irrevocable commitments of
26 natural resources, significant alternatives including mitigation measures, and
27 significant environmental impacts which cannot be mitigated should be
28 consolidated or included, as applicable, in those sections of an environmental
29 impact statement where the responsible official decides they logically belong.

30 CCCU's framing of Issue 24 was torturous. It originally alleged only a violation of
31 chapter 43.21C.³¹⁵ In light of the requirements of RCW 36.70A.290(1), and at the Board's
32 direction during a pre-hearing conference, CCCU was directed to provide a specific statute

³¹⁵ Issue 24, originally CCCU Issue C: Does the 2016 Plan Update constitute an impermissible de facto comprehensive plan amendment, violate public participation requirements, and violate chapter 43.21C RCW because the County never adopted or completed required review under the State Environmental Policy Act of the Growing Healthier Report, the Aging Readiness Plan, the Agriculture Preservation Strategies Report, and the Clark County Bicycle and Pedestrian Plan prior to relying on them in the 2016 Plan Update?

1 or statutes alleged to have been violated.³¹⁶ Following that, CCCU then submitted two
2 different versions of the issue statement, the first on September 15, 2016 and the second on
3 September 20. In the first version it failed to specify which section of chapter 43.21C was
4 violated, but added numerous alleged violations of the GMA. The September 20, 2016
5 version specified the SEPA section as RCW 43.21C.03, but added numerous sections of
6 chapter 197-11 WAC to which Clark County objected.³¹⁷ The Board then issued an order
7 which clearly specified that the issue statement would be worded as set forth above,
8 removing all references to chapter 197-11 WAC.³¹⁸ As WAC 242-03-260 provides, petitions
9 for review may only be amended within a limited period of time following filing.³¹⁹

11 CCCU fails to cite RCW 43.21C.031 in its opening brief or directly address the
12 requirements of that statute. Instead it argues violations of numerous SEPA rules included
13 in chapter 197-11 WAC, and in a footnote it states the following:

14 The County may argue that CCCU did not list these WAC provisions in its
15 issue statement and therefore cannot argue the County failed to comply with
16 them. But CCCU argues that the County failed to comply with SEPA itself—
17 the WACs provide the touchstone to determine whether the County's action
18 complied with SEPA. See RCW 43.21C.095 (the WACs "shall be accorded
19 substantial deference in the interpretation of this chapter" . . .

21 ³¹⁶ All requests for review to the growth management hearings board shall be initiated by filing a petition that
22 includes a detailed statement of issues presented for resolution by the board. The board shall render written
23 decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not
24 presented to the board in the statement of issues, as modified by any prehearing order.

25 ³¹⁷ Respondent Clark County's Objections to Prehearing Order (September 29, 2016).

26 ³¹⁸ Notice of Change of Case Panel and Amended Prehearing Order (October 21, 2016).

27 ³¹⁹ (1) A petition for review may be amended as a matter of right until fourteen days after its date of filing. Any
28 such amendments shall be limited to amending the legal bases for challenging the matters raised in the
29 original petition, but may not raise new challenges to the ordinance.

30 (2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval
31 by the presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the
32 adverse party of unreasonable and unavoidable hardship, or by the presiding officer's finding that granting the
same would adversely impact the board's ability to meet the time requirements of RCW 36.70A.300 for issuing
a final order.

(3) At the prehearing conference the presiding officer will work with the parties to clarify the issues raised in
the petition for review. The presiding officer may, upon motion of a party or upon its own motion, require a
more complete or concise statement of the issues presented for resolution by the board.

See also RCW 36.70A.290(2): All petitions relating to whether or not an adopted comprehensive plan,
development regulation, or permanent amendment thereto, is in compliance with the goals and requirements
of this chapter . . . must be filed within sixty days after publication . . .

1 The County did in fact make that argument and the Board agrees with the County. The
2 Board only has the jurisdiction to address alleged violations set forth in a Petition for Review
3 filed within 60 days after a jurisdiction publishes notice of adoption of legislation. The Board
4 may not allow a party to freely amend allegations following that period of time other than as
5 provided in WAC 242-03-260. **Issue 24 shall be dismissed.**
6

7 **Issue 25: SEPA NOT DONE ON REMANTS FROM 1994 PLAN**

8 Does the 2016 Plan Update violate RCW 43.21C.031 when the County failed to conduct
9 environmental review under the State Environmental Policy Act on the remnants from
10 approximately 36,000 square acres of land that were erroneously designated as agri-forest
11 under the County's 1994 Comprehensive Plan? [CCCU No. K2]

12 CCCU frames this issue statement differently than set forth in the Amended
13 Prehearing Order. It amends the issue statement as follows: "The County Failed to
14 Document Environmental Review under the State Environmental Policy Act as to Non-
15 Compliant Remnants of the County's Illegal Agri-Forest Designation" (underlining added).³²⁰
16 That is, it now seeks to argue that the County failed to "document" SEPA environmental
17 review of a compliance action involving a 1994 comprehensive plan as opposed to its
18 original claim that the County failed to "conduct" such a review. Notwithstanding that
19 difference, CCCU simply fails to establish any violations of RCW 43.21C.031 in its opening
20 brief. Its argument involves 3,500 acres of land which were included in a 1995 challenge of
21 a Clark County 1994 comprehensive plan.³²¹ It contends that the County "has never
22 demonstrated that it conducted SEPA review on any subsequent efforts to bring the 3,500
23 acres into GMA compliance." However, CCCU fails to establish that the County's citations to
24 IR 3087, 3088, and 3089 do not constitute appropriate SEPA review. **The Board finds and
25 concludes CCCU has failed to establish any violations of RCW 43.21C.031 in regards
26 to Issue 25.**
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³²⁰ Petitioner CCCU, Inc.'s Prehearing Brief at 39.

³²¹ GMHB No. 95-2-0067.

1 **NON-COMPLIANCE and INVALIDITY**

2 The Board has determined that Clark County failed to comply with the GMA and
3 remands this matter to the County to achieve compliance under RCW 36.70A.050, RCW
4 36.70A.060, RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.215, and
5 WAC 365-190-050 as follows:
6

7 **Issue 5: UGA EXPANSIONS and BUILDABLE LANDS REPORT**

8 Did the adoption of Amended Ordinance 2016-06-12 expanding the Battle Ground [sic], La
9 Center, and Ridgefield urban growth areas violate RCW 36.70A... because the expansions
10 were not needed to accommodate the planned growth and Buildable Lands reasonable
11 measures were not adopted and implemented?

- 12 • The Board finds: (1) these UGA enlargements violate RCW 36.70A.110 and RCW
13 36.70A.115, and (2) Ordinance 2016-06-12 is clearly erroneous in view of the
14 entire record before the Board and in light of the goals and requirements of the
15 GMA.
- 16 • The Board finds: (1) the County's and Cities' failure to adopt "reasonable
17 measures" to remedy density inconsistencies violates RCW 36.70A.215, and (2)
18 Ordinance 2016-06-12 is clearly erroneous in view of the entire record before the
19 Board and in light of the goals and requirements of the GMA.
- 20 • Accordingly, the Board finds Petitioners failed to satisfy their burden of proof to
21 show an internal plan inconsistency in violation of RCW 36.70A.070.

22 **Issue 6: URBAN RESERVE OVERLAY**

23 Did Amended Ordinance 2016-06-12's adoption of the Urban Reserve Overlay and the
24 Urban Reserve-10 (UR-10) and Urban Reserve-20 (UR-20) zoning districts, the repeal of
25 the Urban Reserve-40 (UR-40) zoning district, and the application of the overlay and
26 districts to rural and natural resource lands violate RCW 36.70A.060; RCW 36.70A.070;
27 RCW 36.70A.110... because the land is not needed to accommodate planned urban growth
28 and the overlay and zoning does not conserve natural resource lands or comply with the
29 requirements for rural areas?

- 30 • The Board finds: (1) these UGA enlargements violate RCW 36.70A.060, RCW
31 36.70A.070, and RCW 36.70A.110, and (2) Ordinance 2016-06-12 is clearly
32 erroneous in view of the entire record before the Board and in light of the goals
and requirements of the GMA.

1 **Issue 10: AGRICULTURAL LAND DE-DESIGNATION**

2 Did the adoption of Amended Ordinance 2016-06-12 including the de-designation of 57
3 acres of agricultural land of long-term commercial significance in the La Center urban
4 growth area expansion and 111 acres in the Ridgefield urban growth area expansion,
5 violate RCW 36.70A... or is the de-designation inconsistent with the Clark County
6 comprehensive plan?

- 7
- 8 • The Board finds and concludes that FOCC has carried its burden of proof
9 showing the County failed to conduct an area- or county-wide analysis in
10 compliance with RCW 36.70A.050 and .060 and WAC 365-190-050.

11 **Issue 11: UPZONE AG / FR LAND FOR MORE DENSITY**

12 Did Amended Ordinance 2016-06-12's amendments to the comprehensive plan... to create
13 the Agriculture 10 (AG-10) District... to create the Forest 20 (FR-20) District... fail to
14 conserve farm and forest land... or are inconsistent with the comprehensive plan?

- 15
- 16 • The Board finds and concludes FOCC has carried their burden of proof that
17 reducing parcel sizes for agricultural and forestry lands will not meet requirements
18 in RCW 36.70A.060 or .070 nor does it meet the standards established in *King*
19 *County* where the County is to assure the conservation of agricultural lands and to
20 assure that the use of adjacent lands does not interfere with their continued use
21 for the production of food or agricultural products.

22 **Issue 13: NO "VARIETY" OF RURAL DENSITIES**

23 Did Amended Ordinance 2016-06-12's adoption of a single "Rural," comprehensive plan
24 designation, violate RCW 36.70A.... because the rural element fails to provide for a variety
25 of rural densities and rural uses?

- 26
- 27 • The Board finds and concludes, FOCC has carried its burden of proof showing
28 the County did not comply with RCW 36.70A.070(5) regarding a variety of rural
29 densities.

30 **Issue 18: PROCEDURAL ERRORS IN INDUSTRIAL LAND BANK DESIGNATION**

31 Did Amended Ordinance 2016-06-12, Ordinance 2016-04-03 and Ordinance 2016-05-03
32 violate RCW 36.70A.... by failing to comply with the procedural and substantive
requirements for industrial land banks?

- 33
- 34 • The Board finds and concludes FOCC has carried its burden of proof
35 demonstrating the County violated RCW 36.70A.367(2)(h) in regards to size
36 limitations for RILBs.

1 **Issue 19: DE-DESIGNATING 602 AG LAND ACRES**

2 Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A... or is the
3 ordinance inconsistent the Clark County comprehensive plan because it de-designated
4 approximately 602.4 acres of agricultural lands of long-term commercial significance?

- 5 • The Board finds and concludes FOCC carried their burden of proof demonstrating
6 the County failed to meet RCW 36.70A.060 and WAC 365-190-050

7 Under RCW 36.70A.302(1), the Board may determine that part or all of a
8 comprehensive plan or development regulations are invalid if the Board:
9

10 (a) Makes a finding of noncompliance and issues an order of remand under
11 RCW 36.70A.300;

12 (b) Includes in the final order a determination, supported by findings of fact
13 and conclusions of law, that the continued validity of part or parts of the plan
14 or regulation would substantially interfere with the fulfillment of the goals of
15 this chapter; and

16 (c) Specifies in the final order the particular part or parts of the plan or
17 regulation that are determined to be invalid, and the reasons for their
18 invalidity.

19 A Determination of Invalidity can only be issued if the Board finds Clark County's
20 adoption of Ordinance No. 2016-06-12 fails to comply with the GMA and that its continued
21 validity would substantially interfere with the fulfillment of the GMA's goals. GMA Planning
22 Goals 1, 2, and 8 in RCW 36.70A.020 are stated as follows:

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

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

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

31 **The Board hereby makes the following determinations:**
32

Invalidity Findings of Fact

1. La Center and Ridgefield claim to have annexed the de-designated agricultural lands of long-term significance that were part of newly enlarged Urban Growth Areas.
2. The record shows Clark County is processing rural rezones from lower density rural zones to higher density rural zones.
3. The record shows rezones and subdivisions will increase rural densities the proposed development may vest prior to exhaustion of appeals.
4. The record shows Clark County does not need expanded Urban Growth Areas in order to accommodate OFM-projected population or employment growth over the next 20 years.
5. Residential growth has occurred in Battle Ground, La Center, and Ridgefield at lower than planned for densities, which contributes to low-density sprawl in Clark County.
6. Land in the La Center and Ridgefield UGA expansions and the Industrial Land Banks continue to qualify as agricultural lands of long-term commercial significance.
7. Areas within the Ridgefield UGA expansion and the Industrial Land Banks has been found to be highly productive farm land.
8. The Urban Reserve Overlay enables urban growth on productive farm and forest lands.
9. Adoption of the amendments to *Clark County Comprehensive Plan* violate 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.
10. There is evidence in the record indicating a risk for project vesting in this case, which would render GMA planning procedures as ineffectual and moot -- if such project vesting was to occur, then the remand of this case to the County would be meaningless and there would be no practical way to address GMA compliance.

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Invalidity Conclusions of Law

1. The Growth Management Hearings Board made findings of noncompliance 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 and issued an order of remand under RCW 36.70A.300.
2. The continued validity of the expanded Urban Growth Area Boundaries of Battle Ground, La Center, and Ridgefield that were adopted by Clark County Amended Ordinance No. 2016-06-12 would substantially interfere with the fulfillment of the GMA Planning Goals 1 (Urban Growth), 2 (Reduce Sprawl), and 8 (Natural Resource Industries).

Determination of Invalidity

The particular parts of the Comprehensive Plan that are determined to be invalid are as follows:

1. The expansions of the Urban Growth Area Boundary for the City of Battle Ground shown on the 2016 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12, and also shown on Figure 12 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.
2. The expansions of the Urban Growth Area Boundary for the City of La Center shown on the 2016 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12, and also shown on Figure 14 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.
3. The expansions of the Urban Growth Area Boundary for the City of Ridgefield shown on the 2016 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County Amended Ordinance No. 2016-06-12, and also shown on Figure 15 of Appendix B attached to the Clark County Comprehensive Growth Management Plan 2015-2035.

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VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board Orders:

- 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.

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Item	Date Due
Compliance Due	September 19, 2017
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	October 3, 2017
Objections to a Finding of Compliance	October 17, 2017
Response to Objections	October 27, 2017
Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 7579646#	November 7, 2017 10:00 AM

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The County's Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 30 pages for Objections to Finding of Compliance, and 5 pages for the Response to Objections.

27
28

So ordered this 23rd day of March, 2017.

29
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Nina Carter, Board Member

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Raymond L. Paoella, Board Member

1 **Concurrence by Board Member Roehl:**

2 I add the following only to clarify my understanding of chapter 365-196 WAC and to
3 add that understanding for the benefit of future petitioners. In my opinion, allegations of
4 violations of that chapter merit little discussion or analysis. Any extensive analysis, together
5 with statements such as the chapter “requires” anything, implies the chapter carries some
6 regulatory weight. It does not. The chapter constitutes “procedural criteria”. As such, a
7 challenger cannot establish a violation.³²² By including consideration of a petitioner’s
8 allegations of violations of this chapter of the Washington Administrative Code, the Board
9 implies a jurisdiction can violate the chapter. The Board’s jurisdiction is limited, in the
10 context of this case, to determining whether the County’s actions are in compliance with the
11 goals and requirements of chapter 36.70A RCW. While the Board considers the procedural
12 criteria, determinations of compliance must be based on requirements of the GMA itself.
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William Roehl, Board Member

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19 **Note: This is a final decision and order of the Growth Management Hearings Board**
20 **issued pursuant to RCW 36.70A.300.**³²³
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³²² WAC 365-196-030 Applicability (1) Where these guidelines apply.... (2) Compliance with the procedural
25 criteria is not a prerequisite for compliance with the act. This chapter makes recommendations for meeting the
26 requirements of the act, it does not set a minimum list of actions or criteria that a county or city must take.
27 Counties and cities can achieve compliance with the goals and requirements of the act by adopting other
28 approaches. (3) How the growth management hearings board use these guidelines. The growth management
29 hearings board must determine, in cases brought before them, whether comprehensive plans or development
30 regulations are in compliance with the goals and requirements of the act. When doing so, board must consider
31 the procedural criteria contained in this chapter, **but determination of compliance must be based on the**
32 **act itself. (Emphasis added)**

³²³ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.
A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be
served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC
242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the
Growth Management Hearings Board is not authorized to provide legal advice.