FRIENDS OF CLARK COUNTY
PO BOX 513
VANCOUVER, WASHINGTON 98666
friendsofclarkcounty@tds.net

June 19, 2017

Dr. Oliver Orjiako, Director
Clark County Community Planning
1300 Franklin Street
3rd Floor
Vancouver, Washington 98660

Re: Comments for Council Hearing Scheduled for June 20, 2017 filed on behalf of Friends of Clark County

Dr. Orijako:

The staff report dated June 20, 2017 accurately states that the original 20 acre lot size minimums were imposed by the County, *See infra*, as part of the original remand process (this has become known as the *Poyfair* remand). However, the staff report incorrectly states that the issue of the reduction of R20-R10 was not appealed. tFOCC and FW challenged the reduction as part of Issue 11(a) of our appeal of the County's decision.[1] However, the GHB did not specifically address it in its FDO.

The 20-acre lot size minimum grew out of the remand proceedings in 1997 and 1998 regarding the Agri-Forest designation that was struck down by Judge Poyfair. The task force started in December 1997 and ended in March 1998. The Task Force issued a majority opinion, a minority opinion and an alternative opinion. The Planning Commission recommended adoption of the minority report but the Board adopted the majority report (which had a 75% consensus). As to the remand on the agri-forest zone, the public participation process was robust:

> The BOCC began its work regarding the 35,000 acres by appointing a 13-member task force composed of a variety of stakeholders with interest in this issue. The public participation process involved 17 different task force meetings at which public comment was solicited and received, four separate open house meetings resulting in written comment, two separate direct mailings to all

[1] Did Amended Ordinance 2016-06-12's amendments to the comprehensive plan including the land use,

> property owners within the 35,000 acres, newsletters, press releases, ads and use of the County website. After the task force issued its final report to the planning commission (PC), the PC held a public hearing and issued a recommendation to the BOCC. The BOCC then held two public hearings on May 19, 1998, and May 28, 1998, and held four separate deliberative open meeting sessions. The public participation in this record was shown to be not only "early and continuous" but also extensive. The County should be justifiably proud of the manner in which it conducted this public participation process.
>
> *See WWGMHB* #95-2-0067 Compliance Order ***(May 1999)***[2]

The WWGMHB found that the county was compliant with its designation of all but 3,500 of the 35,000 acres it designated on Remand. NO party took exception to, or appealed, that 1999 Compliance Order on Poyfair's Remand. Therefore, the actions taken by the County are deemed valid. The Poyfair Remand formally ended in 2006 when the WWGMHB sent out notice to all parties requesting objections to the whether or not the County had complied with Judge Poyfair's remand. No party replied and the WWGMHB held that "Based upon the foregoing, COMPLIANCE on the remaining issues in this case is found and the case is CLOSED" (upper case in original).[3]

It is important to note that the 20-acre parcels were originally created by the County as buffers for resource lands so that the county could become compliant with the FDO and Poyfair remand. Having those buffers was a major factor in the County achieving compliance in the 90s.

In support of the above, I am attaching the staff report I just found from June 26, 2014 from yourself to the Board of County Councilors. In that report, you stated:

> Regarding resource designations of agriculture and forest land both the GMHB and Superior Court decisions affirmed the County's designation as compliant with the GMA. The AG-20, FR-40 and FR-80 in place today are the same as adopted in 1994 and upheld by both the GMHB and Superior Court. The Agri-Forest designation was deleted and ***those 35,000 acres were re-designated to R-5, R-10 and R-20 uses to comply with the Court's decision***. The updates of the 2004 and 2007 comprehensive plans re-adopted the previous land use actions consistent with GMA. While Clark County has been successful in some instances

[2] http://www.gmhb.wa.gov/LoadDocument.aspx?did=871
[3] http://www.gmhb.wa.gov/LoadDocument.aspx?did=263

> in de-designating agricultural lands to non-resource uses, the requirements for doing so are very difficult to meet. Whether to re-consider resource designations and rural lot sizes is ultimately a policy decision for the BOCC in compliance with state law (emphasis supplied)

Your statement above is supported, in part, by the original FDO in *Achen v. Clark County,* where the WWGMHB found the county to be non-compliant regarding the buffering of resource lands. The WWGMHB concluded that in order to become compliant, the County needed to do many things including:

> 3. Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of nonconforming lot sizes as well as other techniques to reduce the impact of the parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas;
>
> 4. Increase the minimum lot sizes of rural areas located north of the "rural resource line";
>
> 5. Eliminate areas that would have otherwise been designated as resource lands from inclusion in an urban reserve area;
>
> *See Also Buffer* section and excerpts from *Rural Issues* section of the FDO (attached).

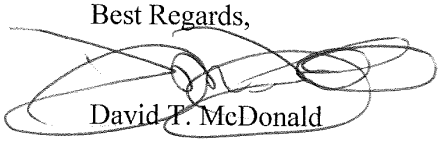
Although I have not yet been able to find my copies of the Agri-Forest majority report, or the BOCC's ultimate decision from May 1998, it is my understanding and belief that the Council today need only look at the Original FDO in *Achen v. Clark County*, the majority report from the Agri-Forest Task Force, the staff report to the Planning Commission hearing held on April 28, 1998, the BOCC hearings held on May 19, 1998 and May 28, 1998 and the Compliance Order handed down by the WWGMHB in May 1999 to understand that the County used the 20 acre minimum parcel sizes in the rural area to buffer resource lands in order to come into compliance.

The 20-acre minimums at issue in this case have been a stable, constant and necessary (for compliance) part of our Comprehensive Plan since 1998. Those 20-acre minimums were only reduced to 10-acre minimums in 2016 because the County determined that, if the Council was allowing for a 10-acre minimum in the AG zone, then it was not necessary to have a parcel twice that minimum size as a buffer.

However, now that the GHB has found the AG 10-acre minimum to be non-compliant, and the County has to downzone the AG zone lot size to at least a 20-acre minimum then, the justification for the 20-acre minimum lot size that pre-dated the 2016 Comp Plan, is still legally valid. Conversely, to not follow the staff and PC recommendations and restore the 20-acre minimum lot sizes, which were initially put in place to achieve compliance with the GMA, would make the current Comp Plan to be even more non-compliant with the GMA.

Thank you for your attention to these issues.

Best Regards,



David T. McDonald