

June 19, 2017

The Honorable Marc Boldt, Council Chair  
Clark County Board of County Councilors  
PO Box 5000  
Vancouver, Washington 98666-5000

Dear Council Chair Boldt and Councilors Blom, Olson, and Stewart, and Quiring:

**Subject: Futurewise supports returning the 283 parcels were changed from R-20 to R-10 in conjunction with the resource lands upzoning back to R-20. Part of CPZ 2017-00023 Comprehensive Growth Management Plan 2015-2035 response to GMHB decision.**

Sent via email to: [boardcom@clark.wa.gov](mailto:boardcom@clark.wa.gov)

Thank you for the opportunity to comment on the on CPZ 2017-00023 to address some of the violations found by the Growth Management Hearings Board. Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and that protect our most valuable farmlands, forests and water resources. We have members across Washington State including Clark County.

Futurewise supports returning the 283 parcels were changed from R-20 to R-10 in conjunction with the resource lands upzoning back to R-20. These rezones were appealed to the Growth Management Hearings Board as part of Issue 11.<sup>1</sup> Futurewise briefed the R-20 to R-10 rezones as part of Issue 11.<sup>2</sup> The Growth Management Hearings Board ruled for us writing “nor do[] [the reduced parcel sizes] meet the standards established in *King County* where the County is to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.”<sup>3</sup> So the county must undo the R-20 to R-10 rezones to comply with the Growth Management Act.

There are other reasons to undo the R-20 to R-10 rezones. The most significant being the lack of water in rural Clark County. The Washington State Department of Ecology (Ecology) has determined that “[t]here is limited water available for new uses in [Water Resource Inventory Area] WRIA 27,” the Lewis River Watershed, and “much of the water in the Lewis River Watershed has already been spoken for.”<sup>4</sup> The situation is the same in the Salmon-Washougal Watershed, WRIA 28. “There is limited water available for new uses ...” and “much of the

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<sup>1</sup> *Clark County Citizens United, Inc., Friends of Clark County and Futurewise v. Clark County*, Case No. 16-2-0005c, Final Decision and Order (March 23, 2017), at 43 of 101 accessed on June 19, 2017 at: <http://www.gmhb.wa.gov/LoadDocument.aspx?did=5601>

<sup>2</sup> Friends of Clark County’s and Futurewise’s Petitioners’ Prehearing Brief with Exhibits in Case No.: 16-2-0005c pp. 26 – 33 (Dec. 1, 2016) cited pages enclosed with this letter.

<sup>3</sup> *Clark County Citizens United, Inc., Friends of Clark County and Futurewise v. Clark County*, Case No. 16-2-0005c, Final Decision and Order (March 23, 2017), at 52 of 101 emphasis added.

<sup>4</sup> Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed, WRIA 27* p. 1 (Publication Number: 11-11-031 August 2012) accessed on June 19, 2017 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111031.html>

water in this watershed has already been spoken for.”<sup>5</sup> In fact, water is in such short supply that there is already evidence that the overdevelopment of rural lands has caused wells to run dry.<sup>6</sup>

When Ecology adopted the instream flow rules for WRIs 27 and 28, Ecology established reserves for future domestic uses.<sup>7</sup> The reserves in Clark County can serve another 4,859 new households or occupied housing units.<sup>8</sup> However, Clark County had 5,042 existing vacant lots in the rural areas and on resource lands as of 2014.<sup>9</sup> Clark County Utilities prepared a map identifying potential water sources for tax lots outside the urban growth areas. That map identified 6,175 vacant lots outside of urban growth areas and not adjacent to public water mains.<sup>10</sup> So the County already has more lots than can be supported by the surface and ground water resources available in rural areas and on resource lands. This counsels for rezoning the R-10 lots to R-20 to comply with the GMA requirements to protect surface and ground water in RCW 36.70A.070(1) and (7). Rezoning these lots from R-10 lots to R-20 is also necessary to protect “against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170” as RCW 36.70A.070(5)(c)(v) requires.

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 118 and email [tim@futurewise.org](mailto:tim@futurewise.org)

Very Truly Yours,



Tim Trohimovich, AICP  
**Director of Planning & Law**

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[Christine.Cook@clark.wa.gov](mailto:Christine.Cook@clark.wa.gov)

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<sup>5</sup> Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed*, WRIA 28 p. 1 (Publication Number: 11-11-032 August 2012) accessed on June 19, 2017 at: <https://fortress.wa.gov/ecy/publications/summarypages/1111032.html>

<sup>6</sup> Val Alexander Letter to Clark County p. \*1 (May 24, 2016).

<sup>7</sup> Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed*, WRIA 27 p. 1 (Publication Number: 11-11-031 August 2012); Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed*, WRIA 28 p. 2 (Publication Number: 11-11-032 August 2012).

<sup>8</sup> “WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by Category” enclosed with Futurewise’s June 2, 2017, letter to the Clark County Board of County Councilors.

<sup>9</sup> *Clark County Buildable Lands Report* p. 13 (June 2015) accessed on June 19, 2017 at: <https://www.clark.wa.gov/sites/default/files/2015BUILDABLELANDSREPORT.pdf>

<sup>10</sup> Clark County Public Utilities, *Water Sources for Tax Lots Outside UGAs* accessed on June 19, 2017 at: <https://www.clark.wa.gov/sites/default/files/dept/files/community-planning/2016-update/Plan%20Adoption/07%20Water%20Sources%20for%20Taxlots%20Outside%20UGA.pdf>

1 incomes.<sup>135</sup> As the strategic plan concludes “[t]he future of farming in Washington is heavily  
2 dependent on agriculture’s ability to maintain the land resource that is currently available to  
3 it.”<sup>136</sup> This criterion weights against de-designation.

4 In sum, all but one of the comprehensive plan and WAC 365-190-050 factors (land values  
5 under alternative uses) show that the two areas have long-term commercial significance for  
6 agriculture. The State Supreme Court has concluded that land values under alternative uses  
7 should not be the deciding factor. The two areas also meet the statutory factors. So de-  
8 designating the UGA expansions violate the GMA and RCW 36.70A.070’s internal consistency  
9 requirement.  
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11 11. Did Amended Ordinance 2016-06-12’s amendments to the comprehensive plan including the  
12 land use, rural, and capital facility plan elements, amendments to the Agriculture 20 (AG-20)  
13 District to create the Agriculture 10 (AG-10) District, amendments to the Forest 40 (FR-40)  
14 District to create the Forest 20 (FR-20) District, related rural rezones, or the allowed uses,  
15 densities, or development standards applicable to the AG-10 or FR-20 districts, including but  
16 not limited to CCC 40.210.010B and E, violate RCW 36.70A.020(8), (10); RCW  
17 36.70A.040(3); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070 (internal  
18 consistency); RCW 36.70A.070(1), (3), (5); RCW 36.70A.130(1), (5), WAC 365-196-815 or  
19 WAC 365-196-825 because they fail to conserve farm and forest land, protect the quality and  
20 quantity of groundwater used for public water supplies, or are inconsistent with the  
21 comprehensive plan? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County,*  
*Washington 20 Year Comprehensive Growth Management Plan 2015-2035* pp. 18 - 19,  
Chapter 1 Land Use Element, Chapter 3 Rural and Natural Resource Element, Chapter 6  
Capital Facilities and Utilities Element, Figure 22A, Figure 228, and Figure 24A; Exhibit 3  
County/UGA Zoning Clark County, Washington [map]; Exhibit 5; Exhibit 6; Exhibit 7;  
Exhibit 8; Exhibit 9; Exhibit 25; Exhibit 26; Exhibit 28; Exhibit 30; Exhibit 31; Exhibit 32;  
Exhibit 33; Exhibit 34; Exhibit 35; Exhibit 36; Exhibit 37; Exhibit 38; and Exhibit 39.  
[FOCC/FW No. 3]

22 **(a) The AG-10, FR-20, and R-20 to R-10 Rezones violate the GMA**  
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25 <sup>135</sup> IR 2666 pp. 032358 – 60 in Tab IR 2666, Washington State Department of Agriculture, *Washington Agriculture*  
26 *Strategic Plan 2020 and Beyond* pp. 50 – 52 (2009).

<sup>136</sup> IR 2666 p. 032358, *Id.* at p. 50.

1 The adopted amendments repealed the Agriculture 20 and Forest 40 Districts and adopted the  
2 Agriculture 10 (AG-10) and Forest 20 (FR-20) zoning districts.<sup>137</sup> In the AG-10 zone, 16,991  
3 acres, 55.6 percent of the land in this zone, is in lots 20 acres or larger and so can be subdivided  
4 into ten acre lots.<sup>138</sup> “An estimated 1,750 new parcels could be created under full build-out” in  
5 the AG-10 zone.<sup>139</sup> In the FR-20 zone 7,036 acres, 24 percent of the land in this zone, is in lots  
6 40 acres or larger and so can be subdivided into 20 acre lots.<sup>140</sup> “An estimated 412 new parcels  
7 could be created under full build-out conditions” in the FR-20 zone.<sup>141</sup> In addition to the  
8 adoption of the AG-10 and FR-20 zones, the adopted amendments rezoned properties adjacent to  
9 the AG-10 zone from R-20 to R-10.<sup>142</sup>

11 These amendments violated the GMA in three ways. First, the lower minimum lot sizes and  
12 increased densities will not conserve agricultural and forest land as the GMA requires. In the  
13 *Soccer Fields* decision, the Washington State Supreme Court has held that [t]he County was  
14 required *to assure the conservation of agricultural lands and to assure that the use of adjacent*  
15 *lands does not interfere with their continued use for the production of food or agricultural*  
16 *products.*<sup>143</sup> A ten-acre minimum lot size and density will not meet this standard. Professor  
17 Nelson analyzed agricultural land preservation techniques and concluded that “[m]inimum lot  
18 sizing at up to forty-acre densities merely causes rural sprawl—a more insidious form of urban  
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23 <sup>137</sup> IR 2830 pp. 034077 – 145 in Tab IR 2830A, Amended Ordinance 2016-06-12 pp. 13 – 81.

24 <sup>138</sup> IR 2808 p. 033766 in Tab IR 2808, ParcelSizeCount\_Forest\_AG.xlsx p. \*3.

25 <sup>139</sup> IR 2929 p. 035378 in Tab IR 2929, FSEIS p. 6-12.

26 <sup>140</sup> IR 2808 p. 033766 in Tab IR 2808, ParcelSizeCount\_Forest\_AG.xlsx p. \*3.

<sup>141</sup> IR 2929 pp. 035377 – 78 in Tab IR 2929, FSEIS pp. 6-11 – 6-12.

<sup>142</sup> IR 2929 p. 035377 in Tab IR 2929, FSEIS p. 6-11; IR 2908 p. 035091 in Tab IR 2908, Exhibit 3 County Zoning.

<sup>143</sup> *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.

1 sprawl.”<sup>144</sup> The American Farmland Trust concluded that to “make substantial progress  
2 protecting farmland in the Puget Sound region, minimum parcel size would be at least 40 acres  
3 and preferably larger.”<sup>145</sup> Clark County’s average farm size has increased from 37 acres in 2007  
4 to 39 acres in 2012, an increase of 5.4 percent.<sup>146</sup> During the same time period, Washington’s  
5 average farm size increase by 4 percent.<sup>147</sup> The increase in average farm size does not support a  
6 reduction in the minimum lot size.  
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8 Like agricultural lands, Clark County must also assure the conservation of forest lands and  
9 assure that the use of adjacent lands does not interfere with their continued use for the production  
10 forest products.<sup>148</sup> A twenty-acre forest zone will not meet these requirements.

11 Parcels smaller than 40 acres have much lower timber harvest rates and are more likely to be  
12 converted to residential land uses.<sup>149</sup> Parcels smaller than 50 acres have higher than average costs  
13 for preparing timber sales, harvesting trees, and reforesting the site.<sup>150</sup> Forest parcelization “can  
14 have profound impacts on the economics of forestry and lead to reduced forest management,  
15 even when land is not physically altered. ... In addition, per unit costs of forest management  
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18 <sup>144</sup> 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  
19 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.

20 <sup>145</sup> IR 1395 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: Jan. 2012).

21 <sup>146</sup> IR 1392 p. 018633 in Tab IR 1392, United States Department of Agriculture, National Agricultural Statistics Service, *2012 Census of Agriculture Washington State and County Data Volume 1 • Geographic Area Series • Part*  
22 *47 AC-12-A-47 Chapter 2: County Level Data* p. 271 (May 2014).

23 <sup>147</sup> IR 1392 p. 018633, *Id.*

24 <sup>148</sup> RCW 36.70A.060(1)(a).

25 <sup>149</sup> IR 2666 p. 032429 in Tab IR 2666, Eric J. Gustafson & Craig Loehle, *Effects of Parcelization and Land Divestiture on Forest Sustainability in Simulated Forest Landscapes* 236 FOREST ECOLOGY and MANAGEMENT 305, 313 (2006). Forest Ecology and Management is a refereed scientific journal. IR 2666 p. 032431, Forest Ecology and Management webpage p. 1 of 2.

26 <sup>150</sup> IR 2666 p. 032433, p. 032441 in Tab IR 2666, R. Neil Sampson, *Implication for Forest Production in Responses to “America’s Family Forest Owners”* 102 JOURNAL OF FORESTRY 4, 12 (Oct./Nov. 2004). The Journal of Forestry is a peer-reviewed scientific journal. IR 2666 p. 032444 Journal of Forestry Guide for Authors webpage p. 1 of 5.

1 practices will increase if economies of scale are lost.”<sup>151</sup> Parcelization and the changes in  
2 economics it brings leads to the conversion of forest land to other land uses.<sup>152</sup> So reducing the  
3 minimum lot size and density below 40 acres will not protect forest land as the GMA requires.

4 In addition, research shows that the smaller the parcel of land, the higher the per acre cost of  
5 the land.<sup>153</sup> The FEIS agreed writing that the AG-10 zone “could increase property valuation and  
6 diminish the ability of the County to attract larger scale agricultural operations.”<sup>154</sup> So by  
7 adopting the AG-10 and FR-20 zones and allowing the subdivision of agricultural and forest land  
8 into smaller lots, Amended Ordinance 2016-06-12 will increase the per acre cost of forest and  
9 farm land. These changes may increase the costs above what farmers and foresters can pay for  
10 resource lands, resulting in the conversion of farm and forest land to other uses. Unfortunately,  
11 “[o]ne of the key obstacles [to agriculture] in Clark County is the limited access to high quality  
12 agricultural land at an affordable cost.”<sup>155</sup> This is one of the reasons why the Washington State  
13 Department of Agriculture’s *Washington Agriculture Strategic Plan 2020 and Beyond* documents  
14 the need to conserve existing agricultural lands to maintain the agricultural industry and the jobs  
15 and incomes the industry provides.<sup>156</sup> As the strategic plan concludes “[t]he future of farming in  
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20 <sup>151</sup> IR 2666 pp. 032462 – 63 in Tab IR 2666, Ralph Alig, Susan Stewart, David Wear, Susan Stein, and David  
21 Nowak, *Conversions of Forest Land: Trends, Determinants, Projections, and Policy Considerations* Advances pp. 6  
22 –7 in John M. Pye, H. Michael Rauscher, Yasmeen Sands, Danny C. Lee, Jerome S. Beatty, tech. eds. *Advances in*  
23 *threat assessment and their application to forest and rangeland management Volume 1* (Gen. Tech. Rep. PNW-  
24 GTR-802: 2010). This study was peer-reviewed. IR 2666 p. 032454, *Id.* at p. \*ii.

25 <sup>152</sup> IR 2666 pp. 032457 – 58, *Id.* at 1 and 2.

26 <sup>153</sup> IR 1432 p. 020013 in Tab IR 1432, Cynthia J. Nickerson and Lori Lynch, *The Effect of Farmland Preservation*  
*Programs on Farmland Prices* 83 AMER. J. AGR. ECON. 341 p. 347 (May 2001). This article was peer-reviewed. IR  
1432 p. 020007, *Id.* at 341.

<sup>154</sup> IR 2929 p. 035378 in Tab IR 2929, FSEIS p. 6-12.

<sup>155</sup> IR 2666 p. 032355 in Tab IR 2666, Globalwise, Inc., *Analysis of the Agricultural Economic Trends and*  
*Conditions in Clark County, Washington* Preliminary Report p. 48 (Prepared for Clark County, Washington: April  
16, 2007).

<sup>156</sup> IR 2666 pp. 032358 – 60 in Tab IR 2666, Washington State Department of Agriculture, *Washington Agriculture*  
*Strategic Plan 2020 and Beyond* pp. 50 – 52 (2009).



1 Washington is heavily dependent on agriculture’s ability to maintain the land resource that is  
2 currently available to it.”<sup>157</sup>

3 So the AG-10 and FR-20 zones will lead to the conversion of agricultural and forest land.  
4 This violates the GMA requirement that Clark County must conserve these lands.

5 Second, the new AG-10 and FR-20 zones allow non-agricultural and non-forestry uses such  
6 as residential subdivisions, guest houses, commercial kennels, public recreation and public parks,  
7 regional recreational facilities, private recreation facilities, country clubs and golf courses (in the  
8 Ag-10 zone), event facilities, public and private elementary and middle schools serving a student  
9 population primarily outside of urban growth boundaries, government facilities, sawmills, oil and  
10 gas processing facilities, solid waste disposal sites, and new cemeteries and mausoleums,  
11 crematoria, columbaria, and mortuaries.<sup>158</sup> Governmental facilities and schools have been built  
12 on agricultural land.<sup>159</sup> As was analyzed in Issue 6 above, these uses all violate the state Supreme  
13 Court holdings in the *Soccer Fields*, *Lewis County*, and *Kittitas County* decisions.<sup>160</sup> As the  
14 Supreme Court held in *Lewis County*, allowing “non-farm uses of agricultural lands failed to  
15 comply with the GMA requirement to conserve designated agricultural lands.”<sup>161</sup>

16 This holding is also supported by the farm land protection literature. Limiting uses reduces  
17 incompatible uses in agricultural areas and prevents land speculation from increasing land costs  
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24 <sup>157</sup> IR 2666 p. 032358, *Id.* at p. 50.

25 <sup>158</sup> IR 2830 pp. 034085 – 89 in Tab IR 2830A, Amended Ordinance 2016-06-12 pp. 21 – 25.

26 <sup>159</sup> IR 2911 pp. 035102 – 08 in Tab IR 2911B, Account Summary and 2014 aerial.

<sup>160</sup> *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143; *Lewis Cty.*, 157 Wn.2d at 509, 139 P.3d at 1106; *Kittitas Cty.*,  
172 Wn.2d at 172, 256 P.3d at 1206.

<sup>161</sup> *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn. 2d 488, 509, 139 P.3d 1096, 1106 (2006).

1 above what agricultural products can support.<sup>162</sup> Schools are particularly a problem in  
2 agricultural areas due to children’s sensitivity to overspray from fields.<sup>163</sup>

3 Third, the Washington State Department of Ecology (Ecology) has determined that “[t]here is  
4 limited water available for new uses in [Water Resource Inventory Area] WRIA 27” the Lewis  
5 River Watershed and “much of the water in the Lewis River Watershed has already been spoken  
6 for.”<sup>164</sup> The situation is the same in the Salmon-Washougal Watershed, WRIA 28. “There is  
7 limited water available for new uses . . .” and “much of the water in this watershed has already  
8 been spoken for.”<sup>165</sup> In fact, water is in such short supply that there is already evidence that the  
9 overdevelopment of rural lands has caused wells to run dry.<sup>166</sup>

11 When Ecology adopted the instream flow rules for WRIsAs 27 and 28, Ecology established  
12 reserves for future domestic uses.<sup>167</sup> The reserves in Clark County can serve another 4,859 new  
13 households or occupied housing units.<sup>168</sup> However, Clark County currently has 5,042 existing  
14 vacant lots in the rural areas and on resource lands as of 2014.<sup>169</sup> Clark County Utilities prepared  
15 a map identifying potential water source for tax lots outside the urban growth areas. That map  
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18 <sup>162</sup> IR 2666 p. 032369 in Tab IR 2666, American Farmland Trust, *Saving American Farmland: What Works* p. 50  
19 (Northampton, MA: 1997); IR 2666 pp. 032392 – 93 pp. 032397 – 98 in Tab IR 2666, Gary Lettman, Katherine  
20 Daniels, & Tim Trohimovich, Chapter 5 Protecting Working Farm and Forest Landscapes: How Do Oregon and  
21 Washington Compare? in Jill Sterrett *et al.* eds. *Planning the Pacific Northwest* pp. 42 – 44 & pp. 53 – 54  
(American Planning Association, Chicago/Washington D.C.: 2015).

22 <sup>163</sup> IR 2666 pp. 032404 – 05 in Tab IR 2666, Hal Bernton *The fall of a pesticide policeman* Seattle Times pp. 3 – 4  
23 of 5 (Aug. 31, 2004).

24 <sup>164</sup> IR 1403 p. 019356 in Tab IR 1403, Washington State Department of Ecology Water Resources Program, *Focus*  
25 *on Water Availability Lewis River Watershed, WRIA 27* p. 1 (Publication Number: 11-11-031 August 2012).

26 <sup>165</sup> IR 1443 p. 020277 in Tab IR 1443, Washington State Department of Ecology Water Resources Program, *Focus*  
*on Water Availability Salmon-Washougal Watershed, WRIA 28* p. 1 (Publication Number: 11-11-032 August 2012).

<sup>166</sup> IR 2723 p. 033151 in Tab IR 2723, Val Alexander Letter to Clark County p. \*1 (May 24, 2016).

<sup>167</sup> IR 1403 p. 019356 in Tab IR 1403, Washington State Department of Ecology Water Resources Program, *Focus*  
*on Water Availability Lewis River Watershed, WRIA 27* p. 1 (Publication Number: 11-11-031 August 2012); IR  
1443 p. 020278 in Tab IR 1443, Washington State Department of Ecology Water Resources Program, *Focus on*  
*Water Availability Salmon-Washougal Watershed, WRIA 28* p. 2 (Publication Number: 11-11-032 August 2012).

<sup>168</sup> IR 2666 p. 032419 in Tab IR 2666, “WRIA 27-28 Reservations ESTIMATES w Totals for Clark County by  
Category.”

<sup>169</sup> IR 1121 pp. 014422 in Tab IR 1121 of FOCC SJM, *Clark County Buildable Lands Report* p. 13 (June 2015).



1 identified 6,175 vacant lots outside of urban growth areas not adjacent to public water mains.<sup>170</sup>

2 So the County already has more lots than can be supported by the surface and ground water  
3 resources available in the rural areas and on resource lands. As was documented above, the AG-  
4 10, FR-20, and R-10 rezones all increase the number of lots that can be created in rural areas and  
5 on resource lands.<sup>171</sup> This violates the requirement that the land use element must protect “the  
6 quality and quantity of groundwater used for public water supplies ...” and that the “rural  
7 element shall include measures that apply to rural development and protect the rural character of  
8 the area ... by ... [p]rotecting ... surface water and groundwater resources[.]”<sup>172</sup>

10 Overdevelopment of agricultural and rural lands is causing farm wells to run dry and farmers  
11 cannot afford piped water from the PUD.<sup>173</sup> This violates the requirement that the “rural element  
12 shall include measures that apply to rural development and protect the rural character of the area  
13 ... by ... [p]rotecting ... against conflicts with the use of agricultural ... resource lands ....”<sup>174</sup>

15 **(b) The Clark County Comprehensive Plan Update fails to protect water**

16 Water resources are limited in Clark County.<sup>175</sup> The land use element must protect “the  
17 quality and quantity of groundwater used for public water supplies ...” and the “rural element  
18 shall include measures that apply to rural development and protect the rural character of the area  
19 ... by ... [p]rotecting ... surface water and groundwater resources[.]”<sup>176</sup> These provisions are  
20 augmented by RCW 19.27.097, which requires applicants for building permits for buildings that  
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22 <sup>170</sup> IR 2811 p. 033784 in Tab IR 2811, Clark County Public Utilities, *Water Sources for Tax Lots Outside UGAs*.

23 <sup>171</sup> IR 2929 pp. 035377 – 78 in Tab IR 2929, FSEIS pp. 6-11 – 6-12.

24 <sup>172</sup> RCW 36.70A.070(1); RCW 36.70A.070(5)(c).

25 <sup>173</sup> R 2723 pp. 033151 – 52 in Tab IR 2723, Val Alexander Letter to Clark County pp. \*1 – \*2 (May 24, 2016).

26 <sup>174</sup> RCW 36.70A.070(5)(c).

<sup>175</sup> IR 1403 p. 019356 in Tab IR 1403, Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Lewis River Watershed*, WRIA 27 p. 1 (Publication Number: 11-11-031 August 2012); IR 1443 p. 020278 in Tab IR 1443, Washington State Department of Ecology Water Resources Program, *Focus on Water Availability Salmon-Washougal Watershed*, WRIA 28 p. 2 (Publication Number: 11-11-032 August 2012).

<sup>176</sup> RCW 36.70A.070(1); .070(5)(c); *Whatcom Cty. v. Hirst*, \_\_\_ Wn.2d \_\_\_, 381 P.3d 1, 11 –18 (2016).

1 need potable water to provide evidence of an adequate water supply. This includes a  
2 determination that the water is illegally and actually available.<sup>177</sup>

3 RCW 19.27.097 applies to all building permits for buildings necessitating potable water, not  
4 just residential building permits. RCW 58.17.110 also requires Clark County to assure adequate  
5 potable water supplies are available when approving subdivision applications. Further, the  
6 county must assure that development applications proposing to use exempt wells are within the  
7 withdrawal limits applicable to those wells. As the Washington State Supreme Court wrote:  
8 “Without a requirement that multiple subdivision applications of commonly owned property be  
9 considered together, the County cannot meet the statutory requirement that it assure appropriate  
10 provisions are made for potable water supplies.”<sup>178</sup>

11  
12 Clark County increased the capacity of the rural area and resource lands, but failed to adopt  
13 comprehensive plan policies and development regulations to protect surface and ground water  
14 resources as the GMA requires. This violates RCW 36.70A.070(1) and (5)(c).  
15

## 16 2. Rural Lands

17 13. Did Amended Ordinance 2016-06-12’s adoption of a single “Rural,” comprehensive plan  
18 designation, excluding limited areas of more intense rural development and similar  
19 categories, in the land use and rural elements and on Exhibit 2 the “County/UGA  
20 Comprehensive Plan Clark County, Washington” map, the county’s future land use map,  
21 violate RCW 36.70A.020(2), (9), (10); RCW 36.70A.070 (preamble), (1), (5); or RCW  
22 36.70A.130(1), (5) because the rural element fails to provide for a variety of rural densities  
23 and rural uses? See Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County,*  
24 *Washington 20 Year Comprehensive Growth Management Plan 2015-2035* p. 10, pp. 14- 16,  
25 p. 31, pp. 36 - 45, Chapter 3 Rural and Natural Resource Element, and Figure 24A; and  
26 Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]. [FOCC/FW  
No. 4]

<sup>177</sup> *Whatcom Cty. v. Hirst*, \_\_\_ Wn.2d \_\_\_, 381 P.3d 1, 11 (2016); IR 2666 pp. 032796 – 97, AGO 1992 No. 17.

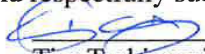
<sup>178</sup> *Kittitas County*, 172 Wn.2d at 178 – 81, 256, P.3d at 1209 – 10 (2011) footnote omitted.

1 | *Plan* they might have deficits by 2035.<sup>257</sup> Ridgefield had more than enough land before the UGA  
2 | expansion even if residential development continues at densities lower than planned for in the  
3 | County comprehensive plan.<sup>258</sup> So development of the farmland in the La Center and Ridgefield  
4 | UGAs and the ILBs, and the rural land in the Battle Ground UGA expansion, and the  
5 | unincorporated area will contribute to low-density sprawl in Clark County.  
6 |

7 | RCW 36.70A.020(8) requires Clark County to “[e]ncourage the conservation of ...  
8 | productive agricultural lands, and discourage incompatible uses.” The La Center UGA expansion  
9 | was part of LB-1 and the ILBs part of VB which the courts found were improperly de-designated  
10 | in 2007 and improperly incorporated into the UGAs.<sup>259</sup> This brief documents that the land in the  
11 | La Center and Ridgefield UGA expansions and the ILBs continue to qualify as agricultural lands  
12 | of long-term commercial significance. The Clark County Food System Council identified nearly  
13 | all of the Ridgefield UGA expansion and the ILBs as “Clark County’s Best Farm Land.”<sup>260</sup>  
14 |

15 | As this brief has documented, the AG-10 zone, the FR-20 zone, the Urban Reserve Overlay,  
16 | and the UR-10 and UR-20 zones all allow urban growth on farm and forest land. Allowing the  
17 | annexation and then vesting will convert agricultural land in the UGA expansions to residential  
18 | and commercial uses. Allowing continued development of urban uses in the AG-10 and FR-20  
19 | zone will convert farm and forest land to urban uses. Paving over this farmland for unneeded  
20 | residential, commercial, and industrial development will substantially interfere with Goal 8.  
21 |

22 | DATED this 1<sup>st</sup> day of December 2016, and respectfully submitted,

23 |   
Tim Trohimovich, WSBA No. 22367

24 | <sup>257</sup> IR 1121 pp. 014419 – 20 in Tab IR 1121 of FOCC SJM, *Id.* at pp. 10 – 11.

25 | <sup>258</sup> IR 1121 p. 014418 in Tab IR 1121 of FOCC SJM, *Id.* at p. 9.

26 | <sup>259</sup> *Clark Cty.*, 161 Wn. App. at 220 & 238, 254 P.3d at 868 & 878.

<sup>260</sup> IR 1535 p. 020853 in Tab IR 1535A of FOCC SJM, *Promoting Agricultural Food Production in Clark County*,  
A proposal developed by the Clark County Food System Council p. 4 (Nov. 2013).