

CLARK COUNTY

MAY 15, 2012

# Rural Lands Study



## Phase 1: Situation Assessment



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**ATTACHMENT A**  
**Policy Review Brief**

# CLARK COUNTY RURAL LANDS STUDY

## Policy Review Brief

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## 1.0 INTRODUCTION

Clark County is exploring methods to retain rural lands that contribute to rural character and promote economic development associated with agriculture and forest products. In 2008, the County examined rural economic development and land use, creating the Rural Lands Task Force (RLTF). The RLTF recommendations have resulted in some changes to County policies and codes as well as the need to examine in more detail economic development and land use policies. This Rural Lands Study will provide an evaluation of the effectiveness of existing policies, as well as policy recommendations and alternatives regarding minimum parcel sizes for agriculture and forestry lands, clustering, a transfer of development rights (TDR) program, rural reserves, agricultural production districts, and current use taxation program.

The Rural Lands Study includes three general phases of study and outreach:

- **Study Phase 1 Situation Assessment** through fall 2011, including policy review, market research, and a TDR framework. This phase will include stakeholder interviews and focus groups, a Cities meeting, and a Joint Planning Commission/Board of County Commissioner meeting.
- **Study Phase 2 Policy and Evaluation** through spring 2012, including developing policy options and testing and evaluating them. Outreach opportunities will include a Public Open House and Joint Planning Commission/Board of County Commissioner Meeting.
- **Study Phase 3 Policy Options Selection and Implementation** through fall 2012, including the development of specific policy and code language that can be adopted. Outreach activities will be offered including a Cities meeting, a Public Open House, and Joint Planning Commission/Board of County Commissioner meeting.

This Policy Review Paper is part of Phase 1, the Situation Assessment. The purpose of this Policy Review paper is to examine the County's rural and resource lands policy objectives and to identify Growth Management Act (GMA) parameters and other rural and resource planning examples that, together with market research prepared under separate cover, can offer some direction for County, consultant, and stakeholder discussions and further policy analysis in later phases. This Policy Review paper addresses:

1. Introduction
2. Clark County's History of Rural and Resource Planning
3. What are Rural, Resource, and Urban Lands?
4. What is Rural Character?
5. Current County Policies and Strategies
6. Examples in Other Counties
7. Growth Management Act Parameters

## 2.0 HISTORY OF RURAL AND RESOURCE PLANNING IN CLARK COUNTY

Pursuant to the GMA, Clark County has adopted a Comprehensive Plan addressing population growth for 20 years<sup>1</sup>, containing a future land use plan, and including elements addressing goals, policies and strategies for land use, housing, rural and natural resources, environmental protection, transportation, capital facilities and utilities, parks and open space, historic preservation, economic development, schools, community design, annexation, and planning procedures.

Clark County's current rural and resource land use designations and corresponding zoning classifications were established with the adoption of the County's first GMA Comprehensive Plan in 1994. Resource and rural designations were revisited to examine uses on the fringe of designated resource lands and some areas were added as resource lands and some were redesignated to rural designations. Rural Centers (called limited areas of more intensive rural development, or LAMIRDs, in GMA) were added to the County's land use plan in 1998. Rural

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<sup>1</sup> Current horizon year is 2024.

Centers recognized established small unincorporated towns or rural commercial centers that serve rural Clark County.

The County's Comprehensive Plan was updated in 2004 and again in 2007, but the focus was on urban growth area expansion to accommodate projected growth to the year 2024. Due to growth projections, land capacity, public and city input, and additional factors, the County's Urban Growth Areas (UGAs) were expanded, shrinking both rural and resource lands.<sup>2</sup>

During the 2007 Clark County comprehensive plan update process the Board of County Commissioners (Board) expressed a desire to focus on rural issues. Accordingly, the Board created the RLTF who was charged with the following:

- Increasing Rural Center economic development opportunities;
- Implementing the recommendations of the Agricultural Preservation Advisory Committee (APAC) who had prepared recommendations in 2009;
- Increasing rural economic development opportunities;
- Identifying potential urban reserve lands; and
- Identifying lands that would not develop.

The RLTF developed a number of recommendations between 2009 and 2010. Many were recommended changes to the County's Unified Development Code Title 40. Some RLTF recommendations have already been completed through the County's "Retooling Our Code" initiative.

Other RLTF recommendations require a more comprehensive understanding and analysis of rural land use and rural economies. These recommendations include:

- Preparing market research for agriculture, forest products and natural resources
- Clustering on resource lands;
- Parcel sizes for resource lands;
- A transfer of development rights (TDR) program;
- A rural reserve program; and
- Current use taxation, including program goals, minimum parcel size and income requirements, and whether goals are being achieved.

It is these recommendations that are the focus of the County's Rural Lands Study.

### 3.0 WHAT ARE RURAL, RESOURCE, AND URBAN LANDS?

The GMA requires counties and cities to plan for future growth and generally classifies lands into three distinct categories: urban, resource, and rural.

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<sup>2</sup> The County was required to make some revisions to its 2007 Comprehensive Plan to comply with Western Washington Growth Management Hearings Board Orders with respect to the reclassification of lands from agriculture and rural to urban. The County agreed to adjust its plans in some cases to redesignate certain properties as agricultural and to remove them from the Vancouver, Battle Ground, Ridgefield, and Camas UGAs, respectively. Certain properties were redesignated as Rural (R-5) and removed from the Vancouver UGA. Also certain properties that had been designated R-5 in 2008 were redesignated as agricultural. The County appealed some of the Growth Management Hearings Board requirements to the appeals court, which supported the County in some respects and not in others and remanded items back for Growth Management Hearings Board review; additional amendments to resolve the case may be required depending on the remand and any further appeals to the Supreme Court.

The total parcel acreage in the County is approximately 390,972 acres.<sup>3</sup> As of the time of this writing, the County has designated approximately 78,564 acres (20%) as Urban, 196,330 acres (50%) as Resource, and 116,078 acres (30%) as Rural. See Appendix A for detailed Comprehensive Plan land use categories and acres.

Urban lands generally are located in Urban Growth Areas (UGAs). These are designated areas where there are housing and jobs developed in a more intensive pattern that are served or can be served by urban services such as sewer. Future urban growth is to largely occur in UGAs and they must be appropriately sized to accommodate planned future population and employment and to contain sprawl.

Resource lands are lands of long-term commercial significance for agriculture, forestry, and mineral extraction. The Rural Lands Study will be particularly focused on agricultural and forest lands and ways to improve their vitality through innovative measures such as transfer of development rights (TDR), clustering, rural reserves, tax incentives, and others.<sup>4</sup> Agricultural and forest lands are generally considered to include:

- Agricultural Land: Primarily devoted to commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees, finfish in upland hatcheries, or livestock. There are detailed classification requirements for agricultural lands of long term commercial significance in WAC 365-190-050.
- Forest Land: Primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production. There are detailed classification requirements for forest lands in WAC 365-190-060.

Rural lands are areas outside of UGAs and outside designated agricultural, forest, and mineral lands—and can consist of a variety of uses and lower residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the Comprehensive Plan Rural Element. The County Comprehensive Plan indicates that rural areas should meet at least one of the following criteria to be considered rural:

- opportunities exist for small scale farming and forestry which do not qualify for resource land designation;
- the area serves as buffer between designated resource land or sensitive areas;
- environmental constraints make the area unsuitable for intensive development;
- the area cannot be served by a full range of urban level-of-service; or,
- the area is characterized by outstanding scenic, historic or aesthetic values which can be protected by a rural designation.(Framework Plan Policies 3.2.0)

## 4.0 WHAT IS RURAL CHARACTER?

As the County considers new Rural Lands policies and regulations, it will need to consider how the initiatives support the county's rural character. GMA defines rural character as follows:

*"Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:*

*(a) In which open space, the natural landscape, and vegetation predominate over the built environment;*

*(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;*

*(c) That provide visual landscapes that are traditionally found in rural areas and communities;*

*(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;*

*(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;*

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<sup>3</sup> Excludes rights of way.

<sup>4</sup> The County has a separate work program for Mineral Lands.

- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas. RCW 36.70A.030 (15)

The County has adopted a Rural Element character policy that is similar to the GMA definition:

*Rural Element, 3.1.1 Clark County shall maintain and protect the character of its designated Rural Area. Therefore, the county's land use regulations and development standards should protect and enhance the following components of the Rural Area:*

- *environmental quality, particularly as evidenced by the health of wildlife and fisheries (especially salmon and trout), aquifers used for potable water, surface water bodies and natural drainage systems;*
- *commercial and non-commercial farming, forestry, fisheries, and mining;*
- *community Rural Center atmosphere, safety, and locally-owned small businesses;*
- *regionally significant parks, trails and open space;*
- *large lot (parcels of 5-20 acres in size) residential development compatible with adjacent farming, forestry and mining and not needing urban facilities and services; and,*
- *historic character and resources including archaeological and cultural sites important to the local community.*

This policy describes rural character as including elements of the environment that are important to the rural area, the presence of resource lands, village type areas that are nodes for small businesses, open space and historic resources, and the presence of large lots with limited public services.

With the decision to have a fresh look at rural and resource lands, the Board described its principles and values in 2009 including broad elements as well as specific tools – these can also help define rural character:

- Rural areas are where natural landscapes dominate over the built environment.
- Rural areas are where urban services are minimal or not provided.
- Clark County is to be positioned for present and future uses using fair, consistent and creative rural zoning.
- Encourage modern economic opportunities, including home businesses, compatible with surrounding uses by:
  - expanding uses in rural centers to enhance their economic viability and community identity; and
  - expanding recreational and tourism opportunities.
- Maintain and enhance farming and forestry while minimizing incompatibilities with adjacent uses by:
  - minimizing the conversion of productive farmland; and
  - encouraging locally-grown food.
- Identify real Urban Reserve areas that are poised to become urban areas when growth boundaries are expanded.
- Maintain breaks/green spaces – natural borders.
- Balance tax base among school districts, where appropriate.
- Re-affirm the right to farm/log ordinance.
- Rural areas are where fish and wildlife habitat are valued.

Following the charge of the Board, the RLTF defined rural character as follows:

*For Clark County, rural character is:*

*Where the natural landscape predominates over the built environment;*

*Where there is small acreage farming and forestry;*

*Where provisions have been made to protect the land for future generations;*

*Where there are modern economic opportunities to live and work in the rural area, particularly in and around rural centers;*  
*Where fish and wildlife habitats are valued;*  
*Where mining is a land use;*  
*Where urban services are not generally provided; and*  
*Where natural surface water and recharge areas are protected.*

The RLTF proposed rural vision statement also applies to both rural and resource lands and is as follows:

*Clark County is to be positioned for present and future uses using fair, consistent and creative zoning. Specifically:*  
*Ease regulations and provide tax incentives for encouraging small scale agriculture and forestry;*  
*Expand cluster development in agricultural and forest zones;*  
*Create 5-acre agriculture and forestry homestead zones;*  
*Expand uses of rural centers to enhance their economic viability and community identity;*  
*Graduate lot sizes radiating from rural centers;*  
*Create a Zoning Fairness Board;*  
*Protect wetland and wildlife habitats;*  
*Allow and encourage alternative energy projects;*  
*Facilitate creation of local utility districts in and around rural centers;*  
*Expand recreational opportunities.*

The Rural Lands Study will evaluate proposed policies and regulations in relation to adopted State goals and requirements, adopted County goals and policies, and the principles and visions proposed by the BOCC and RLTF.

## 5.0 POLICIES AND STRATEGIES

Clark County is studying a variety of innovative tools to enhance both resource and rural lands, including:

- Clustering on resource lands;
- Parcel sizes for resource lands;
- A transfer of development rights (TDR) program;
- Rural reserves
- Agricultural production districts; and
- Current use taxation

Each tool is described below.

### 5.1 Clustering

Clustering refers to the grouping of residential lots in a relatively small percentage of a property in order to preserve the balance of the property for agriculture, forestry, or open space. Typically the residential lot size is relatively small to allow an efficient arrangement of homes, access roads, and other associated features.

County policies address rural lot size variety though clustering is not specifically mentioned:

*3.1.10 Establish provisions for intensity of rural development, including a range of lot sizes based on natural characteristics, proximity to designated natural resource lands, transportation circulation, availability of services which are adequate without extending or up-grading levels of service (LOS), and open space areas.*

Currently, Clark County allows clustering on Rural zoned lands R-20, R-10, or R-5. A maximum density of 110% of the base zone may be allowed. Smaller lots (minimum 1 acre in size) are sited contiguous to each other on a small portion of property while maintaining the majority of the site in a “remainder parcel.” In the R-5 district the remainder lot must be at least 65% of the area of the cluster site. In the R-10 and R-20 the remainder parcel must

be at least 75% of the area of the site. The remainder lot may be identified as “buildable” (if not using the maximum density of the zone) or as solely for open space, agriculture, or forestry (if using the maximum density allowed). If “buildable” the remainder lot must be identified with a building envelope to show the development will occur outside of critical areas.

Based on the Agriculture Preservation Strategies Report<sup>5</sup> between 1999 and 2009, 34 cluster applications involving 1,118 acres of land have been approved yielding 217 residential lots. All of the clusters have reserved the remainder lots as buildable parcels.

Clustering is not currently allowed on Resource lands as stated in the Comprehensive Plan Land Use Element and any prior lots created under former resource land or rural cluster provisions cannot further subdivide:

*Previously Developed Agriculture and Forest Zoned Property: Land divisions of remainder or parent parcels created under previous Agriculture or Forest Zoning District “Cluster” provisions, which are now within a resource zone or rural residential zone, cannot further divide until brought into the urban growth area.<sup>6</sup>*

The RLTF and APAC have recommended the County consider clustering on Resource Lands, primarily to help keep land in resource production while allowing the owner to subdivide for economic or family purposes (e.g. for heirs).

### Key Issues and Questions

- Can clustering be allowed on resource lands consistent with the GMA? Can clustering allow for farmers to provide property for heirs? Is clustering the best way to accomplish this?
- Should clustering be mandatory? If the finished lot size is above X acres [e.g. 5 or 10 acres] in size can they be in a non-cluster pattern if demonstrating resource uses will continue?
- What is an appropriate minimum or average lot size in the clusters given the balance between avoiding urban appearance and reserving as much land for productive resource use?
- How many lots will be allowed in a cluster?
- Is single family development the only allowable cluster use? Are semi-attached or duplexes appropriate?
- How will changes in parcel sizes for resource lands affect the approach to a cluster program?
- Ability to reserve the most productive portion of resource lands for resource use and locate cluster development on poorer soils, given each site’s unique characteristics and availability of access, etc.
- Maintenance of reserve property in resource use – how will continued resource use be assured? Conservation easement or other tool?
- How to ensure that multiple clusters by different property owners do not isolate parcels of farmland, forest land, and open space? (Avoid checkerboard pattern.)
- Ensuring visual compatibility with rural landscape, such as design guidelines to assure compatibility with rural character and minimize visual impact, for example, buffering from rural roads.
- Allowing appropriate rural services for clusters.
- Should clustering have a transfer of development rights element?

<sup>5</sup> Agricultural Preservation Advisory Committee. 2009. Agriculture Preservation Strategies Report. Available: <http://www.co.clark.wa.us/legacylands/AgriculturePreservationReport.html>. Accessed: October 7, 2011. Clark County Legacy Lands Program. Vancouver, WA.

<sup>6</sup> The 2004 Comprehensive Plan (no longer in effect) had explained this statement with an example: For example, a “cluster” subdivision of a 20-acre parcel zoned Agriculture in 1992 created five one-acre and one 15-acre remainder or parent parcel. Now, the property is zoned for five-acre lots. The 15 acre parcel would be entitled to three five-acre lots except for the fact that it was approved as a remainder agriculture resource lot along with five one-acre lots in 1992. Currently, the original 20-acre undivided parcel would have been entitled to four five-acre lots. Since the 20-acre parcel has already been divided into six lots, no further divisions are permitted.

## 5.2 Parcel Sizes for Resource Lands

Currently, outside of the Columbia River Gorge National Scenic Area, the County has a range of parcel sizes established for its Forestry designations – 40 to 80 acres minimum – and Agriculture zones 20 to 160 acres minimum:

*3.3.16 Within the Forest Tier I category, only one principal dwelling unit per 80 acres shall be allowed with the provision for an additional temporary dwelling.*

*3.3.17 Within the Forest Tier II category, one principal dwelling unit per 40 acres shall be allowed with the provision for an additional temporary dwelling.*

*3.4.2 Minimum parcel size should be adequate to allow reasonable and economic agricultural use.*

*3.4.12 Within the Agriculture land designation, one principal dwelling unit per 20 acres shall be allowed with the provision for an additional temporary dwelling.*

*3.4.13 Within the Agriculture/Wildlife category, one principal dwelling unit per 160 acres shall be allowed.*

The predominant Forestry classification is Forest Tier I at 80 acres minimum parcel size, and the predominant Agriculture classification and zone are at 20 acres minimum.

In the Columbia River Gorge, the minimum lot sizes in the Small Woodland zones are 20-40 acres and in the SMA Forest Zones 40 acres minimum. The agricultural lot sizes range from 40-80 acres minimum.

*3.1.16 Rural and Resource land designations within the Columbia River Gorge National Scenic Area are consistent with the requirements of the National Scenic Area legislation. The minimum lot size requirements and uses shall only be authorized to the extent that they are consistent with the National Scenic Area legislation established to implement the requirement of the scenic area.*

Historically commercial agricultural and forestry activities have tended to occur on larger parcels. The County wishes to revisit parcel sizes for several reasons:

- When the County classified lands as Agriculture in 1994, there was a mis-match in some locations with the minimum parcel size of 20 acres and the actual parcel size being smaller. Table 1 identifies the current distribution of Agriculture-20 zoned lots in terms of parcel sizes. Based on preliminary analysis, nearly half of the lots are less than or equal to 5 acres, and another 22% are between 5 and 10 acres. The median parcel size is just over 5 acres. While 34% of lots are enrolled in the current use taxation program representing about 60% of the acres, those lots have a larger median parcel size at 21.4 acres. About 8% of parcels less than 20 acres in area are in contiguous common ownership as shown in Table 2, and if treated together would equal 20 acres or more. These parcels represent about 11% of the Agriculture-20 Zone acreage. Thus most of the smaller lots in the Agriculture-20 zone are less than 20 acres and would not likely be consolidated into larger blocks. A map showing the Agriculture-20 parcels by parcel size and by common ownership is included in Appendix B.<sup>7</sup> In addition; Appendix B contains information about the type of land use on the Agriculture-20 properties.
- According to the Census of Agriculture, the County's average farm size is 37 acres as of 2007, declining from 44 acres in 2002. Even though average farm acreage has reduced there has been an increase in the number of farms from 1,596 to 2,101. It appears that with the local food movement and types of crops (e.g. berries) the lot size needed to have a productive farm may be changing.

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<sup>7</sup> The methodology included isolating the AG-20 zoned property from the County's GIS parcel layer and removing the hardship mobile homes.

**Table 1. Distribution of Parcel Sizes in Agriculture 20 Zone**

Size	# of Parcels	Acres	Percent of Parcels	Median Parcel Size
<=5 acres	1,141	3,387	47%	
5-10 acres	530	3,638	22%	
10-20 acres	336	5,640	14%	
20+ acres	421	16,982	17%	
<b>Total Parcels/Acres</b>	<b>2,428</b>	<b>29,647</b>	<b>100%</b>	<b>5.03</b>
In Current Use Agriculture	824	17,623	34%	21.4

Source: Clark County 2011

**Table 2. Parcels Less than 20 Acres – Contiguous Ownership**

Acreage Category less than 20 acres	Common Owner and Contiguous	# of Parcels	Sum of Acres
<5	Not Common/Contiguous	758	1,522
<5	Yes, Common/Contiguous	25	75
5-10	Not Common/Contiguous	786	4,728
5-10	Yes, Common/Contiguous	99	669
11-20	Not Common/Contiguous	298	5,044
11-20	Yes, Common/Contiguous	41	626
<b>Total</b>		<b>2007</b>	<b>12,665</b>
<b>Common Owner -Contiguous</b>		<b>165</b>	<b>1,371</b>

Source: Clark County GIS; BERK 2011

### Key Issues and Questions

- Would a change in minimum parcel size further the goal of encouraging agricultural and forest land resource uses?
- What is an appropriate minimum lot size for agricultural land in Clark County given the shrinking average farm size?
- What is an appropriate minimum lot size for forest uses? Is there a difference between family forest owners and commercial owners?
- To accomplish either alternative minimum sizes for agricultural or forest designated properties, should an additional district with a smaller minimum parcel size be created in addition to keeping the present zoning districts?
- Below a certain lot size should there be a restriction on use of the parcel for non-resource uses (e.g. only allowing a resource use and not allowing single family homes)?
- How can parcel sizes be set to avoid conversion to large home lots/rural sprawl?
- If clustering is allowed, is a change to the minimum parcel size for resource uses needed?

### 5.3 Transfer of Development Rights

Transfer of Development Rights (TDR) refers to the purchase of development rights on resource or rural lands and relocation of the development rights to locations where development is preferred (e.g. town centers). TDR ordinances define density in sending and receiving areas and determine the value of density credits. Some agencies purchase the density credits and bank them until a developer purchases them from the agency, while other agencies create a program where purchasers and sellers negotiate independently. The RLTF recommended that the County consider a TDR program.

TDR programs are recognized and encouraged in GMA as an innovative land use management tool that can help communities achieve growth and conservation goals. Several counties in Washington State currently have TDR programs, including King, Pierce, Snohomish, Kittitas, Thurston, Clallam, and Whatcom Counties. TDR has been used successfully in several of these counties, resulting in over 143,000 acres of conservation. One important characteristic of TDR is its flexibility: programs can be designed to advance a variety of community goals using a diverse array of approaches. A TDR program in Clark County can be customized to meet the specific needs of the county and achieve the desired growth and land use patterns.

County Framework Plan Policies address innovative measures as an incentive to retain resource lands – TDR could be one tool that meets this intent:

3.1.7 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.

County Framework Plan Policies also promote infill housing development in UGAs and for housing in rural centers that support resource industries – TDR could also be a tool to promote these infill opportunities:

2.1.6 Encourage infill development that enhances the existing community character and provide a mix of housing types in all urban and rural centers. All cities and towns are to encourage infill housing as the first priority for meeting the housing needs of the community.

3.2.7 Revise existing development standards and housing programs to permit and encourage development of affordable housing for people who work in resource-based industries in rural centers.

Other County Framework Plan Policies encourage open space corridors between urban areas as well as encouraging densification along corridors – transferring density from priority open space areas and redirecting growth to centers or corridors could be accomplished with TDR:

10.1.1 Encourage the establishment of open space between or around urban centers. These areas could be public greenways, resource lands, wildlife habitats, etc.

10.1.4 Establish development standards for higher densities and intensities of development along priority and high capacity transit corridors that encourage pedestrian, bicycle, and public transit usage.

The County’s Comprehensive Plan Rural and Natural Resource Element currently has a policy and detailed implementation strategy regarding TDR that would implement some of the Framework Policies described above:

*3.4.1 The county shall encourage the conservation of the county’s designated agricultural lands for long-term commercial and non-commercial agricultural uses and shall protect the opportunity for these lands to support the widest variety of agricultural crops and products as listed in RCW 36.70A.030(2) by:*

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- *encouraging agricultural land use as a clean industry incorporating tax breaks, right to farm, purchase of development rights, transfer of development rights and other economic means and develop strategies to support farming practices.*

*Implementation Strategy*

*Develop a preliminary Purchase of Development Rights (PDR) or Transfer of Development Rights (TDR) Program for Clark County. The primary strategy being:*

*Appoint a Clark County TDR Task Force to produce a recommendation or set of recommendations to the Clark County Board of Commissioners to consider regarding the potential for adopting TDR ordinance.\*\*\**

*The Task Force’s work could include any or all of the following:*

- 1 solicit and retain a private sector property appraiser to assess the economic viability for a TDR program in Clark County;*
- 2 identify potential sending and receiving sites (receiving sites could include city centers and those lots zoned urban reserve and/or those sites on the fringe of the city limits.);*
- 3 design a pilot or hypothetical TDR project;*
- 4 assess farmers and foresters interest in selling development rights;*

- 5 assess developers interest in purchasing such developments rights;*
- 6 determine if the sending parcel's sold off development rights run with the land or the duration of the sender's tenure on the property;*
- 7 determine how development rights (density) should be applied to a receiving site (up-zoning);*
- 8 determine what entity should administer the TDR program; and*
- 9 evaluate the feasibility of placing on the ballot to the voters a Purchase of Development Rights (PDR) Program to preserve farm and forestry lands in Clark County.*

### **Key Issues and Questions**

- Defining clear policy objective(s) and program goal(s)
- Defining sending areas – establish conservation priorities: which lands does the County wish to protect? Do sending areas contain an adequate supply of TDR credits? Are certain categories of sending areas favored for protection over others?
- Defining receiving areas – Cities? UGAs? Rural centers? Rezones or changes in land use designation? Rural clusters? Do receiving areas contain enough build-out potential to generate sufficient demand for development rights that will conserve the desired amount of land?
- What role can cities play in a countywide TDR program? How can cities and the county coordinate conservation and growth management efforts using TDR? What challenges exist for cities to participate?
- Determination of appropriate incentives for receiving site developers and sending area landowners.
- How much are developers willing to pay for increments of additional bonus development in viable receiving areas?
- What role does the County wish to play in the implementation and operation of a TDR program? What administrative model is appropriate for the scale of the program and the desired level of public involvement?
- Use of TDR banks, brokerages, auctions, density fees, and other market-based mechanisms.
- Identify funding opportunities for the county to pursue for TDR program implementation.
- How would a new TDR program interact with existing programs and policy goals, such as housing affordability?

## **5.4 Rural Reserve**

To ensure that the most important areas contributing to rural character are protected from UGA encroachments, the County wishes to consider whether some areas are appropriate to call “Rural Reserves.” This could be accomplished with an overlay district. While a County policy generally considers rural area designation to be permanent until re-designated a UGA, this would not prevent rural areas adjacent to UGAs from being considered for UGA expansion periodically when a Comprehensive Plan Update is accomplished. However, agreed-upon Rural Reserve lands would be more difficult to bring into a UGA.

*3.1.3 Clark County's Rural Area is considered to be permanent and shall not be re-designated to an Urban Growth Area until reviewed pursuant to the Growth Management Act (RCW 36.70A.130(3), and County-wide Planning Policy 3.0.*

Rural reserve lands have been identified in the Portland area by Metro, who negotiated with Clackamas, Multnomah, and Washington counties to define UGA boundaries consistent with a near-term supply of land (approximately 20 years); urban reserves (land supply for another 20 years); and Rural Reserves that are protected from urbanization beyond the next 40 years. Metro indicates that the Rural Reserves are “lands outside the current urban growth boundary that are high-value working farms and forests or have important natural features like rivers, wetlands, buttes, and floodplains.” Metro indicates the urban and rural reserve designations will provide “greater clarity regarding the long term expected use of the land and allow both public and private

landowners to make long term investments with greater assurance.” Upzones would not be allowed in the rural reserve.<sup>8</sup>

### Key Issues and Questions

- What are the criteria for Rural Reserve lands?
  - Will the Rural Reserve focus on agricultural activities that are not protected for the long term as a resource land?
  - Will it focus on lands important for rural character?
- How permanent will the Rural Reserve areas be?
  - What does the community want to change about its rural areas / What does the community want to keep for future generations?
  - What if conditions change?
  - How often will the boundaries be revisited?
- What limitations will be placed on parcels in the rural reserve?
- How to treat land that might be appropriate as either a Rural or an Urban reserve?
- If a Rural Reserve overlay is applied, under what circumstances can it be removed?

## 5.5 Agricultural Production Districts

Rural reserves are established for the purpose of retaining lands important to the rural character of the county for a couple of planning cycles. A related but distinct tool is an agricultural production district that could protect lands in agriculture production, whether in the lands of long term significance for agriculture, or more importantly rural lands that are in agriculture production and at more risk of conversion to non-resource uses. APAC recommendations included the concept of Agricultural Production Districts in rural and resource Lands:

*Agriculture Production Districts are specific geographic areas, regardless of zoning, where farming would be actively supported by the county over the long term. Clark County currently has about 32,500 acres of designated farm resource lands. Approximately 21,700 acres are both enrolled in the farm current use program and designated as farm resource districts in the county’s zoning code. In addition, there are approximately 14,570 acres of land zoned R-5, R-10 and R-20 in agricultural current use taxation. These are among the key building blocks for agricultural production districts. The Agriculture Preservation Advisory Committee identified a goal of maintaining or aggregating contiguous blocks of land 100-150 acres in size as a desirable goal toward which to direct many of the strategies discussed in this document. An agricultural production district may encompass one, or several, of such blocks. There could be a single agricultural producer, or many, within such areas. They should be considered priority areas for use of tools such as purchase and/or transfer of development rights and cluster development concepts to maintain or aggregate larger contiguous blocks of land dedicated primarily to agricultural activities.*

Similar concepts have been advanced to help permanently protect rural or small scale resource activities that are not considered lands of long-term commercial significance requiring indefinite protection but nonetheless support the farming base or rural character. For example, Whatcom County has established an Agricultural Protection Overlay District that “to maintain and enhance commercial agricultural activity and further protect open space resources within Whatcom County; further the county’s efforts in meeting long-term agricultural needs; provide a reasonable mix of uses and activities which may enhance the economic resources available to the farmer; and provide for a variety of uses within the rural areas which are not inconsistent with or incompatible with the use of lands within the area for agricultural activities.”

### Key Issues and Questions

- What are the criteria for agriculture production districts?
- How do agricultural production districts relate to lands of long-term commercial significance for agriculture?
- Will the agriculture production districts include rural lands not protected for the long term as a resource land?

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<sup>8</sup> Metro. 2011. Urban and rural reserves. Available: <http://www.oregonmetro.gov/index.cfm/go/by.web/id=26257>. Accessed: October 7, 2011.

- Will the County or other agencies or groups target particular services or programs that further resource uses in the rural reserve or agricultural production districts? E.g. TDR, purchase of development rights (PDR), marketing, etc.<sup>9</sup>
- How would the agriculture production districts relate to a rural reserve approach?

## 5.6 Current Use Taxation

Current use taxation allows property to be taxed at a reduced level based on its worth as agriculture, forestry, or open space; this helps support the continued use of the resource activities which otherwise could be prohibited by higher taxes. County policies include:

*3.4.1 The county shall encourage the conservation of the county's designated agricultural lands for long-term commercial and non-commercial agricultural uses and shall protect the opportunity for these lands to support the widest variety of agricultural crops and products as listed in RCW 36.70A.030(2) by:*

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*• encouraging the continuation of commercial agriculture by: 1) supporting land trades that result in consolidated agricultural ownership, 2) encouraging the maintenance of agricultural lands in current use property tax classifications, including those classifications as provided for in RCW 84.34 and CCC Chapter 3.08, and 3) working with agricultural landowners and managers to identify and develop other incentives for continued farming; and,*

*3.3.7 Encourage the maintenance of forestlands in timber and current use property tax classifications, including classified forest land, designated forest land and forest open space classifications, as provided for in (RCW 84.28) and (RCW 84.33).*

As of 2009, Clark County had about 32,500 acres of designated farm resource lands. Approximately 21,700 acres are both enrolled in the farm current use program and designated as farm resource districts in the county's zoning code. In addition, there are approximately 14,570 acres of land zoned R-5, R-10 and R-206 in agricultural current use taxation.<sup>10</sup>

Current use taxation parameters are established in state law at Chapter 84.34 RCW and are applied by County Assessor's across the state.<sup>11</sup> As of 2010, Clark County had 4,224 of Washington State's 54,399 program enrollees. See further discussion of this program in "Review of Current Use Taxation Program" prepared as a separate element of the Rural Lands Study Situation Assessment.

### Key Issues and Questions

- Are the Current Use programs goals being met and by what measure?
- Is there is local flexibility within the State Enabling Legislation to modify or expand the program to align with RLTF or APAC recommendations?
- Would the creation of a Public Benefit Rating System for open space provide incentives to meet RLTF or APAC recommendations?
- How would Current Use Taxation interact with a transfer of development rights program?

<sup>9</sup> King County agriculture production districts are synonymous with its lands of long-term significance for agriculture. The County offers a variety of services to its agriculture production districts as well as other agriculture activities in rural areas: <http://your.kingcounty.gov/dnrp/library/archive-documents/wlr/lands/pdf/agbrochure.pdf>.

<sup>10</sup> Agricultural Preservation Advisory Committee. 2009. Agriculture Preservation Strategies Report. Available: <http://www.co.clark.wa.us/legacylands/AgriculturePreservationReport.html>. Accessed: October 7, 2011. Clark County Legacy Lands Program. Vancouver, WA.

<sup>11</sup> An overview of the state legislation that is implemented by each County is found here: [http://dor.wa.gov/docs/Pubs/Prop\\_Tax/OpenSpace.pdf](http://dor.wa.gov/docs/Pubs/Prop_Tax/OpenSpace.pdf)

## 6.0 EXAMPLES IN OTHER COUNTIES

Table 2 shows how other counties in Western Washington address innovative tools to protect rural or resource lands. All allow clustering in rural lands and some allow on resource lands. Some counties have smaller minimum parcel sizes for agriculture and forestry. Many have TDR programs. Some have urban reserve classifications, and none have rural reserve programs though some have agriculture protection districts. The consultant team will explore these examples in more detail as we embark on Study Phase 2 Policy and Evaluation.

Table 2. Comparison of Rural and Resource Conservation Tools by Example Counties

Policy Topic	Clark County	Pierce County	King County	Snohomish County	Skagit County	Whatcom County
Number of Farms 2007	2,101	1,448	1,790	1,670	1,215	1,483
Average Farm Size (acres) 2007	37	33	28	46	89	69
Primary Crops 2007	Milk, Fryers, Berries	Poultry, Nursery, Aquaculture	Milk, Nursery, Aquaculture	Nursery, Milk, Cattle	Nursery, Milk, Potatoes	Milk, Raspberries, Blueberries
Average Market Value Per Farm 2007	\$25,079	\$57,598	\$71,100	\$75,221	\$210,904	\$220,128
Clustering	Allowed in Rural zones Not allowed on Resource Lands – under consideration.	Allowed in Rural zones Clustering allowed on Agricultural Resource Lands if approved in community plans. County has approved it in the Alderton-McMillin Community Plan.	Allowed in Rural Zones Not allowed on Resource Lands	Yes, Rural, Forestry, Mineral. Not on Agricultural. Required on Rural lands adjacent to designated local or commercial farmland.	Yes, Rural, Agricultural, Forestry, Rural Resource, or Mineral lands.	Allowed on Rural lands. Required on Rural lands with Agriculture Protection Overlay (cluster on 25% of land). Under consideration on Resource lands.
Parcel Sizes						
Agriculture	20, 160	10	10, 35	10 standard; can be less if exclusively agriculture use.	40	Agriculture: 40 Agriculture Protection Overlay: 5, 10, 20
Forestry	40, 80	80	80	Zoning says 20 std.; Comp Plan says 80 std. In Forest Transition Area, 20 acres std or 10 acres clustered.	20, 80	20, 40
TDR Program	Policy Support, No Program	Yes	Yes	Yes, Pilot Program. Studying expansion of the program Countywide.	No (only PDR) , considering adding TDR program	Yes
Special Rural or Resource Districts						
Rural Reserve	Not designated	Not designated	Not designated	Not designated	Not designated.	Not designated

Policy Topic	Clark County	Pierce County	King County	Snohomish County	Skagit County	Whatcom County
					County is considering Skagit 2060 to look at long-term growth patterns.	
Agricultural Production District	Only agricultural lands of long term commercial significance	Only agricultural lands of long term commercial significance	County focuses conservation programs for agriculture in Agricultural Protection Districts (APD). APD lands are considered lands of long term commercial significance. The County's Agriculture Program is functional and operating within APD lands and elsewhere. <sup>1</sup>	Only agricultural lands of long term commercial significance	Only agricultural lands of long term commercial significance	Agriculture Protection Overlay (APO) on Rural lands that appear to have prime soils and are in agriculture production. County also defines agricultural lands of long-term commercial significance. The County considers these lands along with designated lands of long-term significance as necessary to meet their goal to retain 100,000 acres of land in production to maintain their industry.

<sup>1</sup> A 2003 survey of the Rural Area identified an additional 25,000 acres in active agriculture outside the APDs. A description of the County's APD and agriculture programs operating in APDs and throughout the County is found here: <http://www.kingcounty.gov/environment/wlr/sections-programs/rural-regional-services-section/agriculture-program.aspx>.

## 7.0 GROWTH MANAGEMENT ACT PARAMETERS

This section describes GMA goals and summarizes key principles and requirements applicable to rural and resource lands. Growth Management Hearings Board cases that are recent or relevant are also summarized. This section is not considered exhaustive but is provided to highlight key concepts that should be kept in mind as rural and resource policies and regulations are developed.

### 7.1 Growth Management Goals

GMA establishes goals (RCW 36.70A.020) that guide the preparation and amendment of comprehensive plans and development regulations such as those that may be under consideration for the Rural Lands Study. GMA goal topics include:

- Urban growth
- Reduce sprawl
- Transportation
- Housing
- Economic development
- Property rights
- Permits
- Natural resource industries
- Open space and recreation
- Environment
- Citizen participation and coordination
- Public facilities and services
- Historic preservation

Important concepts are avoidance of “sprawl” development patterns, maintenance of resource lands, protecting open space and critical areas, and provision of services appropriate to the rural or urban context:

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

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

*(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.*

*(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.*

*(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.*

*(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.*

### 7.2 Rural Lands

It is likely that the Rural Lands Study will lead to recommendations to amend policies in the County’s Rural and Resource Lands Element, e.g. if a Rural Reserve is established. GMA and associated implementing state administrative rules require the following steps when creating or amending the Rural Element:

- *Develop a written record* explaining how the rural element harmonizes GMA goals and meets GMA requirements. This record should document local circumstances the county considered and the historic patterns of development in the rural areas.

- *Establish a definition of rural character* – see the Section titled “What is Rural Character” for GMA and Clark County definitions.
- *Provide for a variety of densities* that are consistent with the pattern of development established in its definition of rural character.
- *Ensure rural governmental services* are delivered to and supported by rural densities, e.g. water, fire and policy services, transportation, and power and telecommunications, and not storm or sanitary sewers that typically support urban development.

### 7.3 Resource Lands

The GMA and implementing state administrative rules guide the designation and regulation of resource lands including agricultural, forestry, and mineral lands:

- The County is to designate resource lands consistent with minimum guidelines in chapter 365-190 WAC.
- The County is also required to adopt development regulations that assure the conservation of designated agricultural, forest, and mineral lands of long-term commercial significance.
- If counties and cities designate agricultural or forest resource lands within any urban growth area, they must also establish a program for the purchase or transfer of development rights.
- Development regulations must prevent conversion to a use that removes land from resource production. Development regulations must not allow a primary use of agricultural resource lands that would convert those lands to non-resource purposes. Accessory uses may be allowed, as noted below.
- Regulations for the conservation of natural resource lands may not prohibit uses legally existing on any parcel prior to their adoption.
- Development regulations must assure that the planned use of lands adjacent to natural resource lands will not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands.
- Counties and cities are encouraged to use a coordinated program that includes non-regulatory programs and incentives to supplement development regulations to conserve natural resource lands.
- Counties should consider use of innovative zoning techniques designed to conserve agricultural lands and encourage the agricultural economy. Examples of innovative zoning techniques include:
  - Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production; any nonagricultural uses allowed should be limited to lands with poor soils or lands otherwise not suitable for agricultural purposes;
  - Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;
  - Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;
  - Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land;
  - Sliding scale zoning, which allows the number of lots for single-family residential purposes, with a minimum lot size of one acre, to increase inversely as the size of the total acreage increases; and

- The transfer or purchase of development rights from agricultural lands, which can be used through cooperative agreements with cities, or counties with non-municipal urban growth areas, as receiving areas for the use of these development rights.

Most of the innovative zoning techniques are under consideration as part of this Rural Lands Study.

## 7.4 Growth Management Hearings Board Cases

Following are selected summaries of cases heard by the Western, Central, and Eastern Growth Management Hearings Board as published in digests of decisions.<sup>12</sup>

- Rural character as envisioned by RCW 36.70A.030(15) refers to patterns of land use and development. That is, it takes a broad approach - an area wide approach - rather than a site-specific one, which is evidenced by the use of words such as "patterns", "predominate", and "landscapes"... RCW 36.70A.070 (5)(c), on the other hand, is more tightly focused. That section mandates the inclusion of measures within a jurisdiction's rural element that, among other things, assure the visual compatibility of rural development with the surrounding rural area. *Butler/Battin v. Lewis County, Case 10-2-0010, Final Decision and Order, at 16-17 (July 22, 2010)*
- Per 36.70A.011 and .070(5)+ The GMA does not prohibit business development in rural areas ... the rural element is to include provisions for rural development ... \*and+ Rural Development is defined at 36.70A.030(16) ... the parameters for allowable rural development ... include ensuring such uses are not characterized by urban growth and that they are consistent with Lewis County's rural character. *Butler/Battin v. Lewis County, Case 10-2-0010, Final Decision and Order, at 11-12 (July 22, 2010)*
- Pierce County, in adopting the Graham Plan, has defined rural character for the Graham area. The GMA acknowledges the importance of local circumstances, and thus allowing each rural community to develop its unique vision of rural lifestyle, as Pierce County does through its community plans, is an appropriate way to implement the requirement for a rural element in the County Comprehensive Plan. *North Clover Creek, et al v. Pierce County, Case 10-3-0003c, Final Decision and Order at 55 (Aug. 2, 2010)*<sup>13</sup>
- The Board has had few opportunities to assess the Rural Element requirements for preserving "visual landscapes" and assuring "visual compatibility." In the present case \*the Community Plan] gives definition to the visual elements of the rural character it seeks to preserve. *North Clover Creek, et al v. Pierce County, Case 10-3-0003c, Final Decision and Order at 57 (Aug. 2, 2010)*
- [I]f a county chooses to allow Rural Cluster Development, the county must do so in a manner that is consistent with rural character and provides appropriate rural densities that are not characterized by urban growth. *Crowder, et al v. Spokane County, Case 10-1-0008, Final Decision and Order, at 7 (Aug. 24, 2010)*
- The rural cluster can create smaller individual lots than would normally be allowed in a Rural Area, but only so long as there is a significant area of compensating open space that is "permanently" protected or protected "in perpetuity." The words "permanent" and "in perpetuity" have the same meaning in the context of rural cluster open space protection, i.e., the open space protection has no expiration date. *Crowder, et al v. Spokane County, Case 10-1- 0008, Final Decision and Order, at 7-8 (Aug. 24, 2010)*

<sup>12</sup> Growth Management Hearings Board. Digest of Decisions. Available: <http://www.gmhba.wa.gov/Digests.aspx>. Accessed October 5, 2011.

<sup>13</sup> Graham Community Plan is found at: <http://www.co.pierce.wa.us/pc/services/home/property/pals/landuse/graham.htm>

- Rural cluster development involves a quid pro quo in that smaller-than-normal individual lots are approved in exchange for the permanent/perpetual open space protection of the property residue. The resulting development is more compact but balanced by the adjoining perpetual open space. Subsequent withdrawal of rural area open space protection would abrogate the rural cluster quid pro quo ... Counties must, therefore, ensure that this open space protection within rural cluster development areas is permanent, continues without expiration, and cannot be revoked so long as the area is governed by the Rural Element. *Crowder, et al v. Spokane County, Case 10-1-0008, Final Decision and Order, at 8 (Aug. 24, 2010)*
- The Board concurs with the County that “There is not, however, a blanket prohibition within the GMA on non-residential uses that are less intensive and consistent with rural character outside of LAMIRDs.” The rural areas of counties, outside of LAMIRDs, are not reserved for purely residential uses. Instead, rural development can consist of “a variety of uses and residential densities”.<sup>13</sup> It is only “more intensive rural development” that the GMA requires to be contained in specially designated LAMIRDs. *Friends of Skagit County, et al v. Skagit County, Case No. 07-2-0025c, Order on Compliance, at 11 (Jan. 21, 2009)*
- See *Bayfield Resources/Futurewise v. Thurston County, Case No. 07-2- 0017c, FDO, April 17, 2008 at 19.* (Affirming Board’s previous holdings that the written record explaining how the rural element harmonizes the goals of the GMA required by RCW 36.70A.070(5) does not need to be a distinct and separate document if the jurisdiction’s comprehensive plan is clear in its description of how its amendments harmonize with the overall goals).
- The new exemption provides that substandard lots in rural areas created by public rights-of-way can be “existing lots of record” and developable without regard to the underlying zoning density requirements. Some of the lots thus created are smaller than the lot sizes required for the allowed densities in the rural zones in which they are located. The County established the rural densities as part of the rural element of its comprehensive plan and in aid of protecting Island County’s defined “rural character.” Under Ordinance C-61-06, the lots created by public rights-of-way are not reviewed to assure conformance with either rural densities or “rural character.” *WEAN v. Island County, Case No. 06-2-0023, FDO, at 15 (Jan. 24, 2007)*
- In rural lands, the Board finds that the small number of detached ADU permits issued annually under the conditions placed on them will not disturb the existing compliant scheme of rural densities. The Board determines that because of the limitations described in the regulations and the historical pattern of guesthouses, permitting a small number of such detached ADUs in rural lands will not upset the traditional rural pattern of development in San Juan County and will not alter its rural character. *Friends of San Juans v. San Juan County, Case No. 03-2-0003c coordinated with Nelson et al v. San Juan County, Case No.06-2-0024, FDO/Compliance, at 3 (Feb 12, 2007).*<sup>14</sup>
- The County Commissioners found that both commercial and noncommercial farming are important to the rural character of Island County. Rural character, they found, is part of the economy and culture of the County. They determined that noncommercial farming activities in rural designations contribute to the rural character of Island County and preserve the County’s agricultural heritage. Therefore, the Commissioners found that the contributions of both noncommercial farming and commercial farming should be recognized and protected. Because of the number of critical areas located on parcels in rural noncommercial agricultural use, the Commissioners found that the standard buffer requirements would threaten the ability of rural agriculture to continue and that BMPs would assist rural agriculture to coexist in conformity with GMA requirements for the protection of critical areas. We find that, with its survey of agricultural activity on Island County and the Commissioners’ findings, the County has established a sufficient rationale, based on its local circumstances, for the need to adopt special measures to protect critical areas that also preserve existing and ongoing

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<sup>14</sup> The GMHB found that detached ADUs should be treated as separate units for density calculations unless used for family or farmworkers engaged in resource production.

agricultural activities in its noncommercial rural zones. *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, 9-1-07)

- RCW 36.70A.070(5)(c) creates an overall requirement to create a written record harmonizing the goals of the GMA with the County's rural element, but does not create a separate requirement for the same process in the establishment of rural character. *Diehl v. Mason County* 95-2-0023c (Compliance Order, 11-12-03)
- The Board recognizes the GMA mandate for Clallam County to provide for a variety of rural densities and permits it discretion in making planning decisions. However, the densities the County selects must be rural in nature. The importance of rural lands and their character is specific, looking to land use patterns for establishing rural character and seeking to foster traditional rural lifestyles and economies that a County has historically provided. By authorizing densities that do not reflect the existing landscape or economy of the area, the County has failed to maintain the traditional rural lifestyles of the residents of Clallam County as required by the GMA. *Dry Creek Coalition/Futurewise v. Clallam County*, Case No. 07-2-0018c (FDO, April 23, 2008) at 63.<sup>15</sup>
- While [Petitioner] acknowledges that "[W]hether a particular density is rural in nature is a question of fact based on the specific circumstances of each case," it nevertheless maintains that a density of 1 dwelling unit per 2.4 acres is "characterized by urban growth" and inconsistent with the density otherwise allowed in the rural zones. However, if it is agreed that the determination of rural density is based on the specific circumstances of each case, it is not appropriate to dismiss a 1du/2.4 acre density out-of-hand, but instead to apply the density, if at all, where it is consistent with existing rural development. In fact, there are areas in Clallam County where a density of 1du/2.4 acre can be consistent with a rural environment, when appropriately limited in a manner such as the County now provides. *Dry Creek Coalition, et al v. Clallam County*, Case No. 07- 2-0018c, Compliance Order (Nov. 3, 2009)
- To be clear, while this Board found that the rural character of Clallam County is a rural density of 1 du/5 acre, the Board has not held that no variation from that density is allowed under any circumstances. In fact, the clear language of the GMA, which requires "a variety of rural densities," would not permit such a holding. Instead, the Board found that the visual landscape and farm-based economy of the County was dominated by lots of greater than five acres in size and that, by authorizing densities "that do not reflect the existing

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<sup>15</sup> Originally, the County found that the average rural parcel size was 4.81 acres with average farm sizes of 25 acres. The County's rural pattern was approximately 1 dwelling unit per 5 acres. Nevertheless the County applied zoning of 1 unit per 2.4 acres. Following a GMHB decision against the R2 and RW2 zoning the County adopted 5 acre zoning in some areas, but also created a Neighborhood Conservation Overlay.

The Compliance Order stated "The County's NCO provision recognizes that, in Clallam County, there are areas where the pattern of rural development has occurred at densities below the average of 4.8 acres and limits the application of this overlay to areas so as to allow 'infill at a density consistent with the substantial residential development already existing'<sup>38</sup>. In those areas where, as required by the County, 70% of the parcels within a neighborhood boundary of 500 feet are already developed at higher densities and contain mature infrastructure and services, it cannot be said that densities of 1 dwelling unit/ 2.4 acres are inconsistent with rural character of that area. In addition, because infill allowed by the NC overlay is limited to neighborhoods that have already been substantially developed, this will not lead to the 'inappropriate conversion of undeveloped lands into sprawling, low-density development'<sup>39</sup> as DCC suggests. In addition, as the County noted, the NCO and NCC address the rural character of existing NC neighborhoods and some NC parcels within a limited number of previously unchallenged and formerly GMA compliant R2 and RW2 areas, which were built out between the mid-1990's and the entry of the FDO.<sup>40</sup> NC parcels and parcels in other rural areas characterized by larger lot sizes would not qualify for NCO, and must meet the County's size limitations, site development criteria and open space requirements."

Further the NCO zone was limited per the Compliance Order: "The County also points out that the former R2/RW2 zones comprise less than 25% of the County's total rural acres. The proposed NC zone lands account for only 2% of the County's total acreage.<sup>41</sup> Thus, the risk of 'inappropriate conversion of undeveloped lands into sprawling, low-density development' is more imagined than real."

landscape or economy of the area, the County has failed to maintain the traditional rural lifestyles of the residents of Clallam County.” Dry Creek Coalition, et al v. Clallam County, Case No. 07-2-0018c, Compliance Order (Nov. 3, 2009)

- [In asserting rural density is, at a minimum 1 du/5 acre, Futurewise relied on the average farm size within Clallam County] Futurewise is essentially arguing that if a lot is too small to farm then it is per se urban. To determine something is per se urban based on a single factor is to essentially establish the bright line that the Viking Court found inappropriate. Although the Board concedes that the average farm size relates strongly to the visual rural character of the area, the ability of land to viably produce agricultural products is not, in and of itself, the defining factor in regards to whether something is rural. The purpose of rural lands is not primarily the production of agricultural products as Futurewise asserts based on the GMA’s definition of urban growth. As noted supra, rural areas provide much more than solely agricultural land. The ability of land to be productive is more appropriate in the context of agricultural lands. It is the County’s own data that is more persuasive ... Given the County’s reliance on farming to sustain traditional rural lifestyles and rural-based economies within the Rural Lands Report, the size of existing, operating farms is persuasive when determining what the character of the County’s rural areas is. Based on statistics provided by Futurewise and the County itself, farms within Clallam County average 25 acres, with farms generally being five acres or greater Dry Creek Coalition/Futurewise v. Clallam County, Case No. 07-2-0018c (FDO, April 23, 2008) at 60.
- A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. Durland v. San Juan County 00-2- 0062c (FDO, 5-7-01)

## 7.5 Appeals Court and Supreme Court Decisions

In the case *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.* issued in July 2011, the Washington State Supreme Court found that Kittitas County violated the GMA by failing to: develop the required written record explaining its rural element, include provisions in its Plan that protect rural areas, provide for a variety of rural densities, protect agricultural land, and protect water resources. The case involved several policies and zones including rural zoning allowing 1 dwelling per 3 acres, planned unit development regulations allowing intense development throughout the County, one time lot splits resulting in smaller parcels, and other aspects. Key points of the case include:

- Counties need a written record to show their work, to define rural character, and to show how innovative techniques harmonize GMA goals and requirements;
- Comprehensive Plans need directive language rather than just broad policy statements;
- Counties can apply innovative zoning techniques and these do not have to match underlying zoned density, but results must show that areas are not characterized by urban growth.
- The Comprehensive Plan as well as zoning should show a variety of densities;
- The Court had concerns over one-time lot splits and conditional uses allowed in the Agriculture zone<sup>16</sup>

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<sup>16</sup> Regarding one-time splits, chapter 17.31 KCC includes a lot size requirement that limits division to two lots per 10 acres and also provides that “[o]nce this provision has been applied to create a new parcel, it shall not be allowed for future parcel subdivision, while designated commercial agriculture.” KCC 17.31.040(1). Regarding conditional uses, many enumerated uses including, for example, non-livestock auctions, quarries and sand and gravel excavation, and kennels While the Board acknowledged that “[t]here are uses presently allowed by the County that may be appropriate for the [agricultural lands of long term commercial significance], if their scope and/or function are limited,” the Board concluded that the County “impermissibly allows urban uses on its

- Counties should limit non-farm uses in agricultural zones

In the *Suquamish Tribe v. Cent. Puget Sound Growth Mgmt. Hearings Bd* case Kitsap County's "Rural Wooded" zone which promoted clustering was found deficient. The Appeals Court in March 2010 found that the Central Puget Sound Growth Management Hearings Board had improperly considered a "bright line" rural density and had relied on a whole parcel acreage even though the actual cluster development could appear urban and could be developed adjacent to "legacy lots" that were platted pre-GMA in higher density patterns.

- Because the Board improperly relied on a whole parcel calculation method and its bright line rule for rural density, we hold that the Board did not decide whether the County clearly erred when the description of local circumstances in the goal harmonizing document did not include a discussion of the impact on the rural element of higher density development under the Rural Wooded Incentive Program when combined with development on the existing legacy lots.

The issue was remanded to the Hearings Board, but the issue has become moot as Kitsap County repealed the Rural Wooded cluster regulations. Before deciding to repeal the program, some important issues with regarding to the length of conservation easements was determined by the Central Puget Sound Growth Management Hearings Board, as follows:

- Kitsap County TDR remand: in 2007 the Central Puget Sound GMHB found Kitsap County's TDR program out of compliance with the GMA for establishing a 40-year term for conservation easements on properties from which development rights are purchased. The County Board of Commissioners subsequently amended the comprehensive plan policies and TDR program to specify that deed restrictions for properties selling development rights would be in perpetuity. This relates to the question of limited term easements, which is included in Clark County's Rural Land Task Force's list of items for consideration in TDR program design and implementation.

Although the Rural Wooded proposals were not successful, Kitsap County has focused on rural lands recently in its "Year of the Rural" update of the Comprehensive Plan Rural Element, winning a Governor's Smart Communities Award in 2011.<sup>17</sup>

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agricultural lands of long-term significance, and fails to include standards within its development regulations to limit such uses and protect the commercial agricultural zone," as required by the GMA.

<sup>17</sup> See webpage at: [http://www.kitsapgov.com/dcd/community\\_plan/rural\\_policy/Rural\\_Policy\\_default.htm](http://www.kitsapgov.com/dcd/community_plan/rural_policy/Rural_Policy_default.htm).

# APPENDIX A: COMPREHENSIVE PLAN LAND USE CATEGORIES

## NET ACRES BY COMP PLAN DESIGNATION, 2011

Comprehensive Plan Designation	Description	Category of Land	Acres	Percent of Total
	Water	UGA	168.32	0.0%
A	Airport	UGA	78.67	0.0%
AG	Agriculture	Resource	157.91	0.0%
BPA	Bonneville Power Administration	UGA	165.63	0.0%
C	City Center	UGA	31.43	0.0%
CC	Community Commercial	UGA	663.81	0.2%
COM	Commercial	UGA	3,091.97	0.8%
D	Downtown	UGA	159.85	0.0%
EC	Employment Center	UGA	1,642.59	0.4%
EMC	Employment Campus	UGA	125.33	0.0%
GC	General Commercial	UGA	1,484.12	0.4%
IND	Industrial	UGA	6,356.50	1.6%
LI/BP	Light industrial/Business park	UGA	1,756.25	0.4%
MFH	Multi-Family_High	UGA	107.08	0.0%
MFL	Multi-Family_Low	UGA	441.74	0.1%
MH	Heavy Industrial	UGA	427.97	0.1%
ML	Light Industrial	UGA	3,951.91	1.0%
MU	Mixed Use	UGA	1,326.26	0.3%
MU-E	Mixed use - Employment	UGA	249.13	0.1%
MU-R	Mixed use - Residential	UGA	462.99	0.1%
NC	Neighborhood Commercial	UGA	103.04	0.0%
OP	Office Park/Business Park	UGA	371.21	0.1%
P/OS	Parks/Open Space	UGA	6,196.27	1.6%
PF	Public Facility	UGA	2,823.85	0.7%
R-10	Rural-10	UGA	5.25	0.0%
RCC	Regional Center	UGA	520.83	0.1%
SFH	Single-Family_High	UGA	170.85	0.0%
SFL	Single-Family_Low	UGA	525.64	0.1%
SFM	Single-Family_Medium	UGA	3,313.86	0.8%
TC	Town Center	UGA	150.63	0.0%
UH	Urban High Density Residential	UGA	3,197.41	0.8%
UL	Urban Low Density Residential	UGA	34,779.97	8.9%
UM	Urban Medium Density Residential	UGA	3,698.48	0.9%
	Water	Rural	3,052.70	0.8%
A	Airport	Rural	83.79	0.0%
AG	Agriculture	Resource	30,298.03	7.7%
AG-WL	Agri-Wildlife	Resource	2,256.37	0.6%

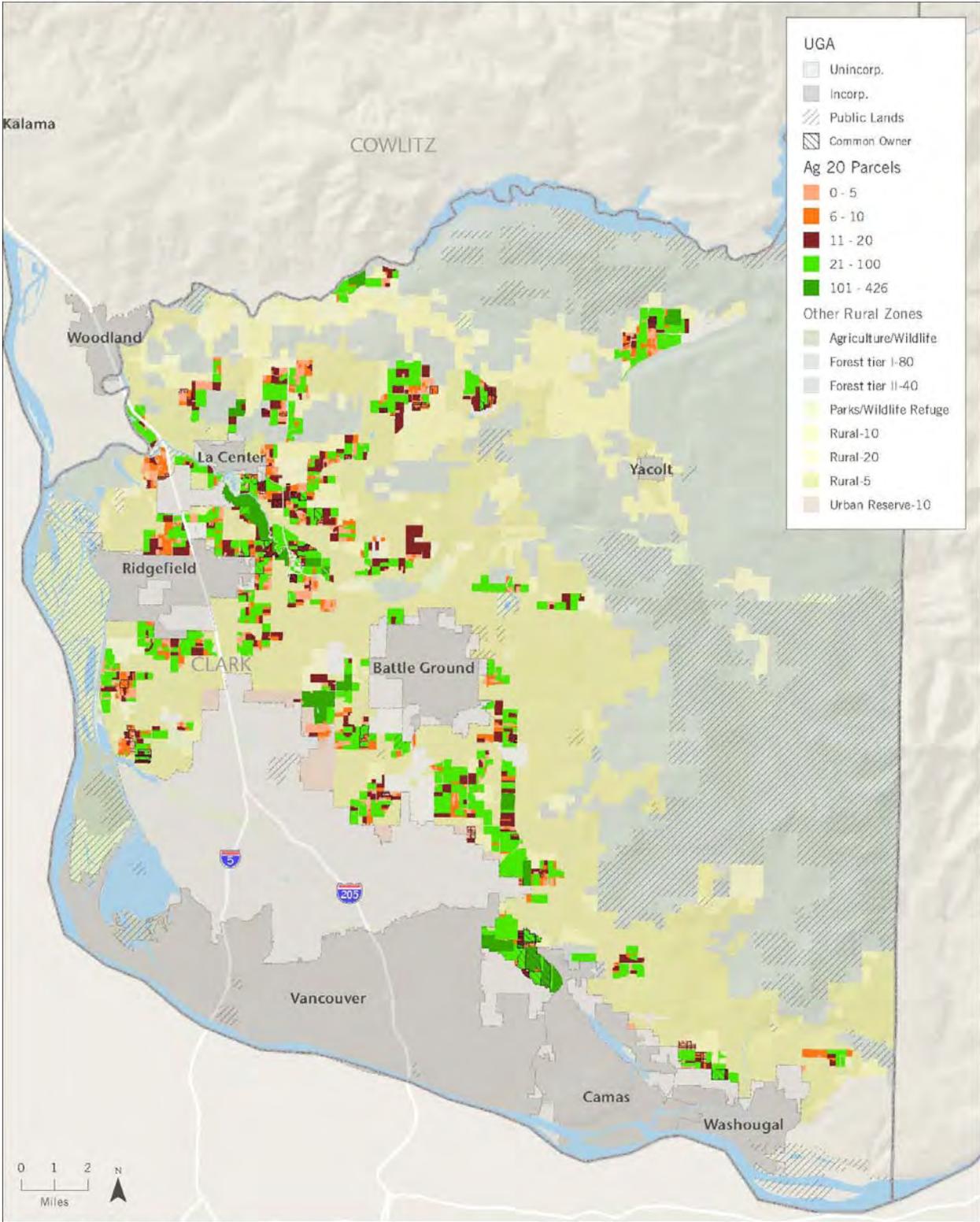
Comprehensive Plan Designation	Description	Category of Land	Acres	Percent of Total
COM	Commercial	Rural	9.87	0.0%
FR-1	Forest Tier 1	Resource	130,105.60	33.3%
FR-2	Forest Tier 2	Resource	29,616.91	7.6%
GLSA 40	Gorge Large-scale Ag 40	Resource	1,475.29	0.4%
GLSA 80	Gorge Large-scale Ag 80	Resource	1,192.14	0.3%
GR 10	Gorge Residential 10	Rural	452.59	0.1%
GR 5	Gorge Residential 5	Rural	199.65	0.1%
GSAG	Gorge SMA Agriculture	Resource	257.17	0.1%
GSNFF	Gorge SMA Non-federal Forest	Resource	54.47	0.0%
GSOS	Gorge SMA Open Space	Rural	1,041.93	0.3%
GSSA	Gorge Small-scale Agriculture	Resource	572.93	0.1%
GSW 20	Gorge Small Woodland 20	Resource	190.71	0.0%
GSW 40	Gorge Small Woodland 40	Resource	152.59	0.0%
MH	Heavy Industrial	Rural	5.08	0.0%
P/OS	Parks/Open Space	Rural	8,845.05	2.3%
R-10	Rural-10	Rural	19,496.25	5.0%
R-20	Rural-20	Rural	7,268.60	1.9%
R-5	Rural-5	Rural	71,438.11	18.3%
RC	Rural Commercial	Rural	269.10	0.1%
RCR	Rural Center Residential	Rural	1,541.73	0.4%
RI	Rural Industrial	Rural	300.93	0.1%
UL	Urban Low Density Residential	UGA	15.00	0.0%
UR	Urban Reserve	Rural	2,073.02	0.5%
<b>UGA</b>			<b>78,564</b>	<b>20.1%</b>
<b>Rural</b>			<b>116,078</b>	<b>29.7%</b>
<b>Resource</b>			<b>196,330</b>	<b>50.2%</b>
<b>TOTAL</b>			<b>390,972</b>	<b>100.0%</b>

Source: Clark County GIS; BERK 2011

Note: Some AG designated property was mapped inside UGAs (along UGA boundaries) but was treated as Resource Land. Also some UL designated land was outside of UGAs and in Rural territory but was treated as UGA. These anomalies are likely database errors. They did not represent large acres considered cumulatively.

## **APPENDIX B. AGRICULTURE-20 PROPERTIES MAP AND CURRENT USES**

CLARK COUNTY: AG 20 PARCELS BY SIZE



**BERK** Date: 11/1/2011  
Source: BERK, Clark County

## Clark County AG-20 Parcels – Current Land Use

Acre Category	Current Land Use Description	Count of		Percent of Parcels
		Parcels	Acres	
Less Than 5	Single family unit not sharing structure with other uses	462	900.71	59.0%
Less Than 5	Unused or Vacant Land - No improvements	149	343.55	19.0%
Less Than 5	Mobile home converted to real property	60	153.06	7.7%
Less Than 5	Unused platted land. One or more mobile homes not affixed to the land (use this code for the 6xxxx-x	24	53.03	3.1%
Less Than 5	Unused land timbered.	11	34.42	1.4%
Less Than 5	Unused land timbered.	10	18.13	1.3%
Less Than 5	Farm Bldgs for Equipment	5	13.3	0.6%
Less Than 5	Churches, synagogues, temples, Sunday school buildings.	5	9.47	0.6%
Less Than 5	Railroad right-of-way	3	8.8	0.4%
Less Than 5	Nurseries and/or commercial greenhouses	2	5.5	0.3%
Less Than 5	Private streets.	7	4.72	0.9%
Less Than 5	Gas storage tanks, pumping, distribution, pipelines, production.	2	4.49	0.3%
Less Than 5	Electric power boosters, transformers, sub-stations, right-of-ways.	6	3.76	0.8%
Less Than 5	Prime Developable Ground	1	3.36	0.1%
Less Than 5	Small retail building (<10,000 s.f.)	2	3.23	0.3%
Less Than 5	Zero value property for various reasons	5	3.1	0.6%
Less Than 5	VACANT	2	3.01	0.3%
Less Than 5	Cemeteries	2	3	0.3%
Less Than 5	SFR with auxiliary unit	1	2.73	0.1%
Less Than 5	Surfaced streets with curbs and gutters.	4	2.64	0.5%
Less Than 5	Unused buildings other than residential.	1	2.03	0.1%
Less Than 5	Retirement residences & ALF's (Assisted Living Facilities)	1	2	0.1%
Less Than 5	Radio & TV Transmitter Bldgs., Phone Exchange, Router Warehouse	1	1.95	0.1%
Less Than 5	Single family residence on commercial land	1	1.93	0.1%
Less Than 5	Fire Station or related facility	2	1.9	0.3%
Less Than 5	AGRICULTURAL BUILDINGS	2	1.85	0.3%
Less Than 5	Passable streets with some surfacing or grading.	1	1.82	0.1%
Less Than 5	Improved walkways used by the public.	1	1.56	0.1%
Less Than 5	Other religious uses (offices, reading rooms, shrines)	1	1.34	0.1%
Less Than 5	Convenience Store - w/ pumps & tanks	2	1.16	0.3%
Less Than 5	COMMUNICATION BLDGS & RELATED STRUCTURES	1	1	0.1%
Less Than 5	Unused land because of terrain.	1	0.98	0.1%
Less Than 5	Granges, Lodges, & Meeting Halls	1	0.97	0.1%
Less Than 5	WATER TOWERS & RESERVOIRS	1	0.8	0.1%
Less Than 5	Public - Primary and elementary schools.	1	0.75	0.1%
Less Than 5	Unidentified Buildings or Use	1	0.5	0.1%
Less Than 5	Farm labor camps.	1	0.44	0.1%
5-10	Single family unit not sharing structure with other uses	491	2943.13	55.5%

Acre Category	Current Land Use Description	Count of Parcels	Acres	Percent of Parcels
5-10	Unused or Vacant Land - No improvements	259	1615.1	29.3%
5-10	Mobile home converted to real property	82	518.92	9.3%
5-10	Unused platted land.	23	130.6	2.6%
5-10	One or more mobile homes not affixed to the land (use this code for the 6xxxx-x	9	63.96	1.0%
5-10	Unused land timbered.	9	55.71	1.0%
5-10	Forestry operations	2	14.71	0.2%
5-10	Farm Bldgs for Equipment	1	10	0.1%
5-10	Surfaced streets with curbs and gutters.	2	10	0.2%
5-10	Zero value property for various reasons	1	5.48	0.1%
5-10	SFR with auxiliary unit	1	5.2	0.1%
5-10		1	5.06	0.1%
5-10	Retirement residences & ALF's (Assisted Living Facilities)	1	5.03	0.1%
5-10	Mobile home converted to conventional structure.	1	5	0.1%
5-10	Hardship Mobile Homes	1	5	0.1%
5-10	Riding stables & arenas, Riding academies.	1	5	0.1%
11-20	Single family unit not sharing structure with other uses	184	3135.21	54.3%
11-20	Unused or Vacant Land - No improvements	103	1670.64	30.4%
11-20	Mobile home converted to real property	25	415.53	7.4%
11-20	Unused platted land.	7	133.21	2.1%
11-20	One or more mobile homes not affixed to the land (use this code for the 6xxxx-x	5	91.25	1.5%
11-20	Unused land timbered.	3	48.61	0.9%
11-20	AGRICULTURAL BUILDINGS	2	27.79	0.6%
11-20	Farm Bldgs for Large Animals - Barns etc.	2	24.2	0.6%
11-20	Highway maintenance facilities (gravel piles, road equipment storage).	1	20	0.3%
11-20	Farm Bldgs for Equipment	1	19.4	0.3%
11-20	Forestry operations	1	17.5	0.3%
11-20	Pleasure boat launching facilities. e.g. ramps, hoists	1	17.21	0.3%
11-20	Prime Developable Ground	1	14	0.3%
11-20	Nurseries and/or commercial greenhouses	1	13.1	0.3%
11-20	Public - Primary and elementary schools.	1	12.84	0.3%
11-20	Private - Preschools, Nurseries, & Daycare Centers	1	10.01	0.3%
21-100	Single family unit not sharing structure with other uses	198	7069.06	49.0%
21-100	Unused or Vacant Land - No improvements	127	4389.79	31.4%
21-100	Mobile home converted to real property	18	637.03	4.5%
21-100	Unused platted land.	14	461.1	3.5%
21-100	Forestry operations	6	339.57	1.5%
21-100	One or more mobile homes not affixed to the land (use this code for the 6xxxx-x	10	298.98	2.5%
21-100	Farm Bldgs for Equipment	5	266.31	1.2%
21-100	Unused land timbered.	5	219.72	1.2%
21-100	Farm Bldgs for Large Animals - Barns etc.	3	137.18	0.7%

Acre Category	Current Land Use Description	Count of Parcels	Acres	Percent of Parcels
21-100	Nurseries and/or commercial greenhouses	3	136.54	0.7%
21-100	Farm labor camps.	2	82.63	0.5%
21-100	AGRICULTURAL BUILDINGS	2	54.67	0.5%
21-100	COMMUNITY EDUCATIONAL FACILITIES	1	40	0.2%
21-100	Boathouses.	1	35.88	0.2%
21-100	Golf courses and clubhouses.	1	35	0.2%
21-100	Prime Developable Ground	1	30	0.2%
21-100	Surfaced streets with curbs and gutters.	1	29.57	0.2%
21-100	SFR with auxiliary unit	1	26.81	0.2%
21-100	Highway maintenance facilities (gravel piles, road equipment storage).	1	26.3	0.2%
21-100		1	24.94	0.2%
21-100	Rock quarry, crushing, sand and gravel pits.	1	24.74	0.2%
21-100	VACANT	1	20.96	0.2%
21-100	Railroad right-of-way	1	20.2	0.2%