

Clark County Comprehensive Plan

Agricultural Resource Land
Issue Paper 1.0, April 26, 2018

Purpose

The purpose of this issue paper is to provide regulatory and historical context related to the designation of agricultural resource land in Clark County, WA.

Comprehensive Planning in Clark County

The following occurred prior to the adoption of the Growth Management Act of 1990.

- 1935 Clark County established its first county planning department and planning commission under Chapter 35.63 RCW.
- 1961 In 1959, the state legislature approved Chapter 36.70 RCW, which applied specifically to county, regional and joint planning programs. Clark County adopted its first Comprehensive Plan (1961 Plan) on April 27, 1961 with the corresponding map on October 2, 1961. [Commissioners' Journal book, page 25929 and 26235 respectively].
- 1971 The county adopted an urban services boundary for the City of Vancouver. The boundary served to limit the extension of sewer, water and roads while establishing a planning area for the determination of future services.
- 1979 On May 10, 1979, Clark County adopted the Clark County Comprehensive Plan (1979 Plan); Volume 1 and 2. The 1979 Plan included a map that identified appropriate levels of development on all lands in unincorporated Clark County and adopted urban area boundaries for the cities of Vancouver, Camas, Washougal and Battle Ground. [1979 Plan Map, page 2].

In rural areas, the 1979 Plan designated and provided policies to encourage the preservation of forest, agricultural and mining land while setting varying levels of housing densities for rural residential areas. The 1979 Plan stated that "agricultural land was considered an irreplaceable natural resource and concerted community effort should be made to protect it as a basic element of the local economy." [1979 Plan, Vol. 2, page 10].

The following policies were used to prepare the 1979 Plan:

1. "To encourage the preservation of agriculture uses on land which is best suited for agricultural production;
2. To encourage the maintenance and creation of those farm sizes needed to accommodate the types of agriculture which are suited to Clark County;
3. Provide for other limited activities which can be considered accessory to agricultural uses (e.g., feed and seed, tractor sales); and
4. Agricultural activities should be considered the most reasonable use of land in areas subject to severe periodic flooding." [1979 Plan, Vol. 2, page 10].

The 1979 Plan designated agricultural land throughout Clark County stating that "the basic philosophy which serves as the cornerstone of this element is that, whenever

possible, those areas which are most suitable for agriculture should be used for food and fiber production. When used here, the term, 'suitability,' reflects soil type, drainage improvements, ownership patterns and limitations to development." [1979 Plan, Vol. 2, page 10]. The 1979 Plan noted that it was "important to protect prime and good agricultural soil because this soil type is limited." [1979 Plan, Vol. 2, page 10]. In the existing conditions section, the 1979 Plan noted that the "production of agricultural land is based largely on the suitability of soils to grow crops for both livestock feed and human consumption." [1979 Plan, Vol. 1, page 9]. "Agricultural soil suitability ratings developed by the USDA Soil Conservation Service showed that "agricultural lands with suitability ratings of prime and good make up over sixty percent (60%) of productive farm lands in Clark County." [1979 Plan, Vol. 1, page 9].

To accomplish the continuation of agricultural productivity, the 1979 Plan proposed a "minimum lot size of twenty acres in both agriculture and timber designated areas. Clustered housing or rural planned unit developments were permitted." [1979 Plan, Vol. 2, page 10]. The 1979 Plan stated that "clustering of housing in this manner could help retain sixty to eighty percent (60-80%) of these lands in open, agricultural or forest use." [1979 Plan, Vol. 2, page 11]. The 1979 Plan noted that these policies were intended to protect the rural character of rural lands and focus urban development within urban areas.

The 1979 plan also included chapters related to transportation planning (adopting an arterial road plan as a part of the countywide plan map), identifying heritage areas and creating policies on improving community appearance. [RES. 1979-05-46]. The 1979 Plan stated that its planning horizon was "intended to be a ten (10) year period for the development of Clark County." [1979 Plan, Vol. 2, page 3]. In addition, the 1979 Plan could be updated annually in light of changing circumstances and a major reevaluation would occur every five (5) years.

1980 On June 11, 1980, Clark County adopted a countywide zoning ordinance and map. [RES. 1980-06-80].

Growth Management in Clark County 1990 - 2018.

1990 The state legislature adopted the Growth Management Act (GMA) as Chapter 36.70A RCW. The GMA responded to concerns about rapid population growth, increasing development pressures, increased traffic congestion, pollution, school overcrowding, urban sprawl and the loss of rural lands. The GMA required counties to adopt comprehensive land use plans, preliminary classifications, designations and enact development regulations on or before July 1, 1993. [Laws of WA, 1990 1st Ex. Session, Section 5, page 6]. Under new Section 5 Guidelines to Classify Agriculture, Forest and Mineral Lands and Critical Areas, the GMA instructed the Washington State Department of Commerce (Commerce) to adopt guidelines under Chapter 34.05 RCW to guide the classification of agricultural lands. Section 5 required that Commerce consult with the department of agriculture regarding guidelines for agricultural lands and consult with interested parties. Commerce was further instructed to consider public input obtained at public hearings when adopting the minimum guidelines. [Laws of WA, 1990 1st Ex. Session, Section 5, page 6]. In April 1991, Commerce adopted guidelines for designation of agricultural lands in Chapter 365-190 WAC..

1992 Clark County adopted countywide planning policies pursuant to RCW 36.70A.210 on July 22, 1992. [ORD. 1992-07-60].

1993 The Community Framework Plan (CFP) was adopted on May 26, 1993. [ORD. 1993-05-41]. This forward looking document provided policy direction in the development of the 1994 Plan and addressed regional issues. The county adopted the following agricultural policies in the framework document:

3.0 “Resource Lands - These policies are to ensure the conservation of agricultural, forest and mineral resource lands and protect these lands from interference by adjacent uses which affect the continued use, in the accustomed manner, of these lands for production of food, agricultural products, timber, or the extraction of minerals.

3.1 Countywide Planning Policies

a. The county and each municipality shall cooperate to ensure the preservation and protection of natural resources, critical areas, open space and recreational lands within and near the urban area through adequate and compatible policies and regulations.

3.2 Framework Plan Policies

3.2.0 The county and its jurisdictions at a minimum are to consider agricultural land based on WAC 365-190-050.

3.2.1 The county and its jurisdictions at a minimum are to consider forest land based on WAC 365-190-060.

3.2.2 The county and its jurisdictions at a minimum are to consider mineral resource lands based on WAC 365-190-070.

3.2.3 Identify agricultural land on parcels currently used or designated for agricultural use and provide these parcels special protection.

3.2.4 Identify forest land on parcels currently used or designated for forest use and provide these parcels special protection.

3.2.5 Encourage the conservation of large parcels which have prime agricultural soils for agricultural use and provide these parcels special protection.

3.2.6 Establish standards for compatible land uses on land designated for agriculture, forest and mineral resource uses.

3.2.7 Review cluster residential development on agriculture or forest land to ensure these developments continue to conserve agriculture and forest land.

3.2.8 Develop a range of programs (such as purchase of development rights, easements, preferential tax programs, etc.) to provide property owners incentives to maintain their land in natural resource uses.

3.2.9 Mineral, forestry and agricultural operations are to implement best management practices to minimize impacts on adjacent property.

- 3.2.10 Establish buffers for natural resource lands (agriculture, forest, or mineral lands) and urban and rural uses to lessen potential impacts to adjacent property.
- 3.2.11 Establish right to farm or harvest ordinances to protect the continued operation of natural resource lands.
- 3.2.12 Public facility and/or utility availability are not to be used as justification to convert agriculture or forest land.” [CFP, pages 22-23].

1993 The Board of County Commissioners (BOCC) convened a Rural and Natural Resource Lands Advisory Committee charged with classifying and designating agricultural and forest resource lands based on the minimum guidelines contained in Chapter 365-190 WAC. Two subcommittees were formed to streamline the effort: the Farm Focus Group and the Forest Focus Group. Each subcommittee issued reports in December 9, 1993.

The Farm Focus Group Final Report (FFGFR) noted that the Farm Focus Group generated countywide core area maps based on state guidelines. Quality soils were the primary factor based on the land capability classification system of the US Dept. of Agriculture Soil Conservation Service. The effects of proximity to population areas and the possibility of more intense uses of the land were important factors. The state guidelines provided ten indicators to assess these factors:

1. “the availability of public facilities;
2. tax status;
3. the availability of public services;
4. relationship or proximity to urban growth areas;
5. predominant parcel size;
6. land use settlement patters and their compatibility with agricultural practices;
7. intensity of nearby land uses;
8. history of land development permits issued nearby;
9. land values under alternative uses; and
10. proximity to markets.” [FFGFR, page 1].

Two position statements were developed. One position “concluded that with the exception of the Vancouver Lake lowlands, agriculture is generally no longer economically viable in most parts of Clark County. The other position concluded that agriculture is economically viable in Clark County and should be conserved.” [FFGFR, page 3].

Approximately 35,916 acres were identified that exhibited characteristics common to both agriculture and forest designation and as such were not included in either the Farm Focus Group or Forest Focus Group reports. The Rural and Natural Resource Lands Advisory Committee created a new hybrid resource designation, Agri-forest to designate lands which exhibited characteristics common to both agriculture and forest. The Rural and Natural Resource Lands Advisory Committee applied this designation in areas north of the East Fork of the Lewis River during the development of the Draft Supplemental Impact Statement. A portion of this work was completed in time to be incorporated into the Final Supplemental Impact Statement.

The balance of the analysis was completed by staff for other areas adjacent to land designated Forest Tier I and property south of the East Fork of the Lewis River. Staff added

the Agri-forest designation based on the following reasons, according to a memo dated October 13, 1994 from Craig Greenleaf, Planning Director to the Planning Commission:

1. The committee separated the selection process into independent determinations of agriculture and forestry characteristics, leaving some land inappropriately considered;
2. The Farm Focus Group did not include heavily forested lands; some of those lands were commingled with agricultural lands and were overlooked by both focus groups;
3. Factors which are not objective tended to carry less weight (e.g. settlement patterns and their compatibility with agricultural practices).
4. The Forest Focus Group discounted the role of soils as a factor because they were found to be uniformly of high quality; and
5. The Farm Focus Group's failure to agree on "long term commercial significance" led to severe difficulty in defining agricultural lands on a consensual basis and narrowed the committee's outcome to things over which agreement was reached.

1994 The Clark County 20-year Comprehensive Growth Management Plan 1994-2014 (1994 Plan) designated a total of 41,229 acres, or 64.42 square miles, of urban growth areas. [ORD. 1994-12-47 and 1994-12-53].

A total of 85 different petitioners filed 61 separate petitions that challenged the 1994 Plan to the Western Washington Growth Management Hearings Board (GMHB). [GMHB Case No. 95-2-0067]. One of the appellants, Clark County Citizens United (CCCU), raised the following resource related issues in its petition to the GMHB:

1. Did the county's designation of agricultural resource lands comply with the GMA?
2. Did the county's designation of agri-forest resource lands comply with the GMA?
3. Did the county's designation of forest resource lands comply with the GMA?

CCCU raised the following issues related to the parcel sizes in the rural area:

1. Did the county's designation of land use densities in rural areas comply with the GMA?
2. Does a comprehensive plan that would make more than seventy percent (70%) of the properties in rural areas non-conforming comply with the GMA?
3. Does a comprehensive plan which bases its land use densities strictly on OFM population projections comply with the GMA, when the county knows or should have known that those population projections underestimate anticipated population growth?
4. May the county disregard its adopted framework plan policies when it adopts a comprehensive plan under the GMA and, if not, is the comprehensive plan consistent with the county's adopted framework plan policies?
5. Does a comprehensive plan that ignores existing conditions in rural areas comply with the GMA?
6. Did the county comply with the requirements of the State Environmental Policy Act (SEPA), RCW Ch. 43.21C?

1995 In its Final Decision and Order (95FDO) dated September 20, 1995; the GMHB remanded the 1994 Plan for inconsistency between population projections and capital facilities planning. However, the GMHB affirmed the county's designations of agricultural, forest and agri-forest resource lands.

“In classifying and designating agricultural and forest lands, Clark County not only considered WAC 365-190-050 and -060, but in fact used them exclusively.” [95FDO, page 11].

“Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were lands of ‘long-term commercial significance.’ Petitioners have failed to carry their burden of proving the decision was an erroneous application of goals and requirements of the GMA. The county chose a decision that was within the reasonable range of discretion afforded by the act.” [95FDO, page 14].

On the issue of parcel size, the GMHB decision stated there was no evidence in the record to support 5-acre minimum parcel size designation north of the rural resource line (a delineation by the East Fork of the Lewis River that recognized the differences in the character and parcelization between the area north of the river and that south of the river). The GMHB had two major concerns. First was that the 5-acre size was insufficient to buffer adjacent resource lands, and second was that significant parcelization had occurred in the rural and resource areas between 1990 and 1993.

“At the time of adoption of the emergency moratoria on clusters, subdivision planned unit developments, and large lot developments in April of 1993, an estimated 19 square miles of segregations had occurred since May 1, 1990... [FDO, page 21-22]. There are implementation measures the county could take to level this playing field and reinject some fairness into the situation... If they do not, the unfair position that many of these site-specific petitioners find themselves in will be perpetuated.” [95FDO, page 25]. (Emphasis added.)

“...the Farm Focus Group established what became known as the ‘rural resource line’. South and west of this resource line, the focus group, staff and the Planning Commission recognized that segregations and parcelizations had occurred involving thousands of lots ranging from 1 to 2.5 acres.” [95FDO, page 22].

“A major omission that the BOCC made in establishing a 5-acre minimum lot size for all rural areas was ignoring the differences that existed north and south of the ‘resource line’. [95FDO, pages 22-23].

“The BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990.” [95FDO, page 24].

1997 CCCU and others appealed the GMHB decision to Clark County Superior Court. Judge Poyfair issued a Findings of Fact, Conclusions of Law and Order (FOF) No. 96-2-00080-2 on April 4, 1997 that:

1. The agri-forest designation was invalid;

“The agri-forest designations violate the GMA.... Furthermore, there is no substantial evidence in the record to support the designation of agri-forest lands under the GMA.” (FOF, page 5). “...failure to solicit meaningful public input for the agri-forest resource lands violates the public participation...” [FOF, page 5].

2. The EIS issued by the county violated SEPA;

“The agri-forest resource land designations were disclosed subsequent to the publication of the final Plan EIS and were not disclosed or discussed in any way in the EIS alternatives.” [FOF, page 5].

“The Board’s decision to uphold the adequacy of the EIS absent additional environmental analysis regarding the agri-forest designations and changes to the pattern of rural development was clearly erroneous.” [FOF, pages 5-6].

3. Agricultural resource land designation had been lawful.

“There is substantial evidence in the record to support the county’s designation of agricultural resource lands.” [FOF, page 5].

4. On the issue of parcel size, the court further ruled that the removal of rural activity centers was not addressed in the EIS; and

“...the county needed to provide a variety of rural densities to be compliant with the GMA, and that could be achieved by designating rural centers as envisioned in the Community Framework Plan.” [FOF, page 5].

5. Rural development regulations were inconsistent with GMA.

“The eradication of the centers and their replacement with a uniform lot density violates the planning goal requiring a variety of residential densities.” [FOF, page 6].

“The only requirement for rural areas in the GMA is that growth in rural areas not be urban in character. While the GMA contains no restrictions on rural growth, it does require a variety of residential densities.” [FOF, page 6].

“There is no requirement in the GMA that the OFM projections be used in any manner other than as a measure to ensure urban growth areas are adequately sized and infrastructure in those growth areas is provided for.” [FOF, page 6].

The Board decision, however, compelled the county to downzone substantial portions of the rural area in order to meet the Board’s apparent requirements.” [FOF, page 6].

“The Board’s interpretation was erroneous, and the county’s decision to follow the Board’s lead was unfortunate.” [FOF, Pages 6-7].

The county did not appeal the Superior Court decision and instead began a process to comply with the court’s order on remand to the GMHB. The first step was to appoint two task forces; one to deal with the agri-forest designation and the other with establishing rural centers.

1998 The Rural Center Task Force presented their recommendations on establishing rural centers. The BOCC accordingly established the rural centers of Amboy, Chelatchie Prairie, Dollars Corner, Meadow Glade, Hockinson and Brush Prairie. [ORD. 1998-06-20].

1998 The Agri-forest Focus Group reported its recommendations on re-designating approximately 35,000 acres of agri-forest designated resource lands. The task force recommended that approximately 99% of the land should be designated Rural (R-5, R-10 and R-20). R-10 and R-20 were newly created in order to provide a variety of rural densities and to buffer adjacent resource lands, primarily north of the rural resource line. Certain members of the focus group issued two minority reports. One report questioned the designation of 3,500 acres to rural as opposed to resource use and the other recommended 5- and 10-acre zoning similar to the 1979 Plan. The BOCC adopted the Agri-forest Focus Group majority recommendation. [ORD. 1998-07-19].

1999 On May 11, the GMHB issued a Compliance Order (CO) No. 95-2-0067 upholding the creation of six rural center designations and the change to Rural designations for approximately 35,000 acres of agri-forest lands; except for the 3,500 acres mentioned in the minority report, which was remanded back to the county.

"We find that Clark County is not in compliance with the GMA as relates to the 3,500 acres. In order to comply with the Act, the county must review the 3,500 acres in light of the Supreme Court's holding in Redmond and the appropriate criteria stated therein to determine if RL [resource land] designation is appropriate." [CO, page 14]. (The State Supreme Court had previously ruled in Redmond v. CPSGMHB that current commercial production is not required for resource designation.)

No party appealed the 1999 compliance order. The county initiated a process to review the 3,500 acres.

2003 The county completed a technical review on the remaining 3,500 acres. The technical review found that a majority of the parcels constituting the current 3,500 acre remand were not associated with designated resource areas. The county applied a non-resource designation of R-5, R-10 or R-20 to those properties. [RES. 2003-09-12].

2004 The periodic update of the Clark County 20-year Comprehensive Growth Management Plan 2004-2024 (2004 Plan) added 6,124 acres or 9.57 square miles to urban growth areas. The county did not de-designate agricultural resource land. [ORD. 2004-09-02]. Several parties challenged the 2004 Plan. The 14 appellants argued that a last minute reduction in the assumed population growth rate had undersized the urban growth boundaries. [GMHB Case No. 04-02-0038c].

2005 The county launched a two year update process that reopened the 2004 Plan. Based on an agreement between the appellants and the county; the cities of Battle Ground and Vancouver and the development industry petitioners withdrew their appeals. The August 22, 2005 GMHB Final Decision and Order (05FDO) upheld the 2004 Plan, finding:

"The county's development regulations to conserve agricultural lands and prevent interference from incompatible uses are unchallenged and therefore deemed compliant..." [05FDO, page 48].

2006 Order Finding Compliance and Closing Case No. 95-2-0067c. The appeal of the 1994 Plan was ended, and the 1994 Plan was found to be compliant with GMA.

2007 The 2007 Plan amendment adjusted the growth assumption in the 2004 Plan from 1.67% annually to 2.0% annually and added 12,023 acres to urban growth areas, most of which

was newly zoned for employment. [ORD. 2007-09-13]. John Karpinsky, the Clark County Natural Resources Council, and Futurewise appealed the 2007 Plan, arguing that the county had erroneously moved 4,351 acres from agricultural resource land to non-resource designations and included those lands within urban growth areas. [GMHB Case No. 07-2-0027].

2008 In its Amended Final Order and Decision, dated June 3, 2008 (08FDO), the GMHB ruled on the de-designation of 19 areas of agricultural resource lands of long-term commercial significance. The GMHB affirmed the 2007 Plan with regard to 8 of the 19 areas, and remanded the decision to the county with regard to the other 11 areas.

1. Agricultural conservation's role in managing growth.

"There is no doubt that the GMA sees agricultural lands and the industry that relies on them as something special given the duty set forth to designate agricultural land and conserve such land in order to maintain and enhance the agricultural industry." [08FDO, page 33].

"The pressure to convert these lands, especially in areas impacted by population growth and development is even more prevalent today (2008). The GMHB recognizes that counties and cities of WA face a multitude of difficult and demanding challenges when determining how their communities will grow....WA's limited, irreplaceable agricultural lands are at the forefront of this mandate..." [08FDO, page 33].

"The GMA, through RCW 36.70A.020 (8), -060, -070, -.170, and -.177 direct counties and cities to protect agricultural lands by:

1. *Designating agricultural lands of long-term commercial significance (RCW 36.70A.170);*
2. *Assuring the conservation of agricultural land (RCW 36.70A.060);*
3. *Assuring that the use of adjacent lands does not interfere with the continued use of agricultural lands for agricultural purposes (RCW 36.70A.060);*
4. *Conserving agricultural land in order to maintain and enhance the agricultural industry (RCW 36.70A.177);*
5. *Discouraging incompatible uses (RCW 36.70A.020); and*
6. *Adopting development regulations to implement these mandates (RCW 36.70A.060)." [08FDO, page 33].*

"The question of the meaning of agricultural lands, under the GMA, was clarified by the Supreme Court in the Lewis County v. WWGMHB decision. In that case, the proper definition of agricultural land was set forth in the court holding; we hold that agricultural land is land:

- a. *Not already characterized by urban growth*
- b. *That is primarily devoted to commercial production of agricultural 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.*

This definition emphasizes the three required elements of agricultural lands - that it is not already characterized by urban growth, that it is primarily devoted to agricultural production, and has long-term commercial significance for agricultural production.” [08FDO, page 34].

2. In assessing relationship of the GMA agricultural goal to the economic development goal, the GMHB cited the Washington Supreme Court’s decisions in King County v. CPSGMHB and Lewis County v. WWGMHB:

“The Board finds that the Supreme Court held the GMA creates a mandate to designate agricultural lands because the Act includes goals with directive language and specific requirements. The Board finds that the GMA’s economic development goal cannot supersede the agricultural mandate defined by the Supreme Court. The Supreme Court, in a later case, also set out a three-part test for evaluating agricultural lands.” [08FDO, page 3].

Prior to issuance of the GMHB decisions, the cities of Camas and Ridgefield annexed approximately 327 acres and 200 acres, respectively, of former agricultural lands.

- 2009 The county and other parties appealed to Clark County Superior Court. [Case No. 08-2-03625-5c]. On June 12, 2019, Judge Harris issued a ruling which affirmed the GMHB in part, reversed it in part, and dismissed the appeal of annexed lands in Camas. Clark County then took compliance action by redesignating two areas as agricultural land. [ORD. 2009-12-15].
- 2011 Futurewise and the Clark County Natural Resources Council then appealed to the Court of Appeals. [No. 39546-1-II]. The Court of Appeals on April 13, 2011 remanded three of the eleven areas found non-compliant by the GMHB and affirmed the GMHB as to the others, including with regard to three areas that had been annexed by cities and had not been the subjects of appeal to the Court of Appeals. Clark County v. WWGMHB, 161 Wash. App. 204 (2011).
- 2013 Ultimately, the Washington Supreme Court granted review, considering only an issue involving the Court of Appeals’ ruling on un-appealed issues relating to the annexed areas. [No. 85989-2]. The Supreme Court vacated the Court of Appeals decision, holding that the Court of Appeals had improperly ruled on issues that no party had appealed. Clark County v. WWGMHB, 177 Wn.2d 136 (2013). Two of the justices issued a concurring opinion that agreed in the result, but for a different reason. The concurrence stated that after annexation by the cities, the designation of the annexed lands was moot, because the county could take no action to regulate those lands. The annexed lands remain annexed and urban.

In the course of the appeals and compliance processes, the courts ruled that the de-designation of 1,500 acres of agricultural land had been noncompliant and invalid. The county removed those lands from urban growth areas and re-designated them as agricultural lands. The 1,500 acres had been included in the Battle Ground, Camas, Ridgefield, Vancouver, La Center, and Washougal urban growth areas.

- 2014 On March 11, 2014, the GMHB entered an order on remand that upheld the de-designations of two of the remaining three areas. On September 4, 2014, after the county removed the last area from the UGA and re-designated it for agriculture, the GMHB found

that Clark County was in compliance with GMA. [ORD. 2007-09-13]. [ORD. 2009-12-15]. [ORD. 2014-07-03].

- 2016 The Clark County 20-year Comprehensive Growth Management Plan 2015-2035 (2016 Plan) adopted two rural industrial land bank (RILB) sites and reduced the minimum lot size for agriculture resource lands from twenty (20) acres to 10 acres (AG-20 to AG-10) with an optional cluster provision. The cities of Battle Ground, La Center and Ridgefield expanded their urban growth boundaries. [ORD. 2016-06-12]. CCCU, Futurewise and Friends of Clark County (FOCC) appealed the 2016 Plan. [GMHB Case No. No. 16-2-0005c].
- 2016 Prior to issuance of the GMHB decision, the cities of La Center and Ridgefield annexed approximately 57 acres and 111 acres, respectively, of land that had been de-designated from agricultural use.
- 2017 In its Final Decision and Order dated March 23, 2017 (17FDO), the GMHB ruled on 25 issues raised by the appellants. The county prevailed on 18 issues, including the following:
1. All of CCCU's issues and arguments, including complaints about participation, timing, SEPA, property rights, density in the rural area, population projections and allocation, cluster remainders, the supposed rural vacant buildable lands model and the background reports.
 2. FOCC's issues about the Capital Facilities Plan and funding, critical areas ordinances, the RILB deadline and annexation.

The GMHB held that the county was noncompliant on certain issues raised by FOCC and Futurewise, based on the following reasoning:

1. Urban Growth Area (UGA) expansions – each of the cities had surplus lands and no need for an expanded UGA. The county and the cities also failed to take reasonable measures to address land use issues related to sizing for each UGA.
2. De-designations for UGA expansions by Ridgefield and La Center – the county failed to conduct an area-wide analysis of lands for these de-designations.
3. Urban reserve overlay – the GMHB described the overlay areas as “UGA enlargements.”
4. Up-zoning to greater density in the resource zones – the GMHB held that this action did not protect and enhance the agricultural and forest industries.
5. Only one comprehensive plan designation for rural lands (outside urban centers) – the GMHB found that having one comprehensive rural lands designation implemented by R-5, R-10 and R-20 zones was not compliant with GMA.
6. RILB creation – the GMHB held that the county had not identified the maximum size of the RILB as required by GMA.
7. De-designation for the RILB – The GMHB held that the de-designation of agricultural resource land had not been proper because:

*“WAC 365-190-050(5) states that the final outcome of a designation 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.” (Emphasis added) Here, the county reviewed four sites and selected*

602 acres within one site that may or may not have a key role to play in the agricultural industry in Clark County or the area. The county in 2004 found this land had long-term significance for agriculture when it designated the land pursuant to the requirements of RCW 36.70A.170.” [17FDO, page 78].

“..the county failed to complete an area-wide analysis of the impacts on the agricultural industry...” [17FDO, page 41].

“...de-designation decisions did not comply with WAC 365-196-050 in which a countywide or area-wide study creates a ‘process that 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**.’” (Emphasis added) [17FDO, page 42].

The GMHB initially found that the plan was invalid only with respect to the de-designations for urban lands and the UGA expansions for the cities of Battle Ground, La Center and Ridgefield.

“WAC 365-190-050(3)(c)(v) lists one criteria for designating agricultural land as ‘[r]elationship or proximity to urban growth areas,’ but this does not mean that every piece of land abutting an UGA must be converted to urban uses. The Legislature intended for counties and cities to identify, designate and conserve agricultural land in RCW 36.70A.060 and that jurisdictions ‘shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with ...these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.’ The GMA was not intended to allow a domino effect of urbanization of parcel next to parcel. Carried to its logical end, natural resource lands would never be protected. Without designating and protecting natural resource lands, there is nothing to prevent the continuing loss of these lands.” [17FDO, page 80].

In response, the county adopted an ordinance on April 25, 2017 that suspended land divisions within lands designated agriculture, forest tier II and rural, and zone changes within those lands pursuant to CCC 40.560.020. [ORD. 2017-04-14]. In June, that suspension was made permanent. [ORD. 2017-06-04]. On July 11, 2017, the county amended the 2016 Plan, zoning maps and county code as follows:

1. Returning resource designations and zoning to AG-20 and FR-40;
2. Returning rural comprehensive plan designations to Rural-5, Rural-10, and Rural-20.
3. Repealing the urban reserve use list.
4. Returning the Battle Ground UGA to its pre-update status.
5. Naming a maximum size of the RILB. [ORD. 2017-07-04].

2017 On September 26, 2017, the county amended the 2015 Buildable Lands Report in order to reflect recent development in Battle Ground, Ridgefield and La Center, and measures taken by those cities to achieve the densities projected for them. [RES. 2017-09-13].

2018 On January 10, 2018, the GMHB issued an Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidly, Stay Order and Supplement the Record (OC). Concerning the minimum lot sizes on agricultural and forest lands, the GMHB found that:

“With the county amendments in Ordinance 2017-07-04 regarding agricultural and forest lands, the Board finds and concludes that the county is now in compliance with RCW 36.70A.060 and RCW 36.70A.070.” [OC, page 12].

The GMHB broadened its determination of invalidity, stating that the county had taken no action to cure its noncompliance on the following issues:

1. The county had not demonstrated need for the UGB expansions in Ridgefield and La Center.
2. The county did nothing to cure the unlawful de-designations of agricultural lands that Ridgefield and La Center brought into their UGBs.
3. The county did nothing to cure the unlawful de-designation of 602 acres of agricultural land of long-term commercial significance (ALLTCS) for the RILB.

“Clark County was before this Board in 2007 in a similar challenge of the county’s process to de-designate approximately 4,000 acres of ALLTCS, then expand urban growth area boundaries to encompass those newly de-designated lands, and then various cities within Clark County rapidly annexed the former ALLTCS. The annexations took place while this Board was hearing the case and before it could render its decision about the county’s ALLTCS de-designation process. Eventually, the Court of Appeals found some of the ALLTCS should not have been de-designated and attempted to address the timing of GMA appeals and city annexations, but our Supreme Court vacated that portion of the Court of Appeals’ decision which addressed the timing of appeals and annexations. [OC, pages 13-14].

Here the Board is once again presented with a challenge of the county’s process to change agricultural lands into urban or industrial lands. In 2016, as in 2007, the county de-designated ALLTCS abutting the cities of La Center, Ridgefield and Battle Ground as well as in proposed industrial areas. Then the county expanded the cities’ UGAs to encompass the newly de-designated agricultural lands and designated two rural industrial land banks. And, as in 2007, while appeals were pending before this Board challenging the county’s de-designation action, the cities rapidly annexed the former ALLTCS land from the expanded UGAs and zoned it for residential uses. The county and city processes have arguably denied recourse for challengers of ALLTCS de-designation. [OC, page 14].

In the present case, while the Petitioners challenged the validity of the annexations themselves (Issue 7), the Board concluded it lacked jurisdiction to rule on that question. The Board did, however, find the county out of compliance with the GMA on Issue 5 (unwarranted UGA expansions) and Issues 10 and 19 (non-compliant de-designation of ALLTCS).” [OC, page 14].

The county has appealed the unfavorable aspects of the GMHB decision to the Court of Appeals. FOCC and Futurewise have appealed the findings of compliance regarding the minimum lot sizes in the Rural and Resource lands. CCCU has appealed with respect to all of its issues. The parties will brief the issues to the Court of Appeals through September, 2018. Clark County’s next compliance report is due to the GMHB on July 23, 2018.

The next periodic review of the county’s comprehensive plan is due June 30, 2024.