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DIVISION II
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STATE OF WASHINGTON
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NO. 39546-1II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CLARK COUNTY, WASHINGTON, CITY OF LA CENTER, GM CAMAS, LLC, MACDONALD LIVING TRUST & RENAISSANCE HOMES,

Respondents,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL & FUTUREWISE,

Appellants.

BRIEF OF RESPONDENT CLARK COUNTY

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I.
INTRODUCTION

Appellants ("Futurewise") seek review of a decision of Clark County Superior Court which affirmed, in part, and reversed, in part, a decision of the Western Washington Growth Management Hearings Board ("Growth Board"). Respondent Clark County and Intervenor-Respondents City of La Center, GM Camas LLC, MacDonald Living Trust and Renaissance Homes had petitioned the superior court for judicial review of certain aspects of the Growth Board's Final Decision and Order dated May 14, 2008, and Amended June 3, 2008, which is attached as Appendix 1 ("FDO"). The FDO itself had affirmed, in part, and reversed, in part, a September 25, 2007 decision of Clark County that updated its 20-Year Comprehensive Growth Management Plan 2004-2024.

As to those parts of the FDO that are still in dispute, Respondent Clark County requests that this Court uphold the decision of the Superior Court in its reversal of portions of the FDO.

II.
RESPONSE TO ASSIGNMENT OF ERROR

The Superior Court correctly reversed the Western Washington Growth Management Hearings Board decision with respect to the

appropriate comprehensive plan designations under the Growth Management Act, RCW 36.70A, of lands identified as Areas LB-1, LB-2, LE, VA, VA-2 and WB.[1] The Growth Board's decision with respect to Area CB is not properly before this Court.[2]

III.
STATEMENT OF THE CASE

In addition to the facts stated herein, Clark County hereby adopts and incorporates the statements of facts and summaries of evidence set forth in the briefs of the City of La Center, Renaissance Homes and Birchwood Farms, and the MacDonald Living Trust.

The agency action challenged in this appeal the FDO in Case No. 07-2-0027 which arose from the Futurewise appeal, pursuant to RCW 36.70A.280, challenging a September 25, 2007 legislative enactment (Ordinance 2007-09-13) by the Clark County Board of Commissioners in

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[1] The total acreage within in the Areas subject to this appeal is approximately 840 acres. *Appendix 1 at 72.* This is 21 percent of that represented by Futurewise in its brief to this Court. Brief of Appellants Karpinski, CCNRC and Futurewise ("Futurewise Brief") at 2.

[2] Area CB was validly annexed in its entirety by the City of Camas prior to issuance of the FDO. When it ruled, therefore, the Growth Board, as well as Clark County, lacked jurisdiction over Area CB for purposes of land use planning and the appeal before the Growth Board. The Growth Board has issued a Finding of Compliance as to Area CB. Compliance Order dated October 29, 2009, attached hereto as *Appendix 2 at 9.*

connection with an update of the County's, that updated and revised its 20-Year Comprehensive Growth Management Plan 2004-2024. The County's plan revisions amended the urban growth areas ("UGA's") for all cities in Clark County, bringing into the UGA's approximately 12,023 acres of land, most of which had been previously designated for rural residential use, and including approximately 4,351 acres of which previously had been designated for agriculture.

The plan update and revisions followed approximately two years of a comprehensive and citizen-oriented process that resulted from a determination that the population forecasts that had underlain the County's initial adoption of its 2004 Comprehensive Plan update had been inadequate to describe growth in the County.[3] The County's early work focused upon the "assumptions" which would provide the framework for plan revisions. Consistent with prior Hearings Board decisions, the County addressed assumptions relating to both "need" and "capacity." As to "need," the Board of County Commissioners (BOCC) first addressed residential growth. The County's initial 2004 population

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[3] See a more detailed description of the County process in Clark County Petition for Judicial Review of Final Decision and Order of the Western Washington Growth Management Hearings Board, filed June 12, 2008, attached as *Appendix 3 at 2-12.*

growth assumption, based on the range then projected by the Office of Financial Management, had been 1.67 percent.[4] Annual County population growth rates from 1990 through 2004, however, had ranged from a low of 2.4 percent (2003) to a high of 5.3 percent (1990), with an average growth rate exceeding 3.1 percent.[5] In the update work performed in 2005, the County concluded that a growth rate of 2.0 percent, with 2.2 percent assumed in 2004-2010 for capital facilities planning purposes, was a more reasonable planning forecast which landed well within the then-current OFM range of 1-2.5 percent.[6] The 2 percent forecast resulted in a 20-year need to accommodate a population growth in Clark County of more than 190,000 new inhabitants.[7]

As to needed employment lands, the BOCC decided that the County should strive to bring its current County's jobs-to-population ratio (1 to 2.9) more into line with the ratio in the metropolitan areas (1 to 2).

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[4] CP 24, Exhibits 158 and 5127, Memoranda of Board of County Commissioners Deliberations, May 5, 2005 and May 17, 2005.

[5] CP 24, Exhibit 135.

[6] CP 24, Exhibits 158 and 5127.

[7] CP 24, Exhibit 135.

The County decided, consistent with the revised growth projections, that all of the growth alternatives to be considered by the County should assume the same population and jobs growth rates, allowing environmental and capital facilities impacts to be comparable. Specifically, each alternative would assume that about 192,000 more people would live in Clark County over the planning horizon (for a total population of about 584,000), with 90 percent (about 173,000) settling in urban areas. In short, 67,000 new urban dwelling units and 138,000 new jobs, and lands with capacity for the homes and jobs, would be needed.[8]

The extensive public process[9] undertaken by Clark County to plan for its expected growth raised numerous policy and legal issues. These were addressed in a series of thirteen "Issue Papers" produced by staff.[10] Issue Paper No. 7, dealing with conversion of agricultural lands, is by far the longest. It reflects the in-depth analysis undertaken by the County to address GMA goals and requirements as judicially interpreted.

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[8] CP 24, Final Environmental Impact Statement, Vol.1, page 3.

[9] Appendix F to Clark County 20-Year Comprehensive Growth Management Plan 2004-2024, Adopted September 2007, attached as *Appendix 4.*

[10] CP 24, Exhibit 6605 (Issue Papers 1, 3, 5, 7, 8, 10, 12 and 13); Exhibit 6346 (Issue Papers 1, 2, 4, 6, 8, 9 and 11).

As demonstrated in the record before the Growth Board, the County undertook two major work efforts to address the conversion issue. First, the County retained an expert consultant to study and report on the general state of the agricultural industry in Clark County.[11] Second, staff analyzed all of the agriculturally-designated areas under consideration for UGA inclusion against the criteria found in statutes, administrative rules, and county code and according to evidence that had been presented throughout the public processes. The result of this analysis is reflected in the spreadsheets attached to Issue Paper No. 7, sometimes referred to as the "matrix".[12] The BOCC's consideration was further informed by property-specific analyses submitted by a number of property owners.[13] A summary of the BOCC's conclusions as to each expansion area is set out in the right-most column of the staff matrix. The County's findings and conclusions are also more generally set forth

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[11] CP 24, Exhibit 6458.

[12] CP 24, Exhibit 6605.

[13] A transcript of the BOCC deliberations, which focused upon relevant agricultural criteria as well as competing GMA goals and requirements, is found at CP 24, Exhibits 6606 and 6430.

in adopting Ordinance 2007-09-13 at pages 9-10,[14] which was supported by evidence in the whole record before the County.

In summary, Clark County's work to revise and update its comprehensive plan, culminating in the September 2007 adoption, was lengthy, extensive in depth and breadth, and informed by significant public process. This work generated an evidentiary record that is both voluminous and detailed as support of the County's decision. Clark County will rely upon the counsel for property owners before this Court to present specific evidentiary details regarding the lands at issue.

The agricultural lands whose redesignations as urban were challenged by Futurewise were studied and identified in proceedings before Clark County as Agricultural Viability Study Areas ("Areas"). For ease of reference, that method of identification continued before the Growth Board and Clark County Superior Court. Futurewise challenged the redesignations of 19 of these Areas. Of the 19 challenged Areas, the Growth Board FDO affirmed the redesignations and incorporation into UGA's of 8 Areas, and ruled noncompliant Clark County's decisions to remove from agricultural designation and place within urban areas the 11 other challenged Areas, as follows:

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[14] Attached as *Appendix 5.*

Battle Ground – BC (68 acres)	La Center – LB-1 (218.81 acres)
Vancouver – VB (780.43 acres)	La Center – LB-2 (244.53 acres)
Camas – CA-1 (342.56 acres)	La Center – LE (112.47 acres)
Camas – CB (402.19 acres)	Vancouver – VA (125.02 acres)
Ridgefield – RB-2 (199.69 acres)	Vancouver – VA-2 (22.89 acres)
	Washougal – WB (116.06 acres).[15]

The Growth Board's disposition of its review of Clark County's actions, with respect to all of the Areas in the above left column, should not be before this Court. No party has appealed the Superior Court's decision to uphold the Growth Board regarding Areas BC and VB. In fact, in order to resolve the appeals regarding those areas and portions of others, Clark County has adopted Ordinance 2009-12-15, which redesignates Areas BC and VB for Resource Agriculture (AG-20) and removes them from the UGA's of Battle Ground and Vancouver, respectively.[16] Consequently, Futurewise may get no relief from the Court of Appeals regarding the 2007 designations for Areas BC and VB.

Before the Growth Board issued its determination of invalidity Area CB was annexed in its entirety by the City of Camas, as was the

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[15] FDO at 72, 79, *Appendix 1.*

[16] Ordinance 2009-12-15, attached as *Appendix 6.*

greater portion of Area CA-1 (approximately 327.06 of 342.56 acres).[17] The remaining 15.5 acres of Area CA-1 have been redesignated as Resource Agriculture (AG-20) and removed from the Camas UGA.[18] Most of Area RB-2 was annexed by the City of Ridgefield prior to the date of the determination of invalidity.[19] The remainder of Area RB-2 has been redesignated for Resource Agriculture (AG-20) and removed from the Ridgefield UGA.[20]

Clark County has no jurisdiction over lands within the limits of cities; therefore, this Court cannot order the County to take action with respect to the annexed properties. With respect to Areas BC and VB and the remainders of Areas RB-2 and CA-1, Clark County has already taken the action required by the Growth Board by adopting Ordinance 2009-12-15. The Washington Supreme Court has stated: "A case is moot if a court can no longer provide effective relief."[21] By the Supreme Court's

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[17] Compliance Order, Appendix 2 at 8; Ordinance 2009-12-15, *Appendix 6.*

[18] Ordinance 2009-12-15, *Appendix 6.*

[19] Compliance Order, Appendix 2 at 8; Ordinance 2009-12-15, *Appendix 6.*

[20] Ordinance 2009-12-15, *Appendix 6.*

[21] Orwick v. Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984) *(case moot because citations against petitioners dismissed before trial court hearing).*

standard, this review is certainly moot as it concerns Areas BC, CA-1, CB, RB-2, and VB. Only the designations of the lands within Areas LB-1, LB-2, LE, VA, VA-2 and WB are before the Court of Appeals in this case.[22]

IV.
ARGUMENT

A. Standard of Review.

In addition to the arguments regarding standard of review stated below, Clark County hereby adopts and incorporates the arguments regarding standard of review set forth in the briefs of the City of La Center, Renaissance Homes and Birchwood Farms, and the MacDonald Living Trust.

The appropriate standard of review has been summarized in the Supreme Court opinion in Lewis County v. Western Washington Growth Management Hearings Board,[23] and quoted by the Court of Appeals and

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[22] Clark County is puzzled by references throughout the Futurewise Brief to lands whose designations are no longer in dispute, and asks that the Court of Appeals disregard any of these references.

[23] Lewis County v. W. Wash. Growth Management Hearings Bd., 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

the Supreme Court in City of Arlington v. Central Puget Sound Growth Management Hearings Board.[24] That summary is adapted here.

First, the Court reviews the Growth Board's decision, not that of superior court. The Court applies the standards of the Administrative Procedures Act, RCW 34.05, directly to the record before the agency.[25] Review of an agency order in an adjudicated proceeding is set forth in RCW 34.05.570(3), which provides that relief from the order can be granted if the Court determines, as relevant, that:

> (d) The agency has erroneously interpreted or applied the law;
>
> (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;
>
> . . . .

RCW 34.05.570(3).

The legislature has mandated that the Growth Boards "grant deference to counties and cities in how they plan for growth, consistent

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[24] City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 138 Wn. App. 1, 154 P.3d 936 (2007), *aff'd* 164 Wn.2d 768, 193 P.3d 1077 (2008).

[25] Lewis County, 157 Wn.2d at 497; City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 45, 959 P.2d 1091 (1998).

with the requirements and goals of" the GMA.[26] An amendment to a comprehensive plan is, with exceptions not relevant here, presumed valid upon adoption, and thus the burden of proof is on a petitioner before the Growth Board to demonstrate that a county's action adopting a plan amendment is clearly erroneous, in that it fails to comply with GMA.[27]

In an opinion specifically addressing the relative degrees of deference to county decision making owed by the Growth Board, and to the Growth Board in reviewing a county action owed by an appellate court, as mandated by RCW 36.70A.3201, APA, and the courts, the Washington Supreme Court has held that "the deference to county planning actions that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and the courts to administrative bodies in general."[28] In other words, even though the Growth Board's interpretation of GMA is entitled to deference and to "substantial weight" by a reviewing court,[29] the Growth Board is

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[26] RCW 36.70A.3201; Lewis County, 157 Wn.2d at 498.

[27] RCW 36.70A.320(1)-(3).

[28] Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 154 Wn.2d 224, 110 P.3d 1132 (2005).

[29] Lewis County, 157 Wn.2d at 498

required to give greater deference than that to a county in its necessary exercise of the discretion that accompanies county-wide planning.

Futurewise fails in its arguments supporting the Growth Board's FDO because Futurewise fails to recognize – as the Growth Board failed to recognize or apply – the proper standard of review. Futurewise argues throughout that substantial evidence supported the Growth Board's decision.[30] Pursuant to RCW 34.05.570(3)(e), one basis for this Court to overturn the Growth Board decision is that the court may grant relief from the agency order if it is not supported by substantial evidence in light of the whole record.

Clark County will concede that certain evidence in the record may support the Growth Board's decision. That is not the issued before the Court in this appeal, however. The question is whether the Growth Board improperly applied the substantial evidence standard when it reviewed Clark County's decision to adopt Ordinance 2007-09-13, and thereby, its comprehensive plan update, in that the FDO remanded the County's decision with regard to Areas LB-1, LB-2, LE, VA, VA-2, and WB, partially on evidentiary grounds, notwithstanding substantial

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[30] Futurewise Brief at, e.g., 20, 21, 23, 25, 29, 32, 33.

evidence in the whole record to support the County's findings that these areas were all subject to more intensive uses, and lacked long-term commercial significance.

Related to that question is whether the Growth Board failed to properly construe and apply RCW 36.70A.320 and RCW 36.70A.3201 in that it failed to accord the County's decision the required presumption of validity, remanded the County's decision though it was not clearly erroneous, and failed to defer to the County's legitimate exercise of its discretion in planning for growth, based upon the requirements of GMA and the evidence actually before it.

These questions are governed by RCW 34.05.570(3)(d). They are questions of law, which are reviewed by the Court de novo.[31]

B. Discussion.

Clark County hereby adopts and incorporates the arguments regarding substantial evidence and error construing and applying law set forth in the briefs of the City of La Center, Renaissance Homes and Birchwood Farms, and the MacDonald Living Trust.

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[31] City of Arlington, 164 Wn.2d at 779.

The core of the Appellants' argument supporting the Growth Board is that the deference standards of RCW 36.70A.320 and RCW 36.70A.3201 lose effect as soon as the Growth Board has made a decision. Futurewise argues that under the APA, the Court must give substantial weight to the Growth Board's interpretation of the GMA, and affirm the Growth Board's decision as supported by substantial evidence. Futurewise fails to note the significance of the statutory authority requiring Growth Board deference to local decision-making. The Supreme Court's decision in Quadrant Corp. did not itself alter anything, but rather analyzed the recently enacted statutory mandates of RCW 36.70A.3201,[32] which provides as follows:

> "In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community."

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[32] Quadrant Corp., 154 Wn. 2d at 235-38.

In order to determine under the APA whether the Growth Board's decision was clearly erroneous, the Court must examine whether the Growth Board accorded the required deference to the county's balancing of priorities and options, in full consideration of local circumstances. RCW 36.70A.3201 unequivocally describes a greater degree of deference to local planning decisions than the "substantial weight" that this Court is to apply to the Hearings Board's decision.[33] Because the Hearings Board did not use the required standard, the Court should reverse and remand its decision, pursuant to RCW 34.05.570(3)(d).

Clark County found with respect to Areas LB-1, LB-2, and LE that the possibility of more intensive use related to the location of these Areas at the La Center junction with Interstate 5 was a justification for redesignation of the agricultural lands as urban.[34] The County found that with regard to Areas VA and VA-2, redesignation from agriculture was justified, in part, by the presence of urban growth, proximity to urban areas, and the possibility of more intensive use.[35] With respect to Area

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[33] Quadrant Corp., 154 Wn.2d at 238.

[34] Ordinance 2007-09-13, Appendix 6, at 9.

[35] Id.

WB, the County found that the land lacked long-term commercial significance as agricultural land.[36]

Each of these rationales demonstrates that one of the three prongs for the designation of agricultural land under RCW 36.70A.030(2), RCW 36.70A.030(10), and WAC 365-190-050(1) had not been met, to wit, the land at issue lacked long-term commercial significance for agriculture.[37] The three aspects of the definition of agricultural land are not alternatives; to be designated properly for agricultural resource use, the land must meet all three parts of the definition.[38]

Clark County properly exercised its discretion and its obligations under GMA to plan for growth in these Areas. Its decision was based upon the evidence in the extensive record before it as detailed above, and in the evidentiary record before the Growth Board, and as argued to this Court by the Respondents in this appeal. This aspect of the County's decision is analogous to the circumstances in City of Arlington.[39] Relevant and sufficient evidence supported the County's valid decision

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[36] Id., Appendix 6 at 10.

[37] Lewis County, 157 Wn.2d at 502.

[38] Id.

[39] 164 Wn.2d 768, 193 P.3d 1077 (2008).

under GMA. The Growth Board misconstrued and misapplied the law in ruling otherwise.

V.
CONCLUSION.

For the reasons set forth above, Respondent Clark County respectfully requests that the Court of Appeals affirm the decision of Clark County Superior Court in reversing the Growth Board with respect to Areas LB-1, LB-2, LE, VA, VA-2, and WB. Clark County requests that the Court of Appeals hold that its decision with regard to those areas complied with GMA, and that the Growth Board's order of noncompliance and invalidity as it affects those Areas is contrary to law and must be rescinded.

Respectfully submitted:

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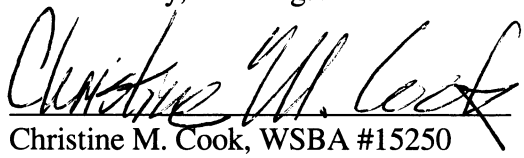
By 
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APPENDIX 1

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BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL and FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent.

And

GM Camas L.L.C., Johnston Dairy, et al and MacDonald Properties, Daryl Germann, Curt Gustafson, T3G, LLC and Hinton Development Corporation, Building Industry Association of Clark County and City of La Center,

Intervenors.

Case No. 07-2-0027

FINAL DECISION AND ORDER

AMENDED FOR CLERICAL AND GRAMMATICAL ERRORS JUNE 3, 2008

On May 14, 2008, the Western Washington Growth Management Board (Board) issued its Final Decision and Order (FDO) in the above-captioned matter.

Subsequent to this issuance, the Board determined that the FDO contained various clerical and grammatical errors. This Amended FDO corrects only those errors which, at times, may involve the restructuring of a sentence for clarity or format purposes. With the exception of including Battle Ground Area BC, which had been found to be inappropriately de-designated on Page 69 and at Conclusion of Law T of the original FDO but was erroneously omitted from the listing of invalidated areas provided on Page 72 of the original FDO AND Findings of Fact 35, 38, 39, 43 and Conclusion of Law M in the May 14, 2008 order were deleted as they were duplicates, this Amended FDO does not amend or modify any procedural or substantive findings or conclusions of the May 14, 2008 FDO.

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I. SYNOPSIS

Just two years after the adoption of its 2004 Growth Management Act (GMA) update, on September 9, 2007, Clark County passed Ordinance 2007-09-13 de-designating 19 areas of previously designated agricultural lands of long-term commercial significance, consisting of 4,351 acres, and added that land to Clark County cities' UGAs. John Karpinski, Clark County Natural Resource Council, and Futurewise (Petitioners) challenged the County's environmental review and public participation processes, the de-designation of the agricultural lands of long-term commercial significance, and the addition of these lands to the UGA.

This order finds that the County's choice of a no action alternative complies with the State Environmental Policy Act (SEPA) and related rules. Additionally, the Board finds that although the County's public participation process was not without irregularities and, at times, may not have seemed to be fair, the irregularities are not clearly erroneous violations of the GMA's public participation requirements.

Decisions by the Courts, in regards to GMA goals and requirements, provide parameters for the decisions of the County and the Growth Management Hearings Boards. The Washington Department of Community Trade and Economic Development also provides guidance for counties on how to determine the long-term commercial significance (LTCS) of agricultural lands through WAC 365-190-050. Past decisions of the Boards have held that to de-designate LTCS agricultural lands the County must go through the same process and evaluate the requirements of the statutes and the WAC applicable to the designation of these lands. The County went through a process to de-designate agricultural lands and at the same time considered adding them to the UGA.

To assist them in their de-designation process, the County developed a principle/values statement that put economic development as its primary goal to increase the tax bases of the county, city, and school districts. The Board finds that the Supreme Court held the GMA

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creates a mandate to designate agricultural lands because the Act includes goals with directive language and specific requirements.[1] The Board finds that the GMA's economic development goal cannot supersede the agricultural mandate defined by the Supreme Court. The Supreme Court, in a later case, also set out a three-part test for evaluating agricultural lands.[2] These three factors come into play when designating agricultural lands.

The County developed a matrix to evaluate the factors set out in WAC 365-190-050 as well as factors to consider for de-designating agricultural lands. The Board finds that some of the factors, such as closeness of the rural centers, were not within the parameters of the GMA, while others, such as alternative value under other uses, cannot be determinative in designating agricultural lands but can be considered.

The Board evaluated the County's decision from its Matrix and its deliberations. We find that the County's de-designations for the others areas challenged comply with the GMA.

We find that the designation of the following areas do not comply: **BATTLEGROUND – BC(68.16 acres), CAMAS – CA-1 (342.56 acres), CAMAS – CB (402.19 acres), LA CENTER LB-1 (218.81 acres),LA CENTER LB-2 (244.53 acres), LA CENTER LE 112.47 acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER – VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB (780.43 acres), WASHOUGAL – WB (116.06 acres).**

Those areas that have been de-designated that comply with the GMA can be added to the UGAs. Those which do not, may not be added because they are not characterized by urban growth and, therefore, cannot be added pursuant to RCW 36.70A.110(1) and (3).

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[1] *Redmond v. Central Puget Sound Growth Management Hearings Board,* 136 Wn.2d 38 (2005)
[2] *Lewis County v Western Washington Growth Management Hearings Board,* 157 Wn.2d 488, 501;139 P.3d 1096, 1103 (2006).

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II. PROCEDURAL HISTORY

See Appendix A for a complete procedural history.

III. BURDEN OF PROOF

For purposes of board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

RCW 36.70A.320(1).

This same presumption of validity applies when a local jurisdiction takes legislative action in response to a noncompliance finding; that legislative action is presumed valid. The only time that the burden of proof shifts to the County is when the County is subject to a determination of invalidity.[3] Here, no finding of invalidity was imposed so the burden remains on the Petitioners.

The statute further provides that the standard of review shall be whether the challenged enactments are clearly erroneous:

> The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(3)

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[3] RCW 36.70A.320(2) and (4).

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In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Within the framework of state goals and requirements, the boards must grant deference to local governments in how they plan for growth:

> In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201 (in part).

In sum, the burden is on Petitioners to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly erroneous, and thus within the framework of state goals and requirements, the planning choices of local government must be granted deference.

IV. ISSUES PRESENTED

1. In the adoption of Ordinance 2007-09-13:
   Did Clark County fail to include an adequate "no-action" alternative and fail to include an adequate range of alternatives to adopting an increase in the population growth targets, expanding the Urban Growth Areas, rezoning properties, and amending the development regulations in the EIS released on May 4, 2007 in violation of RCW 43.21C.030, RCW 43.21C.031, and WAC 197-11-440(5(b)(ii)?

2. In the adoption of Ordinance 2007-09-13:

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a. Did Clark County violate RCW 36.70A.020(8), 36.70A.050(3), 36.70A.070, (1), (3), and 36.70A.170(1) & (2) in Ordinance No. 2007-09-13 by de-designating agricultural land in violation of RCW 36.70A.170, in violation of RCW 36.70A.050(3) and WAC 365-190-050, and in violation of the County's own criteria for designating agricultural land contained within the comprehensive plan and the GMA's requirements for internal consistency in RCW 36.70A.070?

b. Did Clark County violate RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060, 36.70A.110(1) & (3) in Ordinance No. 2007-09-13 by including land within Urban Growth Areas that is not characterized by urban growth, should be designated as agricultural land, and is adjacent to agricultural land?

3. Did Clark County fail to:
   a. Have a public participation plan or broadly disseminate that plan to the public;
   b. Provide for early and continuous public involvement in the comprehensive plan update;
   c. Provide adequate public notice of proposed amendments to the Comprehensive Plan and rezones;
   d. Provide timely and complete public notice of hearings and the documents that are being considered; and
   e. Allow public testimony and comment when proponents are allowed to testify; and
   f. Other public participation failures;

   In violation of RCW 36.70A.020(11), RCW 36.70A.035(1), RCW 36.70A.070, material preceding subsection (1), RCW 36.70A.130(2), and RCW 36.70A.140?

V. DISCUSSION OF THE ISSUES

A. ENVIRONMENTAL REVIEW

Issue: In the adoption of Ordinance 2007-09-13:
Did Clark County fail to include an adequate "no-action" alternative and fail to include an adequate range of alternatives to adopting an increase in the population growth targets, expanding the Urban Growth Areas, rezoning properties, and amending the development regulations in the EIS released on May 4, 2007 in violation of RCW 43.21C.030, RCW 43.21C.031, and WAC 197-11-440(5(b)(ii)?

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Petitioners Position

Petitioners argue that the County's Environmental Impact Statement (EIS) fails to present an adequate "no action" alternative and fails to provide for an adequate range of alternatives to expanding the UGA area. In support of this assertion, Petitioners contend the "no action" alternative should have analyzed environmental impacts based on the growth rate adopted in the County's 2004 CP, which was 1.69%, as opposed to the 2% growth rate the County used. Petitioners assert this decision amounts to both an *action* and a *policy choice* necessitating environmental review.

According to Petitioners, the County's EIS underestimated the adverse environmental impacts of the preferred alternative by utilizing the same 2% growth rate within both alternatives.[4] Therefore, Petitioners assert this error reduced the "effectiveness of the EIS as a tool by which to make an educated decision" and resulted in a "failure to analyze the impacts of amending the CP to increase the growth rate and population targets."[5]

Petitioners further alleged the County violated WAC 197-11-440(5)(b)(ii) when it failed to provide a "no action" alternative that could be evaluated and compared to other alternatives.

County's Position

The County begins by challenging Petitioners' standing to assert a SEPA claim and argues that the Western Board should adopt the SEPA standing test applied by the Central Puget Sound Hearings Board.[6] The County points out this test requires a petitioner to demonstrate that the interest they are seeking to protect are within the zone of interests protected by SEPA and that they have suffered an injury-in-fact.[7]

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[4] The County's "no action" alternative shows a 2% annual growth with no UGA expansion; the preferred alternative shows a 2% annual population growth rate with UGA expansion.
[5] Petitioners' Prehearing Brief, at 11.
[6] County Prehearing Brief – SEPA, at 4.
[7] County Prehearing Brief – SEPA, at 4

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As to the substance of the argument, the County argues that a revision in its growth rate forecast is *factual* and, therefore, is not an *action* requiring environmental review.[8] Rather, the environmental action being analyzed was the review of the County's UGA boundaries, with the "no action" alternative based on no adjustment to the boundaries as opposed to a "no action" alternative based on the revised growth rate as Petitioners contend.[9] The County contends that a "no action" alternative generally encompasses "what would be most likely to happen if the proposal did not occur;" and that the fundamental proposal under consideration is expansion of the UGA boundaries.[10] The County further asserts the SEPA rules allow discretion in developing a reasonable "no action" alternative which it exercised by utilizing existing UGA boundaries and a growth rate that provided for a more realistic approach.[11]

Intervenor TG3 LLC and Germann

Like Clark County, Intervenors contend that, even in a GMA-based appeal, in order to raise a SEPA claim the Petitioners must satisfy the *Trepanier* test in order to obtain standing.[12] Intervenors argue the Petitioners have failed to allege a specific injury to either themselves or their property and, therefore, lack standing.[13]

In regard to the substantive SEPA matter, Intervenors, like the County, concede that although an amendment to the County's CP is subject to SEPA review, the change in growth rate is merely a projection and, therefore, "utilizing a different growth rate factor is not an 'action' subject to SEPA review."[14] Intervenors note that although the OFM population projection range is an adopted CP policy, it is within the "County's discretion to adopt any figure within that range that in its judgment reflects a more accurate

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[8] County Prehearing Brief – SEPA, at 5
[9] County Prehearing Brief – SEPA, at 5-6.
[10] County Prehearing Brief – SEPA, at 8.
[11] County Prehearing Brief – SEPA, at 7-8
[12] Intervenors T3G/Germann Prehearing Brief – SEPA, at 1-2.
[13] *Id.*
[14] *Id.* at 5-6.

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measurement of population growth."[15] Further, Intervenors identify that SEPA is similar to the National Environmental Policy Act (NEPA) for which guidance interpreting SEPA may be used.[16] Intervenors point to *Laguna Greenbelt v. U.S Dept. of Transportation*[17] which upheld the sufficiency of a "no action" alternative despite the fact that it was based on the same growth assumption as the preferred alternative.[18]

Petitioners' Reply

In reply, Petitioners point to this Board's holding in *WEAN v. Island County* which affirmed previous cases finding that participation standing is sufficient to bring a SEPA petition before the Board and urges this holding to be affirmed.[19] Petitioners assert they have not only GMA participation standing but their interests and injuries satisfy the *Trepanier* test.[20] Petitioners counter the County's and Intervenors' assertions in regard to the "no action" alternative, asserting that: (1) it is not a "mere creation of the SEPA rules"; (2) is "not limited by the definition of reasonable alternative"; (3) requires an analysis of "what would occur if the new growth assumptions were not adopted"; and (4) must be "analyzed in sufficient detail to permit a comparative evaluation of the alternatives."[21] Lastly, Petitioners contend the *Laguna Greenbelt* decision cited by Intervenors does not support a finding that the "no action" alternative is sufficient because, not only is the necessary analysis to support the amended growth targets missing, but the *Laguna Greenbelt* rationale actually supports the use of the adopted 2004 CP as the "no action" alternative.[22]

Board Discussion

A. Standing

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[15] *Id.* at 8.
[16] *Public Utility District No. 1 of Clark County v. Pollution Control Hearings Board*, 137 Wash. App. 150, 158;151 P3d 1067 (2007)
[17] *Laguna Greenbelt Association v. U.S. Dept. of Transportation*, 42 F3d 517, 525-26 (9th Cir 1994)
[18] Intervenors T3G/Germann Prehearing Brief – SEPA, at 9.
[19] Petitioners' Reply, at 6-7
[20] Petitioners' Reply, at 7-9.
[21] *Id.* 9-13.
[22] *Id.* at 13-14.

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The County and Intervenors contend that the Board should find, as our colleagues at the Central Board hold, that in order to raise SEPA issues a party must satisfy the two-part standing test set forth by the Court in *Trepainer*. This Board recently addressed this very question and concluded that the GMA's standing provision, when read together with the GMA's grant of jurisdiction in the same section, unambiguously provides that participatory standing is sufficient to bring a SEPA petition before the boards.[23] Neither the County nor the Intervenors have demonstrated that this is an erroneous interpretation of the GMA's standing provisions and, therefore, we continue to adhere to this holding today.

The Board further notes, that the evidence in the record shows the Petitioners adequately participated on this issue, including filing an appeal of the Final Supplemental Environmental Impact Statement (FSEIS). Neither the County nor the Intervenor contests this.

Conclusion: Petitioners, having participated in the environmental review process below, have standing to raise a challenge to the County's FSEIS.

B. No Action Alternative

Petitioners argue that because Clark County failed to analyze a proper "no action" alternative, the County's environmental analysis for the amendment to its 2004 CP does not comply with SEPA.[24] The proper "no action" alternative, according to Petitioners, should have been an analysis of the 1.69% annual growth rate, the rate used as the basis for the County's 2004 CP.[25] Petitioners assert the "rule of reason" and WAC 197-11-440(5)(b) support their position. Alternatively, the County contends that using a 2% annual growth rate complies with the "rule of reason" and is within the broad discretion given to counties

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[23] *WEAN v. Island County*, WWGMHB Case No. 03-2-0008, FDO, at 18-20 (Aug. 25, 2003)
[24] Petitioners' Prehearing Brief at 8.
[25] Id. at 9-10.

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and cities by WAC 197-11-440 (5)(b)(ii) and WAC 197-11-442.[26] The County also claims the 1.69% growth rate assumption is a factual determination and, therefore, is exempt from SEPA. The County emphasizes RCW 43.21C.090 gives the County's decision substantial weight.

The County implies a "no action" alternative may not be required in its EIS for the 2007 Clark County comprehensive plan since the "no action" alternative is not mentioned in Chapter 43.21C RCW. The Board disagrees. Not only has this Board stated, "Under SEPA rules, evaluation and comparison of the "no-action" alternative is a mandatory element of an EIS,"[27] but WAC 197-11-440(5)(b)(ii) requires that a "no action" alternative be evaluated and compared to other alternatives and, RCW 43.21C.095 requires substantial deference to this rule.

The County and Intervenors also contend that the selected annual growth rate was a factual determination, not a policy choice or an amendment to the County's CP; thus, not an action subject to SEPA. The County compares its selected growth rate to Washington Office of Financial Management's (OFM) preparation of population estimates for counties and cities in to regard to UGA sizing, which pursuant to WAC 197-11-800(17) (Data and Research), are exempt from SEPA review.

WAC 197-11-800(17) provides:

> Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal.

The Board sees the growth rate as <u>both</u> a *factual assumption* and a *policy choice*. OFM does broad research to come up with population projections for the County to use in their

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[26] County Prehearing Brief – SEPA, at 8
[27] *Hood Canal, et al. v. Jefferson County* WWGMHB 03-2-0006 (Final Decision and Order, August 15, 2003).

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growth management planning. While OFM does not make the policy choices for counties about how much growth to actually plan for, it does set the parameters. Similarly, within those parameters, the County selects a projected 20-year population on which to base its CP. This decision is a policy choice based on data, discussion, local knowledge, and opinion. The data the County consulted showed its annual growth rate had exceeded that which had been the basis for its 2004 CP for more than a decade.[28] The choice of the annual growth rate may be looked at as part of a study - the EIS being the study - that leads to the proposal to amend the CP. At argument, the County pointed out other assumptions go into a proposal for a CP - such as market factors, buildable lands, and average household size - all of which have their foundation in data, some more than others.[29] These assumptions are then examined in the EIS to determine if the environmental impacts can be mitigated and also through the rest of the comprehensive planning process to ensure adequate capital facilities are available to support them. Ideally, these assumptions should not be a self fulfilling prophecy, as Petitioners contend, but can be changed during the environmental review process, if they are shown not to be sustainable. Because of the importance these assumptions play in the planning process, the annual growth rate and the resulting 20-year population projection that eventually becomes the basis for the CP are *fundamental assumptions.*

The Board of County Commissioners clearly saw the selection of the annual growth rate as an important policy choice, as shown through staff reports, news releases, and their deliberations.[30] Further, the CP describes the need to plan for increases in population as the policy thrust of the 2004-2024 CP based on the 2% growth rate and the resulting projected population of 584,310. The CP states that the population projection and allocations are goals, not just future estimates or guidelines.[31] From the evidence in the

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[28] Exhibit 135.
[29] Exhibit 135.
[30] Exhibits 135,145,143, and158.
[31] 20- Year Growth Management Plan 2004-2024, at 14.

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record and from the fundamental structure of the GMA itself, the Board concludes that the County's choice of the annual growth rate is *policy, a goal, and a change* from the 2004 adopted CP.

Although the Board has concluded that a "no action" alternative is necessary and that the choice of annual growth rate is a fundamental policy choice and goal of the CP, the basic issue is still to be resolved: *Is the change in the population projection resulting from a 2% annual growth rate the action that the County was required to analyze in its EIS, or, instead, was it the evaluation of leaving the UGA boundaries intact the action to be analyzed by the County in its EIS?*

In evaluating this issue, the Board must consider the following laws and rules,

RCW 43.21C.090 directs,

> In any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement", the decision of the governmental agency shall be accorded substantial weight.

WAC 197-11-440 (5) states (in pertinent part)

> An EIS shall contain the following, in the style and format prescribed in the preceding sections... (5) Alternatives including the proposed action...
>
> (iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

The County argues, and the scoping notice for the EIS confirms, that the outcome of the EIS and comprehensive planning process was to be the adoption of a new urban growth boundary for Clark County:

> Since Clark County was adopted in 2004, conditions in the county as well as state and federal laws have changed, requiring corresponding changes in the comprehensive plan. In addition, more accurate data and ground–truthing of the

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> current urban growth areas of available buildable lands data has been accomplished...
>
> As a result, the Board of County Commissioners have adopted issues, planning assumptions and policy direction for reviewing and updating the County's growth management plan early in 2005. The outcome of this EIS and comprehensive planning process will be the adoption of new urban growth boundaries for Clark County.[32]

In contrast, Petitioners argue the County, in the scoping notice for the EIS, recognized that the assumptions in the 2004 plan would be the "no action" alternative for revising the 2004 plan:

> The No-Action Alternative is the adopted September 2004 Growth Management Plan, with the adopted urban growth boundaries, planning assumptions, policies, and implementation ordinances.[33]

Further, Petitioners argue the County's Final EIS provides that the objective of the adopted 2007 plan is to accommodate the projected demand for jobs and housing based on the projected growth assumptions.[34] The County answers that the CP consists of many assumptions and the "rule of reason" allows the County to limit the range of baseline assumptions and policies it needed to evaluate. Here, the change in the urban growth boundary is the one the County chose to evaluate.

As provided in WAC 197-11-440 (5)(iii):

> Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

The configuration of UGA boundaries is an alternative over which the County has authority to control the impacts. As the County argues, its decision to provide more useful

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[32] Exhibit 5279, at 2
[33] Exhibit 5279.
[34] Exhibit 6372 at 1.

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information to the decision-makers by providing a "no action" alternative based on a more realistic growth rate, as opposed to one which was at odds with actual growth for over a decade, is reasonable. This choice was consistent with the "rule of reason" and must be accorded substantial weight.[35]

The County points out that the CP consists of many assumptions and the "rule of reason" allows the County to limit the range of baseline assumptions and policies it needed to evaluate. The County chose one of the baseline assumptions, the 2004 UGA boundary. The Washington Supreme Court defined the "rule of reason":

> The mandate of SEPA does not require that every remote and speculative consequence of an action be included in the EIS. The adequacy of an EIS must be judged by application of the rule of reason. This is the approach adopted by the federal courts. In Trout Unlimited, the court stated at page 1283:
>
> Appellants urge that the EIS is inadequate because it fails to discuss many possible environmental consequences. Many of these consequences while possible are improbable. . . . This is consistent with the (CEQ) Council on Environmental Quality Guidelines and the frequently expressed view that adequacy of the content of the EIS should be determined through use of a rule of reason. . . . A reasonably thorough discussion of the significant aspects of the probable environmental consequences is all that is required by an EIS.[36] (footnotes eliminated)

Additionally, WAC 197-11-440 (1) provides the following guidance:

> The lead agency shall have more flexibility in preparing EISs on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals... The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

While the County and Petitioners disagree on the reasons for the need to revise the 2004 comprehensive plan, the record shows that the County spent time reviewing the data and

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[35] RCW 43.21C.090.

[36] *Cheney v. Mountlake Terrace,* 87 Wn.2d 338, 345 (1976)

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revised several assumptions, including the growth rate. The County says the data showed that since 1990 the County's growth rate had exceeded 2%. The County reasons it would have been unreasonable for them to use a growth rate less than that which was actually occurring.

The County contends that the objective of the EIS was to evaluate the potential need for modifying the UGA boundaries because of both new data and more reasonable assumptions in regard to the County's rate of growth, with the SEPA rules permitting discretion to the lead agency in the design of alternatives. Petitioners counter that the objective was an evaluation of the new population assumption and how best to accommodate it, with a "no action" alternative typically setting forth a scenario akin to having the action being evaluated not occur[37]. Petitioners contend, in this case, the EIS should have utilized a 1.69% growth rate for this very reason. The Board notes that a comprehensive plan is a non-project action based on broad range of assumptions and, therefore, it is not unreasonable for the County to choose as its baseline the current urban growth boundary to evaluate its new assumptions.

Conclusion: The County's non-project EIS analyzed a complex plan with many assumptions. Here, the County changed the assumptions and how those assumptions relate to the current urban growth boundary. While we reject the County's implication that a "no action" alternative might not have been needed in its EIS and that the choice of a growth rate and related population projection is not a goal or an important policy choice, the Board does not find that it was clearly erroneous for the County to have chosen the alternative of not amending the UGA boundaries as the "no-action" alternative. Analyzing whether the new population assumption and the other adopted assumptions will affect the UGA

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[37] Petitioners cite *Barrie v. Kitsap*, where the court found that an EIS for an annexation and zoning change for a shopping center was inadequate, because Kitsap County did not analyze alternate locations for the shopping center. This decision and the *Laguna* decision cited by Intervenor TG3 analyzed more specific actions than a comprehensive plan proposal with many assumptions.

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boundary falls within the "rule of reason," the flexibility given to counties and cities in designing a non-project EIS by WAC 197-11-442, and RCW 43.21C.090's direction that the decision of the local government be given substantial weight - all supporting the County's action. The Board finds that this decision is not clearly erroneous.

B. PUBLIC PARTICIPATION

Issue : Did Clark County fail to:

- ***a. Have a public participation plan or broadly disseminate that plan to the public;***
- ***b. Provide for early and continuous public involvement in the comprehensive plan update;***
- ***c. Provide adequate public notice of proposed amendments to the Comprehensive Plan and rezones;***
- ***d. Provide timely and complete public notice of hearings and the documents that are being considered; and***
- ***e. Allow public testimony and comment when proponents are allowed to testify; and***
- ***f. Other public participation failures;***

In violation of RCW 36.70A.020(11), RCW 36.70A.035(1), RCW 36.70A.070, material preceding subsection (1), RCW 36.70A.130(2), and RCW 36.70A.140?

Petitioners' Position

Petitioners allege several County actions violated the notice and public participation requirements of the GMA. First, the County's failure to disseminate its public participation plan deprived the public of the opportunity to prepare for and attend public hearings. Second, the County did not involve the public in drafting its values/principles statement that was the foundation on which the County undertook its CP update. Third, public notice for meetings was inadequate as exemplified by (1) the County's notice for November 29th work session, published on November 23rd, which because of the Thanksgiving holiday, gave only four days for public preparation, and (2) the County released the Board of County Commissioners' Preliminary Recommendations June 27th map on July 2, 2007 for the July 5, 2007 public hearing, which gave only three days public notice, when the County's own

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ordinance requires 15 days. And, finally, the County invited only those who wanted to expand UGAs time to testify at a public meeting on UGA expansion. [38]

County's Position

The County asserts Petitioners' allegations rest on a violation of RCW 36.70A.140. The County maintains this GMA section does not require exact compliance with the programs and procedures if the spirit of the programs and procedures are observed. Also, the County declares that Petitioners have not shown any prejudice as a result of these alleged violations. [39]

The County also contends it adopted a public outreach program and broadly disseminated it. The County points out its principles and values statement was announced to guide the public process, but was subject to continuing public process. When insufficient notice was given, the County asserts further opportunities to testify were provided. While those who wanted to expand the UGAs were given time at the meeting to address the County Commissioners without additional public comment, the County argues it provided other opportunities to members of the public to ensure involvement in the public process.[40]

Petitioners' Response

Petitioners respond that the County concedes it did not disseminate its public participation program as required. Further, Petitioners declare that there is no authority supporting the County's claim that Petitioners must make a showing of prejudice, which would be an impossibility.[41]

Board Discussion

A. Dissemination of Public Participation Program

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[38] Petitioners' Prehearing Brief at 28-30.
[39] Clark County General Prehearing Brief County (County's General Prehearing Brief) at 26.
[40] *Ibid* at 26 and 27.
[41] Petitioners' Reply Brief at 30.

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The record shows the County adopted a public participation program for revising its comprehensive plan.[42] At argument, the County conceded this program did not get published or distributed, but directed the Board to its CP and the Index to the record to review its extensive public participation process.

The GMA sets forth various public participation requirements:

RCW 36.70A.140 requires (in pertinent part):

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

RCW 36.70A.130(2) requires (in pertinent part);

> Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or reviews of the comprehensive plan are considered by the governing body ...

RCW 36.70A.070 (preamble) requires (in pertinent part):

> A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Clark County's development regulations explain to the public the procedures for how its CP will be amended.[43]

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[42] Exhibit 109
[43] CCC 40.240.030(C).

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The revision to the CP is defined as a Type IV process. CCC 40.500.40 details the Type IV process. In codifying its CP amendment process, the County has complied with the requirements of RCW 36.70A.140.

Petitioners contend that despite this, the lack of distribution of the actual process for this CP revision (with a timeline) did not comply with the spirit of the GMA's public participation requirement because it did not allow citizens to adequately plan for their participation. The record shows Clark County adopted a public participation program[44] and advertised to the public how citizens could get involved in the CP update in May 2005.[45] While a detailed description with a timeline would have been ideal, our review of the Index to the Record shows that this process went on for two years and was extended on several occasions. Therefore, even if the County would have distributed a timeline, it would likely not have been accurate. The Board's review of the Index shows the public participation process was lengthy, broad, and generally with good notification through newspaper announcements and an e-mail distribution list. [46]

Conclusion: From our review of the record, the Board finds that the County's failure to disseminate its public participation program was not a clearly erroneous violation of the spirit of GMA public participation requirements.

B. Lack of Public Participation in the Adoption of the County's Values and Principles Statement

Petitioners argue the County adopted a principles and values statement (P/V Statement) that was integral to their decision making process without public participation. The County contends this statement was subject to continuous public review.

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[44] Exhibit 20.
[45] Exhibit 127. This was added to the exhibits by the County at the Hearing on the Merits without objections from the Petitioners.
[46] Index to the Record at Index numbers 5434, 5495,6614, 5730, 5731, 5757, 5758, 5770, 5895, 5772, 6094, 6368, 6367, 6277, 6278, 6390, and 6291, and the public hearings mentioned above

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The Board's review of this case's record shows that the P/V statement was a fundamental part of the County's process. Evidence of its fundamental place in shaping the CP is demonstrated by the preferred alternative and the Board of Commissioners' deliberations on the decisions to de-designate agricultural lands of long-term significance.[47] While the Board agrees with the Petitioners that this fundamental decision making piece should have had broader discussion with the public, adoption of this statement is not an amendment to the comprehensive plan nor is it a requirement of the GMA. Therefore, the Board does not have jurisdiction to decide whether the public participation process for the adoption of the principles/values statement complied with RCW 36.70A.140, RCW 36.70A.035, and related statutes.

Conclusion: The principles/values statement is not an amendment to the CP nor a requirement of the GMA. The Board has no jurisdiction over the adoption of the principles/ values statement pursuant to RCW 36.70A.280(1).

C. Failure to Properly Provide Public Notice of Work Session and Public Hearing

- Work Session

Petitioners contend that the failure of the County to announce its November 29, 2005 work session on the County's Draft Urban Growth Area's discussion map resulted in Petitioners having only four days to draft comments, due to the Thanksgiving holiday. CCC 40.510.040B, the County's notice requirements for amending CPs, does not mention requirements for work sessions. Petitioners do not cite to any part of Clark County's code which would demonstrate the November 29, 2005 work session's notice was, in fact required, or in violation. The work session notice does not specify if public testimony was allowed at the session but does note written public comments on the map would be allowed with no announced cut-off date.[48] Since the discussion of the proposed expansion of the UGA went on for almost two years after this work session, and the process included many

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[47] Exhibits 6372, 6606 at 378, Exhibit 6605 Matrix
[48] Notice attached to Exhibit 5350.

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workshops, an environmental review process, and several public hearings,[49] giving four actual working days notice of this work session was not fatal to Petitioners' ability to participate in the process.

- Public Hearing

Petitioners allege the County released the BOCC's June 27 Map Preliminary Recommendations just three days prior to the July 5, 2007 public hearing. According to Petitioners, this is a violation of CCC 40.510.040D which requires a copy of a staff report be released 15 days prior to the first public hearing and mailed to interested parties. The Board would consider this a serious violation if no subsequent public hearings had been held. However, the Index shows that four subsequent public hearings were held before the County adopted the revised CP.[50]

While the specific provisions of CCC 40.510.040D were violated, the Board finds in light of the entire record, this failure to release the BOCC's Preliminary Recommendations within the required time is not a clearly erroneous violation of the GMA's public participation requirements.

D. Allowing Only Proponents of UGAs to Address the Commissioners at a Public Meeting

Petitioners maintain that inviting only those who had requests to expand the UGA violates the GMA public participation requirements. The County concedes that only persons requesting additions to the UGA were allowed to speak at the noted meeting, but notes Petitioners had many opportunities to participate.

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[49] See footnote 117.

[50] Subsequent public hearings were held on August 14, August 28, September 11, and September 25, 2007, before the revised CP was adopted (see Index numbers 6423, 6485, 6494, and 6506). It appears to the Board adequate notice of these hearings was given (see Index numbers 6355, 6480, 6492).

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The Board understands how Petitioners might believe that asking only persons interested in expanding the UGAs to address the Board on a meeting set for just that purpose lends an aura of unfairness to the process. Even so, this meeting was held early in the process, July 2005,[51] written comments were allowed, and many more opportunities to critique these proposals followed.[52] While the Board does not condone public meetings that do not permit all interested citizens equal opportunities, in light of the entire record, the Board does not agree that the Petitioners were "frozen out of the process."

Conclusion: Clark County's public process was not without irregularities, including not following its own code provisions or, on occasion, not appearing to be even handed to all groups. However, the record shows ample opportunities to observe the process, to participate, to be informed, and to comment. In light of the entire record, the Boards finds that the public process for the adoption of the County's revised CP was not a clearly erroneous violation of RCW 36.70A.140, RCW 36.70A.130(2), RCW 36.70A.035,or RCW 36.70A.070.

Issue: In the adoption of Ordinance 2007-09-13:

Did Clark County violate RCW 36.70A.020(8), 36.70A.050(3), 36.70A.070, (1), (3), and 36.70A.170(1) & (2) in Ordinance No. 2007-09-13 by de-designating agricultural land in violation of RCW 36.70A.170, in violation of RCW 36.70A.050(3) and WAC 365-190-050, and in violation of the County's own criteria for designating agricultural land contained within the comprehensive plan and the GMA's requirements for internal consistency in RCW 36.70A.070?

Positions of the Parties

A. GMA Framework for Designation of Agricultural Lands of Long-term Commercial Significance

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[51] Exhibit 6753

[52] Index to the Record at Index numbers 5434, 5495,6614, 5730, 5731, 5757, 5758, 5770, 5895, 5772, 6094, 6368, 6367, 6277, 6278, 6390, and 6291, and the public hearings mentioned above.

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Petitioners' Position

Petitioners maintain that agricultural lands of long-term commercial significance (LTCS) must be conserved and excluded from UGAs. Petitioners note the Supreme Court's holding in *Lewis County v. Western Washington Growth Management Hearings Board* [53] which identified a three-part test for designating LTCS agricultural lands.[54]

Petitioners contend that Clark County previously designated these lands in accordance with the GMA and the de-designated lands still meet the test set out by the Court. Petitioners allege the only reason Clark County has de-designated these previously designated agricultural lands is that they wanted to expand their UGAs, and the County had promised to look at UGA expansion to settle challenges to the 2004 comprehensive plan by property owners and the City of Battle Ground. Petitioners assert that these lands are not characterized by urban growth, are used or are capable of being used for agriculture according to soil classification, and are adjacent to other LTCS agricultural lands.[55]

Petitioners acknowledge that local governments are directed to consult the Washington Administrative Code (WAC) at WAC 365-190-050 (WAC factors) in determining whether land has long-term commercial significance for agricultural production and, in their Prehearing Brief, Petitioners provide a general analysis based on the WAC factors for the de-designated agricultural lands. Petitioners reach the following conclusions:

- Availability of public facilities - Only three areas, consisting of 768 acres, have sewer lines within 300 feet and then, only at the area boundary.
- Tax status - 60% of the lands are in agricultural/farm current use tax status.

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[53] *Lewis County v Western Washington Growth Management Hearings Board,* 157 Wn.2d 488, 501; 139 P.3d1096, 1103 (2006)
[54] Petitioners' Prehearing Brief at 13 and 14.
[55] *Ibid* at 14.

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- Availability of public services - Four of the 19 areas have nearby public facilities, several are near an airport. There is no analysis as to the availability of police, fire, or other urban level services.
- Relationship or proximity to UGAs - The additions to the Camas and La Center UGAs add lands that are either not adjacent or are far from the urban growth boundary.
- Predominant parcel size - After an analysis of the average parcel sizes for the farms in Clark County, based on the 2002 Census for Agriculture, all the areas maintain parcel sizes that are consistent with the range of the parcel sizes of farms in Clark County.
- Land uses settlement patterns and their compatibility with agricultural practices and intensity of nearby land uses – The areas are characterized by rural and agricultural uses, with the most intense use being an occasional residential development in several areas.
- History of land development permits issued nearby – With the exception of two areas, no urban development permits have been issued within the vicinity of the areas. Permits issued included one for a water reservoir and another for a 150-unit condominium development within the adjacent UGA.
- Land values under alternative uses – Petitioners recognize that land values are generally higher under urban rather than agricultural use.
- Proximity to markets – All of the parcels are in agricultural areas close to roads and rail transportation, making these parcels ideally situated to market a wide variety of products. [56]

Regarding their conclusion concerning predominant parcel size, Petitioners cite the Supreme Court's holding in *City of Redmond v. Central Puget Sound Growth Management Hearings Board (Benaroya I),* which found that "land is devoted to agricultural use under

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[56] Ibid at 16 – 20.

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RCW 36.70A.030 if it is in an areas where land is actually used or capable of being used for agricultural production". [57] Petitioners contend this argues against a parcel by parcel approach and if parcels are located in an area of productive land, they must remain agricultural.[58]

Regarding their conclusion on land values under alternative uses, Petitioners point again to *Benaroya I* which noted that uses other than agriculture will always be more profitable and this alone does not justify the loss of agriculture land. [59] Petitioners claim numerous other parcels could have been included in the expanded UGAs without converting agricultural land and land prices should not be the steering factor in the UGA expansion decision.[60]

Petitioners claim that Clark County, in Ordinance 2007-09-13, did not provide careful analysis of how it applied the factors in WAC 365-109-050 and the definition of agriculture in RCW 36.70A.030. Petitioners also challenge what they term "impermissible factors" which included "lack of agricultural production," "unique economic development opportunities," and diversifying economies or school district tax bases. Petitioners also assert that these factors are included in Clark County's agricultural lands designation criteria.[61]

Petitioners also assert that the County's analysis of the soils criterion is unclear. Petitioners declare that the CP references USDA Soil Conservation Service (USDA/SCS) land capability classification classes 1 through 8 as soil classes that must be protected. Also, Petitioners allege that the CP states the County mapped prime and unique soils. However, Petitioners contend the County's analysis does not address all of the USDA/SCS land capability classification classes, so the de-designations are inconsistent with the CP.[62]

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[57] *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.3d.38, 53,959 p2d 1091, 1097
[58] Petitioner's Prehearing Brief at 19
[59] *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d at 52.
[60] Petitioners' Prehearing Brief at 20.
[61] *Ibid* at 21.
[62] *Ibid* at 22.

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Petitioners argue the County violates the GMA by adding land that is neither characterized by urban growth nor adjacent to land characterized by urban growth. Petitioners affirm that parcel sizes in this area are between 5.62 and 58.03 acres and have scattered residential dwellings. Aerial photos, Petitioners maintain, demonstrate these lands are not characterized by urban growth. Petitioners further assert that according to the 2002 Census of Agriculture, Clark County had 70,694 acres in farms, or 17 % of the county's land area. Prior to the challenged action, Petitioners note the County had 81,034 acres in UGAs, or 19% of County land. Therefore Petitioners concludes that 26 % of the County's land is not designated as agricultural land, forest land, or UGA and, thus is available for UGA expansion so as to direct growth away from agricultural lands as the GMA directs. Petitioners claim the County created irregular patterns for UGA expansion and ignored Rural and Urban Reserve lands and, points to rural land adjacent to La Center for potential UGA expansion and the Urban Reserve and rural lands near Washougal.[63] Petitioners assert that four of the six UGA expansions create peninsulas of urban growth into predominately rural and agricultural areas, creating conflicts for agricultural lands. Petitioners conclude that expansions into agricultural areas spell doom for the County's agricultural lands and could be avoided as alternative locations exist for these expansions.[64]

County's Response

Court Cases and Board decisions

The County cites Supreme Court and Court of Appeals decisions, and a decision of this Board to support its position. The County, citing to *Manke v. Mason County,*[65] maintains that it has broad discretion in tailoring agricultural lands to local circumstances.[66]

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[63] *Ibid* at 25 and 26.
[64] *Ibid* at 26 and 27.
[65] *Manke v. Mason County,* 91 Wn.App. 793, 807-809; 959 P.2d 1173 (1998), review denied, 137 Wn.2d 1018 (1999)(case dealt with the designation of forest lands).
[66] Clark County General Prehearing at 13.

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The County states the Supreme Court also stressed local discretion. The County, using a different emphasis then Petitioners, asserts the Court in *Benaroya I*[67] held that while the land use on a particular parcel and land owner intended use of land can be considered along with other factors in determining agricultural lands long-term commercial significance, these two factors are not conclusive on a particular parcel.[68] The County declares that in *Benaroya II* the Court rejected limitations on local discretion by holding that "[N]othing in the GMA suggests a city must present 'specific and rigorous evidence' subject to 'heightened scrutiny' when defending a land use designation." [69]

Like Petitioners, the County cites the Supreme Court's decision in *Lewis County.* However, the County stresses the Court's rejection of the argument that RCW 36.70A.030 (the definition of long-term commercial significance) and WAC 365-190 -050 (the WAC factors) limits County discretion by "enshrining the primacy of soil characteristics over 'development related' considerations."[70]

The County references *City of Arlington v. Central Puget Sound Growth Management Hearings Board*[71] as emphasizing local discretion as to resource designations in the context of establishing urban growth boundaries. Here, the County maintains the Court made several important conclusions: (1) regarding the WAC factors, the Court held that the land owner's intent cannot control; the County can take into account the lack of commercial farming and it can consider the owner's views and experience; (2) regarding locational factors in RCW 36.70A.110(1), the Court upheld the County's decision that the County's access to utilities and interchange location connected the Arlington UGA to unique

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[67] *City of Redmond v. Central Puget Sound Hearings Board*, 136 Wn.2d 38, 53; 959 Wn.2d 1091 (1998) (Benaroya I)
[68] Clark County General Prehearing at 14
[69] *Ibid* at 14 quoting City of Redmond v. Central Puget Sound Growth Management Hearings Board, 116, Wn.App.48,65 P.3d 337(2003).
[70] *Ibid* at 15.
[71] *City of Arlington v. Central Puget Sound Growth Management Hearings Board,*138 Wn.App. 1, 154 P.3d 936 (2007).

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commercial opportunities and was located in relationship to area characterized by urban growth; (3) the Court adopted the dictionary definition of "adjacent", rejecting the Central Board's emphasis on geography and topography and (4) the Court rejected the concept that a county must show a change in circumstances to justify re-designation. [72]

The County also points to this Board's decision in *Futurewise v. Skagit County* where it says the Board recognized the additional discretion the GMA gives County when balancing the Act's goals when considering the inclusion of agricultural lands within urban boundaries. [73]

Consideration of GMA's Goals and Requirements and WAC Factors

The County relies on three parts of its record to support its decision in its de-designation of agricultural lands and their addition to its UGAs: the Globalwise Report, Staff Issue Paper #7(Agricultural Lands), and the Board of County Commissioners deliberations.

The County characterizes the "Analysis of the Agricultural Economic Trends and Conditions in Clark County, Washington," (Report) prepared by Globalwise Inc., an agricultural economic consulting company, as background information and objective data as it relates to the UGA expansion areas. The County describes how the Report documents the history of agriculture in Clark County as being vibrant throughout most of the twentieth century, but shows how it has been on a steady decline over the last 30 years and now accounts for only one percent of the County's employment and less the 0.5% of the County's economy. The Report identifies only 145 farms on 3,115 acres in the County that are actively engaged in the commercial production and sale of agricultural products, of which, the County contends, 37 are in already designated UGAs. The County asserts that the UGA expansions add 14

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[72] County General Prehearing, at 16 and 17.
[73] *Futurewise v. Skagit County,* WWGMHB 05-2-0012c (Compliance Order/Final Decision and Order, April 5, 2007).

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farms, consisting of 594 acres, to its UGAs. Of the 4,352 acres being proposed for addition to the UGAs, the Report says that 40% of the land added was in non-agricultural uses.[74]

The County affirms that the Staff Matrix attached to Exhibit 6605 contains exhaustive information addressing all three prongs of the statute and the WAC factors applicable to designation of agricultural lands. The County says the ten WAC factors are each separately reviewed in the Matrix. The County explains the criteria are not mathematical or outcome-determinative, as Petitioners suggest, but broad indicators which are to be considered by counties in the context of local circumstances.[75]

The County declares that the Board of County Commissioners' (BOCC) deliberations reflect careful consideration of commercial agricultural designation criteria, as well as competing GMA goals related to accommodating urban growth. According to the County, extensive deliberations on each expansion area occurred, and the review focused on the agricultural viability matrix and competing growth needs.[76]

The County disputes Petitioners' contention that it used impermissible factors. Regarding the Petitioners' argument that the County's soil analysis failed to address relevant USDA/SCS land capability classifications, the County avers that the CP's Rural and Natural Resources Element has a map for USDA/SCS soil classifications. Also, the County denies that its CP says that all soil classifications should be protected and asserts that its analysis focused on Class I, II, and III soils, the same soil classifications that were used in the 1994 designations. Regarding the consideration of lack of commercial agricultural production in the Battle Ground area, the County argues that while this is not a determinative factor, it is a factor that can be considered. In regard to Petitioners' argument that unique development opportunities and assuring adequate tax base cannot be considered, the County contends

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[74] County's General Prehearing Brief, at 19- 20.
[75] Clark County's General Prehearing Brief, at 20-21.
[76] *Ibid* at 21.

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these are appropriate considerations when considering proximity to population areas and the possibility of more intense uses and, are also relevant factors in balancing the urban growth goals of the GMA. [77]

Urban Growth Locational Factors

The County answers Petitioners' contention that it violated RCW 36.70A.110's requirement that areas characterized by urban growth must be included in the UGA before lands that lack urban characteristics. The County says almost two thirds of the UGA expansions came from non-resource lands and extenuating circumstances, like subdivision covenants, caused it not to take others. The County argues that the definition of urban growth in RCW 36.70A.030(17), gives them discretion when adding land not characterized by urban growth.[78]

The County responds to Petitioners' allegation that it created peninsulas of urban designation into and conflicting with uses in surrounding agricultural land. The County characterizes these not as peninsulas but as isolated islands of agriculturally designated properties that were included in UGA expansions.[79] The Board will discuss challenges to individual expansion areas below.

Intervenors' Responses

Intervenors responded to these general arguments with many of the same arguments put forth by the County, or adopted the County's responses. Their responses concerning specific expansion areas will be discussed below. Intervenors generally assert that the factors listed by WAC 365-190-050 are not exclusive and the County can consider other factors.

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[77] *Ibid* at 22 and 23.
[78] *Ibid* at 24.
[79] *Ibid.*

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Petitioners' Reply

Petitioners counter the County's and Intervenors' arguments that "economic desire may trump agricultural designation," finding it unsupported by *Arlington.* According to Petitioners, *Arlington* holds that economic factors must be constrained by guidance sent out in the WAC and adopted by the County. Petitioners argue that the County is claiming they used the WAC factors for guidance, went through a lengthy analysis for each parcel, but then disregarded the work because the County believed the particular parcels are better for shopping or industry. [80]

Petitioners disagree that the presence of critical areas is a reason for de-designation. Petitioners argue that the presence of critical areas is a reason not to add land to UGAs. Petitioners contend that agricultural areas are exempt from critical area protection, and although they cannot be constructed upon, they can be farmed.[81]

Petitioners dispute the County's and Intervenors' assertion that the lack of the presence of commercial agriculture in an area shows that long-term commercial agriculture is not viable in that area. Rather, they assert it could also be an indication of the property owner's desire to be included in the UGA and opportunities of higher intensity development. The Board will address Petitioners' arguments regarding specific areas below.

Board Discussion

A. Legislative Mandate and Court Decisions

1. Agricultural Conservation's Role in Managing Growth

Petitioners argue that the County's de-designation of over 4,000 acres of previously designated LTCS agricultural lands violate the GMA's goals and requirements for conserving LTCS agricultural lands and the parameters set out by the courts. Petitioners cite *Benaroya I* for establishing the role of agricultural lands in the GMA's framework for

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[80] Petitioners Reply Brief at 14,15.
[81] Ibid at 15.

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managing growth. Both Petitioners and the County cite the three-prong test set out in the Supreme Court's decision in *Lewis County* as the guidance to be followed for designating agricultural lands. Petitioners contend the County did not adequately address the factors laid out by the Court, while the County and Intervenors maintain its Record shows appropriate analysis and the County's decision is well within the discretion afforded it by the GMA.

There is no doubt that the GMA sees agricultural lands and the industry that relies on them as something special given the duty set forth to *designate* agricultural land and *conserve* such land in order to *maintain* and *enhance* the agricultural industry. The purpose of this legislative mandate was articulated by the Supreme Court a decade ago when it held:

> The GMA sought to control and regulate growth, and specifically emphasized the protection of natural resource lands, including agricultural land. The Legislature hoped to preserve agricultural land near our urban centers so that freshly grown food would be readily available to urban residents and the next generation could see food production and be disabused of the notion that food grows on supermarket shelves.[82]

The pressure to convert these lands, especially in areas impacted by population growth and development, is even more prevalent today. The Board recognizes that the counties and cities of Washington face a multitude of difficult and demanding challenges when determining how their communities will grow. But, these challenges must be addressed within the mandates of the GMA so as to serve the "public's interest in the conservation and the wise use of our lands."[83] Washington's limited, irreplaceable agricultural lands are at the forefront of this mandate, with cities and counties discretionary planning choices confined so as to prevent the further demise of the State's ability to provide food for its citizens.

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[82] *Redmond v. Central Puget Sound Growth Management Hearings Board,* 136 Wn. 2d 38, 57-58 (1998).
[83] RCW 36.70A.010

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

1. *Designating* agricultural lands of long-term commercial significance;
2. Assuring the *conservation* of agricultural land;
3. Assuring that the use of adjacent lands *does not interfere* with their continued use for agricultural purposes;
4. Conserving agricultural land in order to *maintain and enhance* the agricultural industry; and
5. *Discouraging* incompatible uses.[84]

The question of the meaning of agricultural lands, under the GMA, was recently clarified by the Supreme Court in the *Lewis County* decision.[85] In that case, the proper definition of agricultural land was set forth with the Court holding:

> We hold that agricultural land is land:
>
> a. not already characterized by urban growth
> b. that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, *and*
> c. that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.[86]

This definition emphasizes the three required elements of agricultural lands – that it is not already characterized by urban growth, that it is *primarily devoted to* agricultural production, and has *long-term commercial significance for* agricultural production.

The meaning of *primarily devoted to* has been addressed by the Supreme Court, with the phrase denoting that the land "is in an area where the land is *actually used or capable of*

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[84] *King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 588 (2000).
[85] *Lewis County v. Western Washington Growth Management Hearings Board,* 157 Wn.2d 488 (2006).
[86] *Lewis County,* 157 Wn.2d at 502.

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being used for agricultural production".[87] The focus is on the general characteristics of the property itself and whether it can be used for any of the types of agriculture enumerated in RCW 36.70A.030(2). The Board notes that soils play a significant role in determining whether land is capable for agricultural use, however it is not the exclusive method since some types of agriculture are not soil dependent. The question is simply – *Is this site or could this site be used for the grazing of cattle? For the cultivation of corn? For the raising of chickens?* The Board further notes that "capable" does not equate to the economics of the property[88] – that is for the next element which addresses the viability of the site for long-term commercial value.

The GMA's definition of *long-term commercial significance* seeks to address the economic viability of the property. This requires an assessment of five different factors, three generally related to the capability of its soils and two based on development-related impacts from the surrounding area.[89] When considering growing capacity, productivity, and soil composition, the focus is on the land itself and jurisdictions must use the USDA soil classification system which incorporates these three considerations.[90] If the property contains a soil type the USDA has determined suitable for agricultural production, then it qualifies for *potential* treatment as land with long-term commercial significance, *subject to* the considerations of development-related impacts. Although the presence of agricultural

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[87] *Redmond,* 136 Wn.2d at 53 (emphasis added) holding:

> [I]f current use were a criterion, GMA comprehensive plans would not be plans at all, but mere inventories of current land use. The GMA goal of maintaining and enhancing natural resource lands would have not force; it would be subordinate to each individual landowner's current use of the land ... [I]f landowner intent were the controlling factor, local jurisdictions would be powerless to preserve natural resource lands. Presumably, in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture ... [I]f the designation of such land as agricultural depends on the intent of the landowner as to how he or she wishes to use it, the GMA is powerless to prevent the loss or natural resource land.

See also Lewis County, 157 Wn.2d at 500.

[88] *See Redmond,* 136 Wn.2d at 53 (Neither current use nor a landowner's intent is conclusive in regard to primarily devoted)

[89] RCW 36.70A.030(10)(b) lists these factors as growing capacity, productivity, soil composition, proximity to population areas, and the possibility of more intense uses of the land.

[90] WAC 365-190-050(1)

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soils weighs heavily on the designation of agricultural land, soils alone do not mandate designation; the GMA requires an analysis of more than just soils to identify and designate agricultural lands.

When evaluating the proximity of the property to population areas as well as its vulnerability to more intensive uses – counties and cities may consider the development-related factors enumerated in WAC 365-190-050(1).[91] These factors consider not only the availability of public facilities and services but the intensity of neighboring land uses, some of which may be incompatible with agricultural uses. The GMA does not assign or dictate the weight of each factor and, therefore, a jurisdiction has discretion regarding how to apply them.[92] In contrast to the analysis of capacity, productivity, and soils, the focus of these factors is on the development prospects of the site and, as the Supreme Court found in *Lewis County,* may potentially pertain to factors not specifically enumerated RCW 36.70A.030(10), including the economic needs of the agricultural industry for the county as a whole, so long as these considerations are within the mandates of the GMA and pertain to the characteristics of the agricultural land to be evaluated. [93]

2. Agricultural Goal's Relationship to the Economic Development Goal

In light of the GMA's mandate to conserve, maintain, and enhance those farmlands with long-term commercial significance and using decisions of the Courts and the Boards to evaluate Petitioners' challenges, the Board will first examine the County's argument that since the County has discretion to balance GMA goals (Goal 5 – economic development and Goal 8- natural resource industries) and that no goal has primacy over another, the County's goals for economic development could be balanced with the agricultural

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[91] *Lewis County,* 157 Wn.2d at 502; *see also Redmond,* 136 Wn.2d at 55.
[92] *Id.* at 502-503.
[93] *Lewis County,* 157 Wn.2d at 502-503 (Finding that it was not clearly erroneous for the County to weigh the farm industry's anticipated land needs above all else, noting that if the industry cannot use the land then the possibility of more intense uses of the land is heightened); *Id.* at 505 (Holding that the farmer's non-farm economic needs are not a logical or permissible consideration because it does not relate to a characteristic of farmland to be evaluated in determining long-term commercial significance).

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conservation goal (Goal 8). The Supreme Court examined a similar situation in *King County v. Central Puget Sound Growth Management Hearings Board*[94] when discussing the balance between the agricultural conservation goal and Goal 9, the open space and recreation goal. The Court noted the GMA included requirements in RCW 36.70A.170 to designate agricultural lands and in RCW 36.70A.060 to adopt development regulations to conserve them. The Court also found:

> The GMA's plain language and ordinary meanings are critical to interpreting these provisions. Contrast the requirements that counties and cities *identify* lands useful for recreation and *encourage* the development of recreational opportunities with the requirements that local governments *designate* agricultural land and *conserve* such land in order to *maintain* and *enhance* the agricultural industry. Although the planning goals are not listed in any priority order in the Act, the verbs of the agricultural provisions mandate specific, direct action. The County has a duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry.[95]

The verbs in the economic development goal are similar to that of the recreational goal:

> *Encourage* economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, *recognize* regional differences impacting economic development opportunities, and *encourage* growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities. (Emphasis added).[96]

Neither the economic development goal nor the recreational goal direct action as the agricultural conservation goal does. Nor does the economic development goal have any corresponding requirements. Also, the economic development goal stresses that growth should be encourage in areas "experiencing insufficient economic development growth, *all within the capacities of the state's natural resources, public services, and public facilities.*

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[94] *King County v. CPSGMHB,* 142 Wn.2d 543; 14 P.3d 133 (2000).
[95] *King County,* 142 Wn.2d at 558.
[96] Ibid.

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Therefore, in using its discretion to balance the agricultural and economic development goals, the County's economic development goals cannot outweigh "the duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry".[97]

3. WAC Factors

As noted above, when evaluating the proximity of the property to population areas as well as its vulnerability to more intensive uses – counties and cities may consider the development-related factors enumerated in WAC 365-190-050(1). The County evaluated the WAC Factors as well as some other factors. The Courts and the Boards have given direction on the use of the WAC factors that the Board will consider when evaluating Petitioners' challenge to the County's designation of agricultural land.

Proximity to urban areas. In the *Redmond* case, the Court interpreted the Legislature's intent that agricultural lands near population centers need to be preserved "so that freshly grown food would be readily available to urban residents."[98] Contrary to what was argued by the County and Intervenors at the hearing, adjacency to urban growth areas does not automatically mean the designated agricultural land is *suitable* for de-designation as the urban growth boundary advances to accommodate increased population. While proximity to urban areas is certainly a factor to be considered along with others lands, the Board reads the Court's interpretation of legislative intent to mean that adjacency to UGAs was not a deciding factor in determining the long-term commercial significance of agricultural land.

Similarly, the Eastern Washington Growth Management Hearings found, when evaluating the designation of Kittitas County's LTCS forest lands, that proximity to urban areas was not a determinative factor in the designation of forest lands:

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[97] Ibid.
[98] *Redmond*, 136 Wn.2d at 58.

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> Clearly, if qualifying forest land is not proximate to population areas it should be designated. The reverse is not necessarily true. As noted above, forest lands of long-term commercial significance may, under limited conditions, be inside urban growth areas. The extent to which a population area impacts forest land is the determining factor. Thus, an 80 acre parcel that elsewhere in the state might be properly designated forest land, might not so qualify if it abutted the City of Seattle. It is the level of impact placed on the property, rather than its location that is determinative. It is the burden of increased management and other costs that disqualifies the property. [99]

The Board finds that this same principle applies to agricultural resource lands.

Also, the Globalwise Report shows that 37 farms out of the 145 farms identified as making over $25,000 a year still exist in UGAs, which clearly demonstrates that close proximity to lands characterized by urban growth does not necessarily make agricultural land unproductive.[100]

Values Under Other Uses. As referenced in *Redmond, supra,* the Supreme Court has held that landowner intent can be considered but it is not a determinative factor in the designation of agricultural lands. In making that finding, the Court said:

> Presumably, in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture. Although some owners of agricultural land may wish to preserve it as such for personal reasons, most... will seek to develop their land to maximize their return. If the designation of such land as agricultural depends on the intent of the landowner as to how he or she wishes to use it, the GMA is powerless to prevent the loss of natural resource land... A stated legislative intent of the GMA is to maintain and enhance agricultural land. .. We decline to interpret the GMA definition in a way that vitiates the stated intent of the statute.[101]

Likewise, because agricultural lands will almost always be more lucrative to develop as other uses, allowing the value of land under other uses to be the controlling factor would

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[99] *Ridge v. Kittitas County*, EWGMHB 94-2-0017 (Final Decision and Order, July 28, 1994).
[100] Exhibit 6548.
[101] *Redmond v. CPGSMHB,* 136 Wn.2d 38; 959 P.2d 1091 (1998)

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also prevent the accomplishment of the stated intent of the statute. Just as with proximity to urban areas, the value of land under alternative uses can be *considered,* according to WAC 365-195-050 (1)(c), but it cannot be the controlling factor. In fact, almost all of the lands that Clark County considered could be targeted for de-designation based on this factor alone.[102]

The availability of public facilities. The County's Matrix shows the nearness of schools, airports, and the access to certain roads and was used to help determine whether the land was vulnerable to the possibility of more intense use. However, it is not clear whether the County believes a school's or an airport's proximity to a LTCS agricultural area interferes with agricultural use or opens up the area up to more intense use. RCW 36.70A.030(12) provides: "public facilities" include "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools," RCW 36.70A.030(13) provides: "'public services" include "fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services".

The GMA's definition section goes on to distinguish the difference between *rural* public facilities and services and *urban* public facilities and services. RCW 36.70A.030 (17) distinguishes "Rural governmental services" or "rural services" to include "those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4)." RCW 36.70A.030(20) defines "Urban governmental service or "urban services" to include "those public services and public facilities at an intensity historically and typically provided in cities,

[102] Matrix, Exhibit 6605

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specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas." The GMA distinguishes land as being urban, rural, and resource.

These GMA definitions recognize that the scale and intensity of services in rural lands should be less than those in urban areas. Rural services should not be of the scale and intensity so as to interfere with agricultural lands. Rural lands act as a buffer to agricultural lands and services in rural lands, by definition, must not interfere with agriculture. While schools are defined as a public facility, they are not listed as either a rural or an urban service. That is because school districts make schools available to students who live on urban, rural, and resource lands. They are not the same kind of facility as a water line or sewer line that enhances the ability of property to be developed. The availability of schools is not a factor in determining whether agricultural land should be de-designated. Further clarity as to the County's meaning in this regard is needed as it is possible that the County meant that the presence of large high schools and junior high schools adjacent to agricultural lands interferes with the productivity of agricultural lands or make the provision of urban services more likely. However, the Board does not find that the presence of schools, needed by residents of all areas alike, a determinative factor for de-designation or should be considered as urban growth that is incompatible with resource lands.

The same is true for airports, which are not listed in the GMA as an urban or rural service. Again, having an airport "available" is not a determinant for designation or de-designation. Large airports serve a wide region. Small scale public use airports are not incompatible with agricultural lands and can provide services farmers need such as crop dusting. In fact, the Washington Department of Transportation does not advise locating intense commercial or residential uses within certain distances from an airport's runway protection zones. Agricultural lands can, in fact, can provide protection for a small-scale airport and are a compatible adjacent use in most cases.

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Roads are also a facility that all residents, regardless of the type of land they inhabit, need. The availability of a rural road is not a service that should cause de-designation. While closeness of urban arterials or an interstate highway, when combined with other factors, could increase the possibility of more intense development, their presence alone is not a determinative factor for de-designation. In contrast, in our FDO in *Futurewise v. Skagit County,*[103] the Board found that one factor in allowing a de-designated property to be added to a UGA was the fact it was surrounded on three sides by roads which help to protect the adjacent farmland from further encroachment of urban uses. Likewise, Interstate 5 serves urban, rural, and agricultural land and runs through hundreds of miles of agricultural land in Washington State. If nearness to Interstate 5 was a determinative factor, then thousands of acres of agricultural land could be de-designated, seriously impacting the fulfillment of the GMA's agricultural conservation goal.

4. Non-WAC Factors

Petitioners argue that the presence of critical areas and the adjacency to Urban Reserve Areas should not be used as factors in the de-designation of agricultural areas and they are not factors recommended for consideration under WAC 365-190-050 . The County and Intervenors argue WAC 365-190-050 does not limit the County's ability to use other factors as long as they do not conflict with the GMA. The Supreme Court in a footnote in the *Lewis County* decision supported this position.[104] The Board recognizes that factors not listed in the WAC can be used, as long as they comport with the goals and requirements of the GMA.

Critical Areas. Petitioners claim the County should not have used the presence of critical areas as a factor in de-designating agricultural lands. Petitioners assert critical areas in agricultural lands are exempt from protection and, that the County's regulations do exempts

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[103] *Futurewise v. Skagit County*, WWGMHB 05-2-0012c, Final Decision and Order/Compliance Order
[104] *Lewis County,* 157 Wn.2d 488, fn. 16

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them. The County says that is incorrect, critical areas in agricultural lands require protection and that the County's regulations do protect them.

The Board agrees with the County that the GMA does not exempt critical areas in agricultural lands from protection and that the County's code does protect them. The GMA requires the protection of critical areas wherever they occur. Also, this Board has held that their occurrence does not prohibit an area's inclusion in a UGA. Likewise, their presence in agricultural lands is not necessarily a reason to de-designate. The GMA identifies five types of critical areas: wetlands, steep slopes, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat areas. Not all of critical areas make an area unsuitable for farming. While a high percentage of steep slopes and wetlands may make a certain land difficult to farm, it does not follow that an entire area is not suitable for agriculture. While protection measures create tension among the GMA agricultural and environmental protection goals, such as with fish and wildlife habitat areas, this tension does not mean that these areas cannot co-exist.

The County uses the percentage of critical areas as a factor to consider when de-designating a LTCS Agricultural Area. However, it does not do the same when considering whether to add it to a UGA.

Urban Reserve Areas. One of the factors in the County's Matrix was the adjacency of a proposed site to an Urban Reserve Area. An Urban Reserve Area is an overlay designation on land still designated as agricultural resource land. Clark County uses this overlay as a planning tool to indicate that when the County needs more land, based on a documented need, for its UGAs then this is the land that would be looked at for possible addition to the UGA. The reason this Board found this concept compliant was that the land would have to go through the required process for de-designation, with an amendment to the CP, and the County would need to show its work for the needing the land before it could added to the UGA. Using adjacency to land designated as Urban Reserve is definitely not a legitimate

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factor to consider for de-designation and cannot be used to show a land's relationship to an urban growth area.

Rural Centers. A rural center is a limited area of more intensive rural development (LAMIRD). RCW 36.70A.030(5)(d) specifically states "A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth." RCW36.70A.070 (5)(d)(iv)(D) states,

> A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection...The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address ... the ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

Proximity to a LAMIRD, or as Clark County terms them – a Rural Center - does not constitute being adjacent to urban growth or services. Having services available in a Rural Center is not a reason for de-designation.

B. Specific Areas of De-designation and UGA Expansion

1. Three-part Test

Clark County acknowledges that de-designation of LTCS agricultural lands is subject to the same process as the designation of LTCS agricultural lands and declares that it has followed an appropriate process.[105] In contrast, Petitioners argue that the LTCS agricultural lands de-designated by the County meet the three part test established by the Court in *Lewis County.*

The Supreme Court in *Lewis County* put forth a three part test to determine whether counties have met the GMA goals and requirements when designating agricultural lands. The same test should be met when de-designating agricultural lands. The three prongs of this test as described *supra* are: (1) land not already characterized by urban growth, (2)

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[105] Clark County's General Prehearing Brief at 12.

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land that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, *and* (3) land that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.[106] From our reading of the statute, lands to be de-designated need to meet all three parts of the test.

Because the designation of LTCS agricultural land involves a specific GMA requirement, what the Supreme Court calls a mandate, Clark County must "show its work" that it has met this GMA's requirement. To do this, Clark County relies on its Record that includes the Report, a matrix that compared the components of the three part test, and deliberations of the BOCC. The County's CP says that it mapped prime agricultural soils and considered the WAC factors.[107] Petitioners argue the County discounted some prime soils as a designation factor and, while it considered the WAC factors, the County essentially "threw them out" in favor of the economic development goal when de-designating long-term significant agricultural lands, noting greater economic opportunity and increased tax base for cities, the county, and school districts. As the Board assesses Petitioners' challenges, the Board recognizes the Supreme Court's holding in *Benaroya II* that "[N]othing in the GMA suggests a city must present 'specific and rigorous evidence' subject to 'heightened scrutiny' when defending a land use designation."[108]

a. Characterized by Urban Growth

The first prong of the three-part test is "land not characterized by urban growth". RCW 36.70A.030(18) states,

> "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

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[106] *Lewis County,* 157 Wn.2d at 502.
[107] Clark County Comprehensive Plan, Chapter 5, Natural Resource Element.
[108] *Ibid* at 14, quoting City of Redmond v. Central Puget Sound Growth Management Hearings Board, 116 Wn.App.48,65 P.3d 337(2003).

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RCW 36.70A. 030(18) defines urban growth as

> ...growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services....

The County's Matrix describes that the areas, in and of themselves, are not characterized by urban growth. However, the County argues these areas are "land located in relationship to an area with urban growth on it as to be appropriate for urban growth."

b. Used or Capable of Being Used for Production Based on Land Characteristics

Petitioners and the County disagree on how the test's second prong, "land that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics" is interpreted. The Board sees this prong speaking to both current use of the property as well as whether the land has been used for agricultural in the past for the uses enumerated in RCW 36.70A.030(2) and whether it is capable of being used based on land characteristics due to capability of the soil.

The County uses information from the Globalwise Report[109] that uses information included in the 2002 Census of Agriculture and assumes that net farm income is a good indicator of what constitutes commercial agriculture, concluding that only 145 "commercial" farms still exist in Clark County that have an income of over $25,000 annually. The Report says "[G]ross sales do not provide a clear indication of business intentions, but higher level of sales does correlate with on-going business intentions". The Report further provides the

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[109] See generally Exhibit 6548 for findings pertaining to farm income levels.

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number of farms making $25,000 or more has declined since 1987, while farms reporting less than $2500 have increased and constitute over half the farms. However, the Report shows that farms making over $25,000 has increased since 2002, especially those making over $100,000 a year. The Report does not indicate why $25,000 should be considered the threshold for commercial farming.

Petitioners point out, and the Report.confirms, that farm income is a measure of owner intent. The Board agrees and recognizes that an owner of a farm that has prime soils or has been historically farmed may have a myriad of reasons for not producing a significant income. Using farm income as a measure of whether agricultural land is primarily devoted to agricultural products speaks to owner intent rather than whether the land is "used or capable of being used for production based on land characteristics." This prong speaks to "land characteristics" not economic function. Farm income is not a measure that meets the second prong of the Supreme Court test. While landowner intent can be considered, according to the Supreme Court as described *supra,* this factor is not determinative when designating agricultural land.

Petitioners focus on the "capable of being farmed" part of this prong and say all the areas in question have prime soils according to the USDA/SCS soils classification system and therefore are "capable of being farmed." Further, they point out that many of the farms that have a high percentage of land are enrolled in the agricultural current use program, which is evidence of the land being farmed. The Board agrees with Petitioners that land in the agricultural/farm current use tax program shows the land is currently being farmed or that having prime soils land shows it is "capable of being farmed" and therefore meets the second prong of the Court's test. The great majority of the challenged areas in question contain well more than 50% prime soils, thus are "capable of being farmed".[110]

[110] Matrix 1-7.

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c. Long-term Commercial Significance

The Court's third prong pertains to land that has long-term commercial significance for agricultural production, a broad prong with many factors, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.[111] This prong involves soil type or class and use of the WAC factors, or factors adopted by the County that are consistent with the GMA's conservation imperative. The County does not adopt any "additional" factors in its CP, but simply refers to the WAC factors as determinants of long-term commercial significance. However, in its de-designation process, the County considered not only the WAC factors but other considerations including the amount of critical areas and closeness of schools, urban reserves, and rural centers.

WAC 365-109-050 also says,

> Counties and cities "shall consider how the combined effects of the proximity of the proximity to population areas and the possibility of more intense uses of land". It is this combined effects of the WAC factors that determines where agricultural land has long-term commercial significance.

The Board will examine Petitioners' challenge to the County's application of the three prong test below.

Camas (Areas CA and CB)

Positions of the Parties

Intervenor Johnston Dairy states that it has an interest in the CB area. Johnston Dairy says that Camas can only grow north; that nine of the fifteen parcels in this subarea have not been devoted to commercial agriculture and will not be in the future; and that most of Clark County's dairy operations have moved to Idaho, Eastern Washington, or Eastern Oregon, with this dairy facing the same issues. According to Johnston Dairy, the County found

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[111] *Lewis County,* 157 Wn.2d at 502.

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among the reasons to de-designate this area as LTCS agricultural land being: that the area has 55% critical areas; the area is partially in the Airport Environs District; the area is across Lake Lacamas from the UGA and the Camas city limits; small urban lots exist near this location (R1-15), and the dairy is part of an industry that will move to Idaho.[112]

Intervenor GMC Camas L.L.C. is the principal owner in Green Mountain properties and also argues for the de-designation of both these subareas. GMC Camas states that in 2006, when it asked for annexation to the City of Camas, 20-25% of this property was being utilized for a golf course, 35% was in vacant forest lands, and 15% was in limited agriculture. GMC Camas counters Petitioners' argument that this subarea is not adjacent to the UGA because of separation by a lake by pointing to Olympia, a city which has areas on either side of a lake, and that in Camas's situation utilities can easily be extended in both directions around the lake.

Petitioners reply that this area is remote, rather than adjacent to the Camas UGA, because it is across a long, narrow lake, surrounded by open fields, large parcels, rural residential, and forested land. Petitioners assert that, with a couple of exceptions, this area is predominantly comprised of large parcels and prime soils, with 85% of it in ag/farm current use tax status. Petitioners recognize that land values are higher under the proposed mixed zoning, but are lower than most of the other areas proposed for inclusion in UGAs. Petitioners also acknowledge that there a number of small parcels, but contend that they could be combined with large parcels and are in an area that can and does support agriculture. Petitioners argue that land values alone should not predominate in the decision to de-designate, as they will always be higher for a non-agricultural use. Petitioners contend that although the lake makes the provision of urban services and commuting difficult, the area is still close to the Vancouver, Camas, and Washougal markets.[113]

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[112] Johnston/Lagler Prehearing Brief at 4 and 5.
[113] Petitioners Reply Brief at 18, 19.

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Board Discussion

The Ordinance's finding in regard to the Camas area show that the reasons for de-designating these areas are 1) proximity to urban areas; 2) the possibility of more intensive use; and 3) unique economic development activities .

According to the Matrix, for area CA, a 342 acre site, the County discounted the existence of prime soils, concluding that most were under the golf course without acknowledging that this does not eliminate its potential use for agricultural production. However, the county map reveals that Class III soils, listed as prime by USDA/SCS, exist within the rest of the area. While the Board recognizes that designation of agricultural lands cannot be based on soils alone, the BOCC decision not to consider the presence of such soils – approximately 66% of the site - makes the de-designation of the CA area clearly erroneous and does not comply RCW 36.70A.170 and RCW 36.70A.020(8).

In area CB, a 402-acre site, the BOCC based its decision on Intervenor Johnston Dairy's assertion that the dairy would soon be moving to Idaho, a trend laid out in the Globalwise Report. However, the Matrix shows that in this area, there are four farms that generate $25,000 or more, the area is comprised of 73% prime agriculture soils, and 85% of the area is in ag/current use. Johnston's operation is not the only farm in the area and the Matrix clearly shows that the land is capable of being farmed. Again, while the Board recognizes that soil type and whether the land is capable of being farmed based on the area are not the only reasons for designating LCTS agricultural land, "capable" land needs to be considered, especially land with prime soils needs. The County's other reason for de-designating this property was that it provides a unique opportunity for Camas, due to the mill's downsizing.[114] Again, de-designating agricultural land to increase the tax base of a city, does not address the needs of the agricultural industry and ignores the conservation

[114] Matrix at 2.

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mandate established by the Supreme Court. The de-designation of this area for the BOCC reasons does not comply with RCW 36.70A.170(1) and RCW 36.70A.020 (8).

Conclusion: The County's decision to de-designate the CA-1 area and the CB area was clearly erroneous and does not comply with RCW 36.70A.020(8) and 36.70A.170.

Ridgefield (Area RB-1)

Positions of the Parties

Intervenor Royle Family has an interest in this area, a 282 acre site, which it describes as "the doughnut hole" in the previous Ridgefield UGA. Royle Family summarizes the County's evaluation of this area which shows that the area is suitable for grazing, is near public services, is not currently being farmed, and 33.5 % of the area is critical areas. As to the surrounding area, Royle Family notes the presence of a school and that the northern, eastern, and the tip of southwestern parcels are adjacent to the Ridgefield UGA. The area is also adjacent to lands zoned Urban Reserve and Urban Holding. Because this area is almost completely surrounded by the Ridgefield UGA and urban uses, Royle Family says the County correctly concluded the area did not have viability for agricultural production.[115]

Petitioners, in response, maintain that this land contains "Gee Silt Loam" soil, which is a USDA prime soil, and "offers the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops." Petitioners portray the area as having three farms, 61% prime soils, 35% critical areas unsuitable for intensive building, with no water or sewer lines, and no proposed development in the area. [116]

Board Discussion

The Matrix indicates that the County recognized that this area was still in active farming but, because it is surrounded on three sides by the Ridgefield UGA, this area would eventually

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[115] Johnston/Lagler Brief, at 5 and 6.
[116] Petitioners' Prehearing Brief at 20.

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be enclosed by urban land uses.[117] However, as Petitioners point out and the Matrix also shows 61% of the area has prime soils, 85 % is in current use tax program, surrounding parcels are in rural and agricultural uses, a road runs through the property but no sewer and water lines are near the area, and no urban development permits have been issued in the vicinity. Here, while the area is adjacent to the UGA, it is not surrounded by land characterized by urban growth. The County Matrix and BOCC deliberations also showed the recognition of the need to conserve this area for farming by requiring the adoption of a transfer of development rights program before the City can annex the area. A transfer of development rights program is required when a City includes LTCS land in the City. Here, the County is de-designating land and rezoning it Urban Low Density residential. The de-designation will not conserve the land while a TDR program is being developed.

Conclusion: The land is surrounded by the UGA. Although it is capable of being farmed, its ability is limited by the encroaching urban areas. The de-designation of Area RB-1 was not clearly erroneous.

Ridgefield (Area RB-2)

Positions of the Parties

Intervenor Pacific Lifestyle Homes has an interest in this subarea, a 199 acre site, in the new Ridgefield UGA. The County's findings de-designating this subarea, as described by Pacific Lifestyle Homes, include identifying only one "commercial farm" in the area, listing 58% of the soils as prime soils, 66.5% as critical areas, showing a major road running through the subarea, and part of the area being adjacent to the Ridgefield UGA.[118]

Petitioners point out that this is an area of Gee Loam soils suitable for various crops. Petitioners portray this area as a 200-acre peninsula thrusting into active farmland, where

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[117] Matrix at 4.
[118] Intervenor Johnston/Lagler Brief at 8.

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only one portion of land touches the UGA and the neighboring land to the south, east, and west are in AG-20 zoning. Petitioners state that this area has no water or sewer and is served only by a rural road. Petitioners agree with the County's assessment as to the percentage of prime soils and critical areas.[119]

Board Discussion

The County's Matrix says that the decision to de-designate this land was based on the agricultural analysis, the lack of water and sewer lines nearby, adjacency to a school site, location near a road that is being built out, and environmental constraints. The Matrix also indicates that 58% of land is prime agricultural soils, it is adjacent to the UGA on its southern tip, and no permits had been issued in the vicinity.[120] Again, while this area touches the UGA, it is not adjacent to an area characterized by urban growth and no sewer and water lines are indicated near the subarea, except what appears to be an area of an isolated subdivision.[121] The majority of the areas has prime soils, so is capable of being farmed, as well as having 85.9% in current tax, indicating use of the land as farms, as well as one farm generating an income of $25,000, showing the land is capable of being farmed.[122] The presence of critical areas, a road that serves agricultural and rural areas, and a school are not criteria for de-designation, as described *supra*. No WAC factors are implicated to suggest a lack of long-term commercial significance. This area still meets the three-part test.

Conclusion: The de-designation of Area RB-2 does not comply with RCW 36.70A.170(1)(a) and RCW 36.70A.020(8) and was clearly erroneous.

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[119] Petitioners' Reply Brief at 20, 21.
[120] Matrix at 4.
[121] Ridgefield UGA – Map 1- Deliberation Components
[122] Matrix at 4.

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Ridgefield (Area RC)

Position of the Parties

Intervenor Pacific Lifestyle Homes has an interest in this subarea, a 306 acre site, within the new Ridgefield UGA. Intervenor says that the County's findings from evaluating the WAC factors demonstrated that the subarea included water lines, a rural residential subdivision of 3/4 to one acre lots, and only one commercial farm according to the Globalwise Report. The County's findings also included that the subarea has sewer lines nearby, is adjacent to the UGA and city limits, and most of the prime soils are underneath a clustered subdivision.[123]

Petitioners depict this area as being another peninsula of de-designated land, containing one active farm. Petitioners declare that 70% of the land is made up of prime soils and 56.33% critical areas. One residential subdivision exists in the area and Petitioners say that the county acknowledges this development is more intense than the rest of the area, but that the area is surrounded by rural and agricultural land uses. Petitioners argue that a cluster subdivision, designed to allow additional density in rural areas, should not be the basis for de-designation on the grounds that now high intensity uses conflict with agriculture. Petitioners contend that while Class I and Class II soils were consumed by housing, Intervenors overestimate the amount of farmland eaten up by housing, and maintain that the southern end of the area contains Class III prime soils and critical areas and, is untouched by housing. [124]

Board Discussion

The RC area is adjacent to the UGA. According to the County's Matrix, the rural subdivision within this area is more intense than the other rural, agricultural land, and rural residential development that surround it. The Matrix also says that water lines are in the area and sewer is at the very tip of the UGA. Although the BOCC indicated in their discussions that

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[123] Intervenor Brief at 9 and 10.
[124] Petitioners' Reply Brief at 22,23.

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no prime soils exist in the area, the Matrix says that 70% of land is prime soils and 68.8% is in agriculture/ current use program. However, the WAC factors of proximity to sewer and water and relationship to UGAs combine to make the land not viable for agricultural use.

Conclusion: The de-designation of Area RC was not clearly erroneous.

Vancouver (Areas VA and VA-2)

Positions of the Parties

Intervenor Renaissance Homes has an interest in this subarea, a 125 acre site (VA) and a 23 acres site (VA-2). Renaissance Homes explains the County's findings show a subarea with a high percentage of prime soils with an Urban Reserve Overlay and surrounded by parcels with an Urban Reserve Overlay. Also, the findings disclose that no commercial farms were identified in the subarea by the Report, the area is in close proximity to the Vancouver and Battle Ground UGAs, and development in this area would be able to utilize 189th Street if it was built out.[125]

Petitioners describe this area as VA and VA-2, and represent that it is isolated from Vancouver by a significant swathe of rural and farmed land. They state that VA consists of 85% prime soils and 33.55% critical areas, while VA-2 is made up of 58.98% prime soils and 33.55% critical areas. Petitioners allege that while the Report shows no active farms in these areas, significant ownership by Renaissance Homes make it likely that owner intent is the reason for lack of farming. Petitioners assert no sewer exists in this area, water is available only on the southern end, the area is surrounded by open fields, forested land, rural residential, and farm buildings, and no urban development permits have been issued in the vicinity.[126]

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[125] Johnson/Lagler Prehearing Brief at 11.
[126] Petitioners' Reply Brief

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Board Discussion

The Matrix details that the reasons for de-designating these areas are to utilize the build-out of 189th Street, when it occurs, the lack of existing farms on the site, and the proximity to the Vancouver UGA. Further examination of the Matrix shows that the VA area is made up of 85% prime soils and prime soils comprise about 59% of VA -2. The land within the subareas and surrounding area is comprised of rural land uses, open fields, forested land, interspersed with residential and farm buildings. About 40% of VA is in current ag/farm status, while none of VA-2 has current ag/farm current use.[127] The map shows a water line at the southern edge of the parcel of the VA area.[128]

These areas are near the UGA but are not near areas characterized by urban growth or adjacent to areas characterized by urban growth.[129] The Urban Reserve designation is an overlay on agricultural resource land. The fact that VA has been part of Urban Reserve since 1994 is not that unusual. Many times, in large UGAs, urban growth does not occur at the edges of the UGA even within the planning period, due to less than expected growth in the area or the inability to expand or extend capital facilities. The County notes that these are areas of prime soils. Prime soil areas are areas capable of being farmed. A road serving urban, rural, and agricultural residents that has potential to be improved does not constitute a public facility that detracts from the agricultural lands resource lands long-term commercial significance nor does the presence of a water line without sewer cause the potential for more intense uses. These areas are not characterized by urban growth or adjacent to areas characterized by urban growth. The area is comprised of a majority of prime soils. An evaluation of the WAC factors does not indicate the area is vulnerable to more intense uses. The area still meets the Court's three-part test.

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[127] Matrix at 5, Comprehensive Growth Management Plan NW Vancouver UGA-Map 1
[128] Comprehensive Growth Management Plan NW Vancouver UGA-Map 1
[129] *Ibid.*

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Conclusion: Based on the foregoing, the de-designation of VA and VA -2 does not comply with RCW 36.70A.170(1) and RCW 36.70A.020(8) and was clearly erroneous.

Vancouver (Area VB)

Positions of the Parties

Intervenor Lagler Real Property, LLC, has an interest in this property, a 780 acres site, which it says will close the gap between the Vancouver UGA boundary to the south and the Bush Prairie Rural Center to the north. Lagler Real Property discusses the County's findings for this area, which has Urban Reserve zoning, adjacent educational facilities, an airport, a 150-unit condominium project on the south, and a circulation plan in place. Three farms still exist in this area but, Lagler says, and the County findings predict, that economic pressures will cause the existing dairy to move. The County's findings also conclude that the presence of a railroad, state highway, and planned arterial expansion present unique economic development opportunities. [130]

Petitioners describe this area as consisting of 77% prime soils, 33% critical areas, and includes three active farms. Unlike other areas, Petitioners point out that the County has not calculated the value of this area under alternative land uses, but claims this area has "unique development opportunities," which Petitioners argue is an impermissible factor. Petitioners point out that here the previous Urban Reserve Overlay for this area was also overturned by the Board. Also, Petitioners argue that instead of "closing the gap" between Vancouver and the Bush Prairie Rural Center, LAMIRDs are supposed to be separated from UGAs to avoid sprawl.[131]

Board Discussion

The County' s Matrix notes that this area provides unique opportunities for industry along the railroad, SR 503, and 119th Street to utilize high capacity infrastructure, having a

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[130] Johnson/Lagler Prehearing Brief at 13.
[131] Petitioners Reply Brief at 25.

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circulation plan in place for the area, and providing a greater tax base for the Battle Ground School District as reasons for de-designating this area. Additionally, the County says that rising transportation costs will cause the dairy to move closer to its suppliers. The Matrix also supports Petitioners' argument that the VB area is an area of prime soils (79%), 85% of the area is in current use programs, and three "commercial" farms exist in the area. The Matrix also shows that the southern tip touches the Vancouver UGA, while the rest of the area is surrounded by rural land uses, including a Rural Center to the north.

This area barely adjoins the UGA and is neither characterized by urban growth nor adjacent to areas characterized by urban growth. The County's Matrix supports Petitioners' argument that the area has prime soils and existing farms. Petitioners cite unique development opportunities as a factor that should not be used to de-designate. As the Board discussed above, the presence of state highways and roads that serve urban and rural residents and farmers are neither urban nor rural facilities that detract from the long-term commercial significance of agricultural lands. The Matrix mentions that water lines are present within the subareas boundaries. However, the water line's capacity is not described. This is important as water lines can be an urban as well as rural service. Unique economic development opportunities and increasing a school districts tax base cannot undermine the GMA's conservation mandate. While higher land values under alternative uses can be considered, it cannot be a determinative factor or no agricultural land will ever be preserved. Intervenor's and the County's argument that the dairy farm may have to move due to higher transportation costs is not a concrete fact that the land is no longer productive, but rather speculative.

Conclusion: This area is not characterized by urban growth, nor is it adjacent to land characterized by urban growth. It touches the tip of the Vancouver UGA. The area has prime soils and is farmed so it is land used or capable of being used for production based on land characteristics. Consideration of the WAC factors does not show that this land no

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longer has long-term commercial significance. This area still meets the Court's three-part test and the County's de-designation of this area was clearly erroneous.

Vancouver (Area VC)

Positions of the Parties

Intervenor Vision First has an interest in this subarea, a 38 acre site, in the new Vancouver UGA. Vision First says that this property has never been farmed for commercial purposes, but cattle grazed on it until 2000, but was discontinued because cattle kept breaking through fences meeting with complaints from surrounding neighbors. Vision First summarizes the County's findings for de-designation as indicating water lines run through the subarea, the northern portion of the subarea has an urban reserve overlay, no parcels were identified as commercial farms by the Report, sewer lines and a school are adjacent to the area, and all prime soils are under a cluster subdivision.[132]

Intervenor Gustafson states that its property in the VC area has been used to produce grass hay and alfalfa, and has minimal agricultural management during most of the year. Gustafson puts forth a comparative analysis to demonstrate that the soils are not suitable without irrigation or drainage improvements, the losses that would be experienced from a variety of crops, land value under alternative uses, and the presence of public facilities and services.[133]

According to Petitioners, this area consists of two parcels, 18 and 19 acres in size, that have 51% prime soils and 43% critical areas. Petitioners criticize Intervenor Gustafson's reliance on the Globalwise Report and its author, emphasizing the author has a Masters degree in agricultural economics, but no expertise in soils. On this basis, Petitioners question Gustafson's assertion that without irrigation crops would be subject to drought conditions. Petitioners assert that the soils on this property are classified prime, prime if drained, and

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[132] *Ibid* at 17.
[133] *Ibid* at 9 and 10.

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farmland of statewide significance and can support a wide variety of crops. Petitioners dispute that the farm is only good for growing hay or small grains, since this is only the historical use of the farm.[134]. Petitioners further argue that a Right to Farm law should protect owners of farm animals from neighbors' complaints and that owner's decision not to farm does not make the land unsuitable for farming.[135]

Board Discussion

The County's reasons for de-designating this area is that is adjacent to urban residential development and that it has low value farm land, even though the County's Matrix says that the area contains 51% prime soils. The County's decision map shows that these are Class III soils, a prime soil.[136] Petitioner asserts that the County's Agriculture Viability Study Areas for the Vancouver UGA East shows that the area is adjacent to the Vancouver UGA and surrounded by urban growth on the south and east. The Matrix indicates that sewer lines are adjacent to the southern boundary.

This area is adjacent to the Vancouver UGA and adjacent to an area within the UGA characterized by urban growth. Sewer lines are adjacent to property increasing its potential for urban development. Adjacency to an area characterized by urban growth and having sewer available at its boundary increases this area's development potential so the property no longer meets the Court's three-part test for an LTCS agricultural area. Here, although the area has prime soils, the area's relationship to area characterized by urban growth and with available urban services makes the decision to de-designate this area not clearly erroneous.

Conclusion: The County's decision to de-designate VC area is not a clearly erroneous violation of RCW 36.70A.170(1) and RCW 36.70A.020(8).

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[134] Petitioners' Reply Brief at 25.
[135] Petitioners' Reply Brief at 26.
[136] Matrix at 6, Comprehensive Growth Management Plan NE Vancouver UGA – Map Deliberation Components.

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Vancouver (Area VE)

Positions of the Parties

Intervenor Hinton characterizes this area as being 74 parcels, totaling 416 acres, with most parcels under 10 acres and many under one acre. Hinton notes only a few parcels are greater than 20 acres and there is very limited agricultural production. Hinton owns 23 parcels.[137]

From the Globalwise Report, Hinton accounts that while all 74 parcels receive tax benefit for agricultural use, none are in agricultural production. Interviews of long-time residents detailed in the Report tell that steady expansion of residential development as the primary reason for land conversion, with the best example being Monet's Garden, which brought 42 homes in the middle of designated agricultural land in the late 1990s. Hinton acknowledges the presence of prime soils in the area, but says water quality standards, high land prices, and an overarching inability to make a living at farming have determined the nature and type of agriculture in this area. Again, referencing the $10,000 per acre figure that a farmer will pay for land, Hinton says that the Report informs land in the area is selling for alternative uses at $40,000 to $50,000 per acre. Like the analysis of the Gustafson property, the Report concludes that agricultural production would result in net losses.

Other factors, arguing for de-designation, according to Hinton, are proximity to public services such as public schools, police, fire, urban arterial traffic capacity, water from Clark County public utilities; sewer lines adjacent to boundary; parcel size; and residential subdivisions and the urban growth boundary abut the area.[138]

According to Petitioners' description, this area consists of 416 acres of which 78% are prime soils and 31% are critical areas. While the cluster subdivision covers Class I and II soils,

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[137] Intervenors Curt Gustafson, Hinton Development Corp. and MacDonald Properties Brief on Agricultural Issues at 11.

[138] *Ibid* at 14.

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which Petitioners claim violates the GMA, they explain that the rest of the area is not encumbered with critical areas and has Class III soils. Also, only a small area on the east has water and no sewer exists in the area, Petitioners state. Petitioners further argue that a Right to Farm law should protect owners of farm animals from neighbors' complaints and that owner's decision not to farm does not make the land unsuitable for farming.[139]

Board Discussion

A study of this area showed that, since 1990, this area has experienced a steady decline of farming.[140] While some of the soils in Area VE are prime, the County's Matrix noted that all prime soils for agricultural use are under the houses in the cluster subdivision. An economic analysis of farming in this area showed an annual loss of a variety of agricultural practices.[141] These factors tend to show that Area VE is not economically capable of growing or sustaining agricultural crops or livestock[142] Furthermore, Area VE is adjacent to areas already characterized by urban growth, as seen by the presence of urban arterial traffic, water, sewer lines, and other public services and facilities.

Conclusion: Petitioners have not carried their burden to show that de-designation of Area VE was clearly erroneous.

Washougal (Area WA)

Position of the Parties

While Petitioners challenge all of the County's de-designation, they do not offer any specifics about this area, a 253 acre site. Here the County's Matrix notes that the area is adjacent to the urban growth boundary and the county's map confirms it is adjacent to an area characterized by urban growth. Less than half of the area has prime soils, although 71% is in current agricultural use. Public services exist in the UGA.

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[139] Petitioners' Reply Brief at 26.
[140] See, Exhibit 5837.
[141] Id.
[142] See, City of Redmond v. CPSGMHB, 136 W.2nd 38, 53 1998).

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Conclusion: The Petitioners have submitted only conclusory arguments in regard to the WA area and, therefore, have failed to carry their burden in demonstrating that the County's decision to de-designate the site was clearly erroneous.

Washougal (Area WB)

Positions of the Parties

Intervenor MacDonald owns a parcel consisting of 79 acres in this 116 acre subarea. MacDonald states that 25% of this property consists of land sloped at more than 15%, making it susceptible to erosion, most of the other soil on the property is Hesson clay loam, and the area is used for the production of hay or as pasture. Turning to the Globalwise Report, MacDonald recounts the analysis of the losses that raising cattle, growing hay, and Christmas trees would incur. Other reasons that MacDonald cites for why the property was properly de-designated is the ability to provide water, sewer, and stormwater; being surrounded by small parcels that do not have agricultural/farm use tax status; and the value of the land in the area being $25,000 per acre.[143]

Petitioners declare that this area consists of two large agricultural areas with 82% in prime soils, 5.89% in critical areas, and 100% in current agricultural tax status. Petitioners describe the area as being remotely located from the Washougal UGA and surrounded by open fields, forested land, and rural residential development. Also, Petitioners point out there is no evidence of water to support employment and no analysis of the value of this land under alternate uses. [144]

Board Discussion

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[143] Intervenors Curt Gustafson, Hinton Development Corp. and MacDonald Properties Brief on Agricultural Issues at 17-20.

[144] Petitioners' Prehearing Brief at 27.

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The County's Matrix describes the land as having 82 % prime agricultural soils. Most soils appear to be Class I and II.[145] The Matrix also says that it is to be brought into the area to provide tax base for the Battle Ground School District. The area is not adjacent to the UGA and no permits for development have been issued nearby. Intervenor says that his land is not productive as a farm based on analysis by Globalwise. However, productivity is a character of the soil as described by WAC 365-190-050. In evaluating critical areas, cities and counties use Best Available Science to help designate critical areas. The resource that the GMA gives cities and counties is USDA soil characteristics and that is what the Board needs to rely on. The County's Ordinance says that this area was de-designated because it no longer has long-term commercial significance.

Conclusion: Based on the County's decision making criteria, the Board finds the County erred in de-designating this land. This designation does not comply with RCW 36.70A.020(8) and RCW 36.70A.170.

La Center (Areas LA, LB -1, LC, LE)

Positions of the Parties

Petitioners summarize their objections in their Reply brief. They claim that La Center ignored rural land north and northeast of the city and instead expanded its UGA into agricultural lands and, thrust a peninsula of urban development into agricultural lands. Petitioners argue that economic desire cannot be a basis for de-designation of commercially significant agricultural lands. The LB and LE areas of the UGA expansion are isolated from the UGA and surrounded by open fields, rural residences, and forest land, and have a high percentage of prime soils (56 – 80%) and of critical areas (36 – 46%), Petitioners assert. Petitioners further contend that the area is well suited for agriculture, but not for offices or shopping centers, and the area has no history of development nor water or sewer.[146]

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[145] 6605 Matrix at 7. Washougal Map 1.

[146] Petitioners' Prehearing Brief at 28 and 29.

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Intervenor La Center does not deny that this area has prime soils, but insists that this is the only area where a fast growing city (8.7% annually) with a limited tax base can expand. La Center declares that it explored expansion options in an EIS. Going north of the Lewis River would require an expensive bridge and south of the East Fork of the Lewis River was constrained by various wetlands.[147]

La Center argues that Petitioners use good soils as their only criterion, when the County can consider other factors.[148] La Center says that its situation is similar to that of Arlington's UGA which the Court of Appeals found a similar result as Clark County did.[149] La Center says that the County used the WAC factors to evaluate the area and concluded that proximity to public facilities - Interstate 5 - and that ease that water and sewer could be delivered were valid reasons for de-designation.[150]

To answer Petitioners' challenge that the UGA contains lands that are not contiguous to the UGA, La Center replies that the UGA had to be long and skinny for several reasons: to follow existing transportation and utility corridors, to avoid critical areas, and to not add more land than needed to accommodate its population allocation.[151]

Board Discussion

The County divided the La Center area in five areas for analysis: LA (6.85 acres adjacent to the UGA), LB-1 (218.81 acres adjacent to the UGA's eastern boundary) LB-2 (244.63 acres that on the east border I-5), LC (69.57 acres adjacent to the UGA), and LE (112.47 acres adjacent to I-5).

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[147] Prehearing Brief of Intervenor Respondent City of La Center at 3.
[148] *Ibid* at 7.
[149] *Ibid* at 9.
[150] *Ibid* at 10.
[151] *Ibid* at 1, 12.

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Area LA is adjacent to the UGA, City limits, water, sewer, with few prime soils, even though 85% is in current use. The UGA that is near this area is characterized by urban growth with urban services. The combination of its relationship to an area characterized by urban growth and the availability of services supports the County's decision to de-designate this area. Likewise, LC is adjacent to area within the UGA that is characterized by urban growth that has available water and sewer. Although it has few prime soils, 79% is enrolled in agricultural current use program. Again, its relationship to an area of characterized by urban growth and urban services show the County's decision to de-designate Area LC was not clearly erroneous.

Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA characterized by urban growth. In fact, the County's Matrix describes all the areas as having rural land uses in and adjacent to the areas. All the areas have a high percentage of prime soils and LB-1 has 85% of its land in the agricultural/ farm current tax program. All areas are capable of being farmed. LB -1 has water and sewer located at its eastern boundary.

LB-2 and L-E have no public sewer or water available, the County's Matrix describes the areas as being surrounded by rural land uses, open fields, and forested land. No permits have been issued in the vicinity. Both areas border I-5. The BOCC's reason for de-designating these areas is that they border I-5 therefore presents a unique economic development opportunity for La Center. The area is not adjacent to an area characterized by urban growth, has prime soils capable of being farmed, and has no public water and sewer available. Here, adjacency to I-5 does not combine with other WAC factors to make these lands not viable for agricultural use. Petitioners are correct that LB-1 and LE still meet the *Lewis County* Court's three prong test. The BOCC's desire to further economic development can not outweigh its duty to designate and conserve agricultural lands so as to assure the maintenance and enhancement of the agricultural industry.

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La Center presents its environmental impact analysis as evidence that it weighed other opportunities for economic development when considering its expansion into agricultural lands. The Board does not doubt La Center's need for more industrial and commercial land. However, the EIS does not lay out how the County's jobs to population goals translates into acres of land needed for development. Nor, could the Board find anything in the EIS that acknowledged that alternatives to agricultural lands were being considered, rather the Board found them described as rural lands with agriculture uses and one unit per 20 acre zoning. However, it is not La Center's need for urban land that is being evaluated here, but the County's rationale for de-designating this land. That is the first step needed to be taken before the land can be added to the UGA, and the de-designation of areas LB-2 and LE do not comply with the GMA's goals and requirements.

Conclusion: The de-designation of Areas LA and LC are not clearly erroneous. The designation of LB-1, LB-2 and LE do not comply with RCW 36.70A.170(1) and RCW 36.70A.020(8).

Battle Ground (Area BB)

Positions of the Parties

Petitioners challenge all the de-designations, including this one, a 345 acre site, based on the fact that the County considered the use of inappropriate WAC factors, but does not offer a specific critique of the factors used in the de-designation of the agricultural lands that have been added to the UGAs.

Board Discussion:

The County directs us to its Matrix and BOCC deliberations. Our review of the County's maps and Matrix show that the County considered that this area is adjacent to the City limits and an area characterized by urban growth. While the County's reason to add this to the Battle Ground school district tax base is not a legitimate reason to de-designate this land, it no longer meets the three part test.

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Conclusion: The decision to de-designate Area BB is not clearly erroneous.

Battleground (Area BC)

Position of the Parties

Petitioners challenge this de-designation, a 68 acre site, on the basis of the use of inappropriate factors on which to base the County's decision. The County provides no specific argument, except to direct us to its Matrix and BOCC deliberations.

Board Discussion

Here, the County's Matrix shows that the area has 85.6% prime soils and 93% of the land is in the agricultural tax current use program. The County notes that a Rural Center is adjacent, but the rest of the area is characterized by open fields and forested lands. Water is available at the site and sewer and water are available in the neighboring Rural Center. The County's main reason to de-designate this land is to provide more tax base to Battle Ground and the school district.

Here a great majority of the land has prime soils and is currently farmed based on lands in the current ag/ farm tax program. The area is capable of being farmed. The fact that the area is adjacent to a Rural Center and water and sewer are available from there is not an appropriate factor to consider for de-designation. A rural center is a LAMIRD. Without sewer, the availability of public utilities does not combine to make this area not viable for agriculture.

Finally, the record reflects that the County's main reason for de-designating this area was to provide tax base for the City and the School District. This factor is not tied to the need of the agricultural industry and, if used, would endanger a significant amount of designated agricultural lands to de-designation.

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Conclusion: The land in Area BC is still capable of being farmed based on soils alone and is not located in relationship to an area the GMA considers urban growth. The factors the County used to de-designate this Area BC are clearly erroneous and fail to comply with RCW 36.70A.170 (1) and RCW 36.70A.020(8).

Issue : Did Clark County violate RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060, 36.70A.110(1) & (3) in Ordinance No. 2007-09-13 by including land within Urban Growth Areas that is not characterized by urban growth, should be designated as agricultural land, and is adjacent to agricultural land?

The GMA recognizes three types of land: urban, rural, and natural resource, which includes agricultural lands. From its very beginning, the GMA required the designation of natural resource lands, including agricultural land, as the first step of the planning process. The rationale for requiring the designation of agricultural lands before anything other stage in the planning process was to prevent the irreversible loss of those lands to development and provide jurisdictions with the ability to conserve these lands. These first agricultural lands designations occurred in the mid-90s. The Boards have held, and the County recognizes, that to de-designate agricultural lands the County must go through the same process and criteria it did to designate them.[152]

Once lands have been de-designated they become candidates for consideration for urban growth. In *Futurewise v. Skagit County,*[153] the Board held that for any land to be included in the UGA it must be needed to accommodate urban population and supporting land uses. Counties and cities must "show their work" and provide supportable rationale to determine how much land they require to accommodate their projected needs. Here, the County's projected need for the lands has not been challenged nor has its ability to provide for urban services to these areas over the 20-year life of the plan before the Board.

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[152] *Futurewise v. Skagit County*, WWGMHB Case No.05-2-0012c(Final Decision and Order, September 25, 2005) at 18-19

[153] *Ibid* at 21-22.

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If these lands are *properly* de-designated, the GMA does not prohibit the County from considering the land as an area for inclusion within an urban growth area. Lands that were not *appropriately* de-designated are not candidates for inclusion in the UGA and do not comply with RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060, 36.70A.110(1) & (3). The Record reflects that the County's process to de-designate and to the add land to the UGAs was combined in a single process.

As note *supra,* the County's de-designation of some of the agricultural lands was compliant with the GMA and therefore, these lands are available for inclusion within their respective UGAs. The Board finds no error on the part of Clark County in this regard.

Those agricultural lands for which the Board found the County's process did not reflect the requirements of the GMA: **BATTLE GROUND (68.16 acres), CAMAS – CA-1 (342.56 acres), CAMAS – CB (402.19 acres), LA CENTER LB-1 (218.81 acres),LA CENTER LB-2 (244.53 acres), LA CENTER LE 112.47 acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER – VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB (780.43 acres), WASHOUGAL – WB (116.06 acres)** were not available for consideration or inclusion within any UGA.[154]

INVALIDITY

Petitioners request the Board enter a finding of invalidity on the areas of agricultural lands inappropriately designated and included with the UGA expansions. The basis for this request is to protect those lands from potential development given Washington's Vested Rights Doctrine and ensure that the GMA's goals in regard to agricultural conservation and urban sprawl are realized.[155]

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[154] Agricultural lands may be including within a UGA if a jurisdiction has adopted a Transfer of Development Rights (TDR) program pursuant to RCW 36.70A.060(4). Clark County has not adopted such a program.
[155] Petitioners' Prehearing Brief, at 31.

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Applicable Law

The GMA's Invalidity Provision, RCW 36.70A.302, provides:

(1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

Discussion

In the discussion of the Legal Issues in this case, the Board found and concluded that Clark County's adoption of Ordinance No. 2007-09-13 was **clearly erroneous** in regard to several areas for which it removed agricultural designation. These actions were **non-compliant** with the requirements of RCW 36.70A.170 because it requires the designation of agricultural lands of long-term commercial significance. The Board further found and concluded that the County's action **was not guided by the goals** of the Act, specifically Goal 8 – the Natural Resources Goal – and Goal 2 – Preventing Urban Sprawl. The Board is **remanding** Ordinance No. 2007-09-13, in regard to the designation of certain agricultural

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lands, with direction to the County to take legislative action to comply with the goals and requirements of the GMA as set forth in this Order.

A Board may enter an order of invalidity upon a determination that the continued validity of a non-compliant city or county enactment substantially interferes with fulfillment of the goals of the GMA. RCW 36.70A.302(1)(b). As set forth in the findings and conclusions contained within this Order, Clark County's adoption of Ordinance No. 2007-09-13, which fails to conserve agricultural lands and maintain and enhance the agricultural industry, interferes with the fulfillment of the goals of the GMA, in particular RCW 36.70A.020(2) and .020(8).

As noted in this Order, the Board finds the following areas **non-compliant with the GMA and invalidates Ordinance No. 2007-09-13 as it pertains to these areas:**

Battle Ground – BC (68 acres)
CAMAS – CA-1 (342.56 acres)
CAMAS – CB (402.19 acres)
LA CENTER LB-1 (218.81 acres)
LA CENTER LB-2 (244.53 acres)
LA CENTER LE (112.47 acres)
RIDGEFIELD – RB-2 (199.69 acres)
VANCOUVER – VA (125.02 acres)
VANCOUVER – VA-2 (22.89 acres)
VANCOUVER – VB (780.43 acres)
WASHOUGAL – WB (116.06 acres)

VI. FINDINGS OF FACT

1. Clark County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.

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2. On September 9, 2007, Clark County passed Ordinance 2007-09-13 de-designating 19 areas of previously designated agricultural lands of long-term commercial significance and added to these lands to Clark County cities' UGAs.
3. On November 16, 2007, the Western Washington Growth Management Hearings Board (Board) received a Petition for Review (PFR) from John Karpinski, Clark County Natural Resource Council, and Futurewise (collectively, Petitioners). The PFR challenged Clark County's adoption of Ordinance No. 2007-09-13.
4. GM Camas, T3G LLC, Daryl Germann, Curt Gustafson, McDonald Properties, Hinton Development Corporation, Johnston Dairy LLC, ET Royal Family Partnership, Pacific Lifestyle Homes, Vision First LLC, Renaissance Homes, Lagler Real Property LLC (collectively, Johnston Dairy Intervenors) the Building Industry Association of Clark County, and the City of La Center filed motions intervene in this case.
5. The No-Action Alternative is the adopted September 2004 Comprehensive Plan's adopted urban growth boundaries.
6. The record shows that the County spent time reviewing the data and revised several assumptions, including the growth rate.
7. The County says the data showed that since 1990 the County's growth rate had exceeded 2%.
8. The comprehensive plan is a non-project action based on a broad range of assumptions.
9. The record shows the County adopted a public participation program for revising its comprehensive plan.
10. CCC 40.240.030(C) explains how the Clark County Comprehensive Plan will be amended.
11. The Board's review of the Index to the Record shows that this amendment process went on for two years and was extended on several occasions.

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12. The Index shows the public participation process was lengthy, broad, and generally with good notification through newspaper announcements and an e-mail distribution list.
13. The Board finds that the County's failure to disseminate its public participation program was not a clearly erroneous violation of the spirit of GMA public participation requirements.
14. The County's principles and values statement is not an amendment to the comprehensive plan nor is it a requirement of the GMA.
15. The County gave four actual working days notice of the November 29, 2005 work session The discussion of the proposed expansion of the UGA went on for almost two years after the work session, and the process included many workshops, an environmental review process, and several public hearings.
16. The County released the BOCC's June 27 Map Preliminary Recommendations just three days prior to the July 5, 2007 public hearing in violation of CCC 40.510.040D.
17. The index shows that four public hearings, subsequent to the July 25, 2007 hearing, were held before the County adopted the revised CP.
18. Petitioners had many opportunities to participate in the process and provide comments after the meeting where only proponents of UGA expansions were allowed to address the Board of County Commissioners.
19. The verbs in the economic development goal are similar to the verbs in the recreational goal.
20. The economic development goal does not have any corresponding requirements.
21. Almost all of the lands that Clark County considered could be targeted for de-designated based on the WAC factor of land value under alternative uses.
22. Rural services should not be of the scale and intensity that interfere with agricultural lands.
23. An Urban Reserve Area is an overlay designation on land still designated as agricultural resource land.

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24. In Area CA, the Matrix shows that there are four farms that generate $25,000 or more, the area is made of 73% prime agriculture soils, and 85% of the area is in ag/current use.

25. In Area CB, Johnston's operation is not the only farm in the area and the Matrix clearly shows that the land is capable of being farmed.

26. In Area CB, the County's other reason for de-designating this property was that it provides a unique opportunity for Camas, due to the mill's downsizing.

27. Area RB -1 is almost completely surrounded by the Ridgefield UGA and urban uses.

28. While Area RB-2 touches the UGA, it is not adjacent to an area characterized by urban growth and no sewer and water lines are indicated near the subarea, except what appear to be those limited to an isolated subdivision.

29. In Area RB-2 the majority of the areas has prime soils, so is capable of being farmed as well as having 85.9% in current tax, indicating use of the land as farms, as well as one farm generating an income of $25,000, showing the land is capable of being farmed.

30. In Area RB-2, the presence of critical areas, a road that serves agricultural and rural areas, and a school are not criteria for de-designation, as described *supra.* No WAC factors are implicated to suggest a lack of long-term commercial significance.

31. Area RC adjoins a city limits and a UGA.

32. Areas VA and VA-2 are near the UGA but are not near areas characterized by urban growth or adjacent to areas characterized by urban growth.

33. Further examination of the Matrix shows that the VA area is made up of 85% prime soils, and prime soils comprise about 59% of VA -2. The land within the subareas and surrounding the area is comprised of rural land uses, open fields, forested land, interspersed with residential and farm buildings. About 40% of VA is in current ag/farm status, while none of VA-2 has current ag/farm current use.[156] The map

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shows a water line at the southern edge of the parcel of the VA area. An evaluation of the WAC factors does not indicate the area is vulnerable to more intense uses.

34. In Area VB, 85% of the area is in current use programs, and three "commercial" farms exist in the area. The Matrix also shows that the area's southern tip touches the Vancouver UGA, while the area is surrounded by rural land uses including a Rural Center to the north.

35. Area VB barely touches the UGA and itself is not characterized by urban growth. The area's water line's capacity is not described. This is important as water lines can be an urban as well as rural service.

36. Area VC is adjacent to the Vancouver UGA and adjacent to an area within the UGA characterized by urban growth. Sewer lines are adjacent to property increasing its potential for urban development. Adjacency to an area characterized by urban growth and having sewer available at its boundary increases this area's development potential.

37. A study of the VE area showed that, since 1990, this area has experienced a steady decline of farming.[157]

38. An economic analysis of farming in Area VE showed an annual loss of in a variety of agricultural practices.

39. In Area WA, the County's Matrix notes that the area is adjacent to the urban growth boundary and the county's map confirms it is adjacent to an area characterized by urban growth. Less than half of the area has prime soils, although 71 % is in current agricultural use.

40. In Area WB, the County's Matrix describes the land as having 82% prime agricultural soils. Most soils appear to be Class I and II.[158] The Matrix also says that it is to be brought into the area to provide tax base for the Battle Ground School District. The area is not adjacent to the UGA and no permits for development are nearby.

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[157] See, Exhibit 5837.
[158] 6605 Matrix at 7. Washougal Map 1.

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41. Area LA is adjacent to the UGA, City limits, and water and sewer, with few prime soils.

42. Area LC is adjacent to area within the UGA that is characterized by urban growth that has available water and sewer

43. Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA characterized by urban growth. In fact, the County's Matrix describes all the areas as having rural land uses in and adjacent to the areas. All the areas have a high percentage of prime soils and LB-1 has 85% of its land in the agricultural/ farm current tax program. All areas are capable of being farmed. LB -1 has water and sewer located at its eastern boundary.

44. In Area BB, the County's maps and Matrix show that the County considered that this area is adjacent to the City limits and an area characterized by urban growth.

45. In Area BC, a great majority of the land has prime soils and is currently farmed based on lands in the current ag/farm tax program. The area is capable of being farmed.

46. The fact that Area BC is adjacent to a Rural Center and water and sewer are available from there is not an appropriate factor to consider for de-designation. A rural center is a LAMIRD. Without sewer, the availability of public utilities does not combine to make this area not viable for agriculture.

47. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.

V. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the matter and the parties in this case.

B. Petitioners have standing to participate in this case.

C. Intervenors have been granted leave to participate in this case.

D. The Board finds that Clark County's decision to use the 2004 Comprehensive Plan's adopted urban growth boundaries is not clearly erroneous pursuant to WAC 197-11-442 and RCW 43.21C.090.

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E. The County's failure to disseminate its public participation program was not a clearly erroneous violation of the GMA public participation requirements (RCW 36.70A.140, RCW 36.70A.035, RCW 36.70A.070, RCW 36.70A. 130).

F. The Board does not have jurisdiction to decide whether the public participation process for the adoption of the principles/values statement violated the GMA, pursuant to RCW 36.70A.280(1).

G. The County's decision to de-designate the CA-1 area and the CB area was clearly erroneous and does not comply with RCW 36.70A.020(8) and 36.70A.170.

H. The de-designation of RB-1 complies with RCW 36.70A.170(1) and RCW 36.70A.020(8).

I. The de-designation of Area RB-2 does not comply with RCW 36.70A.170(1)(a) and RCW 36.70A.020(8) and was clearly erroneous

J. The de-designation of Area RC was not clearly erroneous.

K. Based on the foregoing, the de-designation of VA and VA -2 does not comply with RCW 36.70A.170(1) and RCW 36.70A.020(8) and was clearly erroneous.

L. The designation of Area VB does not comply with RCW 36.70A.170(1) and RCW 36.70A.020(8).

M. The de-designation of Area VC complies with RCW 36.70A.170(1) and RCW 36.70A.020(8).

N. The de-designation of Area WB does not comply with RCW 36.70A.170(1) and RCW 36.70A. 020(8).

O. The de-designation of LB -1, LB-2, and LE do not comply with RCW 36.70A.170(1) and RCW 36.70A.020(8).

P. Areas LA and LC's de-designation complies with the GMA.

Q. The public process for the adoption of the County's revised CP was not a clearly erroneous violation of RCW 36.70A.140, RCW 36.70A.130(2), RCW 36.70A.035,or RCW 36.70A.070.

R. Area BB does comply with RCW 36.70A.170 and RCW 36.70A.020(8).

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S. Area BC does not comply with RCW 36.70A.020(8) and RCW 36.70A.170.

T. The following Areas do not comply with RCW 36.70A.170(1) and interfere with RCW 36.70A.020 (2), and (8): CAMAS – CA-1 (342.56 acres) CAMAS – CB (402.19 acres), LA CENTER LB-1 (218.81 acres), LA CENTER LB-2 (244.53 acres), LA CENTER LE (112.47 acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER – VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB (780.43 acres), WASHOUGAL – WB (116.06 acres), Area BC.

VIII. ORDER

Compliance Due	November 12, 2008
Compliance Report and Index to Compliance	November 24, 2008
Any Objections to a Finding of Compliance and Record Additions/Supplements Due	December 8, 2008
County's Response Due	December 22, 2008
Compliance Hearing (location to be determined)	January 6, 2009

The Board's May 14, 2008 Final Decision and Order is hereby amended this 3rd day of June, 2008.

Holly Gadbaw, Board Member

James McNamara, Board Member

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Pursuant to RCW 36.70A.300 this is a final order of the Board.[159]

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

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[159] For the purpose of appeal, as provided by RCW 36.70A.300(5), the appeal period commenced upon issuance of the Board's May 14, 2008 Final Decision and Order. The issuance of this Amended FDO, which does not change any substantive or procedural findings, does not modify the appeal period.

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APPENDIX A
PROCEDURAL HISTORY

John Karpinski, et al v. Clark County WWGMHB Case No. 07-2-0027

On November 16, 2007, the Western Washington Growth Management Hearings Board (Board) received a Petition for Review (PFR) from John Karpinski; Clark County Natural Resource Council, and Futurewise (collectively, Petitioners). The PFR challenged the Clark County's adoption of Ordinance No. 2007-09-13. The case was assigned No. 07-2-0027.

On November 26, 2007, the Board issued its Notice of Hearing and Preliminary Schedule for the matter.

On December 10, 2007, the Board received GM Camas LLC's Motion to Intervene, seeking intervention on behalf of the County.

On December 12, 2007, the Board received several Motions to Intervene. Motions were filed by T3G LLC, Daryl Germann, Curt Gustafson, McDonald Properties, Hinton Development Corporation. A motion was also received from Johnston Dairy LLC, ET Royal Family Partnership, Pacific Lifestyle Homes, Vision First LLC, Renaissance Homes, Lagler Real Property LLC (collectively, Johnston Dairy Intervenors.. All parties sought intervention on behalf of the County.

On December 14, 2007, the Board held its Prehearing Conference in this matter.

On December 20, 2007, the Board received Clark County's Index of the Record.

On December 21, 2007, the Board received Petitioners' Revised Statement of Issues Two and Three.

On December 28, 2007, the Board received Intervenor Johnston Dairy's Objections to the Revised Statement of Issues.

On December 28, 2007, the Board received Intervenors MacDonald Properties, Hinton Development, Gustafson, and Germann's Joinder and Response to Revised Statement of Issues in regard to Intervenors Johnston Dairy's Objections to Revised Statement of Issues.

On January 2, 2008, the Board sent correspondence to the parties in regard to the Revised Issue Statement.

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On January 2, 2008, the Board issued several Orders on Intervention. An Order Granting Intervention was issued to GM Camas LLC and an Order Granting Intervention was issued collectively to Johnson Dairy Intervenors, MacDonald Properties, Daryl Germann, Curt Gustafson, T3G LLC, and Hinton Development.

On January 3, 2008, the Board received Petitioner's Stipulated Additions and Revisions to Index to the Record.

On January 7, 2008, the Board received from Intervenors a Supplemental Objection to Petitioners' Revised State of Issues.

On January 8, 2008, the Board received from Petitioners their Second Revised Statement of Issue Two.

On January 9, 2008, the Board received the Building Industry Association of Clark County's Motion to Intervene.

On January 10, 2008, the Board received the County's approval of Petitioners' Stipulated Additions and Revisions to the Index to the Record.

On January 10, 2008, the Board issued its Prehearing Order in this matter.

On January 10, 2008, the Board received the County's Second Objection to the Second Revised Statement of Issue Two.

On January 11, 2008, the Board sent correspondence to the parties in regard to the Issue Statement.

On January 14, 2008, the Board received the City of La Center's Motion to Intervene.

On January 17, 2008, the Board received Intervenors Johnston Dairy's Motion to Strike Issues 2(c) and 2(d).

On January 25, 2008, the Board received Petitioners' Response to Intervenors' Motion to Strike Issues 2(c) and 2(d).

On January 28, 2008, the Board issued its Order Granting Intervention to the City of La Center.

On January 28, 2008, the Board issued its Order Granting Intervention to the Building Industry Association of Clark County.

On February 1, 2008, the Board received Petitioners' Motion to Supplement the Record.

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On February 11, 2008, the Board sent correspondence to the parties in regard to Intervenors' Motion to Strike.

On February 13, 2008, the Board issued is Order Granting Motion to Strike Issues 2(c) and 2(d).

On February 13, 2008, the Board sent correspondence to the parties notifying them that the Presiding Officer in this matter was being changed. Holly Gadbaw became Presiding Officer.

On February 25, 2008, the Board received Clark County's Stipulated Additions to the Index to the Record.

On February 25, 2008, the Board received Petitioners' Prehearing Brief, with attachments.

On March 5, 2008, the Board issued its Notice of Change of Date and Hearing Location for the Hearing on the Merits.

On March 17, 2008, the Board received Intervenors Gustafson, Hinton Development, and MacDonald Properties' Prehearing Brief on Agricultural Land Issues, with attachments.

On March 17, 2008, the Board received Intervenors T3G LLC and Germann's Prehearing Brief on SEPA Issues, with attachments.

On March 17, 2008, the Board received GM Camas LLC's Prehearing Brief and Motion to Supplement the Record, with attachments.

On March 17, 2008, the Board received Intervenors Johnston Dairy's Prehearing Brief, with attachments.

On March 17, 2008, the Board received Intervenor City of La Center's Prehearing Brief.

On March 18, 2008, the Board received Clark County's General Prehearing Brief, with attachments and Clark County's Prehearing Brief on SEPA Issue, with attachments.

On March 21, 2008, the Board received Intervenor City of La Center's Motion to Supplement the Record, with attachments.

On March 28, 2008, the Board received Petitioners' Prehearing Reply Brief and Motion to Supplement the Record, with attachments.

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On April 1, 2008, the Board held its Hearing on the Merits for this matter. Present for the Western Washington Growth Management Hearings Board were Board Members James McNamara and Holly Gadbaw; Board Member Gadbaw presiding. Petitioners were represented by Keith Scully. Respondent Clark County was represented by Richard Lowry and Richard Settle. Marty Snell also attended for the County. Intervenor City of La Center was represented by Daniel Kearns. Intervenors Johnston Dairy LLC and Lagler Real Property LLC were represented by Stephen Horenstein and James Howsley. Intervenors Gustafson, Hinton Development, and MacDonald Properties were represented by Randall Printz. Intervenors T3G LLC and Germann were represented by Michael Simon. Intervenor GM Camas LLC was represented by Alexander Mackie. No other intervenor filed a brief or was represented at the hearing.

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APPENDEX B
PRELIMINARY MATTERS

John Karpinski, et al v. Clark County WWGMHB Case No. 07-2-0027

Motions to Supplement the Record

Several Motions to Supplement the Record were filed in conjunction with the parties briefing. Both the GMA, at RCW 36.70A.290(4), and the Board's Rules of Practice and Procedure, at WAC 242-02-540, permit the additional evidence subject to a finding by the Board that such additional evidence would be necessary or of substantial assistance to the Board in reach its decision.

- Intervenor GM Camas LLC

In conjunction with its Prehearing Brief, Intervenor GM Camas LLC seeks the addition of an October 2, 2006 letter drafted by this Intervenor to Clark County's Department of Community Planning. This letter contains GM Camas's comments on the DEIS for the update of the Comprehensive Plan.[160]

- Intervenor City of La Center

Subsequent to the filing of its Prehearing Brief, Intervenor City of La Center filed a Motion to Supplement the Record with the City's FEIS for the La Center Comprehensive Plan Amendment, dated December 19, 2006.[161] The FEIS analyzed the City's proposal to expand its UGA.

- Petitioners Karpinski, et al.

In conjunction with its Reply Brief, Petitioners seek the addition of a May 24, 2005 News Release issued by Clark County which Petitioners contend demonstrates Clark County's

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[160] Intervenors' GM Camas LLC Prehearing Brief, at 19.
[161] Intervenor City of La Center Motion to Supplement, at 1.

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public participation violations.[162] In addition, Petitioners seek addition of a September 22, 2006 letter drafted by Petitioners to County Commissioner Morris commenting on the County's EIS and the Growth Plan Alternatives.[163]

Conclusion

The Board did not receive, orally or in writing, any objections to the proposed additions. The Board finds these documents are relevant to the issues before the Board in this matter and will be of substantial assistance to the Board when analyzing the issues presented. **The Record shall be supplemented with these documents.**

Motion to Intervene

The Board notes that the Building Industry Association of Clark County (BIACC) filed a Motion to Intervene, with the Board subsequently granting this motion.[164] Despite this, BIACC did not submit a brief in this matter nor did they participate at the Hearing on the Merits. **Therefore, the Board concludes BIACC has abandoned any interest in this matter and is dismissed as an intervenor.**

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[162] Petitioners' Reply Brief, at 5.
[163] Petitioners' Reply Brief, at 5
[164] January 9, 2008 BIACC Motion to Intervene; January 28, 2008 Board's Order Granting Intervenor Status to BIACC.

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WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Case No.: 07-2-0027

John Karpinski, Clark County Natural Resources Council and Futurewise v. Clark County

DECLARATION OF SERVICE

I, PAULETTE YORKE, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the Executive Assistant for the Western Washington Growth Management Hearings Board. On the date indicated below a copy of a FINAL DECISION AND ORDER, AMENDED FOR CLERICAL AND GRAMMATICAL ERRORS JUNE 3, 2008 in the above-entitled case was sent to the following through the United States postal mail service:

Clark County Natural Resources Council (CCNRC)
1701 Broadway, PMB 231
Vancouver, WA 98663

John Karpinski
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Vancouver, WA 98661

Richard Lowry
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Stephen W. Horenstein
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500 E. Broadway, Suite 400
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DATED this 3rd day of June, 2008.

Paulette Yorke, Executive Assistant

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APPENDIX 2

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BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL and FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent.

And

GM Camas L.L.C., Johnston Dairy, et al and MacDonald Properties, Daryl Germann, Curt Gustafson, T3G, LLC and Hinton Development Corporation, Building Industry Association of Clark County and City of LaCenter,

Intervenors.

Case No. 07-2-0027

COMPLIANCE ORDER

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CLARK COUNTY
RISK MANAGEMENT

This matter came before the board on October 20, 2009, pursuant to the Board's earlier Order Finding Continuing Noncompliance and Invalidity.[1] Nina Carter, James McNamara, and William Roehl participated on behalf of the Board with Mr. Roehl presiding. Christine Cook represented Clark County (the County). Robert Beattey represented the Petitioners. Brian K. Gerst represented McDonald Properties and GM Camas, LLC. James D. Howsley represented Johnston Dairy, et al. Daniel H. Kearns represented the City of La Center.

[1] Order Finding Continuing Noncompliance and Invalidity, January 8, 2009. This Order set a compliance hearing date of September 2, 2009. However, due to the illness of one of the parties' attorneys, the compliance hearing was rescheduled to October 20, 2009.

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I. RELEVANT PROCEDURAL HISTORY

This case originally arose from the County's adoption of Ordinance 2007-09-13 which, among other things, de-designated various areas of agricultural lands of long-term commercial significance and added those lands to Clark County cities' Urban Growth Areas (UGAs). The Board issued an Amended Final Decision and Order (AFDO) on June 3, 2008, which found, *inter alia*, that the de-designation of numerous areas throughout the County did not comply with provisions of the Growth Management Act.[2] The Board's decision was appealed to the Clark County Superior Court.[3]

Prior to the expiration of the compliance period established by the Board's January 2009 Order, the Clark County Superior Court issued its decision.[4] The Court reversed the Board in part,[5] upheld the Board in part,[6] and found one of the de-designation decisions was moot.[7] The Superior Court's ruling was subsequently appealed and cross appealed to the Court of Appeals, Division II.[8]

II. BURDEN OF PROOF

For purposes of Board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local government.

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[2] RCW 36.70A.170 and RCW 36.70A.020(8).
[3] Clark County Superior Court Consolidated Cause No. 08-2-03625-5. No party having sought a stay during this court appeal, on January 8, 2009, the Board issued an Order Finding Continuing Non-Compliance and Invalidity based on the fact that Clark County had taken no action to achieve compliance.
[4] Clark County Superior Court Memorandum of Decision, May 20, 2009; Clark County Superior Court Order, June 12, 2009.
[5] The Board was reversed with respect to the following areas: CA-1, CB, LB-1, LB-2, LE, VA, VA-2, and WB.
[6] Areas BC and VB.
[6]Area RB-2. The Court's Order of June 12, 2009 stated "Area RB-2 is moot and remanded to the Board for proceedings consistent with this decision." It is the Board's understanding that the Court's decision regarding RB-2 was based on the belief that the City of Ridgefield had annexed RB-2 in its entirety. The County's compliance report indicates that only a portion of RB-2 was annexed and thus the area remaining under the County's jurisdictional authority remains before the Board for consideration.
[8] Court of Appeals Division II. Docket No. 39546-1.

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Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

This same presumption of validity applies when a local jurisdiction takes legislative action in response to a noncompliance finding; that legislative action is presumed valid. The only time that the burden of proof shifts to the County is when the County is subject to a determination of invalidity.[9] The Board imposed invalidity in this matter.[10]

Therefore, the County has the burden to demonstrate that the action it has taken in response to the Board's Amended Final Decision and Order of June 3, 2008 no longer substantially interferes with the goals of the GMA.

Additionally, on legislative actions taken by a local jurisdiction in response to a finding of noncompliance, the statute further provides that the standard of review shall be whether the challenged enactments are clearly erroneous:[11]

> The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."[12]

Within the framework of state goals and requirements, the boards must grant deference to local governments in how they plan for growth:[13]

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[9] RCW 36.70A.320(2) and (4).
[10] AFDO, at 72.
[11] RCW 36.70A.320(3).
[12] *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
[13] RCW 36.70A.3201 (in part).

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> In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

III. ISSUE TO BE DISCUSSED

Although the Board's June 2008 AFDO found Clark County had failed to comply with the GMA in regards to 11 areas, the appeals currently pending before the court continue the debate over many of these areas, specifically LB-1, LB-2, LE, VA, VA-2, and WB. Because of the court appeal, the Board issued an Order Granting Limited Stay of Compliance Proceedings in regards to these six areas.[14] However, the other areas – BC, CA-1, CB, RB-2, and VB – remain before the Board and will be addressed in this Order.

The current compliance proceeding addresses the following two issues:

1. Whether Clark County has taken effective action in regards to areas BC, VB and the portion of RB-2 not annexed by the City of Ridgefield to bring itself into compliance and, if not, should the Board's prior determination of invalidity be continued?
2. What is the impact of the annexation of a portion of Area CA-1, Area CB, and the portion of Area RB-2 annexed by the City of Ridgefield in regards to Clark County's duty to achieve compliance with the GMA as set forth in the Board's AFDO?

IV. DISCUSSION AND ANALYSIS

Compliance-Areas BC, VB, and RB-2

[14] August 6, 2009, Order Granting Limited Stay of Proceedings.

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The areas clearly before the Board for consideration in these compliance proceedings are BC, VB, and the portion of RB-2 which was not annexed City of Ridgefield. The County's Compliance Report failed to indicate any actions taken to bring these areas into compliance. During the compliance hearing, the County stated the court appeal regarding these three areas has been dismissed by a Court of Appeals order entered on September 25, 2009. Furthermore, the County stated that it is in the process of providing notification of intent to consider re-designation of those areas as agriculture lands of long-term commercial significance. The County's anticipated timeline will culminate with action by the Board of County Commissioners in mid-December 2009.

The Petitioners requested an order be entered finding the County remains in continuing noncompliance in regards these three areas.

In that the County has yet to complete any compliance action, the Board's sole and appropriate option is to find the County in continuing noncompliance.

Conclusion: As to Areas BC, VB, and the portion of RB-2 which was not annexed by the City of Ridgefield, the County continues to be out of compliance with RCW 36.70A.170. Furthermore, the de-designation of those areas continues to substantially interfere with RCW 36.70A.020(2) and (8), thus warranting continuation of invalidity.

Compliance- Areas CA-1, CB, and RB-2

More troubling to the Board are three areas previously found to be non-compliant and invalid – CA-1, CB, and RB-2. The County requests the Board issue an order finding compliance and removing invalidity with respect to these areas because all three have been annexed and the related appeal is moot.[15] In addition, the County notes the Clark County

[15] Clark County's Compliance Report, at 3-4

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Superior Court reversed the Board's decision as to CB and as to the property owned by GM Camas, LLC,[16] which the County states constitutes Area CA-1.[17]

The history of the lands under appeal, the annexation in relationship to this appeal, and the Clark County Superior Court decisions are pertinent to the Board's resolution of this matter.

City of Ridgefield: In the underlying case, Clark County dealt with two areas related to the City of Ridgefield – RB-1 and RB-2. Of these areas, the Board concluded that only the de-designation of agricultural lands of long-term commercial significance found in RB-2 to be in violation of the GMA.[18] On January 4, 2008, prior to the issuance of the AFDO[19], Ridgefield received a Notice of Intention to Annex lands within RB-2.[20] On April 10, 2008, just nine days after the Hearing on the Merits, the City approved the annexation.[21]

RB-2 encompassed 11 parcels for a total of 199.69 acres and was located along NW Hillhurst Road in the vicinity of land destined to be a new high school.[22] The annexation approved by Ridgefield Ordinance No. 991related to five of these parcels, those for which Intervenor Pacific Lifestyle Homes had an interest.[23] The County concedes the fact that not all land was annexed. Its Compliance Report states: "[M]ost of Area RB-2 was annexed."[24] Since not all of the land encompassed by RB-2 was annexed[25], the appeal is not moot, as Clark County insinuates. Thus, the conclusions set forth in the Board's AFDO

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[16] Clark County's Compliance Report, at 3.
[17] Clark County's Compliance Report, at 3.
[18] AFDO, at 52-53.
[19] Issued June 3, 2008.
[20] Clark County's Compliance Report, Exhibit 8 – Ridgefield Ordinance No. 991. It should be noted that the Petition for Review initiating this case was filed on November 16, 2007.
[21] Clark County's Compliance Report, Exhibit 8. The Board was not informed, either in briefing or at the HOM, of the pending annexation.
[22] Exhibit 605, Attachment A.
[23] Exhibit 8, Ridgefield Ordinance 991 – Exhibit 1; Intervenor's HOM Brief, Exhibit JL-2.
[24] Clark County's Compliance Report, at 3.
[25] Six parcels remain within the County's jurisdiction.

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as to these unannexed parcels, along with the determination of invalidity, were and are effective.

It should also be noted that the Clark County Superior Court did not rule on the merits of the Board's decision in regards to RB-2; rather the Court, apparently relying on a representation that the property subject to RB-2 had been annexed, found the appeal moot and remanded to the Board for proceedings consistent with the Court's decision.[26] As noted above, not all land was annexed and therefore the County was required to take legislative action on the portion of RB-2 which remains subject to the County's jurisdiction. The Superior Court's holding did not modify the Board's previously issued finding of non-compliance and determination of invalidity in this regard.

City of Camas: Two City of Camas areas were contested – CA-1 and CB – with the Board finding the de-designation of both of these areas failed to comply with the GMA.[27] CA-1, located near the northwest corner of Camas's UGA, was comprised of 34 parcels.[28] CB, located across Lacamas Lake from the UGA, contained 17 parcels. Property owners for some of these parcels did participate as intervenors in this appeal, namely GM Camas LLC (property interests within CA-1) and Johnston Dairy LLC (property interests within CB). Similar to Ridgefield, the City received a Notice of Intention for lands contained in CA-1 on December 14, 2007 and for CB on December 11, 2007, with annexation completed on April 21, 2008.[29]

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[26] June 12, 2009 Order; May 20, 2009 Memorandum of Decision.
[27] AFDO, at 79.
[28] The Board notes that the Superior Court Memorandum of Decision referred to Area CB-2. There was no such area and the Court Order later referred to Area CA-1. Based on the Court's descriptions of "Area CB-2", the Board concludes that it was in fact referencing Area CA-1 in the Memorandum of Decision.
[29] Clark County's Compliance Report, Exhibits 5 and 6, Camas Ordinances. As was the case with Ridgefield, the Board was not informed, either in briefing or at the HOM, of the pending annexation.

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The 34 parcels of CA-1 totaled 342.46 acres yet the annexation approved with Ordinance No. 2512 encompassed substantially more - in excess of 550 acres.[30] The February 2009 Stipulated Order explicitly limited the Court's holding, which reversed the Board, to the GM Camas property.[31] That is, the Court's Order did not encompass all of the lands within CA-1, a fact not clearly stated by the County in its Compliance Report.[32] Furthermore, the City did not annex all of the lands covered by CA-1, excluding those parcels along the eastern edge of the expanded UGA. That fact was not mentioned by the County. In fact, the County stated that "Area CA-1 . . . (was) annexed by the City of Camas". [33]

Area CB was fully annexed with the adoption of Ordinance No. 2511.[34] Clark County no longer has authority over this land as it is now contained within the municipal boundaries of the City of Camas. Although the Superior Court appeared to be confused as to CB's location and characteristics, the Court did reverse the Board. [35]

Conclusion: The Board does not dispute that Camas and Ridgefield have annexed properties that were the subject of this appeal prior to the issuance of the Board's AFDO. Since invalidity can only apply prospectively,[36] the Board's ruling on invalidity had no effect on those annexed lands. Therefore, although the Board does not view rescission of invalidity as a necessity, the Board will expressly rescind its Determination of Invalidity as to those lands within CA-1, CB, and RB-2 which have been annexed to their respective

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[30] County's Compliance Report, Exhibit 5 – Ordinance 2512.
[31] " . . .the Western Washington Growth Management Hearings Board's Final Decision and Order is hereby reversed, with respect to GM Camas, LLC ." Stipulation and Agreed Order, February 6, 2009, pg. 2.
[32] "By a Stipulated and Agreed Order . . . Clark County Superior Court reversed the FDO with regard to the property owned by GM Camas, LLC, **which is Area CA-1**." Clark County Compliance Report at 3.
[33] Clark County Compliance Report at 3.
[34] Clark County Compliance Report, Exhibit 6 – Ordinance 2511.
[35] The Superior Court incorrectly refers to this area as CB-2, a reference that did not exist in this matter. The Superior Court also notes that a substantial portion of this area is within a golf course. However, the golf course – owned by GM Camas LLC – is located within CA-1. May 20, 2009 Memorandum of Decision, at 4; June 12, 2009 Order.
[36] RCW 36.70A.302(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the Board's order.

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municipalities. As a result of these annexations, the GMA's duty of planning for growth for the annexed areas, including the provision of public facilities and services, is now the sole responsibility of the respective cities.

However, the issue presented to the Board with the PFR was whether the County's adoption of Ordinance 2007-09-13, which de-designated areas of previously designated agricultural lands of long-term commercial significance and adding that land to Clark County cities' UGAs, violated the GMA. The annexation of the land did not modify the underlying issue – it modified Clark County's ability to take legislative action in order to comply with the mandates of the GMA as determined by the Board in the AFDO. **The Superior Court's reversal of the Board's AFDO in regards to the GM Camas LLC property in CA-1, and in regards to CB, is acknowledged and the Board issues a Finding of Compliance.**

The Superior Court did not reverse the Board's conclusions as to RB-2; it remanded, finding the challenge regarding that area to be moot. However, as to the annexed lands in RB-2, since Clark County no longer has the authority to take legislative action to remedy its clearly erroneous de-designation of annexed lands, the Board has no alternative but to withdraw its order to achieve compliance.

As to the parcels which remain within the County's authority in CA-1 and RB-2, the Board's conclusion as to non-compliance and invalidity remain. The County, as ordered by the Board's June 2008 AFDO and January 2009 Compliance Order, was to take legislative action to achieve compliance with the GMA. This the County has not done and, therefore, the Board finds continuing non-compliance and continuing invalidity as to the unannexed lands within CA-1 and RB-2.

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VI. ORDER

The Board's prior determinations of noncompliance and invalidity regarding the GM Camas LLC property in Area CA-1, Area CB, and the portion of Area RB-2 annexed by the City of Ridgefield are rescinded.

Clark County must take legislative action to comply with the GMA in regards to Areas BC, VB and the portions of RB-2 and CA-1 which were not annexed by the cities of Ridgefield and Camas, respectively, in accordance with the Board's prior orders within 120 days of this order according to the following schedule:

Item	Date Due
Compliance Due	**February 25, 2010**
Statement of Actions Taken and Index to Compliance Record Deadline	March 11, 2010
Objections to a Finding of Compliance Deadline	April 1, 2010
Response to Objections Deadline	April 15, 2010
Compliance Hearing	April 27, 2010

ENTERED this 29th day of October, 2009.

William Roehl, Board Member

James McNamara, Board Member

Nina Carter, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for

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reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. A response to a Motion for Reconsideration must be filed within 5 days of the filing of the motion.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Case No.: 07-2-0027

John Karpinski, Clark County Natural Resources Council and Futurewise v. Clark County

DECLARATION OF SERVICE

I, PAULETTE YORKE, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the Executive Assistant for the Western Washington Growth Management Hearings Board. On the date indicated below a copy of a COMPLIANCE ORDER in the above-entitled case was sent to the following through the United States postal mail service:

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Vancouver, WA 98663

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Randall B. Printz
Michael Simon
Brian K. Gerst
Landerholm, Memovich et al
915 E. Broadway
PO Box 1086
Vancouver, WA 98666

DATED this 29th day of October, 2009.

Paulette Yorke, Executive Assistant

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APPENDIX 3

COPY
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL and FUTUREWISE,

Petitioners below and
Respondents on Review,

v.

CLARK COUNTY,

Respondent below,

and

GM Camas LLC, Johnson Dairy, et al., MacDonald Properties, Daryl Germann, Curt Gustafason, T3G, LLC, Hinton Development Corporation., and Building Industry Association of Clark County,

Intervenor-Respondents below,

and

City of LaCenter,

Intervenor-Respondent below and
Petitioner on review.

08 2 03649 2

Superior Court Case No. _____

WWGMHB Case No. 07C-2-0027

PETITION FOR JUDICIAL REVIEW OF FINAL DECISION AND ORDER OF THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Clark County petitions this Court for review of the Final Decision and Order (FDO) of the Western Washington Growth Management Hearings Board (WWGMHB) issued on May 14,

CLARK COUNTY PROSECUTING ATTORNEY
CIVIL DIVISION
604 W EVERGREEN BLVD • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2478 (OFFICE) / (360) 397-2184 (FAX)

2008 in Case No. 07-2-0027, pursuant to RCW 36.70A.300(5) and the Administrative Procedures Act, RCW 34.05.510 to 34.05.598.

1. **Petitioner:** The Petitioner to this appeal is:

Clark County
1300 Franklin Street
Vancouver WA 98660

2. **Petitioner's Attorney:** Petitioner is represented by:

Chris Horne, WSBA No. 12557
Clark County Prosecuting Attorney
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Vancouver, WA 98666
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Fax: (360) 397-2184
e-mail: chris.horne@clark.wa.gov

3. **The Agency:** The agency whose Final Decision and Order is challenged in this appeal:

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Fax (360) 664-8975

4. **Agency Action Challenged in this Appeal:**

The agency action challenged in this appeal is a May 14, 2008 FDO by the WWGMHB in Case No 07-2-0027. This decision arose as an appeal by Petitioners, John Karpinski, Clark County Natural Resource Council and Futurewise (collectively "Futurewise"), pursuant to RCW 36. 70A.280 challenging a September 9, 2007 legislative enactment (Ordinance 2007-09-13) by the Clark County Board of Commissioners that amended the urban growth areas for all cities in Clark County. Relevant to Futurewise's arguments below, Clark County had de-designated 19 areas of land (4,351 acres) from agricultural to a nonresource designation and included those lands within the urban growth areas of cities.

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In its FDO – the decision challenged in this appeal – the WWGMHB rejected those portions of Clark County's decision de-designating the following 10 areas: Camas CA-1 (342.56 acres), Camas CB (402.19 acres), LaCenter LB-1 (218.81 acres), LaCenter LB-2 (244.53 acres), LaCenter LE (112.47 acres), Ridgefield RB-2 (199.69 acres), Vancouver VA (125.02 acres), Vancouver VA-2 (22.89 acres), Vancouver VB (780.43 acres) and Washougal WB (116.06 acres). The WWGMHB overturned Clark County's decision to de-designate these 10 areas and include them within urban growth boundaries.

5. **Parties to the administrative proceeding and their attorneys of record:**

The parties to the adjudicative proceedings that led to the agency action are:

- Respondent below: Clark County, a political subdivision of the State of Washington.
- Intervenor-Respondents below: Johnson Dairy, E.T. Royle Family Partnership, Pacific Lifestyle Homes, Inc., Renaissance Homes, Vision First, LLC, and Lagler Real Property, LLC (collectively the "Johnson Dairy Intervenors"), GM Camas LLC, MacDonald Properties, Daryl Germann, Curt Gustafason, T3G, LLC, Hinton Development Corporation, the Building Industry Association of Clark County, and City of LaCenter.
- Petitioners below: John Karpinski, Clark County Natural Resources Council ("CCNRC") and Futurewise.

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6. **Facts demonstrating entitlement to relief:**

The process employed by the County in revisiting the decisions made in the 10-year update to its urban growth boundaries was lengthy, citizen oriented, and comprehensive. In reviewing the narrow challenges now made to such process, it is important that this Hearings Board have an appreciation for the scope and depth of the County's work. Accordingly, the following description of the County's process is intended to broadly describe the County's process, rather than simply cull those records relevant to the issues on review.

6.1 ***The Decision to Re-Open the 2004 Plan.***

The County adopted its initial GMA comprehensive plan in 1994. Urban growth boundaries were first expanded in a major plan update adopted in September of 2004. The 2004

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plan, in part, responded to the GMA mandate in RCW 36.70A.130(3) that urban growth areas "at least every ten years . . . shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period." Growth projections are to be based upon the range provided by OFM pursuant to RCW 43.62.035. OFM projected a 20-year population increase at an annual rate between 1.15 and 2 percent, resulting in a 20-year need to accommodate between a population range of 465,591 to 600,963 inhabitants. *Ex. 135.* The 2004 plan had assumed a growth rate of 1.69 percent.

Fourteen appeals were filed with this Hearings Board challenging the 2004 plan, two by the present petitioners and ten by the City of Battle Ground and various development interests. The latter appeals focused, in part, on the last minute reduction in the assumed growth rate from 1.83 to 1.67 percent. 2005 also saw a change in the makeup of the Board of Clark County Commissioners. The new Board expressed its view that the growth rate assumed in the 2004 plan was unrealistically low based upon historic trends and committed to reopening the plan. *Ex. 143.* In reliance upon County assurances for additional local process, the City of Battle Ground and the development petitioners withdrew their appeals. On November 23, 2005, this Hearings Board issued its amended Final Decision and Order in *Building Ass'n of Clark County v. Clark County, WWGMHB No. 04-2-0038c*, upholding the 2004 plan.

6.2 **The Revised Growth Forecast.**

The County's early work focused upon the "assumptions" which would provide the framework for plan revisions. Consistent with prior Hearings Board decisions, the County addressed assumptions relating to both "need" and "capacity." As to "need," the Board of County Commissioners (BOCC) first addressed residential growth, concluding that a growth rate of 2.0 percent, with 2.2 percent assumed in 2004-2010 for capital facilities planning purposes,

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was a more reasonable planning forecast which falls well within the OFM range of 1-2.5% *Exs. 158 (memorialization of 5/10/05 work session); 5127 (memorialization of 5/17/05 work session).* Annual County growth rates from 1990 through 2004 had ranged from a low of 2.4% (2003) to a high of 5.3% (1990), with an average growth rate exceeding 3.1%. *Ex. 135.*

As to needed employment lands, the BOCC decided that the County should strive to bring its current County's jobs-to-population ratio (1 to 2.9) more into line with the ratio in the metropolitan areas (1 to 2).

The County's early work also involved "ground truthing" the capacity assumptions embedded in the Vacant Buildable Lands Model (VBLM) which had been challenged, albeit unsuccessfully, in the appeal of the 2004 plan. Based largely on improved data available from the County's Geographic Information System (GIS), modifications were made to the VBLM model relating to infrastructure set asides, critical area development limitations and redevelopment potential. *E.g., Exs. 90, 189.*

A partial listing of the resulting planning assumptions underlying the 2007 update process (with similarities or differences with 2004 assumptions noted in parentheses) is set forth in Volume 3 of the FEIS at pages 2-3.

6.3 **BOCC Principles and Values.**

In addition to refining the "need" and "capacity" assumptions which would provide the technical underpinnings for the plan update, County legislative body also wished to provide a policy context. In September, 2005, following several months of discussion in open work sessions, the BOCC adopted the following set of Principles and Values to guide the update process. These Principles and Values were intended to provide broad direction consistent with,

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but more locally oriented, than GMA's goals. Table 3 of the FEIS, Volume 3 at pages 16-18, evaluates consistence of alternatives with the BOCC's Principles and Values.

6.4 **The Alternatives.**

In June of 2005, the BOCC invited the public and its cities to recommend potential UGA expansion areas. More than 800 citizens responded with comments either favoring or opposing various UGA expansion alternatives. *See generally, the Index at pages 1 through 37.* City proposals, both for and against expansion, were also provided. Based upon the input received, a "maximum study area" map was produced for consideration by the BOCC in developing the alternatives to be subjected to environmental and capital facilities analysis. *Ex 5269.*

Consistent with the revised growth projection, it was decided that all of the alternatives should assume the same population and jobs growth rates allowing environmental and capital facilities impacts to be comparable. Specifically, each alternative would assume that about 192,000 more people would live in Clark County over the planning horizon (for a total population of about 584,000), with 90 percent (about 173,000) settling in urban areas. In short, 67,000 new urban dwelling units and 138,000 new jobs would be needed. *FEIS Vol. 1, page 3.*

The BOCC selected three broad alternatives for environmental analysis, capital facilities review, and public comment. Alternative 1 assumes that urban growth areas will not be expanded so that needed new homes and jobs would have to be achieved by increased density within current UGA's. Alternative 2 is the "preferred alternative" reflecting the BOCC's leanings on UGA expansion based upon the process to date. Alternate 3 consists of additional potential expansion subareas reflecting citizen and city input which could be substituted for lands within Alternative 2 to avoid or reduce significant impacts. *FEIS, Volume 3, at pages 3-4.*

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6.5 **The EIS.**

The County determined that the passage of time warranted a new EIS process, rather than merely supplementing the environmental documents produced for the 2004 plan. In October of 2005, the County undertook the public scoping process. A draft EIS was issued on August 25, 2006. The comment period was extended. *Ex. 5772.* A public hearing on the DEIS was also held. The FEIS was released on May 1, 2007. Volume 2 of the FEIS includes the numerous comments received and the County responses.

6.6 **Public Participation.**

The County continually solicited, received, and considered public input through its update process.

The BOCC formally approved a "Public Outreach Plan" for the update on May 2, 2005 *(Ex. 20)* calling for news releases, ads, open houses, web site information, newsletters, speaker presentation, and cable television interviews. The County process encompassed all of this and much more. Appendix F of the adopted Plan recites many but not all the extensive steps taken by the County to ensure the public's ongoing awareness of and opportunity to participate in the update process. Nine "open houses" were held at key points in the process. The County web site contained continually updated in-depth information. A county-wide newsletter was mailed in the spring of 2007. A public hearing on the DEIS was held on September 20, 2006. Joint BOCC/Planning Commission public hearings were held June 5 and 6, 2007, and the BOCC held its own public hearings on June 20, 26, 27, 29, July 5, 10, August 14, and September 18, 25, 2007.

The Index reflects more comprehensively the early and continuous County efforts to engage its citizens. Because of the limited nature of Petitioners' public participation claims, the County

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is not including the numerous documents in the Index reflecting its enormous public outreach effort. However, a brief listing of relevant Index documents is appropriate in giving context to Petitioners' claims. Each of the 39 BOCC work sessions noted in the Appendix of the Comprehensive Plan, including the agricultural discussions, were noticed and allowed public input.[1] The County issued at least 56 news releases reflecting progress in the plan update effort and inviting public input.[2] In addition to the county-wide newsletter, information was provided on a regular basis to a mailing list which ultimately included more than 2500 persons who had expressed an interest in the county process. *Comprehensive Plan, Introduction at p. 1.9.*[3]

6.7 **The Issues.**

The extensive public process raised both policy and legal issues. Both were addressed in a series of thirteen "Issue Papers" produced by staff. *Exs. 6605 (Issue Papers 1, 3, 5, 7,8, 10, 12 and 13); 6346 (Issue Papers 1, 2, 4, 6, 8, 9 and 11).* The quality of the analysis in these papers is likely a reason why the challenges to the 2007 plan are so limited. A summary of major issues not appealed is set forth below.[4]

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[1] *See generally,* Index Nos. 37, 39, 49, 84, 90, 96, 109, 135, 159, 189, 203, 245, 300, 363, 410, 605, 607, 831, 5127, 5131, 5170, 5232, 5235, 5275, 5261, 5291, 5342, 5357, 5403, 5489, 5573, 5604, 5911, 5930, 5931, 5634, 6027, 6033, 6094, 6236, 6254, 6302, 6324, 6332, 6333, 6395, 6467, 6479 6490,6587, 6594, 6595, 6596, 6601, 6605, 6631, and 6652.)

[2] *See generally,* Index Nos. 29, 77, 83, 99, 129, 143, 151, 165, 180, 284, 195, 209, 251, 254, 422, 575, 826, 5275, 5279, 5328, 5389, 5400, 5410, 5434, 5748, 5629, 5640, 5758, 5772, 5779, 5816, 5898, 5870, 5935, 6045, 6284, 6225, 6283, 6291, 6298, 6299, 6305, 6308, 6315, 6353, 6355, 6405, 6408, 6413, 6423, 6434, 6458, 6480, 6501, 6514, and 6561.

[3] *See generally,* Index Nos. 180. 411, 5237, 5299, 5822, 5855, 5965, 6044, 6265, 6276, 6278, 6281, 6368, 6367, 6393, 6417, 6455, 6464, 6492 and 6577.

[4] *Issues Not Appealed:* Major themes of the 2007 update reflecting the BOCC's early enunciation of guiding Principles and Values included: (a) accommodation of a two percent annual increase in population; (b) significantly increasing the jobs base in the County to be consistent with the Portland Metropolitan average; and (c) providing an adequate tax base for school districts. Issue Papers 1, 6 and 11 addressed the proposed plan's success in achieving these goals. Futurewise never contested the validity of the "numbers" underlying the County work. The update process did surface major philosophical and methodology issues with the City of Vancouver. The former centered

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Three unresolved issues were raised before the WWGMHB: the adequacy of environmental review, the de-designation of agricultural lands, and the public process. Each was the subject of a staff Issue Paper. A description of the County's public outreach efforts is set forth above. The County process dealing with the environmental and agricultural land conversion issues is summarized below.

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[4] *cont.*
on issues regarding annexation and where growth should be encouraged. The latter focused upon technical assumptions imbedded in the VBLM analysis relating primarily to redevelopment assumptions and additional growth which should be assumed based upon subarea planning undertaken by the City. Numerous submittals by the City reflect its position. *Ex. 186 is an example.* Issue Paper No. 2 addresses the technical issues from the County staff perspective. This interjurisdictional friction previously has been before this Hearings Board in an appeal relating to the lifting of the urban holding designations under the 2004 plan. *City of Vancouver v. Clark County, WWGMHB No. 06-2-0013.* The more narrow issues then presented ultimately were successfully resolved. *Ex. 5656 (Res. 2006-06-05).* The broader disputes presented by this update were partially addressed in the comprehensive plan update and also are the subject of a forward-looking interlocal agreement entered into between the County and City on December 4, 2007. *Ex. 6542.* The City of Vancouver has not challenged the County's 2007 plan.

A significant procedural issue underlying the entire update process is the allowed frequency of UGA expansions under statutory and locally enacted limitations. Issue Paper No. 4 deals with this question. Revised County policies addressing UGA expansions are set out in the CP in Chapter 13 and in revisions to Chapter 40.500 of the County Code. The new criteria have not been challenged.

The County received letters from the Department of Community, Trade, and Economic Development (CTED) and the Department of Fish and Wildlife (WDFW) questioning whether the proposed plan for expansion of the Camas and La Center UGAs adequately addressed the GMA requirement to designate open space corridors within the between urban growth boundaries. Issue Paper No. 9 deals with this issue. The BOCC addressed the concern in its final designations for both cities. No appeal has been lodged.

Not surprising, questions were raised throughout the update process regarding whether projected growth could be accommodated by capital facilities plans. This was a major focus of the technical work underlying the plan update. The capital facilities review commenced in February of 2006 with a request for capability issued to service providers. The responses provided the basis for environmental review in the EIS. A comprehensive overview of the capital facilities element is set out in Appendix E of the Plan. Ultimately, the CFP question focused on schools generally, transportation within the Vancouver UGA, and sewer service capacity for the proposed La Center, Battle Ground and Ridgefield expansions. For schools, consistent CFPs were submitted, but the fundamental question came down to long-term funding. Consistent with its Principles and Values, the BOCC saw this as a fundamental land use question relating to tax base "equity" among districts which informed its decisions on areas/designations for expansion. For transportation, the analysis indicated that virtually the same major road improvements would be needed regardless of which alternative was selected. *FEIS; Issue Paper No. 12.* Although the analysis indicated no financial shortfall in the first six years of the plan, a significant long-term deficit existed. Strategies to deal with such deficit are set out at Page 5-35 of the Plan. Questions regarding the adequacy of the north county cities' sewer CFPs also were addressed. Again, no CFP issues are presented for Hearings Board resolution.

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Three challenges to the adequacy of the FEIS were filed with the County, two by the present petitioners and one by the City of Vancouver. *Exs. 6294, 6649 and 6650.* A hearing devoted solely to these three administrative appeals was conducted by the BOCC on June 27, 2007. *Ex. 6431.* Issue Paper No. 8 responded to the challenges. The BOCC deliberations on this matter were held on September 18, 2007. BOCC findings in rejecting the adequacy challenges are set forth in Ordinance No. 2007-09-13 at pages 8-9.

Issue Paper No. 7 dealing with conversion of agricultural lands is by far the longest. It reflects the in-depth analysis undertaken by the County to address GMA goals and requirements as judicially interpreted. The County undertook two major work efforts to address the conversion issue. First, a consultant was retained to report on the general state of the agricultural industry in Clark County. *Ex. 6548.* Second, staff analyzed all of the agriculturally designated areas under consideration for UGA inclusion against the statutory/WAC criteria. The result of this analysis is reflected in the spreadsheets attached to Issue Paper No. 7. *Ex. 6605.* The BOCC's consideration was also informed by property-specific analyses submitted by a number of property owners. A transcript of the BOCC deliberations, which focused upon relevant agricultural criteria as well as competing GMA goals, is found in Ex. 6606 and 6430. A summary of the BOCC's conclusions as to each expansion area is set out in the right-most column of the staff matrix. Such conclusions are also more generally set forth in Ordinance 2007-09-13 at pages 9-10.

6.8 **Ordinance 2007-09-13.**

The two-year update process culminated with the adoption by the BOCC of Ordinance 2007-09-13 on September 25, 2007. The adopted 2004-2024 Comprehensive Plan adds a total of 12,023 acres to urban growth boundaries. A breakdown of acreages added to each UGA by land

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use category is set out in Table 1.3 of the Plan at page 1-5. Of this total, 4352 acres of previously designated agricultural land were included within urban growth boundaries.

It is this record that supported the actions of the Clark County Board of Commissioners in adopting ordinance. The Board heard and considered testimony and weighed the evidence presented by both proponents and opponents to the GMA update. Yet the WWGMHB failed to properly consider the factual record in reviewing Clark County's comprehensive plan.

7. **Petitioner's Standing:**

Petitioner, Clark County, has standing to appeal as the legislative body whose decision was reversed, in part, by the WWGMHB.

8. **The reasons why relief should be granted:**

Petitioner will assert the following assignments of error:

8a. The WWGMHB misapplied and misinterpreted WAC 365-109-050 and the statutory definitions of the operative GMA terms in RCW 36.70A.030 when it determined that certain parcels were "agricultural land" under RCW 36.70A.170 and 36.70A.020 and when it then declared that Clark County had improperly de-designated these areas to a non-agricultural designation and included them in the urban growth area.

8b. The WWGMHB exceeded its authority, failed to apply correctly its review standard, and rendered a decision that was arbitrary and capricious by re-weighing and re-evaluating the evidence in the record and independently determining that these areas were agricultural lands of long-term significance.

8c The WWGMHB erred in concluding that expansions to the Urban Growth Areas (hereinafter "UGA") could not be considered until the issue of dedesignation of resource lands was resolved.

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8d The WWGMHB failed to give proper deference to the decision of the Clark County Board of Commissioners as required by RCW 36.70A.320 (3).

8e The WWGMHB erred in entering an order of invalidity: no error by the Clark County justified such findings or conclusions under RCW 36.70A.302.

8c. The WWGMHB's decision with regard to its factual determinations was not supported by substantial evidence in the whole record or adequate findings.

9. **Relief Sought:**

Petitioner, Clark County, respectfully requests this court to reverse and set aside the WWGMHB's FDO as it applies to those portions of Ordinance 2007-0913 that were modified or reversed by the WWGMHB. Further, Clark County requests this court reverse the finding of invalidity wrongly made by the WWGMHB.

Respectfully submitted this 12th day of June, 2008.

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APPENDIX 4

APPENDIX F

PUBLIC INVOLVEMENT

The public involvement program for the Plan update began with news releases advising residents of the Board of County Commissioners (BOCC) series of work sessions to review the 2004 Plan. Local cities were involved in contributing inputs and requests for changes to their Urban Growth Areas (UGAs). The cities of Ridgefield and La Center prepared and issued a separate SEPA review of their revised comprehensive plans.

Opportunities for public participation, input, and the program to inform Clark County residents consisted of the following:

Board of County Commissioner worksessions were held in 2005, 2006, and 2007:

1. April 19, 2005 — Review Planning Assumptions
2. April 26, 2005 — Vacant and Buildable Lands Model
3. May 3, 2005 — Capital Facilities Planning
4. May 10, 2005 — Review Planning Assumptions
5. May 17, 2005 — Review Planning Assumptions
6. May 25, 2005 — Review Planning Assumptions and Focused Public Investment
7. May 31, 2005 — Review Planning Assumptions
8. June 7, 2005 — Revenue Forecasting and Plan Monitoring
9. June 14, 2005 — Review City UGB Requests
10. June 28, 2005 — Review Property Owner Requests and Planning Assumptions
11. July 5, 2005 — Review Property Owner Requests
12. July 6, 2005 — Review Property Owner Requests
13. August 16, 2005 — Maximum Study Area
14. September 6, 2005 — Maximum Study Area Update and Mapping
15. December 13, 2005 — Alternative 2 Map Discussion
16. March 14, 2006 — Alternative 2 Map Discussion
17. May 23, 2006 — Comprehensive Plan Schedule
18. June 20, 2006 — DEIS Status and New VBLM Results
19. July 18, 2006 — Interchange Overlay Discussion
20. October 10, 2006 — Preferred Map
21. October 24, 2006 — Preferred Map
22. November 27, 2006 — Joint PC/BOCC Worksession to review materials
23. January 16, 2007 — FEIS Status and Review Comprehensive Plan Text
24. January 23, 2007 — Urban Holding and Annexation
25. January 30, 2007 — Agriculture
26. February 6, 2007 — Transportation Revenue Forecasting
27. February 27, 2007 — Economic Development
28. March 13, 2007 — Economic Development

29. March 20, 2007	Urban Holding and Annexation
30. March 21, 2007	Parks Master Plan and 2004 Urban Holding
31. March 27, 2007	Comprehensive Plan School Element
32. March 29, 2007	RTC Model
33. April 10, 2007	Transfer Development Rights
34. April 17, 2007	Urban Holding and Annexation
35. April 18, 2007	Industrial Lands Inventory
36. April 24, 2007	Transportation
37. May 1, 2007	Capital Facility Plan
38. May 15, 2007	Comprehensive Plan and Title 40
39. May 30, 2007	Dockets

- Media coverage—news releases, stories, and public notification of BOCC work sessions
- In-depth information on Clark County's Growth Management Plan web site
- Dissemination of information to a mailing list of interested citizens
- A Board of County Commissioner appointed Agriculture committee was formed to discuss agriculture today in the county. The committee met June through August 2006.

Opportunities for Public Comment

1. An **Open House** was held in October 18, 2005 to scope the draft alternative land use plans and to identify issues that need to be addressed in the draft environmental impact statement. The meeting included staff presentations, a question and answer session, and an open house format, with informational displays, maps, and handouts. Staff was present to respond to questions and elaborate on the available materials. No alternatives were presented at that time, but a "maximum impact area" illustrated the potential areas that could be included in the action alternatives. The public provided input on areas of the environment that should be evaluated in the DEIS. A copy of the scoping comments can be found on the County's Growth Management website.

2. Two public **Open Houses** were held in February 9 and 23, 2006 to present the alternatives and to give the public a progress report on the update of the comprehensive plan. A copy of the comments is available on the Clark County Growth Management Plan update webpage.

3. **Clark County Fair** August 4 through 13, 2006.
4. **DEIS released** public for public comment on August 25, 2006.
5. Three **Open Houses** were held in September 11, 12, 13, 2006 discuss the three draft alternative land use plans and to help select a preferred alternative land use scenario.
6. A **Public Hearing** on the Draft Environmental Impact Statement was held in September 20, 2006.
7. Joint Board of County Commissioners and Planning Commission **Hearings** November 23 and 24 to receive comment on Preferred Map.
8. **FEIS issued** April 20, 2007.
9. Three **Open Houses** were held in May 16, 22, 23, 2007 to discuss the capital facility plan.
10. A county-wide **community newsletter** was mailed from the Board in the spring 2007 with an update to the process and future hearings.
11. Joint Board of County Commissioners and Planning Commission **Hearings** June 5 and 6, 2007.

12. Planning Commission Deliberation Hearings were held on June 7, 11, and 12,
13. Board of County Commissioners Docket Hearing was held on June 19 and Deliberation Hearings on June 20, 26, 27, 29, July 5, 10, August 14, and September 18, 25.

APPENDIX 5

ORDINANCE NO. 2002-09-13

An ordinance relating to land use; adopting an updated Growth Management Comprehensive Land Use Plan, zoning maps and zoning ordinances; providing for severability; providing an effective date; and requiring notice.

WHEREAS, Clark County is required to update its comprehensive plan in accordance with the goals and requirements of RCW 36.70A (the Growth Management Act, or GMA); and

WHEREAS, the county's comprehensive plan is required to include maps and descriptive text covering the objectives, principles and standards used to develop the essential elements of the plan; and

WHEREAS, GMA directs counties to adopt urban-growth areas (areas within which urban growth is encouraged and outside of which only non-urban growth can occur) and to address these areas in the county-wide planning policies; and

WHEREAS, GMA mandates the county's identification and designation of critical areas and agricultural, forest, and mineral resources lands, together with the adoption of protective regulations; and

WHEREAS, the update of the county's comprehensive plan must be processed in compliance with the State Environmental Policy Act (SEPA), and include an analysis of cumulative effects of development in the county; and

WHEREAS, the county needs to address site-specific requests for comprehensive plan and zoning changes, and considered requests on more than 300 parcels; and

WHEREAS, 1) the county, pursuant to RCW 36.70A.130 revised UGAs to accommodate a new 20-year OFM population projection in 2004; (2) the board

determined that the public interest requires adjustment of the growth assumption in the 2004 plan from 1.67% annually to 2.0% annually; (3) the plan horizon has remained the same and the increased growth assumption continues to fall within the OFM range, and (4) the plan reflects principles and values adopted by the board at the outset of the update process; and

WHEREAS, copies of the county's proposed updated comprehensive plan are required to be and have been submitted to the state at least sixty days prior to final adoption, and the plan must be transmitted to the state within ten days after final adoption; and

WHEREAS, it is expected that the cities will complete the updates to their land use and capital facilities plans to make them consistent with the county plan; now therefore

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

I. FINDINGS

A. Findings, General

The Board of County Commissioners (the Board) finds that all GMA prerequisites for the revision of the county's comprehensive plan have been met and that the plan adopted herein achieves the goals and satisfies the requirements of the GMA, as follows:

1. Compliance with the Required Elements of the Comprehensive Plan. The 20-year Comprehensive Growth Management Plan adopted herein includes all of the following required elements: Land Use, Housing, Capital Facilities and Utilities, Rural and Natural Resources, Transportation, Economic Development, and Parks and Open Space. In addition, the plan also contains the following optional elements: Environment, Historic Preservation, Schools, Community Design, Annexation, and Procedural Guidelines.

2. Compliance with Resource and Critical Areas Designations and Regulation. Resource issues were not addressed in this plan revision; findings related to inclusion

of resource lands in UGAs are included in Section B below. Agricultural, forest and mineral resource lands are designated on the Comprehensive Plan map, and conserved through the establishment of minimum lot sizes and other zoning regulations.

3. Public Participation. The public participation requirements of the GMA have been met through an extensive public involvement process that included the following:
   a. A Technical Advisory Committee comprised of planners from the cities, the county and special districts, who met to discuss planning issues of a technical nature.
   b. Two county-wide mailings describing the GMA plan update process and progress made, and asking for comments on a variety of growth management issues.
   c. Three rounds of public meetings (February 2006; September 2006; May 2007) throughout Clark County on the environmental impact statement/capital facilities plan process, the land use alternatives, and the proposed plan.
   d. Extensive use of the Clark County website that included information on the GMA, an outline of the comprehensive plan update process, notices of meetings and hearings, maps of alternatives considered in the EIS process, meeting summaries, and issue discussions, the DEIS, and the FEIS, and a way to comment to the county directly about GMA issues.
   e. Ads, flyers, postcards, meeting summaries, etc. sent to a GMA e-mailing list of 780.
   f. Outreach to special audiences, including neighborhoods and youth; community groups; and staffing of a booth for the ten-day run of the 2006 Clark County Fair.
   g. Televised public hearings held by the Planning Commission and the Board on plan adoption.

4. State Environmental Policy Act (SEPA). The county has complied with the environmental review process required by SEPA, as follows:
   a. A scoping meeting was held in October 2005.
   b. A Draft Environmental Impact Statement (DEIS) outlining three alternatives was completed in August 2006. Open houses to review EIS information and to prepare citizens to comment were held in September 2006. A public hearing on the DEIS was held on September 20, 2006.
   c. A Final EIS was completed in May 2007. The FEIS focused on a preferred alternative, which subsequently became the proposal that was the subject of public hearings before the Planning Commission and the Board.
   d. The FEIS was a major decision tool in the comprehensive plan update process.

5. Amendment. The Comprehensive Plan provides adequate monitoring and amendment procedures.
   a. The Comprehensive Plan provides for a procedure to monitor internal and inter-jurisdictional consistency.
   b. The Comprehensive Plan contains provisions governing its amendment. Amendments will not be considered more than once each year.

c. The Comprehensive Plan provides for an automatic comprehensive review of urban growth areas at least once every ten years.

6. Record of Process.
   a. The Board and the Clark County Planning Commission conducted a duly-advertised joint public hearing on the comprehensive plan update on June 5, 6, and 7, 2007.
   b. The Clark County Planning Commission conducted a duly-advertised public hearing concerning recommendations for adoption of the Comprehensive Plan on June 7, 11, 12, and 13, 2007. A public hearing on annual reviews and dockets was held on May 17, 2007.
   c. The Board conducted a duly-advertised public hearing concerning the Planning Commission recommendation and adoption of the Comprehensive Plan on June 19, 20, 26, 28 and 29; July 5; August 14 and 28; and September 11, 18 and 25, 2007.
   d. All public hearings before the Planning Commission and the Board included opportunities for public comment.
   e. All public hearings before the Planning Commission and the Board were transcribed, tape recorded, and televised locally on cable television. Written transcripts, and video and audio tapes are on file.
   f. Copies of all newsletters, articles, and other publications are on file.
   g. Copies of all written correspondence received by the county are on file.

7. Internal Consistency. The Comprehensive Plan is internally consistent.
   a. The policies within and among elements are complementary, not contradictory. Both separately and together, they further the goals of the GMA.
   b. The land use map represents a detailed analysis carried out in cooperation with individual cities and the business and environmental communities. The analysis and draft land use maps were subject to public scrutiny for several months as the analysis progressed.
   c. The Comprehensive Plan contains policies, implementation measures, and procedures which provide for its review and adjustment if internal conflicts are discovered.

8. Individual Site Specific Requests. Clark County established a process to address individual site specific requests for a change in designation and/or zoning as part of the plan update.

9. Concurrency. The Comprehensive Plan meets the concurrency requirement of the GMA. The plan requires direct concurrency for transportation (implemented by the concurrency ordinance which specifies levels of service for identified corridors) for water and for sewer, and the plan includes six and twenty-year project lists for these. The plan also includes project lists for indirect concurrency elements (schools, parks and stormwater).

10. Inter-jurisdictional Coordination. The Comprehensive Plan is consistent with adopted county-wide planning policies. The Community Framework Plan introduces the element chapters of the plan. County-wide planning policies are included in each plan element.

11. Coordination with other plans. The Comprehensive Plan is coordinated with those of neighboring jurisdictions. Environmental documents were developed jointly by the county and the cities within it. Capital facilities plans were produced in cooperation with cities, C-Tran, service providers, public safety agencies, school districts, and metropolitan area planning agencies. Park, recreation and open space planning has been carried out cooperatively with cities and Vancouver-Clark Parks.

12. Analysis of Cumulative Effects. An analysis of cumulative effects has been completed as part of the review of the comprehensive plan under SEPA. The SEPA was done jointly for the comprehensive plans of the county and its cities. Affected jurisdictions and the public have had an opportunity to comment on this analysis.

13. GMA Goals. The Comprehensive Plan addresses the goals of the GMA through its policies and implementation measures. The GMA contains 13 goals listed as follows, with corresponding policies of the plan noted. The plan is also in compliance with more specific citations contained within the GMA. Plan goals and policies which achieve compliance with the GMA in its entirety are also not limited to those cited below in association with the 13 basic goals.

    a. Urban Growth: Encourage development in urban areas where adequate public facilities exist or can be provided in an efficient manner.

        The Community Framework Plan contains policies that direct growth within the region into existing urban areas. The plan addresses this objective most directly through the goals and policies in the Land Use Element, as well as the adoption of new urban growth boundaries surrounding local cities. Supporting policies and implementation measures are contained throughout the document.

    b. Reduce Sprawl: Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

        The plan addresses this objective directly through the goals and policies in the Land Use Element, as well as the adoption of new urban growth boundaries surrounding local cities.

    c. Transportation: Encourage efficient multi-modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

        The Comprehensive Plan addresses this most directly through the goals and policies in the Transportation Element.

d. Housing: Encourage the availability of affordable housing to all economic segments of the population, promote a variety of residential densities and housing types, and encourage preservation of the existing housing stock.

The Comprehensive Plan addresses this most directly through the goals and policies in the Housing Element, as well as the variety of residential designations contained in the Comprehensive Plan map.

e. Economic Development: Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of the state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services and public facilities.

The Comprehensive Plan addresses this most directly through the goals and policies in the Economic Development Element, and through the designation of industrial and commercial lands on the Comprehensive Plan map.

f. Property Rights: Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

It is the intent of Clark County in administering the Comprehensive Plan to ensure that regulatory actions affecting private property are not arbitrary or discriminatory in any way. The rights of private property owners and the avoidance of any taking of private property without just compensation have been given due consideration in the development of the Comprehensive Plan policies and implementation measures.

g. Permits: Applications for both state and local permits should be processed in a timely and fair manner to ensure predictability.

The Comprehensive Plan addresses this most directly through the goals and policies in the Housing Element, Rural and Resource Element and the Economic Development Element, and through ordinance language that outlines specific standardized processes for permit issuance.

h. 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.

The Comprehensive Plan addresses this most directly through the goals and policies in the Rural and Resource Element and the Economic Development

Element, and through specific identification and designation of agricultural, forest, and mineral resource lands.

i. Open Space and Recreation: Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

The Comprehensive Plan addresses this most directly through the goals and policies in the Environmental Element and the Parks, Recreation, and Open Space Element.

j. Environment: Protect the Environment and enhance the state's high quality of life including air and water quality and availability of water.

The Comprehensive Plan addresses this most directly through the goals and policies in the Environmental Element and the Parks, Recreation, and Open Space Element, and related ordinances relating to protection of critical areas and shorelines.

k. Citizen Participation and Coordination: Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

Throughout the plan update process Clark County has provided extensive opportunities for citizen involvement and coordination, ranging from community-wide open houses to surveys to formal hearing testimony. The Community Involvement Process is detailed in the Introduction to the Comprehensive Plan, and within this ordinance.

l. 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.

The Comprehensive Plan addresses this most directly through the goals and policies in the Capital Facilities and Utilities Element and the Schools Element, and the county's transportation concurrency ordinance.

m. Historic Preservation: Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

The Comprehensive Plan addresses this most directly through the goals and policies in the Historic, Archaeological and Cultural Preservation Element.

14. Compliance with county-wide planning policies. As required by the GMA, Clark County participated in discussions with cities within the county to revise urban

growth area boundaries, and adopted such boundaries for each city consistent with the county-wide planning policies. Further, the county provided notification to surrounding jurisdictions of its comprehensive plan development process. The county has achieved consistency with adopted county-wide planning policies.

15. Compliance with submission requirements. The required notice of intent to adopt was filed with the Washington Department of Community, Trade, and Economic Development (CTED) within the required time frame.
    a. CTED received notice of the county's intent to adopt a comprehensive plan under the GMA on May 23, 2007.
    b. Comments were received from CTED on the DEIS on October 12, 2006, and on the FEIS in a letter dated June 4, 2007. CTED's comments were considered in the update of the Comprehensive Plan.

16. Implementation measures. The county has adequate development regulations through Title 40 in place. Adoption of updates to zoning ordinances and other measures necessary to implement the Comprehensive Plan are being adopted simultaneously with this ordinance.

B. Findings, Contested Issues

17. SEPA issues

The Board finds that the EIS satisfies the rule of reason, specifically:

- Alternatives.
    1. The EIS contains a 'no-action' alternative that is within the definition in the SEPA rules.
    2. The EIS contains a discussion of a 'delay alternative' by making reference to phasing development as a way to mitigate the impacts of the proposal.
    3. The EIS includes a reasonable range of alternatives, which, according to the WAC 1) are required to be sufficient to do a comparative impact evaluation, and 2) shall be limited to a general discussion of impacts of alternative proposals for policies, for land use, and for implementation measures.

- The FEIS may respond to comments by incorporating a revised DEIS.

- The EIS contains an adequate analysis of cumulative impacts since the impacts described are those that would occur at build-out at the end of the 20-year planning horizon. A comprehensive plan EIS deals with land use over the landscape and not with specific projects.

- The EIS contains adequate information to assist decision makers in their discussions about where and where not to expand urban growth boundaries to accommodate the projected growth.

- The EIS contains a discussion about how current plans are consistent with the proposal.

- The EIS contains a discussion of the preliminary cost figures for implementing the proposal that has been substantially fleshed-out in the proposed Capital Facilities Plan and Capital Facilities Financial Plan that are adopted as part of the comprehensive plan by this ordinance.

- Capital facilities projects for transportation are similar for each alternative in the FEIS because the same road segments under county jurisdiction would need capacity improvements under either alternative.

- The EIS contains an adequate discussion of the impacts of adding 6,300 acres of impervious surface in UGAs over the next 20 years.

Based on the foregoing, the Board rejects the appeals challenging the adequacy of the FEIS.

18. Agricultural lands

The Board finds de-designating of lands designated as 'Agriculture' and their inclusion in urban growth areas to be appropriate, as follows:

- Battle Ground UGA. About 414 acres are de-designated and included in the UGA primarily because 1) of proximity to urban areas; 2) the lack of commercial agricultural production; and 3) the presence of environmental constraints.

- Camas UGA. About 745 acres are de-designated and included in the UGA primarily because of 1) proximity to urban areas; 2) the possibility of more intensive use; and 3) unique economic development activities. In addition, 69 acres of land is de-designated from 'Forest' and included in the UGA because of the lack of long-term commercial significance.

- La Center UGA. About 652 acres are de-designated and included in the UGA primarily because of 1) the presence of urban growth; 2) the possibility of more intensive use; and 3) the need to diversify the La Center economy.

- Ridgefield UGA. About 788 acres are de-designated and included in the UGA primarily because of 1) the presence of urban growth and proximity to urban areas (the so-called 'doughnut hole), and 2) the possibility of more intensive use.

- Vancouver UGA. About 1,383 acres are de-designated and included in the UGA primarily because of 1) the presence of urban growth and proximity to urban areas; 2) the possibility of more intensive use; and 3) the need to create jobs with

a new industrial node to include and served by the county railroad which will diversify the economic base in the Battle Ground School District.

- Washougal UGA. About 370 acres are de-designated and included in the UGA because of the lack of long-term commercial significance.

19. Overrides

The Board asked each of the cities for a list of overrides to reflect 1) jobs on sites for which development approvals have been granted, and 2) where transportation/planning studies or development agreements indicate that the density is likely to be different from that assumed in the VBLM density calculations. The overrides the Board accepted are shown in Table 20 in the FEIS, and they were included in the calculations of how much land would be needed to accommodate projected growth.

Additional Vancouver overrides have been recognized in the adopted plan. Even though the city and county continue to disagree over certain overrides related to densities due to city/county sub-area plans and recent development patterns, the conflict between respective plan assumptions does not amount to GMA violation so long as neither plan precludes realization of the other. The adopted plan commits the county to coordinating with the city in monitoring and adjusting VBLM assumptions.

20. Fish and Wildlife

With regard to fish and wildlife in the county, the Board, in response to comments from the Washington Department of Fish and Wildlife (WDFW), finds the following:

- The county's habitat conservation ordinance (HCO) provides for connectivity by establishing riparian habitat areas along the length of streams, which along with identified PHS sites, protects against fragmentation. The HCO also allows the county to manage access to habitat areas.

- The comprehensive plan keeps open space between UGAs.

- The county's efforts with regard to open space and wildlife corridors has been the protection of more than 3,800 acres of high-quality shorelines, greenways, open space, and fish and wildlife habitat. The Conservation Futures program is central to this effort. The county is also looking into mitigation banking for both wetlands and habitat, and is considering a 'transfer of development rights' program.

- The city of Camas responded to WDFW in a letter dated June 27, 2007. The city included Camp Currie and the park land the south end of the Lacamas Lake north shore in order to protect these areas from urban development. The city has critical areas ordinances in place by which any development would be reviewed. And, the city has a proposed Open Space Network map

that includes a continuous open space along the north shore of the lake northwest to include Lacamas Creek.

- The Preferred Alternative for La Center included the Eaglecrest subdivision north of La Center Road and all of the Lewis River bottomlands north and east of the subdivision. The August 14, 2007 Land Use Map excludes all of this area from the proposed La Center UGA expansion, leaving it in county jurisdiction.

21. Capital Facilities Plans

With regard to capital facilities, the Board finds the following:

- Capital facilities plans for service providers (including school districts, public safety, parks, water, sewer, and transportation) satisfy GMA requirements are incorporated into the comprehensive plan.

- The city of Ridgefield has adequately addressed its sewer capacity issue.

II. COMPREHENSIVE PLAN ADOPTION

Section 1. Adoption of the updated Clark County Comprehensive Plan. The 20-year land use plan is hereby adopted as the GMA Comprehensive Plan for Clark County. The plan consists of the following documents:

1. The 20-year Comprehensive Growth Management Plan document and all text and policies contained therein (Exhibit 1).
2. Updated maps showing plan designations for unincorporated rural and resource lands, and maps establishing urban growth area boundaries and providing plan designations for unincorporated lands within the boundaries of cities and towns in Clark County (Exhibits 2A and 2B). Such updates reflect the dockets process.
3. An updated map showing arterial classifications and cross-sections for roadways within the county's land-use jurisdiction (Exhibit 3).
4. The following items, incorporated by reference:
   a. Capital facilities plans for school districts; transportation; parks, recreation and open space services; water; sewer; sheriff; fire; and stormwater;
   b. Clark County Capital Facilities Financial Plan
   c. 2007-12;
   d. Vacant and Buildable Lands Analyses for urban growth areas; and
   e. County transportation analysis.

Section 2. Adoption of the updated Clark County Zoning Map. An updated zoning map is hereby adopted that implements the GMA Comprehensive Plan for Clark County. (Exhibit 4)

Section 3. Amendatory. Clark County Code Section 40.100.070 Definitions is amended as shown in Exhibit 5.

Section 4. Amendatory. Clark County Code Section 40.230.070 Urban Holding Districts is amended as shown in Exhibit 6.

Section 5. Repealer. Clark County Code Chapter 40.250.050 Interchange Area Overlay District is repealed.

Section 6. Amendatory. Clark County Code Chapter 40.350 Transportation and Circulation is amended as shown in Exhibit 7.

Section 7. Amendatory. Clark County Code Section 40.560.010 Plan Amendment Process is amended as shown in Exhibit 8.

III. DOCKETS/ANNUAL REVIEWS

Section 8. Dockets/Annual Reviews. The findings and analysis contained in the Clark County Planning Commission's memorandum dated May 17, 2007, relating to the 2007 Comprehensive Plan Amendments—Dockets is hereby adopted and incorporated herein by reference, except inconsistent with the following:

Comprehensive Land Use Plan and Zoning Map Modifications

1. The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for that certain property located at the corner of NE 29th Avenue and NE 139th Street is hereby amended from Neighborhood Commercial (C-2) to Employment Center (OC) respectively as recommended by the Planning Commission and as indicated on the attached map (Exhibit 9). In the matter of **Docket item number CPZ2007-00003 HCR Manor Care**, the Board concluded that the Employment Center designation is appropriate for the site due to its location near similarly designated parcels and its proximity to medical facilities. Tax serial numbers 186633-000, 186633-005, 186633-010, 186648-000, located in the NE Quarter Section 26, Township 3 North, Range 1 East of the Willamette Meridian.

2. The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for that certain property located at the intersection of NE Fourth Plain Boulevard and 162nd Avenue is hereby amended to remove the surface mining overlay as recommended by the Planning Commission and as indicated on the attached map (Exhibit 10). In the matter of **Docket item number CPZ2007-00004 Eastlake Village**, after reviewing supplemental information provided by County staff, the Board concluded the surface mining overlay was no longer appropriate in the vicinity of the site and should be removed. Tax serial numbers:

107963472, 107963474, 107963476, 107963478, 107963480, 107963482, 107963484, 107963486, 107963488, 107963502, 107963504, 107963506, 107963508, 107963510, 107963512, 107963514, 107963516, 107963518, 107963520, 107963522, 107963524, 107963526, 107963528, 107963530, 107963538, 107963546, 107963548, 107963550, 107963560, 107963562, 107963564, 107963578, 107963580, 107963582, 107963602, 107963606, 107963608, 107963610, 107963612, 107963614, 107963616, 107963618, 107963620, 107963622, and 107963624 located in the NW ¼ Section 12, Township 2 North, Range 2 East of the Willamette Meridian.

3. The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for that certain property located at 9600 NE 179th Street, is hereby amended from Rural Residential (R-5) to Rural Center Residential (RC-1) respectively as indicated on the attached map (Exhibit 11). In the matter of **Docket item number CPZ2007-00005 Meadow Glade**, the Board concluded that higher density residential designation is suitable for parcel 193854-000 (9600 NE 179th Street) because the density of surrounding development is similar to the proposed density and the parcel is not in the City of Battle Ground's Urban Growth Boundary. Tax serial number 193854-000, located in the NW ¼ Section 09, Township 3 North, Range 2 East of the Willamette Meridian. In a separate motion, the board denied the proposed RC-1 zoning for Parcels 193928-000, 193932-000, 193927-000, 193936-000, 193923-000, 193931-000, 193940-000, and 193941-000, due to the fact that these parcels are now within the City of Battle Ground's Urban Growth Boundary.

4. The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for certain property located in the vicinity of NE 88th Street, west of the I-205 Interchange, is hereby amended from Light Industrial (ML) to General Commercial (CH), and for certain property located south of NE 88th Street, east of the I-205 Interchange, is hereby amended from Light Industrial (ML) to Low Density Residential (R1-6), as recommend by the Planning Commission and as indicated on the attached map (Exhibit 12). In the matter of **Annual Review item number CPZ2007-00006 SW Barberton Commercial Area**, the Board concluded that the general commercial designation is more appropriate for a designated area west of the I-205 Interchange in recognition of the type and intensity of commercial uses which would be suitable in this location. The Board found that the amendment was contingently approved subject to a concomitant rezone agreement that addresses needed transportation improvements not currently programmed in the County's Capital Facilities Plan. The change in designation to General Commercial (CH) applies to tax serial numbers 106100-000, 106104-000, 106104-007, 106112-000, 106124-000, 106128-000, 106128-005, 106132-000, 106136-000, 106140-000, 106146-000 located in the SE ¼ Section 6, Township 2 North, Range 2 East of the Willamette Meridian. In addition, the Board concluded that the residential designation is more appropriate for the subject parcels east of the I-205 Intersection, recognizing that the area is currently developed with single-family homes at a density consistent with the proposed R1-6. The change in designation to

Urban Low Density Residential (R1-6) applies to tax serial numbers 105689-000, 106361-476, 106361-478, 106361-480, 106361-482, 106361-484, 106361-486, 106361-488, 106361-490, 106361-492, 106361-494, 106361-496, 106361-498, 106361-500, 106361-502, 106361-504, 106361-506, 106361-508, 106361-510, 106361-512, 106361-514, 106361-516, 106361-518, 106361-520, 106361-522, 106361-524, 106361-526, 106361-528, 106361-530, 106361-532, 106361-534, 106361-536, 106361-538, 106361-540, 106361-542 located in the SE ¼ Section 6, Township 2 North, Range 2 East of the Willamette Meridian.

Clark County Capital Facilities Components

5. Those changes and additions relating to the updated School District Capital Facilities Plans of the **Camas School District Docket Item number CPZ2007-00007** and including the revised impact fees proposed in the modified capital facilities plan for the same School Districts, which plan was adopted by Ordinance 2004-09-02, is hereby approved as shown on these district's capital facilities plans and which sets forth impact fees of $5,785.41 per single family residence and $ 5,997.61 per multi-family unit for Camas School District (Exhibit 13).

6. Those changes and additions relating to the updated School District Capital Facilities Plans of the **Green Mountain School District Docket Item number CPZ2007-00008** and including the revised impact fees proposed in the modified capital facilities plan for the same School Districts, which plan was adopted by Ordinance 2004-09-02, is hereby approved as shown on these district's capital facilities plans and which sets forth impact fees of $3,387.00 per single family residence for Green Mountain School District (Exhibit 14).

7. Those changes and additions relating to the updated School District Capital Facilities Plans of the **Hockinson School District Docket Item number CPZ2007-00009** and including the revised impact fees proposed in the modified capital facilities plan for the same School Districts, which plan was adopted by Ordinance 2004-09-02, is hereby approved as shown on these district's capital facilities plans and which sets forth impact fees of $7,090.02 per single family residence and $3,692.00 per multi-family unit for Hockinson School District (Exhibit 15).

8. Those changes and additions relating to the updated School District Capital Facilities Plans of the **La Center School District Docket Item number CPZ2007-00010** and including the revised impact fees proposed in the modified capital facilities plan for the same School Districts, which plan was adopted by Ordinance 2004-09-02, is hereby approved as shown on these district's capital facilities plans and which sets forth impact fees of $6,891.90 per single family residence and $5,290.80 per multi-family unit for La Center School District (Exhibit 16).

9. Those changes and additions relating to the updated School District Capital Facilities Plans of the **Vancouver School District Docket Item number CPZ2007-00011** and including the revised impact fees proposed in the modified capital facilities plan for

the same School Districts, which plan was adopted by Ordinance 2004-09-02, is hereby approved as shown on these district's capital facilities plans and which sets forth impact fees of $1,112.00 per single family residence and $1,421.00 per multi-family unit for Vancouver School District (Exhibit 17).

10. Those changes and additions relating to the updated School District Capital Facilities Plans of the **Washougal School District Docket Item number CPZ2007-00012** and including the revised impact fees proposed in the modified capital facilities plan for the same School Districts, which plan was adopted by Ordinance 2004-09-02, is hereby approved as shown on these district's capital facilities plans and which sets forth impact fees of $ 5,339.39 per single family residence and $ 6,530.00 per multi-family unit for Washougal School District (Exhibit 18). The Board's decision reflects a multi-family fee that is less than the requested fee of $8,163.33 due to their concerns that high multi-family fees would discourage the development of this type of housing in Washougal.

Deferred Cases

11. CPZ2006-00004 NE 379th Street
The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for that certain property located at 4517 NE 379th Street, is retained as Resource Lands Agriculture (AG-20) zoning as indicated on the attached map (Exhibit 19). In the matter of **Annual Review item number CPZ2006-00004 NE 379th Street**, the Board concluded that designations of resource lands countywide should undergo comprehensive review and, therefore, the subject property should retain its resource land designation and this request should be included in the comprehensive review. At the conclusion of the comprehensive review should this property continue to retain its resource land designation, it may be placed on the next docket agenda for consideration at no cost to the applicant. Tax serial numbers 257006-000 located in the NW ¼ Section 25, Township 5 North, Range 1 East of the Willamette Meridian.

12. The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for that certain property located west of NE Ammeter Road and south of Stauffer Road at NE 23rd Street are retained as Forest Tier 1 (FR-80) zoning as indicated on the attached map (Exhibit 20). In the matter of **Annual Review item number CPZ2006-00001 Fern Prairie**, is hereby **denied** as recommend by the Planning Commission. Tax serial number 140027-000 located in the SW ¼ Section 20, Township 2 North, Range 4 East of the Willamette Meridian.

13. The Clark County 20-Year Comprehensive Growth Management Plan Map Designation and corresponding Zoning Map for that certain property located at 32619 NW Pekin Ferry Road are retained as Resource Lands Agriculture (AG-20) zoning. In the matter of **Annual Review item number CPZ2006-00008 Pekin Ferry Road**, the Board concluded that the existing AG-20 zoning was not appropriate for the subject site and that the rural designation is more appropriate for the site as indicated on the attached

map (Exhibit 21). Tax serial numbers 210126-000 and 210129-000 located in the SW ¼ Section 5, Township 4 North, Range 1 East of the Willamette Meridian.

IV. MISCELLANEOUS

Section 9. Effective Date. This ordinance shall go into effect at midnight on the date of adoption, except for the expansion of urban growth boundaries and the corresponding comprehensive plan and zoning designations (Section 2(2)), which will take effect at 12:01 a.m. at January 1, 2008.

Section 10. Severability. If any section, clause, or phrase of this ordinance should be held invalid or unconstitutional by the Growth Management Hearings Board or a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 11. Instructions to the Clerk. The Clerk of the Board shall:

1. Transmit a copy of this ordinance to the Washington Department of Community, Trade, and Economic Development within ten days of its adoption, pursuant to RCW 36.70A.106;

2. Record a copy of this ordinance with the Clark County Auditor; and

3. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 25th day of September, 2007.

Attest:

Clerk of the Board

BOARD OF COMMISSIONERS
FOR CLARK COUNTY WASHINGTON

Steve Stuart, Chair

Approved as to form only
ARTHUR D. CURTIS
Prosecuting Attorney

By _____
Richard S. Lowry
Chief Civil Deputy

Betty Sue Morris, Commissioner

Marc Boldt, Commissioner

APPENDIX 6

ORDINANCE NO. 2009-12-15

AN ORDINANCE relating to land use; adopting amendments to the Clark County 20-year Comprehensive Growth Management Plan 2004-2024 Map and Zoning Map to re-designate certain properties as agricultural and to remove them from the Battle Ground, Camas, Vancouver, and Ridgefield Urban Growth Areas, respectively; to redesignate certain properties as rural and remove them from the Vancouver Urban Growth Area; to redesignate certain properties now designated rural as agricultural; and to amend the text of the Clark County Unified Development Code.

WHEREAS, Clark County adopted a 20-Year Comprehensive Growth Management Plan through ordinances 1994-12-47 and 1994-12-53 on December 20, 1994 to meet the goals and requirements of Chapter 36.70A RCW (also known as the Growth Management Act "GMA"); and

WHEREAS, Clark County adopted an updated 20-Year Comprehensive Growth Management Plan through ordinance 2007-09-13 on September 25, 2007 to meet the goals and requirements of Chapter 36.70A RCW; and

WHEREAS, portions of the update were ruled as out of compliance with Growth Management Act (GMA) by the Western Washington Growth Management Hearings Board (Growth Board), and certain parts of the Growth Board ruling were upheld by Clark County Superior Court; and

WHEREAS, certain actions taken as part of 2008 Annual Review and Dockets were also ruled as out of compliance with GMA by the Growth Board; and

WHEREAS, Clark County has taken certain actions to comply with the orders of Clark County Superior Court and the Growth Board to move the county toward compliance with GMA; and

WHEREAS, the Clark County Planning Commission reviewed the plan and zoning map amendments and modifications of the Footnote 9 to Table 40.210.010-1, Uses Table for Agriculture and Forest Zones during duly advertised Public Hearings on November 19, and December 9, 2009 and has forwarded its recommendations to the Board; and,

WHEREAS, the Board of County Commissioners considered amendment cases CPZ2009-000300 (Area VB); CPZ2009-00031 (Area BC); CPZ2009-00032 (Area RB-2); CPZ2009-00034 (Area North of VB); CPZ2009-00035 (Schwarz and Firestone); CPZ2009-00033 (Area CA-1); CPZ2009-00036 (Footnote #9 Amendment), at duly advertised public hearings on December 15, 2009; and

WHEREAS, the Board of County Commissioners took public testimony from interested parties, considered all the written and oral arguments and testimony, and considered all the comments presented to the Board; and

WHEREAS, the Board of County Commissioners in reviewing all the respective comprehensive plan changes considered the requirements of GMA, as construed in the rulings of the Growth Board and Clark County Superior Court, and

WHEREAS, the Board of County Commissioners also considered the staff reports and recommendations of the Clark County Planning Commission; and

WHEREAS, the Board finds that the amendments to the 20-year Comprehensive Growth Management Plan Map and Zoning Map and to the Unified Development Code comply with all applicable requirements of the Growth Management Act, the 20-year Comprehensive Growth Plan, and the Clark County Code, and that they are in the best public interest; and

WHEREAS, the Board concluded at duly advertised public hearings and finds that adoption of this ordinance is in the best public interest and will further the public health, safety and welfare; now therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

Section 1. Findings.

The findings and analysis contained in the Clark County Planning Commission's Memorandum dated December 15, 2009, and the Staff Reports dated October 28, October 29 October 30, and November 4, 2009 relating to the 2007 GMA Comprehensive Plan Compliance Amendments and the 2008 Annual Reviews and Dockets GMA Compliance Amendments are hereby adopted and incorporated herein by reference except where inconsistent with the following.

Section 2. Comprehensive Land Use Plan and Zoning Map Modifications.

1. Amend the comprehensive plan and zoning maps to redesignate the following properties now in the Vancouver Urban Growth Area as Agricultural (Ag-20), and to remove these properties from the urban growth area: Properties with tax identification numbers 196656-000, 196925-000, 196926-000, 196930-000, 196954-000, 196983-000, 197036-000, 198072-000, 198075-000, 198076-000, 198080-000, 198082-000, 198083-000, 198084-000, 198086-000, 198087-000, 198101-000, 198111-000, 198112-000, 198113-000, 198114-000, and 300012-000. For purposes of Clark County's 2007 comprehensive plan update, these properties were known as Agriculture Viability Study Area VB. Certain of these properties are currently designated Light Industrial, and others are designated Railroad Industrial. All of these properties are within an Urban Holding Overlay District (UH).

2. Amend the comprehensive plan and zoning maps to redesignate as Rural (R-5) the following properties now in the Vancouver urban growth area, and which are generally located near the northern portions of the area known as study area VB, and to remove these properties from the urban growth area: Parcels with tax serial numbers 196924-000, 196934-000, 196935-000, 196937-000, 196938-000, 196939-000, 196940-000, 196941-000, 196942-000, 196949-000, 196953-000, 196953-005, 196959-000, 196969-000, 197010-000, 197014-000, 197015-000, 197016-000, 197017-000, 197018-000, 197018-005, 197018-010, 197032-000, 197033-000, 197035-000, 197043-000, and 197049-000. These properties are currently designated Light Industrial, and are within an Urban Holding Overlay District (UH).

3. Amend the comprehensive plan and zoning maps to redesignate the following properties now in the Battle Ground Urban Growth Area as Agricultural (AG-20), and to remove these properties from the urban growth area: Parcels with tax serial numbers 195244-000, 195271-000, 195275-000, 195283-000, and 195287-000. For purposes of Clark County's 2007 comprehensive plan update, these properties

were known as Agriculture Viability Study Area BC. These properties are currently designated Employment Center, and are within an Urban Holding Overlay District (UH).

4. Amend the comprehensive plan and zoning maps to redesignate the following properties now in the Ridgefield Urban Growth Area as Agricultural (AG-20), and to remove these properties from the urban growth area: Parcels with tax serial numbers 216473-000, 216491-000, 216672-000, 216706-000, and 216714-000. For purposes of Clark County's 2007 comprehensive plan update, these properties were a portion of the area known as Agriculture Viability Study Area RB-2. These properties are currently designated Urban Low Density Residential, and are within an Urban Holding Overlay District (UH).

5. Amend the comprehensive plan and zoning maps to redesignate the following properties now in the Camas Urban Growth Area as Agricultural (AG-20), and to remove these properties from the urban growth area: Parcels with tax serial numbers 173156-002, 173156-004, 173156-006, 173156-008, 173156-010, 173156-012, 173156-014, 173156-016, 173156-018, 173156-020, 173156-022, 173156-024, 173156-026, 173156-028, 173156-030. For purposes of Clark County's 2007 comprehensive plan update, these properties were a portion of the area known as Agriculture Viability Study Area CA-1. These properties are currently designated Urban Medium Density Residential, and are within an Urban Holding Overlay District (UH).

6. Amend the comprehensive plan and zoning maps to redsesignate the following properties as Agricultural (AG-20) from Rural (R-5): Parcels with tax serial numbers 180532-000, 180747-000, 180748-000, and 180834-000. These properties are currently designated Rural (R-5), and are located at 3504 NW 179th St, 2910 NW 179th St., 2614 NW 179th St., and 2528 NW 179th St., respectively, Ridgefield, WA. Consider amending the comprehensive plan and zoning maps through the docket process next year to re-designate these properties as Rural (R-5) from Agricultural (AG-20)

Section 3. Amendatory.

Section 26 (Attachment D) of Ordinance 1994-12-53, as most recently amended by Ordinance 2009-12-01, and codified as UDC Section 40.210.010-1, Uses Table for Agriculture and Forest, are each amended to read as follows:

****

7. [9]Commercial uses supporting resource uses, such as packing, first stage processing and processing which provides value added to resource products ~~as well as facilities that repair, maintain or refurbish or manufacture component parts for equipment utilized for agricultural, forest. And other resource based industries including wind, hydro and solar generation, but specifically not including the establishment or siting of a wind, hydro or solar generating facility~~. Chippers, pole yards, log sorting and storage, ~~antique agricultural storage or display,~~ temporary structures for debarking, accessory uses including but not limited to scaling and weigh operations, temporary crew quarters, storage and maintenance facilities, disposal areas, saw mills producing ten thousand (10,000) board feet per day or less, and other uses involved in the harvesting of forest products.

****

Section 4. Severability.

If any section, sentence, clause, or phrase of this ordinance should be held invalid or unconstitutional by a court of competent jurisdiction or the Growth Management Hearings Board, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 5. Effective Date.

This ordinance shall go into effect at 12:01 a.m. on January 1, 2010.

Section 6. Instructions to Clerk.

The Clerk to the Board shall:

1. Transmit a copy of this ordinance to the Washington State Department of Commerce within ten days of its adoption pursuant to RCW 36.70A.106.

2. Transmit a copy of the adopted ordinance to Clark County Geographic Information Systems (Ken Pearrow GIS Coordinator), to Community Planning Department, and to Community Development Department - Development Services (Mary Johnson, Tidemark Data Manager).

3. Record a copy of this ordinance with the Clark County Auditor.

4. Cause notice of adoption of this ordinance to be published forthwith pursuant to RCW 36.70A.290.

ADOPTED this 15 day of December 2009.

Attest:

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

Louise Richards
Clerk to the Board

By: _____
Marc Boldt, Chair

Approved as to Form Only:
ARTHUR D. CURTIS
Prosecuting Attorney

By: Christine Cook
Christine Cook
Deputy Prosecuting Attorney

By: _____
Steve Stuart, Commissioner

By: Tom Mielke
Tom Mielke, Commissioner

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

NO. 39546-1-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CLARK COUNTY, WASHINGTON, CITY OF LA CENTER, GM CAMAS, LLC, MACDONALD LIVING TRUST & RENAISSANCE HOMES,

Respondents,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL & FUTUREWISE,

Appellants.

CERTIFICATE OF SERVICE

Attorneys for Respondent, Clark County, Washington:

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Deputy Prosecuting Attorney
Clark County Prosecuting Attorney's Office
Civil Division
604 W Evergreen Blvd.
PO Box 5000
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Telephone: (360) 397-2478
Fax: (360) 397-2184

I, Thelma Kremer, hereby certify and state the following: I am a citizen of the United States of America and a resident of the State of Washington; I am over the age of eighteen years; I am not a party to this action; and I am competent to be a witness herein.

On this 18th day of December, 2009, I caused true and correct copies of the following:

1. Brief of Respondent Clark County; and
2. Certificate of Service;

to be served on the following parties by e-mail and by U.S. mail, postage prepaid, to the following addresses:

Jerald R. Anderson, Sr. Counsel
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Licensing & Admin Law Division
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Thelma Kremer

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BY
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NO. 39546-1-II

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CLARK COUNTY, WASHINGTON, CITY OF LA CENTER, GM CAMAS, LLC, MACDONALD LIVING TRUST & RENAISSANCE HOMES,

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WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL RESOURCES COUNCIL & FUTUREWISE,

Appellants.

AMENDED

CERTIFICATE OF SERVICE

Attorneys for Respondent, Clark County, Washington:

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Clark County Prosecuting Attorney's Office
Civil Division
604 W Evergreen Blvd.
PO Box 5000
Vancouver, WA 98666-5000
Telephone: (360) 397-2478
Fax: (360) 397-2184

I, Thelma Kremer, hereby certify and state the following: I am a citizen of the United States of America and a resident of the State of Washington; I am over the age of eighteen years; I am not a party to this action; and I am competent to be a witness herein.

On the 18th day of December, 2009, I caused true and correct copies of *Brief of Respondent Clark County* and *Certificate of Service* to be served on the following parties by U.S. mail, postage prepaid, at the following addresses:

Jerald R. Anderson, Sr. Counsel
Atty General of WA
Licensing & Admin Law Division
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michael.simon@landerholm.com

On this 21st day of December, 2009, I caused copies of *Brief of Respondent (w/o attachments)* and this *Amended Certificate of Service* to be e-mailed to the parties at the above-specified e-mail addresses.

Thelma Kremer