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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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No. 265471
con w/ 265480

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

KITTITAS COUNTY and CENTRAL WASHINGTON HOME
BUILDERS ASSOCIATION, et al,

Petitioners,

v.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD et al,
Respondents.

OPENING BRIEF OF KITTITAS COUNTY

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March 12, 2009

original

**OPENING BRIEF OF
KITTITAS COUNTY**

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1 *Yakima County v. Eastern Washington Growth*
2 *Management Hearings Board*, 146 Wn.App. 679,
192 P.3d 12 (2008)

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3 **STATUTES**

4	RCW 34.05.570	12, 13
	RCW 36.70A.010	2
5	RCW 36.70A.020	3, 4, 11
	RCW 36.70A.030	3, 28
6	RCW 36.70A.070	1, 2, 3, 4, 11, 15, 16, 28
7	RCW 36.70A.280	11
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8	RCW 36.70A.320	2, 11, 12, 15
9	RCW 36.70A.3201	2, 12, 15, 18, 19, 28
10	WAC 242-02-630	2
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12	WAC 365-195-030	15
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13	WAC 365-195-070	15
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14	WAC 365-195-300	15
15	KCC 17.04.060	24

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I. INTRODUCTION

Appellant Kittitas County ("County"), respondent before the Growth Management Hearings Board for Eastern Washington ("Hearings Board"), submits this Opening Brief in its appeal of the Final Decision and Order of the Hearings board issued on August 20, 2007 in its cause number 07-1-0004c ("FDO"). Kittitas County's position is that the Hearings Board's determination that the County's three-acre zoning violates the Growth Management Act ("GMA") is neither supported by the record nor the law.

II. ASSIGNMENTS OF ERROR

Kittitas County assigns the following errors in the Findings of Facts and/or Conclusions of Law.

- a. Findings of Fact number 5¹, as to three-acre rural densities, is a conclusion of law, and, regardless of its characterization, is not supported by the record before the Hearings Board.
- b. Conclusion of Law number 9², as to three-acre densities, is a misstatement of the applicable law and/or is a misrepresentation of the applicable law.

¹ "The County does not protect its rural character and does permit low-density sprawl throughout much of the rural area, all contrary to the specific requirements in RCW 36.70A.070(5)." AR 2368 (FDO pg 81).

² "Kittitas County has allowed improper densities in the Rural element of the County when it allowed UGNs, Gold Creek and zonings Agriculture-3 and Rural-3." AR 2370 (FDO pg 83).

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c. Conclusion of Law number 11³, as to three-acre densities, is a misstatement of the applicable law and/or is a misrepresentation of the applicable law.

d. The Hearings Board engaged in unlawful decision-making by failing to give due deference to Kittitas County's amendment to its Comprehensive Plan as to three-acre densities, as required under RCW 36.70A.320; 36.70A.3201; WAC 242-02-630; 242-02-632; and 242-02-634, and instead substituted its judgment for that of the duly elected local legislative body.

e. The Hearings Board made an erroneous interpretation and application of the law and engaged in unlawful decision-making by failing to presume Kittitas County's amendment to its Comprehensive Plan as to three-acre densities is valid, as required under RCW 36.70A.320; 36.70A.3201; and WAC 242-02-630.

f. The Hearings Board's decision is not supported by substantial evidence.

g. The Hearings Board acted outside of its authority by ordering action, as to three-acre densities, by Kittitas County that is not required by the GMA (RCW 36.70A.010 et. seq.) and for which the Hearings Board is not given authority to order.

For the reasons set forth in paragraphs a through g, the Hearings Board has engaged in unlawful procedure or decision-making process, the Hearings Board erroneously interpreted or applied the law, the Order is not

³ "Kittitas County has failed to have a variety of rural densities that complies with RCW 36.70A.070(5)(b) and is out of compliance with the GMA." *Id.*

1 supported by substantial evidence, and the Hearings Board has acted
2 outside of its statutory authority.

3 III. STATEMENT OF THE CASE

4 A. Basic GMA Framework

5 Under the GMA, certain counties must adopt comprehensive plans,
6 which the GMA defines as merely “a generalized coordinated land use
7 policy statement of the governing body of a county.” RCW
8 36.70A.030(4); WAC 365-195-200(4).⁴ RCW 36.70A.070(5) provides in
9 pertinent part that

10 Counties shall include [in their comprehensive plans] a
11 rural element including lands that are not designated for
12 urban growth, agriculture, forest, or mineral resources. The
13 following provisions shall apply to the rural element: (a)
14 Growth management act goals and local circumstances.
15 Because circumstances vary from county to county, in
16 establishing patterns of rural densities and uses, a county
17 may consider local circumstances, but shall develop a
18 written record explaining how the rural element harmonizes
19 the planning goals in RCW 36.70A.020 and meets the
20 requirements of this chapter.

21 The GMA planning goals of RCW 36.70A.020 “are not listed in
22 order of priority and shall be used exclusively for the purpose of guiding

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⁴ Strict compliance with a comprehensive plan is not determinative; only general conformance is required. *Tugwell v. Kittitas County*, 90 Wn.App. 1, 8, 951 P.2d 272 (1997).

1 the development of comprehensive plans and development regulations.”
2 RCW 36.70A.020. They include at subsection (2) the reduction of sprawl,
3 at subsection (4) the provision of a variety of densities of housing,
4 subsection (5) recognition of regional differences as a part of economic
5 development, subsection (8) the protection of resource industries such as
6 agriculture which includes the encouragement of conservation of
7 agricultural lands and the discouragement of incompatible uses, subsection
8 (9) the preservation of open spaces, subsection (10) the protection of the
9 environment, and subsection (12) provision of public services and
10 facilities. RCW 36.70A.020.

11 RCW 36.70A.070(5)(a) also requires the written harmonization to
12 include “the requirements of this chapter.” That would chiefly mean, for
13 purposes of this case, the remainder of RCW 36.70A.070(5)(b)-
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15 (b) Rural development. The rural element shall permit rural
16 development, forestry, and agriculture in rural areas. The
17 rural element shall provide for a variety of rural densities,
18 uses, essential public facilities, and rural governmental
19 services needed to serve the permitted densities and uses.
20 To achieve a variety of rural densities and uses, counties
21 may provide for clustering, density transfer, design
22 guidelines, conservation easements, and other innovative
23 techniques that will accommodate appropriate rural densities
24 and uses that are not characterized by urban growth and that
25 are consistent with rural character.

1 In short, the rural element must take into count local circumstances
2 and there must be evidence in the record and a written description of how
3 the local regulation fits those local circumstances, harmonizes the
4 planning goals of the GMA, and provide for a variety of rural densities
5 and uses and protects rural character.

6 **B. Facts Of This Case**

7 Kittitas County's public process used to amend its comprehensive
8 plan produced testimony and evidence in the record supportive of the
9 County's three-acre zoning harmonizing the goals and objectives of the
10 GMA. AR 1746-1779 attached hereto as Exhibit "A." The testimony
11 found there by Lila Hanson, Pat Deneen, and Urban Eberhart from the
12 Kittitas County Farm Bureau, are in accord that three-acre zoning
13 preserves the rural character and promotes agriculture. *Id.* Their
14 testimony is unified in its assertion that, by allowing farmers to sell off the
15 smallest portion of agriculturally marginal land possible for cash flow
16 purposes in low-irrigation years, it allows the farmer to remain
17 economically competitive by being able to retain the greatest amount of
18 productive farm land. *Id.* This allows farmers to retain the most
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1 agriculturally valuable farm land possible for subsequent better farming
2 years, thereby promoting agriculture and preserving rural character. *Id.*

3 Kittitas County adopted a comprehensive plan that, in
4 consideration of local circumstances, harmonized and promoted the goals
5 of the GMA. AR 213-221. In addition to citing to and quoting RCW
6 36.70A.030(15), (16), and (17) as to definitions of rural lands, GPO 8.1
7 states that "Kittitas County's rural land use designation consists of a
8 balance of different natural features, landscape types and land uses. Rural
9 land uses consist of both dispersed and clustered residential developments,
10 farms, ranches, wooded lots, and small scale commercial and industrial
11 uses that serve rural residents as their primary customer." AR 213. After
12 describing rural densities as ranging from three to twenty acres, GPO 8.3
13 states that "The aforementioned range of rural densities and uses has
14 created and contributed to a successful landscape which contributes to an
15 attractive rural lifestyle. The exception to this landscape can be seen in
16 areas where individuals have had to acquire larger lots than desired in
17 order to obtain a building site. This has created the effect of "rural
18 sprawl." This current mix of rural uses and densities has not increased the
19 cost to taxpayers for road and utility improvements, police and fire
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1 protection, or the education of school populations beyond the means of the
2 local people to finance such infrastructure. The mix of rural uses and
3 densities has allowed rural growth to be accommodated in a variety of
4 areas where it is appropriate. This has been compatible with both resource
5 activities and urbanization.” AR 215.

6 GPO 8.5 states “The following goals, policies and objectives for
7 Rural Lands are established in an attempt to prevent sprawl, direct growth
8 toward the Urban Growth Areas and nodes, provide for a variety of
9 densities and uses, respect private property rights, provide for residences,
10 recreation, and economic development opportunities, support farming,
11 forestry and mining activities, show concern for shorelines, critical areas,
12 habitat, scenic areas, and open space while keeping with good governance
13 and the wishes of the people of Kittitas County and to comply with the
14 GMA and other planning mandates. Kittitas County recognizes and
15 agrees with the need for continued diversity in densities and uses on Rural
16 Lands.” AR 216. GPO 8.9 states that “Projects and developments which
17 result in the significant conservation of rural lands or rural character will
18 be encouraged.” AR 217. GPO 8.13 states “Methods other than large lot
19 zoning to reduce densities and prevent sprawl should be investigated.”
20

1 AR 217. GPO 8.27 states "Kittitas County should cooperate in sound
2 voluntary farm conservation or preservation plans." AR 218. GPO 8.28
3 states "Non-farmers in agricultural areas should be encouraged to meet
4 commonly accepted farm standards." AR 218. GPO 8.30 states that the
5 County will "Look at solutions to the problems of needing to sell house
6 lots without selling farm ground." AR 218. GPO 8.49 states that "Lot
7 size should be determined by provision for water and sewer."

8 In short, (1) there is evidence in the record supporting three-acre
9 zoning as a response to the local circumstances that fosters agriculture and
10 protects rural character. (2) The County has explained in writing in its
11 GPO's how three-acre zoning harmonizes the planning goals of the GMA.
12 Specifically, goal #2 (Reduction of sprawl) is harmonized by GPO's 8.3,
13 8.5, 8.13, and 8.49. Goal #4 (Variety of residential densities) is
14 harmonized in GPO 8.1 and 8.13. Goal #5 (Recognition of regional
15 differences in economic development) is harmonized in GPO's 8.1 and
16 8.5. Goal #8 (Protection of resource industries such as agriculture and the
17 preservation of agricultural land) is harmonized in GPO's 8.3, 8.5, 8.9,
18 8.27, 8.28, and 8.30. Goal #9 (Preservation of open space) is harmonized
19 in GPO 8.5. Goal #10 (Protection of the environment) is harmonized in
20

1 GPO's 8.1 and 8.5. Goal #12 (Public facilities and services) is
2 harmonized in GPO's 8.3 and 8.49. (3) The "other requirements" of the
3 GMA are also harmonized in the County's GPO's. The Variety of
4 densities and uses is harmonized at GPO's 8.1, 8.3, 8.5, and 8.49. The
5 protection of rural character is harmonized at GPO's 8.1, 8.9, 8.27, 8.28,
6 and 8.30.

7 Futurewise and Community Trade and Economic Development
8 ("CTED") appealed the County's comprehensive plan to the Hearings
9 Board, challenging, among other things, that the County's provision for
10 three-acre zoning was not compliant with the GMA as constituting sprawl,
11 denigrating rural character, and having neither evidence supporting it in
12 the County's administrative record for its comprehensive plan nor having
13 any explanation in the comprehensive plan how the County's provision for
14 three-acre zoning harmonized with and promoted the goals of the GMA.
15 AR 2368, 2370. The very manner in which the rural density question was
16 framed called for a bright line ruling because it asked "Does Kittitas
17 County's failure to review and revise the comprehensive plan to eliminate
18 densities greater than one dwelling unit per five acre in the rural area"
19 violate the GMA? AR 2292. Despite the statement that "This Board
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1 agrees there is no bright line as to the size of rural lots” (AR 2345), the
2 Hearings board proceeded to make a bright line pronouncement as to rural
3 densities with statements such as “This Board and the other two Hearings
4 Boards have studied rural lot sizes, effects of those lot sizes and measured
5 these findings against the requirements of the GMA” (AR 2302) and
6 “From the record before the Board and review of previous Board decision
7 here in Eastern Washington and Western Washington, the Board must find
8 that densities permitted by Agriculture-3 and Rural-3 regulations are urban
9 and prohibited in the County’s rural element.” (AR 2303) Commissioner
10 Roskelley most clearly articulated that the Board was making a bright line
11 pronouncement when he wrote “Furthermore, this Board has consistently
12 found and the courts have held, as the Petitioners have shown, that a
13 pattern of lots smaller than five acres is urban in nature, rather than rural.”
14 AR 2346.
15

16 The Hearings Board found that Futurewise and CTED carried their
17 burden of proof and the County has appealed the issue of its three-acre
18 zoning’s compliance with the GMA as being an appropriate rural density,
19 promoting rural character, and contributing to a variety of rural densities.
20 AR 2368, 2370.
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1 The Hearings Board ignored the evidence in the record supporting
2 the County's decision to allow three-acre densities in its rural areas and
3 the comprehensive plan provisions that explained how this harmonizes the
4 GMA goals, both the evidence and comprehensive plan GPO's are cited
5 above. Instead of even acknowledging their existence and disagreeing
6 with them, or discrediting them, the Hearings Board merely stated "the
7 County must "develop a written record explaining how the rural element
8 harmonizes the planning goals in RCW 36.70A.020 and meets the
9 requirements of the [Act]." RCW 36.70A.070(5). They have not
10 developed this written record." AR 2303. The Hearings Board continued
11 to ignore the evidence and harmonization found in the written record and
12 comprehensive plan at AR 2345 where it merely said "The County also
13 failed to develop a written record explaining how the rural element
14 harmonizes the planning goals in RCW 36.70A.020 and meets the
15 requirements of the GMA."
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17 IV. ARGUMENT

18 A. Standard of Review

19 The Hearings Board adjudicates issues of GMA compliance and
20 may invalidate noncompliant comprehensive plans. RCW
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1 36.70A.280(1)(a), .302. Petitions challenging whether a comprehensive
2 plan complies with the GMA must be filed within sixty days after
3 publication by the legislative bodies of the county. RCW 36.70A.290(2).
4 A comprehensive plan is presumed valid, and the Hearings Board “shall
5 find compliance unless it determines that the action by the state agency,
6 county, or city is clearly erroneous in view of the entire record before the
7 board and in light of the goals and requirements of [the GMA].” RCW
8 36.70A.320(3). To find an action clearly erroneous, the Hearings Board
9 must have a firm and definite conviction that a mistake has been
10 committed. *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157
11 Wn.2d 488, 497, 139 P.3d 1096 (2006)(quoting *Dep’t of Ecology v. Pub*
12 *Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646
13 (1993)). The party petitioning for review of a comprehensive plan has the
14 burden of demonstrating the local government’s actions failed to comply
15 with the GMA. RCW 36.70A.320(2). A Hearings Board must defer to a
16 local government’s decisions that are consistent with the GMA. RCW
17 36.70A.3201. Judicial review of Hearings Board actions is governed by
18 the Administrative Procedures Act, chapter 34.05 RCW. *Quadrant Corp.*
19 *v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233,
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1 110 P.3d 1132 (2005). The party appealing a board's decision has the
2 burden of demonstrating the invalidity of the board's actions. RCW
3 34.05.570(1)(a).

4 The court shall grant relief from an agency order in an
5 adjudicative proceeding only if it determines that: (a) The
6 order...is in violation of constitutional provisions on its
7 face or as applied; (b) The order is outside the statutory
8 authority or jurisdiction of the agency conferred by any
9 provision of law; (c) The agency has engaged in unlawful
10 procedure or decision-making process, or has failed to
11 follow a prescribed procedure; (d) The agency has
12 erroneously interpreted or applied the law; (e) The order is
13 not supported by evidence that is substantial when viewed
14 in light of the whole record before the court, which
15 includes the agency record for judicial review,
16 supplemented by any additional evidence received by the
17 court under this chapter; (f) The agency has not decided all
18 issues requiring resolution by the agency; (g) The motion
19 for disqualification under RCW 34.05.425 or 34.12.050
20 was made and was improperly denied or, if no motion was
21 made, facts are shown to support the grant of such a motion
22 that were not known and were not reasonably discoverable
23 by the challenging party at the appropriate time for making
24 such a motion; (h) The order is inconsistent with a rule of
25 the agency unless the agency explains the inconsistency by
stating facts and reasons to demonstrate a rational basis for
inconsistency; or (i) The order is arbitrary or capricious.
RCW 34.05.570(3).

18 Courts review issues of law de novo. *Lewis County*, 157 Wn.2d at 498,
19 139 P.3d 1096. Substantial weight is accorded to a Hearings Board's
20 interpretation of the GMA, but the court is not bound by the Hearings
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1 Board's interpretation. *City of Redmond v. Cent. Puget Sound Growth*
2 *Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). A board's
3 order must be supported by substantial evidence, meaning there is a
4 sufficient quantity of evidence to persuade a fair-minded person of the
5 truth or correctness of the order. *Id.* On mixed questions of law and fact,
6 we determine the law independently, then apply it to the facts as found by
7 the agency. *Lewis County*, 157 Wn.2d at 498, 139 P.3d 1096. "Finally, it
8 should be noted that from the beginning the GMA was riddled with
9 politically necessary omissions, internal inconsistencies, and vague
10 language. The GMA was spawned by controversy, not consensus and, as
11 a result it is not to be liberally construed." *Thurston County v. Western*
12 *Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 342, 190 P.3d 38
13 (2008)(quoting *Quadrant Corp.*, 154 Wn.2d at 232, 110 P.3d 1132 and
14 *Woods v. Kittitas County*, 162 Wn.2d 597, 612 n.8, 174 P.3d 25 (2007)).

15
16 **B. RCW Standards for Rural Lands and Local Deference.**

17 Regulation must incorporate local circumstances. WAC 365-195-
18 020 provides in pertinent part that "Within the framework established by
19 the act, a wide diversity of local visions of the future can be
20 accommodated." WAC 365-195-060(2) provides that "To a major extent,
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1 recognition of variations and diversity is implicit in the framework of the
2 act itself, with its emphasis on a "bottom up" planning process and on
3 public participation. Such recognition is also inherent in the listing of
4 goals without assignment of priority. Accordingly, this chapter seeks to
5 accommodate regional and local differences by focusing on an analytical
6 process, instead of on specific outcomes."⁵

7 RCW 36.70A.3201 provides that

8 In amending RCW 36.70A.320(3) by section 20(3), chapter
9 429, Laws of 1997, the legislature intends that the boards
10 apply a more deferential standard of review to actions of
11 counties and cities than the preponderance of the evidence
12 standard provided for under existing law. In recognition of
13 the broad range of discretion that may be exercised by
14 counties and cities consistent with the requirements of this
15 chapter, the legislature intends for the boards to grant
16 deference to counties and cities in how they plan for
17 growth, consistent with the requirements and goals of this
18 chapter. Local comprehensive plans and development
19 regulations require counties and cities to balance priorities
20 and options for action in full consideration of local
21 circumstances. The legislature finds that while this chapter
22 requires local planning to take place within the framework
23 of state goals and requirements, the ultimate burden and
24 responsibility for planning, harmonizing the planning goals

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19 ⁵ For further statutory direction for local variation, see generally WAC 365-195-030(1),
20 (2), and (3)(list of possible choices, not a minimum list of actions, criteria compliance not
21 a prerequisite to finding of GMA compliance); WAC 365-195-060(1), (3), (4) and
22 (5)(local variations to be reflected "local jurisdictions are expected to use a pick and
23 choose approach," increased leeway for smaller jurisdictions); WAC 365-195-
24 070(1)(different emphasis expected); and WAC 365-195-300(2)(e)(articulate community
25 values and locally defined terms).

1 of this chapter, and implementing a county's or city's
2 future rests with that community.

3 **C. Local Circumstances**

4 In accord with RCW 36.70A.070(5), Kittitas County fully
5 considered local circumstances and appropriately decided that three-acre
6 zoning was a reasonable means of harmonizing the planning goals of the
7 GMA. The County considered the local circumstance of farmers needing
8 to sell small agriculturally marginal pieces of land for cash-flow purposes
9 in years of low irrigation water. The public testimony and record of the
10 County's proceedings attest to this situation, and the need for farmers to
11 retain as much land as possible for subsequent better years. AR 1746-
12 1779. Allowing smaller portions to be sold off ultimately preserves farm
13 land, farming and the rural character because it causes the smallest portion
14 possible of land to be taken out of agricultural production. If larger
15 parcels were required as minimal buildable lots, then the stock of
16 agricultural land will be whittled down more rapidly.

17 **D. Other GMA Goals And Provisions**

18 In accord with RCW 36.70A.070(5), Kittitas County developed a
19 written record explaining how its rural element harmonized the goals of
20 the GMA. At GPO 8.28 (AR 218) the County recognized and grappled
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1 with the problem of people, because of large-lot zoning, purchasing larger
2 lots than they can manage and having them turn into weed patches to the
3 detriment of our agricultural community, economy, and character-a
4 phenomenon known as “rural sprawl.”⁶ There the comprehensive plan
5 asserts that “Non-farmers in agricultural areas should be encouraged to
6 meet commonly accepted farm standards.” Similarly, GPO 8.27 states
7 “Kittitas County should cooperate in voluntary farm conservation or
8 preservation plans.” AR 218. At GPO 8.30, the County recognized and
9 grappled with the problem of farmers needing to sell property for cash
10 flow purposes yet trying to keep as much land as possible in agricultural
11 production when it says that the County will “Look at solutions to the
12 problem of needing to sell house lots without selling farm ground.” AR
13 218. These problems, referred to as “rural sprawl” in Kittitas County’s
14 comprehensive plan, are also addressed in GPO’s 8.13 and 8.9. AR 218,
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16 ⁶ In *Henderson v. Kittitas County*, 124 Wn.App. 747, 100 P.3d 842 (2004) Division III
17 affirmed rezoning property to three-acre density because it fostered the comprehensive
18 plan goal of combating “rural sprawl.” The Court stated “In its introduction to the rural
19 lands section, the comprehensive plan further describes the problem [of “rural sprawl”]:
20 State planners are concerned about “urban sprawl” with less than five acre minimum lot
21 sizes. However, over the past fifteen to twenty years Kittitas County has experienced
22 “rural sprawl” through the adoption of 20 acre minimum lot sizes, which has caused the
23 conversion of farm land into weed patches. Small lot zoning with conservation
24 easements for agriculture, timber, or open space may be preferable to the wasteful
25 “sprawl” developments of large lot zoning and could be more conducive to retaining rural
character.” *Id.* at 755, 756; *see also Woods v. Kittitas County*, 130 Wn.App. 573, 586,
123 P.3d 883 (2006) *aff’d* 162 Wn.2d 597, 174 P.3d 25 (2007).

1 217. GPO 8.13 states that "Methods other than large lot zoning to reduce
2 density and prevent sprawl should be investigated." GPO 8.9 states that
3 "Projects and developments which result in the significant conservation of
4 rural lands or rural character will be encouraged." Finally, and most
5 importantly, GPO 8.3, after describing Kittitas County's allowed zoning as
6 including the mix of densities from three to over twenty acres, states how
7 the allowance of three-acre zoning resolves these issues because small lot
8 zoning prevents "rural sprawl" and is "compatible with both resource
9 activities and urbanization." Hence, Kittitas County has, in its
10 comprehensive plan, created a written record of how it has grappled with
11 its local circumstance of "rural sprawl" and harmonized the use of three-
12 acre zoning with the goals of the GMA. Three-acre zoning is a means of
13 harmonizing the goals and requirements of the GMA as it protects rural
14 character, prevents the taking of land out of agricultural production,
15 protects agriculture from incompatible uses, provides a variety of rural
16 densities, preserves open spaces, reduces sprawl, and provides for a
17 variety of housing densities.
18

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1 **E. Lack Of Deference Under GMA**

2 RCW 36.70A.3201 requires the hearings board to defer to the
3 County that has harmonized the planning goals of the GMA as described
4 above. This was not done. RCW 36.70A.3201 provides in pertinent part
5 that “the legislature intends that the boards apply a more deferential
6 standard of review to actions of counties ... than the preponderance of the
7 evidence standard provided for under existing law. In recognition of the
8 broad range of discretion that may be exercised by counties and cities
9 consistent with the requirements of this chapter, the legislature intends for
10 the boards to grant deference to counties and cities in how they plan for
11 growth, consistent with the requirements and goals of this chapter. Local
12 comprehensive plans and development regulations require counties and
13 cities to balance priorities and options for action in full consideration of
14 local circumstances.” Instead of granting this deference, the Hearings
15 Board ignored the record and the GMA harmonization altogether and
16 ordered the County to provide such as though none existed. AR 2303,
17 23454. The hearings board granted no deference to the county and
18 determined that the County was not in compliance with the GMA. While
19 RCW 36.70A.3201 states that “the ultimate burden and responsibility for
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1 planning, harmonizing the planning goals of this chapter, and
2 implementing a county's ...future rests with that community," the
3 hearings board, in this case, usurped that role. The Hearings Board
4 instead ignored the evidence in the record and the written harmonization
5 of GMA goals the County had provided, and instead ordered the County to
6 do what it had already done-produce a record and written explanation of
7 GMA harmonization. AR 2303, 2345.

8 **F. *Thurston County v. Western Washington Growth***
9 ***Management Hearings Board*, 164 Wn.2d 329, 190 P.3d**
10 **(2008).**

11 In *Thurston County v. Western Washington Growth management*
12 *Hearings Board*, one of the issues was whether the County had provided
13 for a variety of rural densities when it allowed rural densities greater than
14 one dwelling unit per five acres. 164 Wn.2d 329, 355, 190 P.3d 38
15 (2008). Rural densities greater than one dwelling unit per five acres
16 existed, including densities of up to two units per acre in some cluster
17 developments and four units per acre in certain areas. *Id.* The actual
18 zoning densities were located in the county code, rather than the
19 comprehensive plan, and the comprehensive plan set forth that 48.3% of
20

1 the land would have one dwelling unit per five acres, and that 5.5% would
2 have greater than one dwelling unit per two acres. *Id.* at 356. The
3 hearings board determined that anything denser than one dwelling unit per
4 five acres was not rural, and since these lands could not be considered
5 rural, the county had failed to provide for a variety of rural densities. *Id.*

6 The Supreme Court held that the very way the issue was presented
7 was calling for the hearings board to make a bright line rule. *Id.* at
8 footnote 20. The Court stated

9 Since 1995, GMHBs have utilized bright-line standards to
10 distinguish between urban and rural densities. *Thurston*
11 *County*, 137 Wash.App. at 806, 154 P.3d 959 (“[t]he Board
12 considers a density of not more than one dwelling unit per
13 five acres to be rural.”) The GMHB, as a quasi-judicial
14 agency, lacks the power to make bright-line rules regarding
15 maximum rural densities. *Viking Props.*, 155 Wash.2d at
16 129-30, 118 P.3d 322. We hold a GMHB may not use a
17 bright-line rule to delineate between urban and rural
18 densities, nor may it subject certain densities to increased
19 scrutiny. The legislature did not specifically define what
20 constitutes a rural density. Instead, it provided local
21 governments with general guidelines for designating rural
22 densities. [...] Whether a particular density is rural in nature
23 is a question of fact based on the specific circumstances of
24 each case. In this case, the common rural residential
25 density in the county is one dwelling unit per five acres or
less according to the comprehensive plan. [...] Only 5.5
percent of rural acreage is designated at densities higher
than one dwelling per five acres. The comprehensive plan
explains the purpose, definition, characteristics, and local
guidelines for each zoning density. The Board should not

1 have rejected these densities based on a bright-line rule for
2 maximum rural densities, but must, on remand, consider
3 local circumstances and whether these densities are not
4 characterized by urban growth and preserve rural character.
5 Finally, the GMA does not dictate a specific manner of
6 achieving a variety of rural densities. *Widbey Env'tl. Action*
7 *Network*, 122 Wash.App. at 167, 93 P.3d 885. Local
8 conditions may be considered and innovative zoning
9 techniques employed to achieve a variety of rural densities.

10 164 Wn.2d at 358-360.⁷

11 In this case, the hearings board issued a bright-line ruling as the
12 very manner in which the rural density issue was framed called for one.
13 Just as in *Thurston County*, the question was framed as to whether
14 allowance of densities greater than one dwelling per five acres violated the
15 GMA. AR 2292. Similarly, the hearings board's discussion focused upon
16 the set of bright-line decisions regarding rural density made by all the
17 boards, rather than discussing the local justifications found in the record
18 and the GPO's. AR 2303, 2345. Commissioner Roskelley expressly

19 ⁷ It is significant to note that the Supreme Court essentially disfavored several cases
20 previously relied upon by Futurewise and CTED. Footnote 21 essentially disfavors
21 *Vashon-Maury v. King County* and *Yanisch v. Lewis County*. Additionally, the Court
22 corrected a misrepresentation of the Court of Appeals decision when it stated in footnote
23 22 that parties had represented that "The Court of Appeals stated, "The Supreme Court
24 has referred to a density of one dwelling unit per five acres as 'a decidedly rural
25 density.'" *Thurston County*, 137 Wash.App. at 806 n.15, 154 P.3d 959 (quoting *Skagit*
Surveyors & Eng'rs, 135 Wash.2d at 571, 9958 P.2d 962). This is incorrect. The cited
provision is found in the dissenting opinion in *Skagit Surveyors & Engineers*, 135
Wash.2d at 571, 958 P.2d 962. To the contrary, we have rejected any bright-line rule
delineating between urban and rural densities. *Viking Props.*, 155 Wash.2d at 129-30,
118 P.3d 322."

1 stated that the board's decision was a bright-line ruling. AR 2346. Rather
2 than discussing the local circumstances, record, and GMA harmonization,
3 the Hearings Board ignored its existence. AR 2303, 2345. This type of
4 ruling has been expressly rejected, and the cases supporting it disfavored.⁸

5 Instead, rural densities are justified by evidence in the record and
6 GPO's that harmonize the local circumstances with the goals of the GMA.
7 Kittitas County has both. The hearings board ignored both, and instead
8 issued a bright line ruling that is in excess of their authority, as they have
9 no policy-making authority, is not supported by substantial evidence, and
10 is a misapplication of the law to the facts. Simply by framing the issue as
11 whether allowing densities greater than one dwelling per five acres
12 violates the GMA, the County's regulation has been subjected to a greater
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16 ⁸ Futurewise and CTED may well cite to *Goldstar Resorts v. Futurewise*, 140 Wn.App.
17 378, 166 P.3d 748 (2007) for the proposition that even though hearings boards cannot
18 issue bright-line rules of rural density being no greater than one dwelling per five acres,
19 that bright-line rule is really not a bright-line rule as it was approved of there. It is
20 important to distinguish that case because Whatcom County explicitly defined rural as
21 being no denser than one dwelling per five acres. *Id.* at 397, 398. If the county, after
22 completing its case-specific inquiry into what is rural for it, determines that it is five-acre
23 lots, than it cannot be heard to allow greater density and still call it rural. In this case,
24 Kittitas County, after completing its case-specific inquiry into what is rural, has
25 determined that three-acre zoning is a part of that rural mix. Therefore, the imposition of
a finding of non-compliance because three is denser than five constitutes a bright-line
rule that is ignorant of local circumstances and harmonization. Similarly, the holding in
Goldstar Resorts as to rural density is inapplicable to this case.

1 degree of scrutiny, which is directly in violation of the holding of the
2 Supreme Court in *Thurston County*, 164 Wn. 2d at 359.

3 The allowance for densities greater than one dwelling per five
4 acres did not automatically violate the GMA and what constituted “rural”
5 for a given locality was a case-specific evaluation of local circumstances
6 in *Thurston County*. 164 Wn.2d at 359. Similarly, Kittitas County allows
7 density greater than one dwelling per five acres in its rural designation,
8 although none as dense as what was allowed in *Thurston County*.

9 Similarly, Kittitas County has evidence in the record supporting its use of
10 three-acre zoning and explained in its GPO’s how that three-acre zoning
11 harmonizes the goals of the GMA. What is “rural” for Kittitas County has
12 been supported in the record and justified in its written harmonization, and
13 so the bright-line rule by the Hearings Boards finding that the County’s
14 three-acre zoning violates the GMA must be reversed.
15

16 In the *Thurston County* case, the actual regulation of zoning
17 density was found in the county code and the county’s regulation provided
18 for 5.5% of the county’s land being in rural density greater than one
19 dwelling unit per two acres. 164 Wn.2d at 355, 356. Though this will be
20 more fully briefed in the linked case challenging Kittitas County’s
21

1 development regulations (Ct. App. Cause No., 271234), KCC 17.04.060
2 provides that the up to 3% of the entire county may be zoned as Ag-3 and
3 up to 3% of the entire county may be zoned as R-3. Currently, about half
4 that much of the county is zoned for three-acre density, in other words
5 about 3% in total between Ag-3 and R-3. Kittitas County is well within
6 the tolerances contemplated in the *Thurston County* decision.

7 **G. Hearings Board Did Not Grant Proper Deference To**
8 **County's Decision Under *City of Arlington*.**

9 In *City of Arlington v. Central Puget Sound Growth Management*
10 *Hearings Board*, evidence was present in the record that supported the
11 county's decision to dedesignate a parcel of land. 164 Wn.2d 768, 785-
12 786, 193 P.3d 1077 (2008). This evidence had been submitted into the
13 record by a consultant hired by the developer and was contradictory to
14 evidence generated and submitted into the record by the county's own
15 staff. *Id.* at 783, 784. The Supreme Court held that "There is evidence in
16 the record supporting the County's determination on this point, and the
17 Board wrongly dismissed this evidence. Because this evidence supports
18 the County's finding that the land at Island Crossing has no long-term
19 commercial significance for agricultural production, the Board erred in not
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1 deferring to the County's decision to redesignate the land for urban
2 commercial use." *Id.* at 782. The court further held that "To the extent
3 this evidence supports the County's conclusion that the land was not of
4 long-term commercial significance to agricultural production, and we find
5 that it does, the Board would be required under the GMA to defer to the
6 County and affirm its decision redesignating the land urban commercial."
7 *Id.* at 788. "The Board erred because it dismissed a key piece of evidence
8 that supported the County's conclusion on this point. Because there is
9 evidence in the record to support the County's conclusions, the Board
10 should have deferred to the County. Furthermore, we hold the Board erred
11 in finding the County committed clear error in including the land at Island
12 Crossing within the newly expanded Arlington UGA. There are facts in
13 the record to support the conclusions that the land in question is
14 characterized by urban growth and/or adjacent to territory already
15 characterized by urban growth." *Id.* at 795. In short, when the standard
16 for hearings board review of a county decision is clear error, and there is
17 evidence in the record supporting the county's decision, regardless of it
18 being created by an interested party and regardless of the presence of
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1 contrary evidence, the hearings board must defer to the county's decision
2 and is not free to ignore or dismiss the supportive evidence.

3 In this case, there is evidence in the record explaining why three-
4 acre zoning makes sense in rural Kittitas County, and there is language in
5 the GPO's explaining how three-acre zoning harmonizes the goals of the
6 GMA. The hearings board completely ignored the evidence in the record
7 and the County's written explanation of GMA harmonization. Indeed, the
8 hearings board simply asserted that the County needed to establish a
9 record and show in writing how it harmonized the goals of the GMA
10 without ever even acknowledging the existence of the evidence the County
11 pointed out already met that burden. Since the burden of proof was clear
12 error (RCW 36.70A.320(3)), and there was evidence in the record
13 supporting what the County did, it was error for the hearings board to
14 ignore that evidence and find that the County had committed clear error.
15

16 Similarly, in *Yakima County v. Eastern Washington Growth*
17 *Management Hearings Board*, the Court of Appeals stated that
18 "Specifically in *Quadrant*, the Supreme Court held that "deference to
19 county planning actions, that are consistent with the goals and
20 requirements of the GMA, superseded deference granted by the APA and
21

1 courts to administrative bodies in general.” 146 Wn.App. 679, 687, 192
2 P.3d 12 (2008). In this case, how three-acre zoning harmonizes the goals
3 of the GMA has been demonstrated by the County in its GPO’s, hence
4 how the County’s three-acre zoning is consistent with the goals and
5 requirements of the GMA has been demonstrated. Therefore, the
6 deference granted to the County as it weighed the evidence that now sits in
7 the record supporting three-acre zoning is greater than the deference
8 afforded to the hearings board when it determines that any rural density
9 greater than one dwelling per five acres violates the GMA.

10 The GMA provides for consideration of local circumstances and
11 contemplates that comprehensive plans will be tailored to municipalities’
12 unique needs. RCW 36.70A.030(16); 36.70A.070(5); 36.70A.3201; WAC
13 365-020; 365-195-060(2). Although not taking up the issue of whether or
14 not Kittitas County’s three-acre zoning complied with the GMA, the
15 Supreme Court in *Woods v. Kittitas County* did make a determination as to
16 what kind of a response the County’s three-acre zoning was to its unique
17 circumstances. 162 Wn.2d 597, 609, 622, 174 P.3d 25 (2007). The use of
18 three-acre zoning to combat the sort of “sprawl” Kittitas County
19 experiences was termed by the Supreme Court to be “a reasonable
20

1 decision based on the county's specific needs." *Id.* at 622. Since the
2 GMA asks for a written record showing local circumstances and how the
3 local decision harmonizes the goals of the GMA, the fact that the
4 Washington Supreme Court, having viewed those circumstances and a
5 portion of that record has determined the County's action to be a
6 "reasonable decision" in light of the municipality's unique circumstances,
7 it is difficult to imagine the County's decision not being a "reasonable
8 decision" in light of its circumstances for purposes of the GMA.

9
10 **V. CONCLUSION**

11 The FDO by the Hearings Board finding Kittitas County's three-
12 acre zoning violates the GMA was the product of an unlawful procedure
13 or decision-making process, was an erroneous interpretation or application
14 of the law, is not supported by substantial evidence, and is outside the
15 statutory authority granted such boards by the GMA. As such, the FDO's
16 pronouncements about Kittitas County's three-acre zoning must be
17 reversed and Kittitas County's three-acre zoning declared GMA-
18 compliant.

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Respectfully submitted this 12th day of March,
2009.



NEIL A. CAULKINS, WSBA #31759
Deputy Prosecuting Attorney
Attorney for Kittitas County

Comprehensive Plan revisions meeting
Ellensburg, WA August 23, 2006
From: Lila Hanson, Swauk Prairie -674-2748

EXHIBIT "A"

Re: proposed loss of 3-acre agricultural zoning option
Over years of ag zoning concerns, I've seen lots of good sounding but counter-productive ideas and this is one of those. Small-lot (1-3 acres) zoning in ag zones permit farmers to sell off small, less productive lots in hard times rather than having to sell large parcels of farmable land or the entire farm.

That was the intent of our original ag 3 zone. A similar process was the recommendation of the ag committee formed when state land use planning supplanted Kittitas County's local planning 10-15 years ago. And that is what makes sense if it is the intention of our planning to encourage our traditional, intergenerational farms to survive in the mix of land uses.

It may be the county's intention to have all recreational homes and just the "appearance of farms" via 20 acre horse keeps, weed patches and hobby farms - all dependent on non-farm incomes. Within the past two years, the exemption for farm families to add a small house on the place for an elderly relative or a young couple has been revoked. Without small lot ag zoning, any family adding a home will need to isolate 20 acres of farmable land.

If the concern is that there are too many 3 acre lots being created, then the need is for limiting density, not lot size. For years, it has been obvious that we need to separate lot size from density, especially on uneven terrain like much of Kittitas County. Slapping a 20 acre grid on everything is lazy, counterproductive, and results in poor planning and use.

Lately, government's use of the 3 acre zone, like its exempt segs, has left much to be desired. But the small-lot ag zone is a useful tool that should be available, just more carefully described so that it works for farm retention and not as an incentive for hasty land speculation.

Please recommend that we leave a one to three acre minimum lots size zone among our comprehensive plan choices for agriculture and let's work on the other documents to make it impossible for county officials to confuse our traditional working farmers with outside speculators.

Exhibit # LP
Date: 10-25-06
Submitted by: Lila Hanson

13

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B2 # 73
Lila Hanson
3 vs. 5

EXHIBIT NO.: 6
Hearing: RLAC
Date: 8/23/06
Submitted by: Lila Hanson

Joanna F. Valencia

From: Pat Deneen [pat@patrickdeneen.com]
Sent: Wednesday, November 01, 2006 10:46 AM
To: Alan Crankovich; David Bowen; David B. Bowen; Darryl Piercy; Kittitas County Commissioners Office; Joanna F. Valencia
Cc: 'Chad Bala'; 'Lindsey Ozbolt'; 'Jeff Slothower'
Subject: Comp Plan - 5 acre vs 3 acre
Attachments: Density issue - comp plan 11-1.doc

Re: Comprehensive Plan Update – Item 2

Date: 11-1-06

Note: Please send me a reply that you have received this email so I know it arrived timely.

Re: Density 5 Acre vs. 3 acre

As we all know there is a law suite in the initials stages that may lead to a clear understanding as to what the rural densities should be. It seems very clear to me that GMA is a bottom up planning process and it seems that the recent Supreme Court cases back this up. I think that the county can study its own unique situation and then make a plan for rural densities.

To this I should submit that nothing should be changed in the rural lands section of our comp plan including the zoning as it now sits.

It is clear that by increasing the minimum lot size all we do is eat up more land and create more weeds.

I have attached a drawing (jpg) that shows how the difference between 5 ace and 3 acre development effects the land ... It shows that all 5 acre lots do is eat up more land.

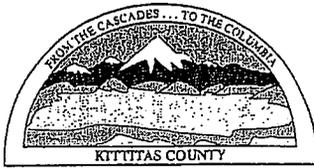
Please see attached

<<...>>

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No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.1.409 / Virus Database: 268.13.22/512 - Release Date: 11/1/2006



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

411 N. Ruby St., Suite 2, Ellensburg, WA 98926

CDS@CO.KITTITAS.WA.US

Office (509) 962-7506

Fax (509) 962-7682

Exhibit #8: CD submitted 10/26/06 by Pat Deneen containing following PowerPoint Slides

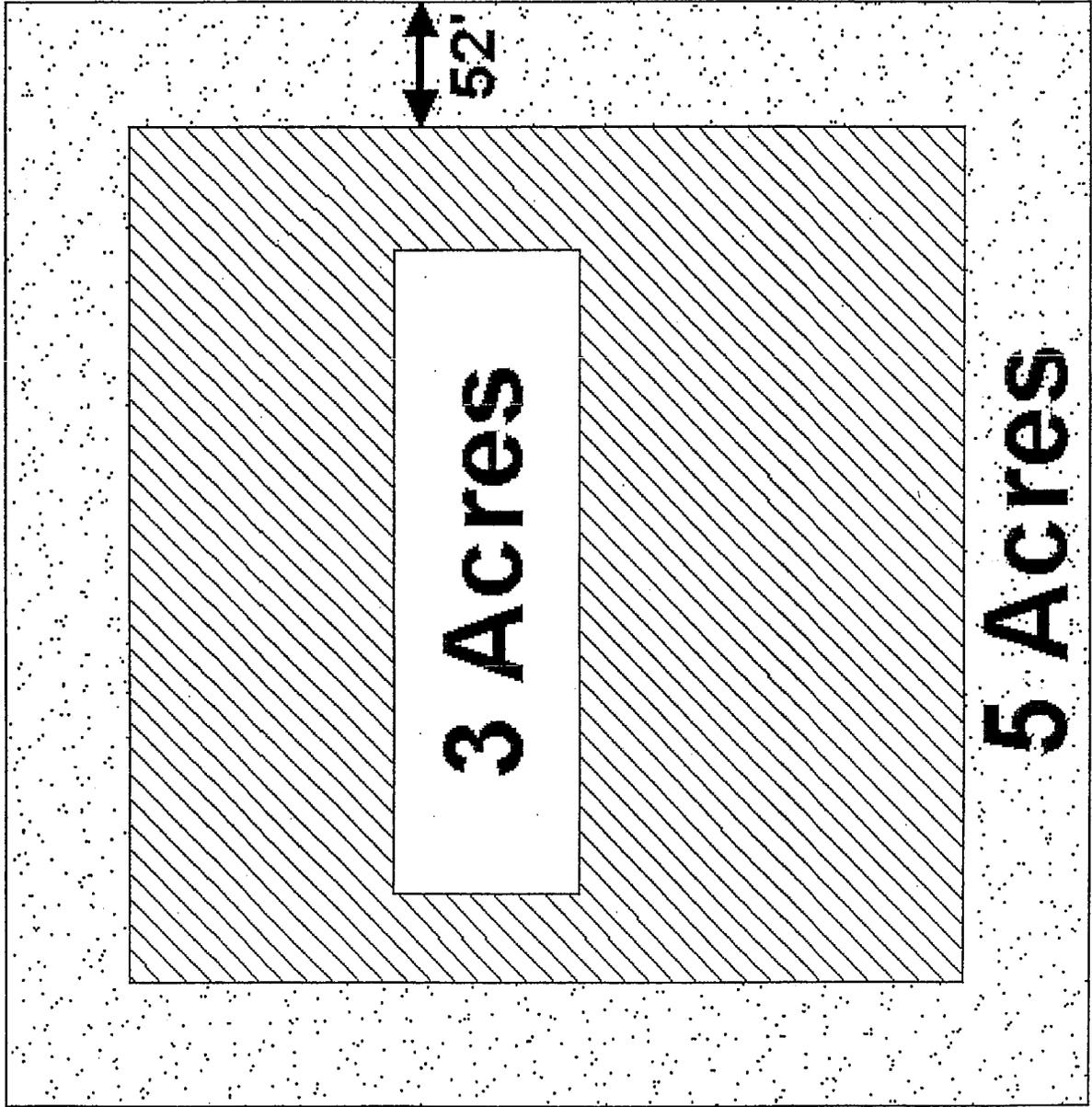
(Copies of CD available by request at CDS office, 509-962-7506)

31

DARRYL PIERCY, DIRECTOR

ALLISON KIMBALL, ASSISTANT DIRECTOR

COMMUNITY PLANNING • BUILDING INSPECTION • PLANS EXAMINATION • ADMINISTRATION • PERMIT SERVICES • INVESTIGATION • ENFORCEMENT • GIS



Comparison of 5-acre vs. 3-acre Zoning

on 100 acres

- Under the 5-acre zoning
There will be 20 lots on 100 acres

- Under the 3-acre zoning
There will be 33 lots on 100 acres

- Under the 5-acre zoning
33 lots would consume
165 acres of land

- Under the 3-acre zoning
33 lots would consume
99 acres of land

**5-acre zoning
consumes 65% more
land than**

3-acre zoning

5-acre zoning reduces
land values by 40%.

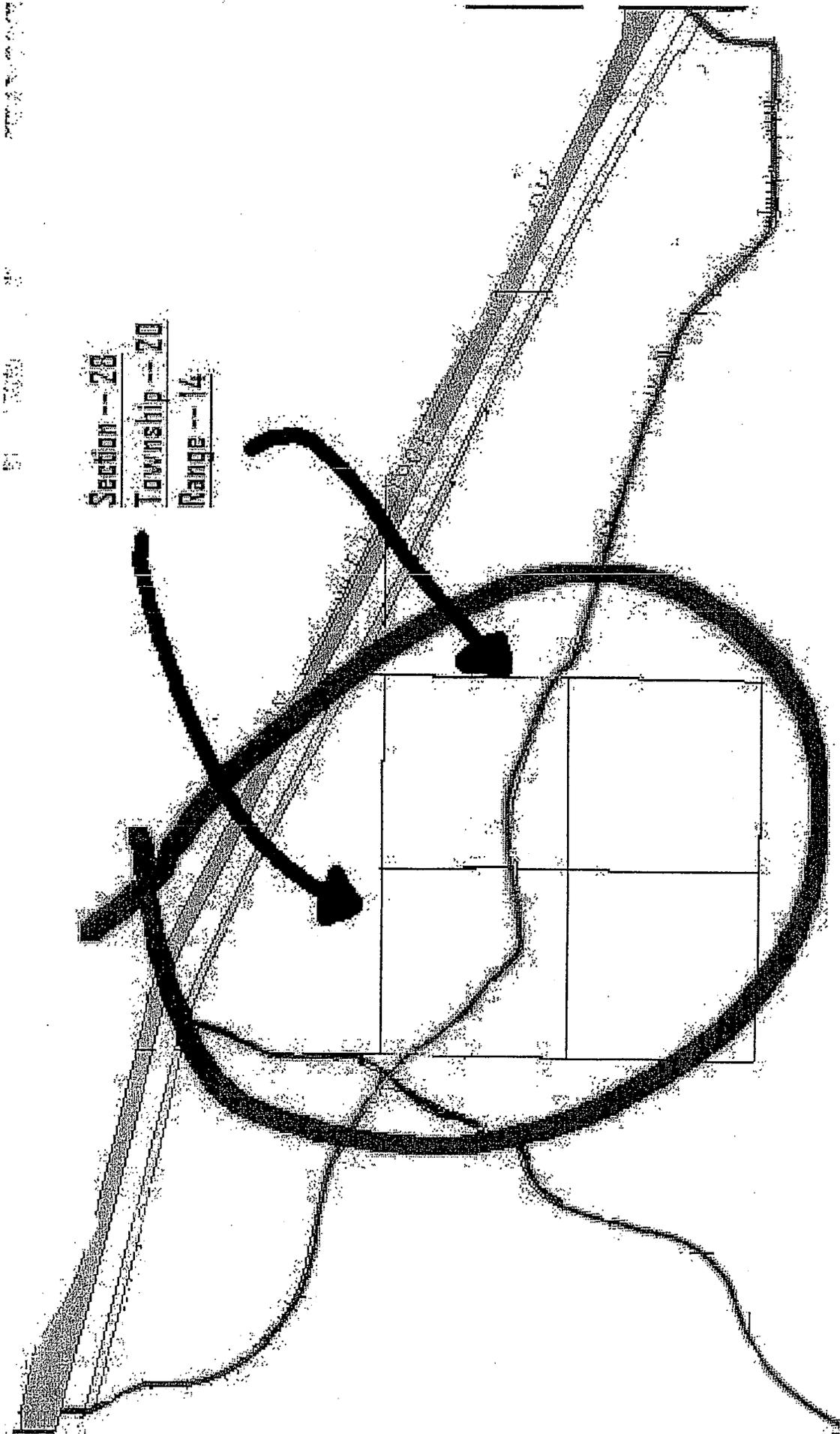
- Under the 5-acre zoning
The value of 20 lots is \$2,960,000

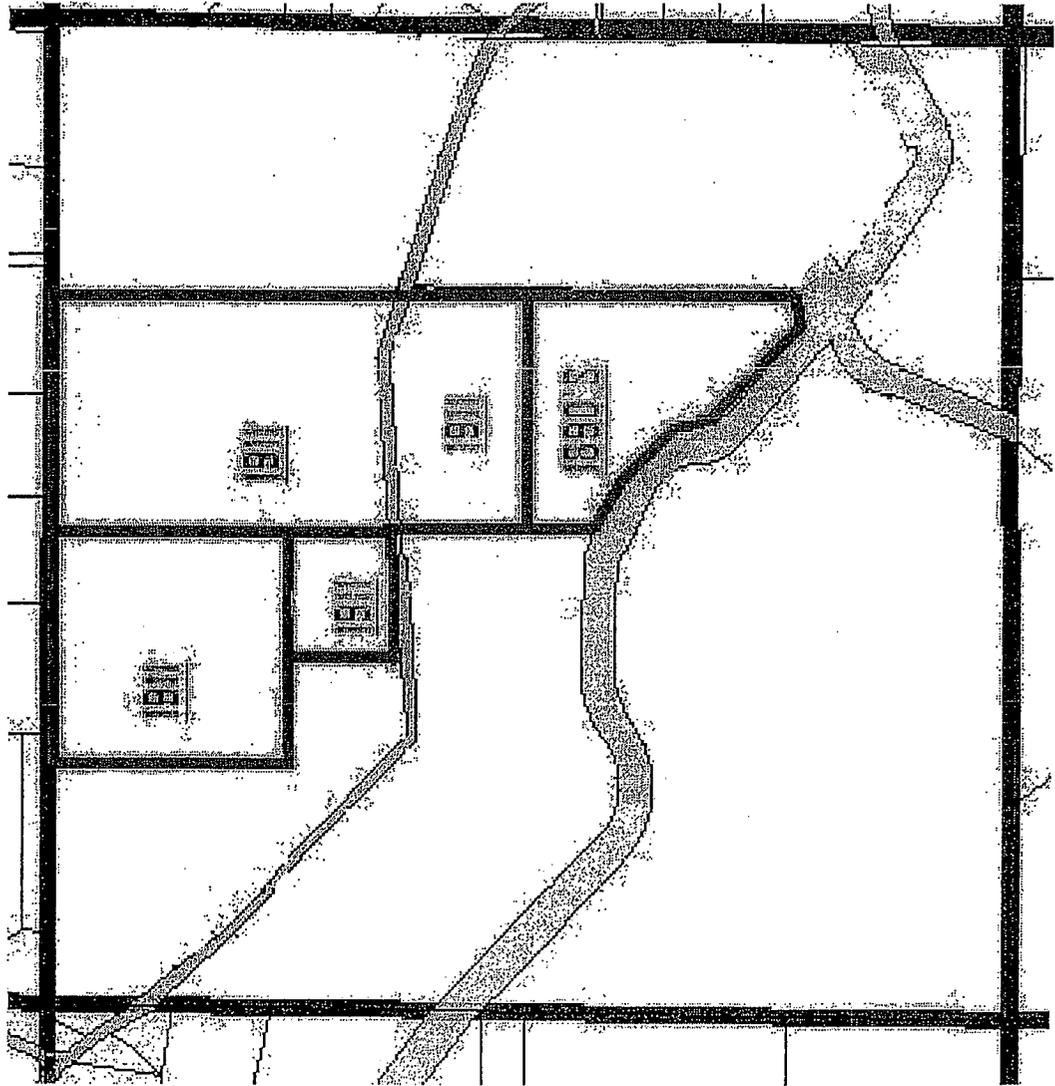
- Under the 3-acre zoning
The value of 33 lots is \$4,950,000

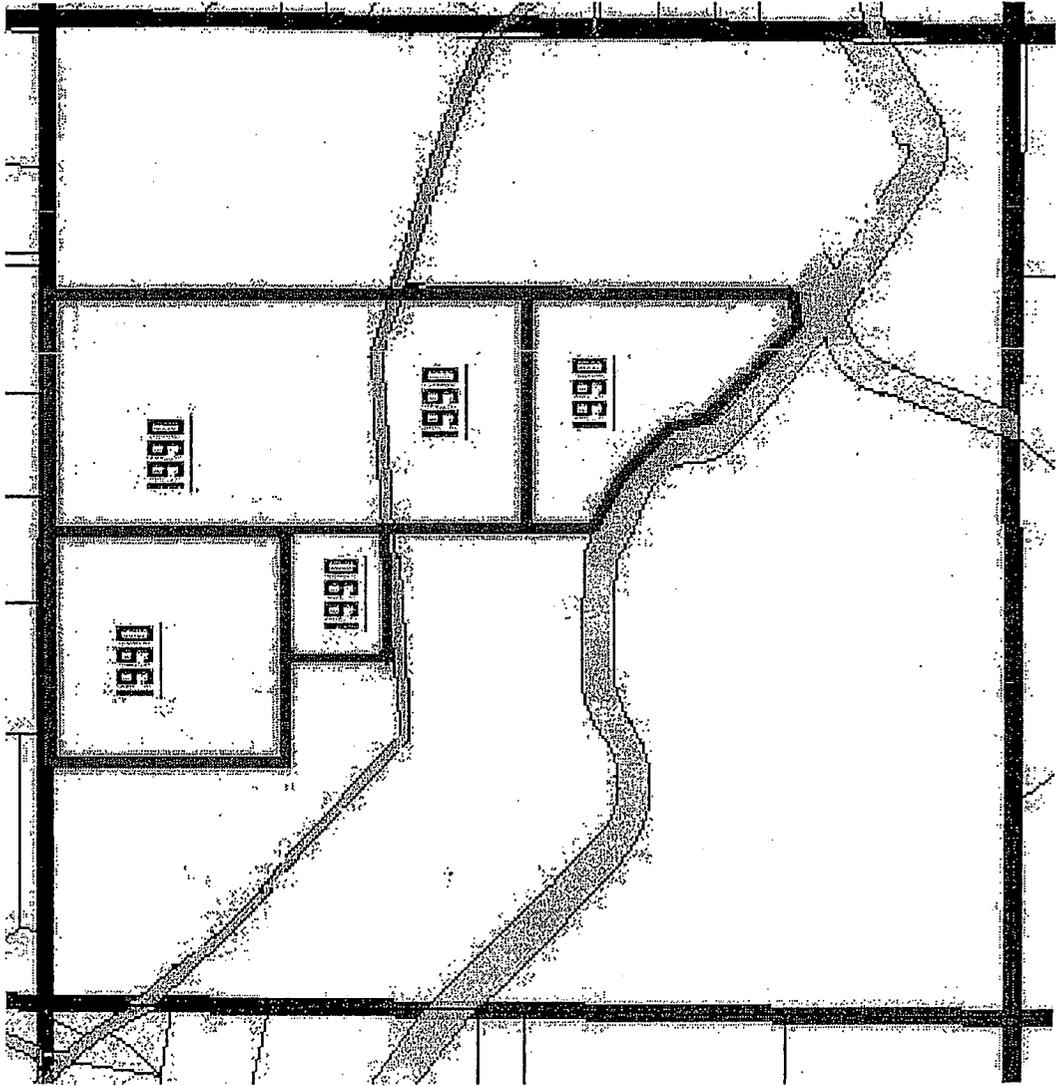
The following is one example
of growth occurring through
the late 1890's to the present.

Section -- 28
Township -- 20
Range -- 14

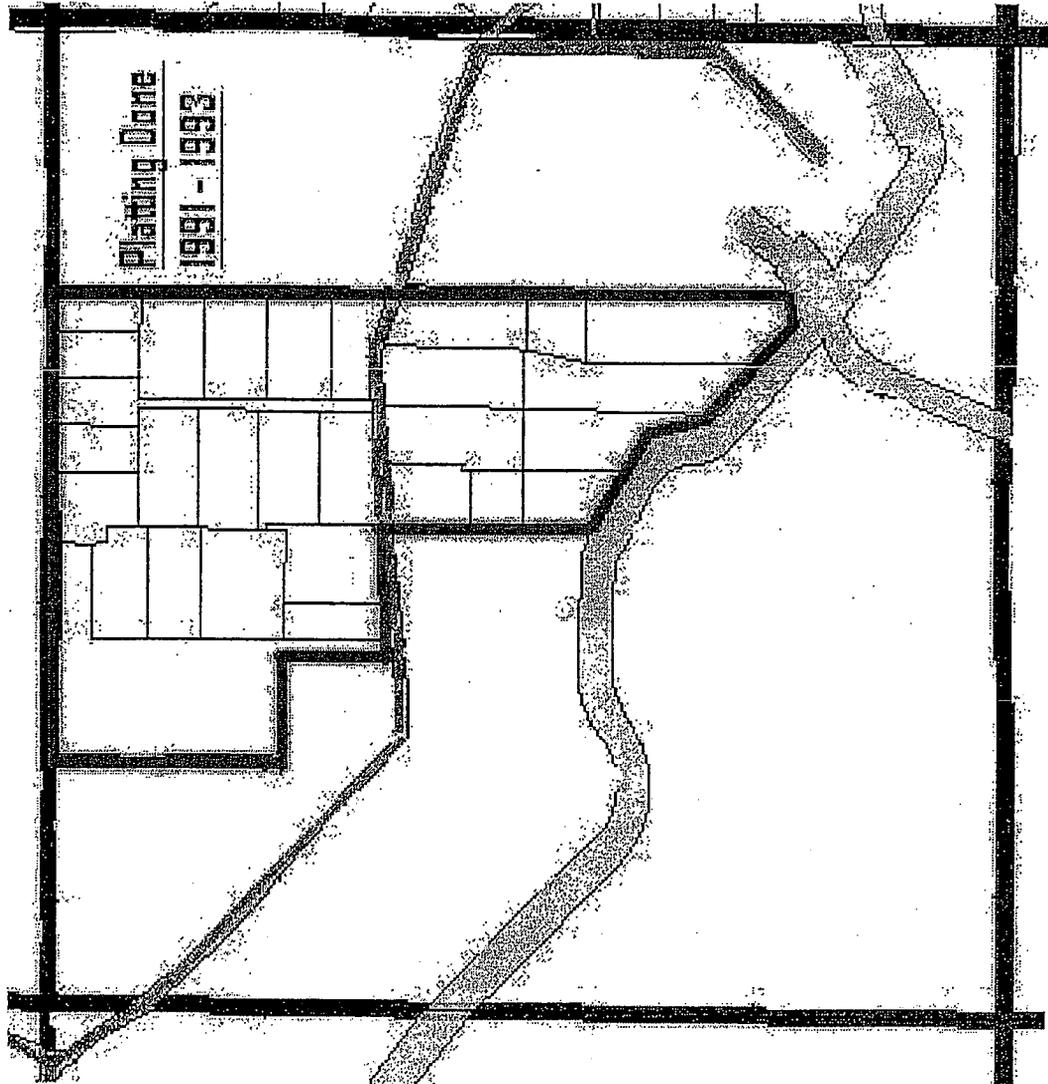
Section -- 28
Township -- 20
Range -- 14



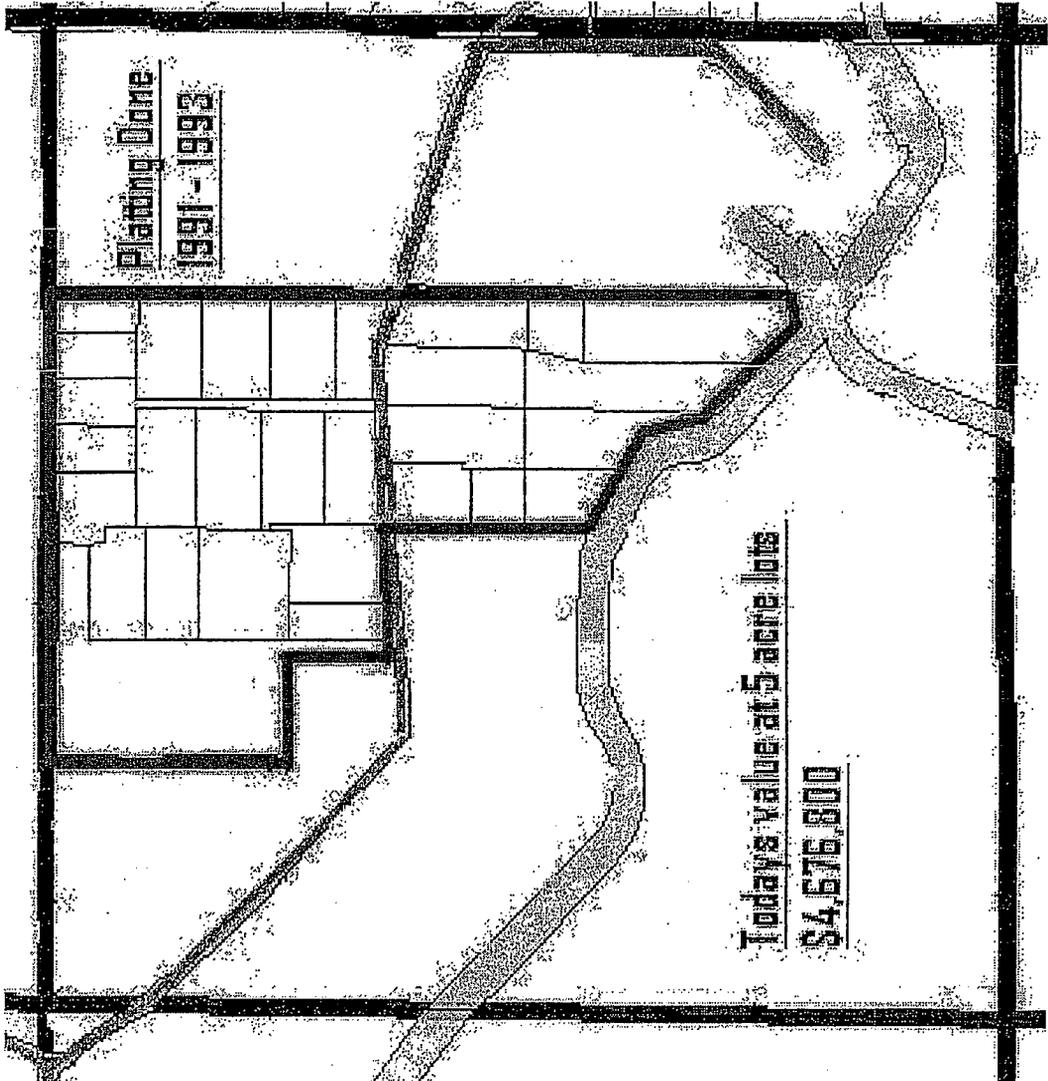




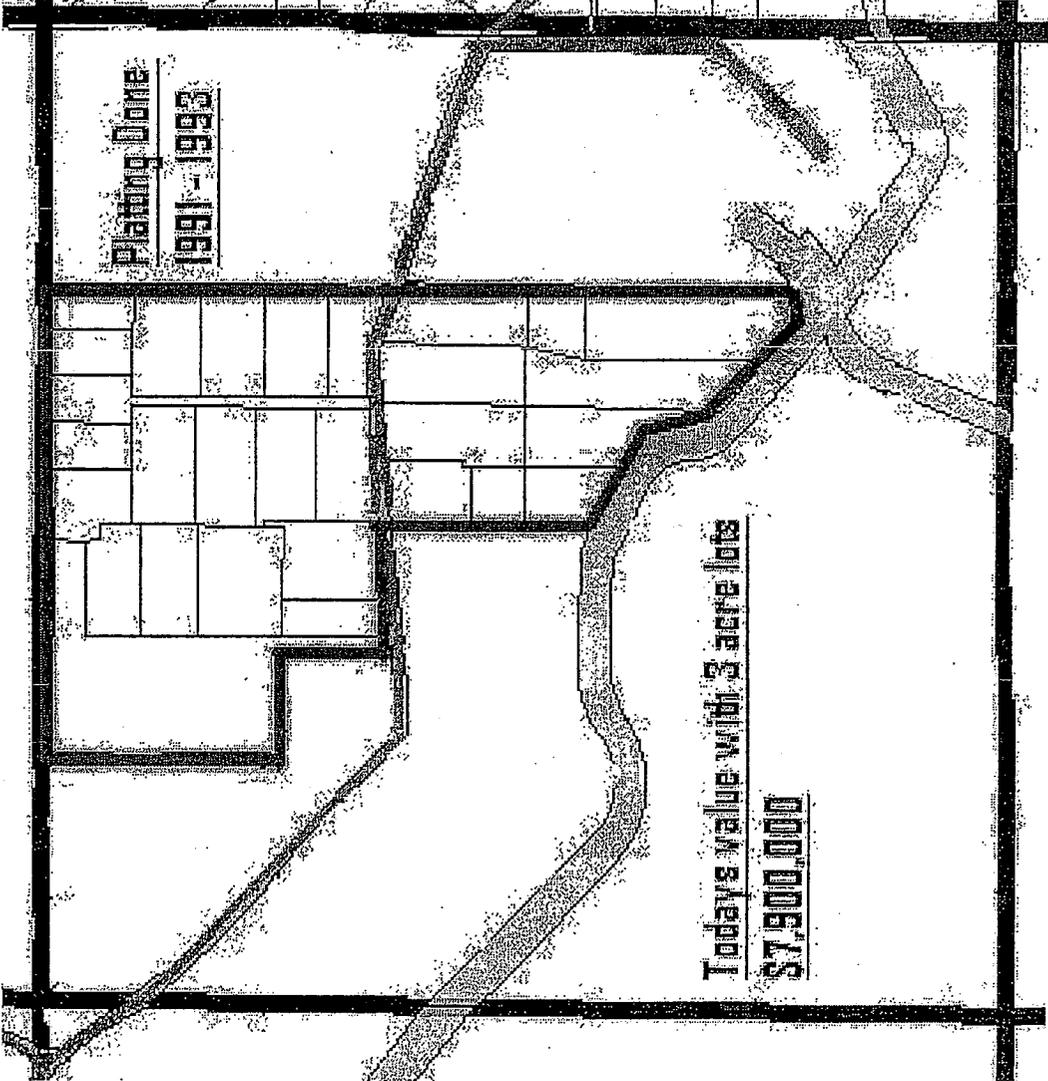
Planning Done
1991 - 1993



Planning Done
1991-1992

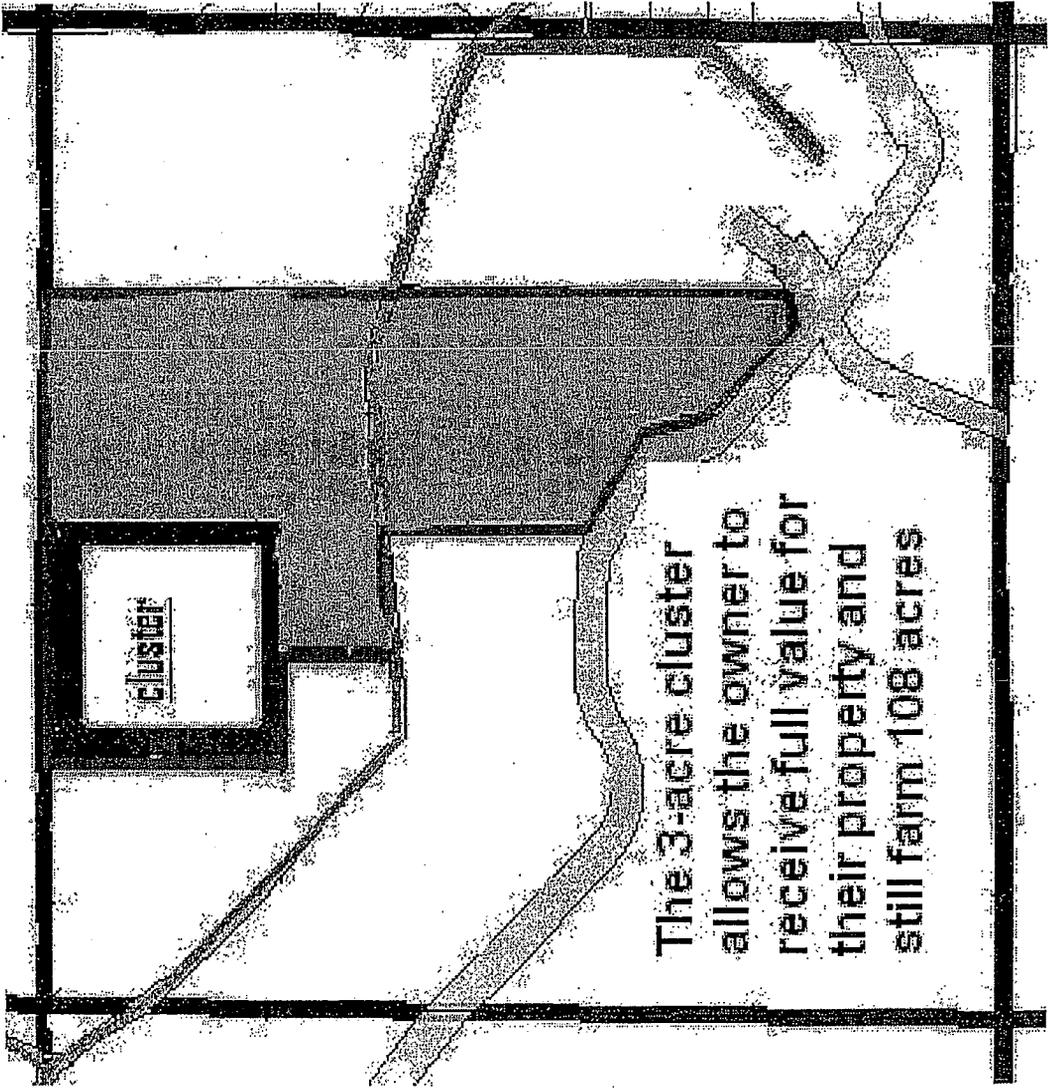


Today's value at 5 acre lots
\$4,676,800

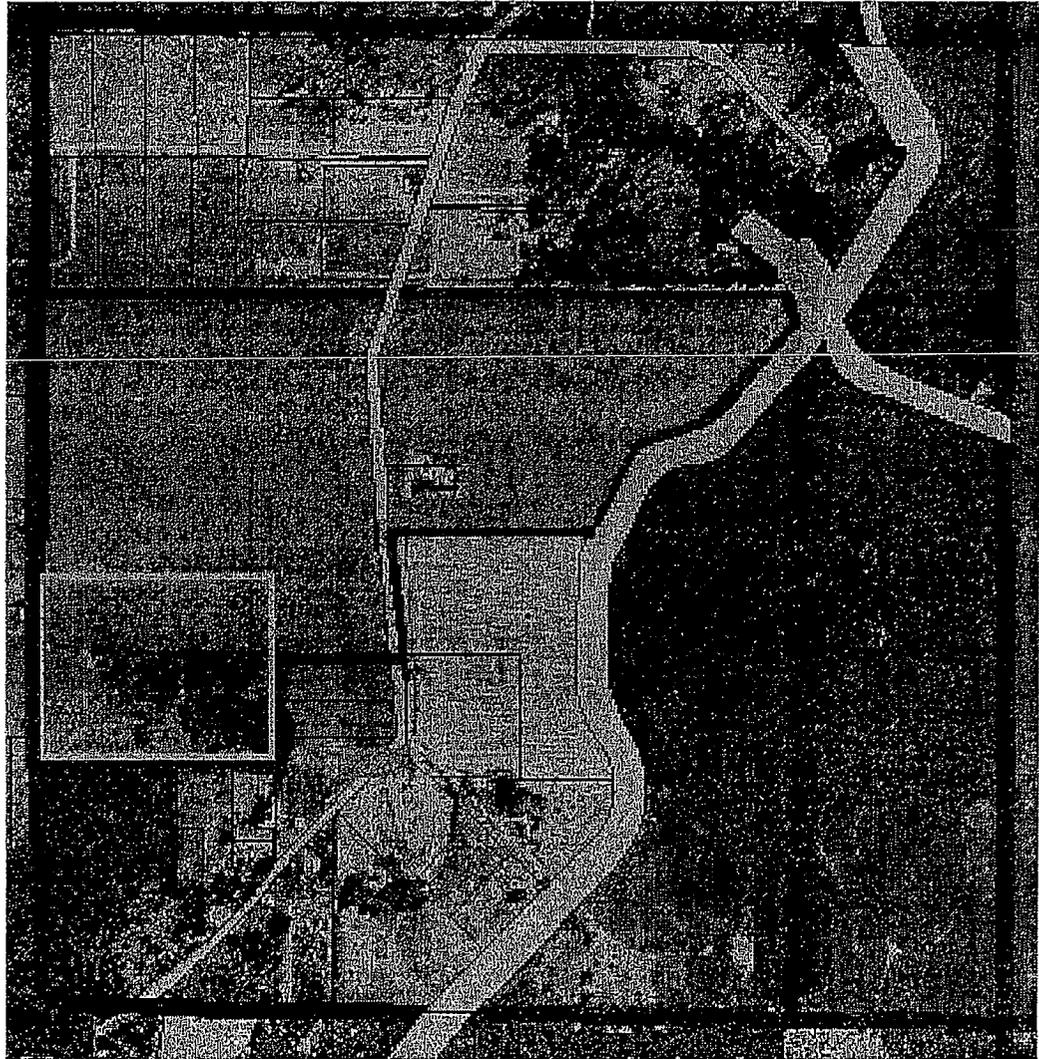


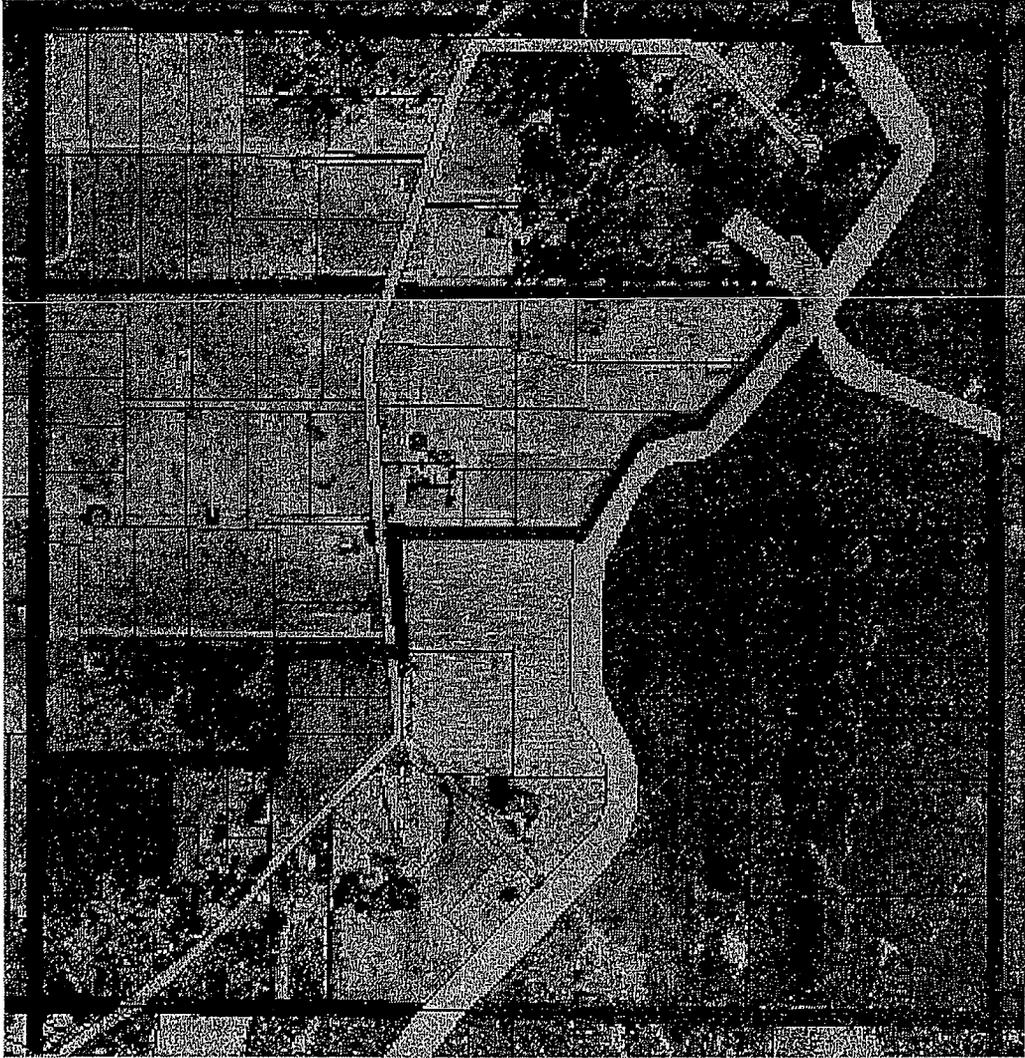
1991-1992

Total Area 2,111,811 Sq. Ft.
000,000 Sq. Ft.



The 3-acre cluster allows the owner to receive full value for their property and still farm 108 acres.





Testimony of Urban Eberhart

President Kittitas County Farm Bureau

October 25 2006

To Kittitas County Commissioners

Kittitas County Comprehensive Plan, Kittitas County Planning

Commission recommendations from

October 5, 2006

Thank you Chairman Bowen, Vice Chairman Crankovich, and
Commissioner Huston for the opportunity to testify before you this
evening on the recommended amendments to the Kittitas County
Comprehensive Plan.

My name is Urban Eberhart I am currently serving as President of
the Kittitas County Farm Bureau and I am speaking on behalf of
the Farm Bureau.

My father and Uncle along with my Grand Parents first lived here
in our valley in 1933. They moved to the lower valley then

returned here in the mid 1960's; I have lived in the rural area of Kittitas County since 1965. We originally grew alfalfa in the field behind our house and then our family planted our first fruit trees in 1968. I have been involved with raising hay and fruit here in the valley since that time. The Kittitas County Farm Bureaus recommendation to you is that you keep the existing Comprehensive Plan as it is and do not make the major changes that the planning commission has recommended to you. You should appoint the growth management agricultural advisory council mentioned in GPO 2.124 with actual real agricultural producers on the committee and allow that committee to make their annual report to you. Not eliminate the agricultural committee as the Planning Commission has recommended to you. There are several reasons for this recommendation. The first is that our county is dependant on Timothy hay for its agricultural economic survival. We do not have the growing degree units here that would allow us to grow some of the other crops that grow in the Columbia Basin or in the lower part of the Yakima Valley. While

there is a tremendous amount of ground water available in our valley the Timothy hay is dependant on the surface supply of water for irrigation. It would be too costly to use ground water to irrigate Timothy Hay and bureaucratically impossible as the Department of Ecology will not issue new irrigation water rights for individual Timothy growers to affordably tap into the plentiful ground water supply. The Kittitas Reclamation District is the major supplier of surface water in the Kittitas County. The KRD is very dependant on a good snow pack every year in order to meet the annual water needs of its irrigable acreage. There have been significant surface water supply shortages in three out of the past five years with 2001 being a 34% supply and 2005 a 42% supply both water years caused the KRD to turn off two months early. The Timothy fields take about three years to recover from early shut off dates like those that occurred in 2001 and 2005. When the fields are damaged by drought the quality of Hay is significantly reduced which reduces the value of the crop which in many farmers' cases creates economic hardship. With each drought agricultural

producers go out of business. There is also a negative trickle down effect on the other irrigation entities that are below the KRD which impacts their Timothy growers as well. Even though the other entities may have a higher priority water right it is difficult for them to get water to their farmers when the water is off in the KRD because of lack of return flow. This negatively impacts their production. The irrigation distribution systems in our county were originally designed to irrigate several different crops with different watering patterns and timing needs. The Timothy hay which must be grown for economic reasons must all be watered at the same time which causes water rationing at certain critical times of the year even on normal water years. This would not be the case if it were economically viable to raise other crops here. The fruit crops that are grown here are dependant on a labor pool that simply is not available to harvest it anymore. The few small growers left with labor intensive crops are not able to get the crops thinned or harvested. Until there is a workable federal immigration policy that is put in place there will not be significant economically viable

labor intensive crops in the Kittitas Valley. Even if the labor supply were to be adequately addressed the world market has been flooded with fruit. Washington State has one of the highest minimum wage laws in the nation which makes it very difficult to compete with other production areas. The existing fruit crops that are here will continue to be removed because of international market pressures, primarily because of China and because of the labor issues. It used to be that the Kittitas Valley was the only major quality Timothy producer anywhere. Now we are seeing other areas making inroads into Timothy production. If something happens to the precarious local Timothy market like happened to the fruit market there will not be a back up commodity to take its place that will be economically sustainable.

The proposed changes that the planning commission recommended to you in GPO 2.124 is an example of the total disregard for agricultural producers that the proponents of the change have. The existing language now reads "Create a growth management agricultural advisory council comprised only of agricultural

producers to review and make recommendations to the board of county commissioners on at least an annual basis over the coming 20 years on:

- a. The status of agriculture in Kittitas County
- b. County agricultural policies and regulations

In the recommendation that they sent to you, the agricultural producers have been struck out in the proposal and replaced by a Resource Land Advisory Committee that has no mention of agricultural membership. However it will be set up to report to the Commissioners on local agricultural marketing and agricultural economic planning and review and make recommendations regarding zoning and development regulations. It would also report to the commissioners on the status of agriculture in Kittitas County and report on county agricultural policies and regulations. The proposal has the non agricultural resource committee members, some connected with Seattle based environmental groups, that do not know anything about agriculture making these reports to the Commissioners. The reports could have major impacts on farmers

livelihood, having non agricultural producers in a position to make these recommendations is seen as an attack on our local farm families.

The Growth Management Agricultural Advisory Council that is allowed for in the existing plan which is comprised only of agricultural producers needs to be appointed and allowed to make the annual report. Not the resource land advisory committee. The report should cover not only a report on the state of Agriculture in the Kittitas Valley but also the report on and make recommendations on individual requests to change agricultural land of long term commercial significance designations.

The existing introduction to rural lands Chapter 8 must stay. It must not be struck as the planning Commission has recommended.

We do not agree with the striking of section 8.1. In this section there is a discussion about how over the past 15 to 20 years Kittitas County has experienced "Rural Sprawl" through the adoption of 20 acre minimum lot sizes, which has caused the conversion of farm land into weed patches. It goes on to state further that small lot

zoning with conservation easements for agriculture, timber, or open space may be preferable to the wasteful "sprawl" developments of large lot zoning and could be more conducive to retaining rural character. It was true ten years ago and it is true now. Large lot zoning causes an acceleration of the conversion of ag lands. The smaller you keep parcel sizes (3 acres or less) the more ag land you actually conserve because requiring large lots results in rural sprawl as the county gets divided into 5 to 20 acre parcels. Also from the ag land management perspective it is much easier to sell a smaller parcel and maintain the rest of the farm as a viable operation. We vigorously oppose the proposed GPO 8.12 which sets the rural density at 5 acres.

More of the existing 8.1 that is recommended to be struck goes on to state: "More and more Appearance" rather than actual substance or function seems to be the goal of planning. Perhaps our lands do not have to be rural, they just have to "appear to be rural" to satisfy those aggressively demanding that government mandate "ruralness". It goes on to allude to the fact that we are not a

totalitarian society, we do not allow our government to dictate where each person will live and what work and lifestyle they will adopt. Can our free society require its rural citizens to appear to be peasants or to actually be indentured to their own property in an agrarian role? Can we require that all rural residents adopt and portray a rural or agrarian lifestyle even if it is unsustainable?

We say that the answer is of course not. Earlier this month in the comp plan map amendment hearings you heard testimony from interests that are blatantly unsympathetic to the positions of the farmers. One individual testified that he was always hearing about the plight of the farmers. He said that being a farmer is a life style choice and said that the big fish are always eating the little fish and farmers can not expect to be immune from that. This person further testified that if a farm was bought or inherited as a farm it must remain a farm forever and we can not be making planning decisions on an individuals life span and retirement or there children's life span. This is an unrealistic, idealistic position based on a Utopian theory. Utopian societies do not work. Attempts at

them have not worked in the US or anywhere else in the world. In 1515 Sir Thomas More wrote about the perfectly orderly and reasonable social arrangements of the Utopia where private property does not exist. Karl Marx's later vision of the ideal communist state strongly resembles More's Utopian in regards to individual property. You hear from people who want to treat the ag lands as if they own them but they do not. If they want the ag lands then they should buy them, not take them. The statements in 8.1 must stay; it is the only way that we can keep the important perspective described in the introduction from fading away. It is also the only way that we can keep the message of the importance of preventing those that wish to impose their vision of perfect preservation plans without compensation from running over individual rights.

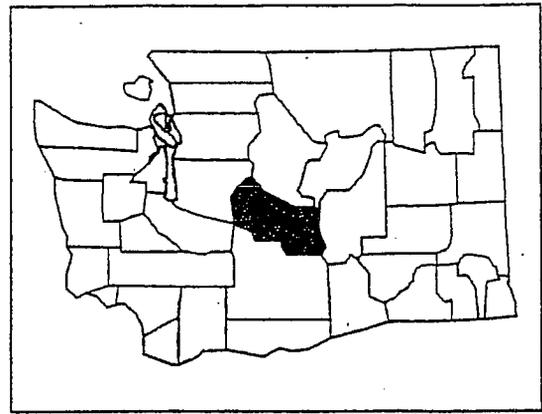


NASS

FACT FINDERS FOR AGRICULTURE
UNITED STATES DEPARTMENT OF AGRICULTURE
Washington, D.C.

2002 Census of Agriculture County Profile

Kittitas, Washington



Number of farms

931 farms in 2002, 1,008 farms in 1997, down 8 percent.

Land in farms

230,646 acres in 2002, 187,881 acres in 1997, up 23 percent.

Average size of farm

248 acres in 2002, 186 acres in 1997, up 33 percent.

Market Value of Production

\$56,364,000 in 2002, \$82,178,000 in 1997, down 31 percent.

Crop sales accounted for \$38,432,000 of the total value in 2002.

Livestock sales accounted for \$17,932,000 of the total value in 2002.

Market Value of Production, average per farm

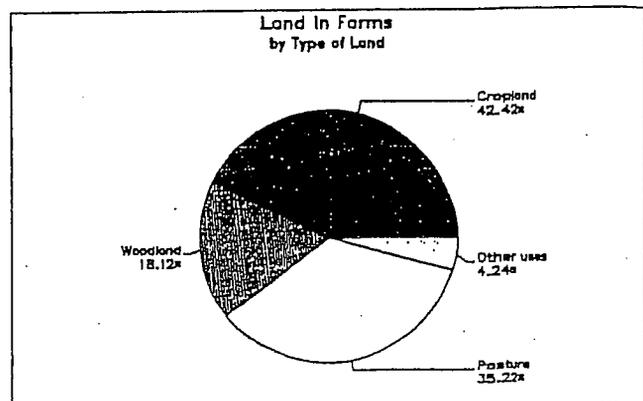
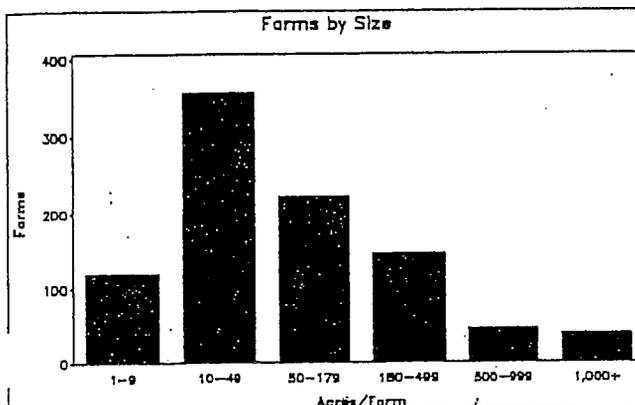
\$60,542 in 2002, \$81,526 in 1997, down 26 percent.

Government Payments

\$539,000 in 2002, \$338,000 in 1997, up 59 percent.

Government Payments, average per farm receiving payments

\$4,768 in 2002, \$4,573 in 1997, up 4 percent.



2002 Census of Agriculture

County Profile

United States Department of Agriculture, Washington Agricultural Statistics Service

Kittitas, Washington

Ranked items among the 39 state counties and 3,078 U.S. counties, 2002

Item	Quantity	State Rank	Universe ¹	U.S. Rank	Universe ¹
MARKET VALUE OF AGRICULTURAL PRODUCTS SOLD (\$1,000)					
Total value of agricultural products sold	56,364	20	39	1,020	3,075
Value of crops including nursery and greenhouse	38,432	19	39	669	3,070
Value of livestock, poultry, and their products	17,932	19	39	1,389	3,070
VALUE OF SALES BY COMMODITY GROUP (\$1,000)					
Grains, oilseeds, dry beans, and dry peas	709	19	34	1,881	2,871
Tobacco	-	-	-	-	560
Cotton and cottonseed	-	-	-	-	656
Vegetables, melons, potatoes, and sweet potatoes	3,869	14	36	366	2,747
Fruits, tree nuts, and berries	3,798	14	39	170	2,638
Nursery, greenhouse, floriculture, and sod	(D)	(D)	36	(D)	2,708
Cut Christmas trees and short rotation woody crops	(D)	(D)	31	(D)	1,774
Other crops and hay	29,899	5	39	46	3,046
Poultry and eggs	8	30	39	2,074	2,918
Cattle and calves	15,489	8	39	679	3,053
Milk and other dairy products from cows	1,060	24	34	1,346	2,493
Hogs and pigs	93	11	38	1,475	2,919
Sheep, goats, and their products	158	12	38	549	2,997
Horses, ponies, mules, burros, and donkeys	671	7	39	239	3,014
Aquaculture	2	33	35	1,175	1,520
Other animals and other animal products	452	11	37	311	2,727
TOP LIVESTOCK INVENTORY ITEMS (number)					
Cattle and calves	31,415	10	39	1,018	3,059
Mink	(D)	2	6	(D)	117
Horses and ponies	3,749	7	39	117	3,065
Sheep and lambs	2,284	8	39	492	2,867
Swine 20 weeks old and older	766	28	39	1,592	2,983
TOP CROP ITEMS (acres)					
Forage - land used for all hay and haylage, grass silage, and greenchop	58,132	4	39	207	3,059
All Vegetables harvested	3,798	9	36	175	2,710
Sweet corn	3,783	7	29	40	2,279
All Wheat for grain	2,152	18	26	1,263	2,517
Oats	846	5	30	594	2,215

Other County Highlights

Economic Characteristics	Quantity	Operator Characteristics	Quantity
Farms by value of sales		Principal operators by primary occupation:	
Less than \$1,000	235	Farming	483
\$1,000 to \$2,499	113	Other	448
\$2,500 to \$4,999	76		
\$5,000 to \$9,999	119	Principal operators by sex:	
\$10,000 to \$19,999	89	Male	815
\$20,000 to \$24,999	18	Female	116
\$25,000 to \$39,999	65		
\$40,000 to \$49,999	24	Average age of principal operator (years)	55.7
\$50,000 to \$99,999	66		
\$100,000 to \$249,999	74	All operators ² by race:	
\$250,000 to \$499,999	18	White	1,415
\$500,000 or more	34	Black or African American	-
Total farm production expenses (\$1,000)	49,602	American Indian or Alaska Native	11
Average per farm (\$)	53,278	Native Hawaiian or Other Pacific Islander	2
		Asian	2
Net cash farm income of operation (\$1,000)	7,647	More than one race	4
Average per farm (\$)	8,213	All operators ² of Spanish, Hispanic, or Latino Origin	7

(D) Cannot be disclosed. (Z) Less than half of the unit shown. See "Census of Agriculture, Volume 1, Geographic Area Series" for complete footnotes.

¹ Universe is number of counties in state or U.S. with item.
Data were collected for a maximum of three operators per farm.

Historical TWSA Estimates by Month & YRBWEP Title XII Target flows, Commencing WY 1995.

Month	Mar's	Apr	XII	Apr	XII	May	XII	Jun	XII	Jul	XII	Aug	Sep	Percent
YEAR	KAF	cfs	KAF	cfs	KAF	cfs	KAF	cfs	KAF	cfs	KAF	cfs	KAF	%
1977			2037											70%
1978	3000		2678		2341					1433		970		100%
1979	2770		2657		2460		1964							94%
1980	3248		3147		2705		2121							100%
1981	2629		2357		2296		1979							100%
1982	3433		3256		3003									100%
1983	3453		3302		1941		2271							100%
1984	2956		2786		2501		2200							100%
1985	3195		3111		2858		2395		1529		319			100%
1986	3061		2668		2294		1900		1267					Avg.
1987	2598		2559		2297		1661		1301					68%
1988	2377		2353		2064		1710		1349					90%
1989	2946		3071		2556		2192							100%
1990	3446		3268		2824		2417		1717					100%
1991	2938		2952		2762		2261		1854					100%
1992	2853		2422		2268		1497		1154		718	324		58%
1993	2852		1974		1842		1405		1126		774	415		67%
1994	2159		2016		1691		1791		934		512	283		57%
1995	3284	600	3044	500	2666	500	2088	400	1573	400				100%
1996	3268	600	2872	400	2530	400	2003	400	1463	400				100%
1997	4055	600	4542	600	3836	600	2670	600	1935	600				100%
1998	3193	500	2987	500	2548	400	2017	400	1536	400				100%
1999	4179	600	4198	600	3548	600	3017	600	1913	600				100%
2000	3319	604	3345	604	2691	504	2175	404	1615	404				100%
2001	1820	304	1678	304	1547	301	1285	301	970	301	679	319		37%
2002	3121	501	3316	601	2879	501	2348	501	1631	401				100%
2003	2492	302	2644	302	2437	402	2003	402	1521	302	169			92%
2004	2879	402	2553	302	2076	302	1662	302	1255	302	654	507		92%
2005	1700	302	1717	302	1491	302	1329	302	1043	302				
Avg	2946		2849		2543		2024		1457		779	338		

37% - 4/1

Values in blue italics are based on adjusted or adjusted forecast.
 The forecast does not include October water from April 1993 onward.
 XII flow includes YRBWEP lease and acquisition (LAA) water which not on over 100.

0.86857

Original compilation by Steve Fanchiello. Modified for Excel and updated by Chris Lynch.

Median	3075	600	2917	500	2544	501	2003	400	1496	401	781	322		
Avg	2926	539	2868	614	2466	476	2025	451	1464	428	764	335		

Avg	3067	600	2922	400	2611	400	2000	400	1491	300	764	335		
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Title XII flow derived by looking up average TWSA in the Title XII table

2003 0.81244091

0.80564

0.83364