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I. INTRODUCTION

Appellants ask this Court of reverse Clark County Superior Court's ruling overturning the Western Washington Growth Management Hearings Board decision to remove various properties from the urban growth areas of Vancouver, La Center, Washougal and Camas.

Appellant's arguments in support of their claims for relief fail to take into account the correct governing standard of review, are incorrect factually or ignore the substantial evidence in the record. When viewed in light of the substantial evidence and the appropriate standards for judicial review, the decision of Clark County Superior Court and thus the County's original decision for inclusion of these lands in the various urban growth areas readily withstands all of the Appellants claims. And therefore this Court should deny the Appellant's claims for relief and affirm the decision of the Superior Court.

II. STATEMENT OF FACTS

Clark County (the "County") decided to review its Comprehensive Plan beginning in the summer of 2005. Respondent Renaissance Homes ("Renaissance") submitted a site specific request to Clark County for the inclusion within the Vancouver Urban Growth Area ("UGA") various

properties located off of 179th street in unincorporated Clark County. Renaissance later amended this request to encompass all of the properties within sub-area VA including the properties owned by Intervenor Birchwood Farms, LLC ("Birchwood").¹ Renaissance's 2005 submittal contained an analysis of the definitions of agriculture under the Growth Management Act ("GMA") and the associated criteria in the WAC.² Specifically, Renaissance demonstrated the County wanted to widen 179th Street adjacent to the properties and also create a new collector street 189th Street that would cross the properties.³

From the beginning the County remained mindful of the agricultural lands issues in developing its Comprehensive Plan. The County announced its principles and values in developing its Comprehensive Plan that included the importance of balancing economic

¹ Clerks Papers 24, Administrative Record ("AR"), 2812-2813, Final Environmental Impact Statement ("FEIS") Volume II, Draft Environmental Impact Statement ("DEIS") comment 233.

² CP 24, AR 1454 (Exh. 250 Tab 14); Exh. 246; Exh. 5306.

³ Id.

development versus agricultural preservation.⁴ And therefore each site specific request containing agricultural land necessitated additional scrutiny.

On October 25, 2005 Appellant filed comments with the County merely alleging in the agricultural lands context that urban growth should be directed away from natural resource lands.⁵ And Appellant included with their comments aerial photographs and Comprehensive Plan map designations for all of the subareas.⁶ But Appellant did not evaluate each specific property under the WAC factors, nor did they introduce any other information about each specific property other than the aerials.

On August 10, 2006 the Washington Supreme Court announced the *Lewis County v. The Western Washington Growth Management Hearings Board et al*, decision that prescribed an analysis to be conducted

⁴ CP 24, FEIS, Volume I, p. 6. AR 2812-2813.

⁵ CP 24, (Exh. 6650)

⁶ CP 24, (Exh. 6634A and 6634B).

in relation to the de-designation of agricultural lands.⁷ Shortly after the Court announced *Lewis County*, the County hired Globalwise, Inc., an agricultural economist, to conduct an independent analysis of the state of farming in Clark County.⁸ And Globalwise examined some of the farming operations identified in the nineteen subareas identified as potential areas of de-designation.⁹

Renaissance immediately conducted its own analysis under *Lewis County* addressing the appropriate criteria citing specific facts to the analysis, including the location of the properties near such major urban uses as Washington State Vancouver, Legacy Hospital, the Clark County Amphitheater and several other major commercial and residential projects, the County's transportation improvement plan, the fact that the properties were in urban reserve since 1994, the proximity to Interstate 5 ("I-5") and

⁷ *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 139 P.3d 1096 (2006).

⁸ CP 24, AR 2136 (Exh. 6548).

⁹ *Id.*

the surrounding land use patterns.¹⁰ Renaissance participated in every public opportunity to comment, including hearings in front of the planning commission and Board of County Commissioners elaborating on these points and more.

Over at least four months in 2007, the County evaluated each of the nineteen subareas under the WAC Factors to determine whether the properties within each of the subareas previously identified as agricultural land still qualified as lands with long-term commercial significance for agriculture.¹¹ And the County prepared and presented a matrix evaluating every subarea under each of the WAC Factors.¹²

The Board of County Commissioners discussed each subarea in detail during a June 26, 2007 hearing, including the information provided by staff, the Globalwise report and the property owners.¹³ By July 25,

¹⁰ CP 24, AR 2812-2813, FEIS, Volume II, DEIS comment 233.

¹¹ CP 24, AR 2130, May 17, 2007, staff report (Exh. 6548); AR 2236, August 2007 Issue Paper (Exh. 6605), September decision (Ordinance No. 2007-09-13).

¹² CP 24, AR 2134 (Exh. 6548).

¹³ CP 24, AR 2285 (Exh. 6606, Transcript, Clark County Board of Commissioners' Public Hearing, June 26, 2007, 10 a.m.-10 p.m.).

2007 the County tentatively approved expanding the boundaries into the various areas evaluated in the matrix.¹⁴ And as the process continued, the Board of County Commissioners deliberated further and those findings were added to the matrix, and staff prepared an issue paper to guide the Board in issuing its findings.¹⁵

In regards to subarea VA, the Board found that subarea VA had an urban reserve overlay and was surrounded by urban reserve parcels, none of the parcels were identified in the Globalwise report as commercial farms, only 39.99% of the parcels were in the current use program, more than one quarter was mapped with critical areas, that the property is located in very close proximity to the Vancouver and Battle Ground UGAs, that 189th Street is important for the County's transportation plans and necessitates the parcels being urban, and that despite the soil type other WAC factors were evaluated, such as proximity to urban areas, to conclude that VA should be included in the Vancouver UGA. The Board

¹⁴ CP 24, AR 2241 (Exh. 6605) attached as Exhibit A.

¹⁵ Id.

also characterized the condition of subarea VA as a "peninsula" of agriculturally zoned land within an urban reserve area.¹⁶ And finally the Board expressly found that the County could not rely on agricultural soils alone for the economic viability of farm land, but that the subarea was close to the urban area and there were no existing commercial farms or infrastructure to support farming.¹⁷

The County brought subarea into the Vancouver UGA with urban low residential zoning. Appellants filed a challenge to the Western Washington Growth Management Hearings Board ("GMHB"), alleging that the County failed to correctly evaluate the properties under *Lewis County* and that the properties qualified as lands of long term commercial significance.

The GMHB heard the case and evaluated, weighed, and applied various relevant factors on its own.¹⁸ During its analysis the GMHB ignored much of the Board of County Commissioners deliberations and

¹⁶ CP 24, AR 2620, 2622 (Exh. 6606, p. 336, lines 23-24; p. 338, lines 16-17).

¹⁷ CP 24, AR 2615 (Exh. 6606, p. 322, lines 4-23).

¹⁸ FDO , p. 56.

concluded that the de-designation of subarea VA did not comply with GMA.¹⁹

Renaissance and Birchwood joined with the County and various other parties in appealing the decision to Clark County Superior Court alleging that the GMHB failed to give discretion to the County and that the evidence supported the County's decision to include subarea VA in the Vancouver UGA.²⁰ The Superior Court overruled the GMHB concluding that the substantial evidence existed to support the County's decision to include area VA in the Vancouver UGA.²¹

III. DISCUSSION

A. APPELLANT FAILS TO IDENTIFY THE CORRECT STANDARD OF REVIEW.

1. Birchwood adopts and incorporates the arguments set forth in the County's and other responding parties to Appellants assertions about the standard of review.

¹⁹ FDO, p. 57.

²⁰ CP 26, Opening Brief of Petitioners Renaissance Homes and Birchwood Farms.

²¹ CP 64.

2. The GMHB failed to give the appropriate deference to the County planning action.

Appellant states that the Court needs to give deference to the GMHB's legal conclusion and interpretations of the statutes it administers.²² But appellant fails to acknowledge that GMA requires that the GMHB must give greater deference to the County's planning actions.²³

Under GMA, the County's Comprehensive Plan is presumed valid upon adoption.²⁴ A petitioner challenging a County action bears the burden of proof that the action fails to comply with GMA.²⁵ GMA compels the GMHB to find compliance unless it determines that the County's action is clearly erroneous in view of the record before the GMHB and the goals and requirements of GMA.²⁶ To find the County's

²² Futurewise Opening Brief page 5, citing *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000).

²³ *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005).

²⁴ RCW 36.70A.320(1).

²⁵ RCW 36.70A.320(2).

²⁶ RCW 36.70A.320(3).

decision clearly erroneous, the Board must have a "firm and definite conviction that a mistake has been committed."²⁷

But Appellant ignores this requirement and rather presumes that the GMHB used the correct standard of review in issuing its final order. We argue that this Court must determine if the GMHB violated the correct standard of review and whether or not it failed to give the proper deference to the County's decision and evaluation of the subarea VA under *Lewis County* and the ten factors in WAC 365-190-050. And this Court must decide if the GMHB properly deferred to the County's policy choices.

The Administrative Procedures Act governs judicial review of GMHB decisions.²⁸ And therefore this Court reviews the GMHB's legal conclusions de novo, giving deference to the GMHB's interpretation of GMA; but this Court is not bound by the GMHB's interpretations.²⁹ On

²⁷ *Lewis County*, 157 Wn.2d at 497.

²⁸ RCW 34.05; *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 341 190 P.3d 38 (2008).

²⁹ *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

mixed questions of law and facts, this Court determines the law independently, and then applies the law to the facts found by the County.³⁰

B. THE COUNTY EVALUATED SUBAREA VA UNDER LEWIS COUNTY AND ESTABLISHED THAT IT WOULD INCLUDE IN THE VANCOUVER URBAN GROWTH AREA.

1. Birchwood adopts and incorporates the arguments set forth in the County's brief responding to Appellants assertions that they did not conduct an analysis and prepare findings for subarea VA.
2. The GMHB committed an error by evaluating the factors in WAC 365-190-050 independent of the County decision to include VA in the Vancouver UGA.

The GMHB evaluated subarea VA under the factors in WAC 365-190-050 and purged VA from the Vancouver UGA based on its analysis. Appellant fumbles in their argument because they continually ignore that the GMHB substituted its own judgment of the facts against the WAC factors. But GMA is clear; the GMHB must give deference to the County.³¹

³⁰ *Lewis County* 157 Wn.2d at 498.

³¹ *Quadrant* 154 Wn.2d at 238.

Appellant attempts to shroud this issue by taking the evidence in the record and provide its own analysis of the facts against the WAC criteria. But this fails because it does not recognize that the County is the appropriate finder of fact. And that the GMHB may only substitute its judgment if it is clearly erroneous. The GMHB never concluded that the County's decision was clearly erroneous. Rather, the GMHB simply dismissed the County's analysis of the substantial evidence and facts and applied its own analysis to the WAC factors.

The Superior Court understood this. And the Superior Court correctly examined to see whether or not the County supported its policy decisions under the WAC factors with substantial evidence.³² In reversing the GMHB the Superior Court looked to the substantial evidence in the record that the County relied upon in its original decision.³³ Namely that VA is characterized by urban growth with the presence of Washington

³² CP 64.

³³ CP 64 at page 7.

State Vancouver and Legacy Hospital.³⁴ The Court went on to state that the Globalwise report indicated no agricultural activity within the area and that the infrastructure is available.³⁵

All of these facts came to light during the update of the County's Comprehensive Plan. The County relied upon this evidence in ascertaining that subarea VA would be part of the Vancouver UGA.

3. The County's decision is supported by substantial evidence.

GMA contemplates the conversion of resource lands to more intense uses over time. Obviously, UGAs must expand over time in order to accommodate the population forecasts required by GMA.³⁶ Simply put, lands designated as agriculture lands may not remain that way forever.³⁷

i. *The WAC Factors.*

The factors in WAC 365-190-050 are part of the guidance for a municipality's classification of agricultural resource lands. The ten factors

³⁴ Id.

³⁵ Id.

³⁶ *Bonney Lake v. Pierce County*, CPSGMHB No. 05-3-0016c, Final Decision and Order (August 4, 2005), at 18.

³⁷ *Grubb v. City of Redmond*, CPSGMHB No. 00-3-0004, Final Decision and Order (August 11, 2000) at 11.

act as guides to see whether resource lands have the potential for long-term commercial significance. There are two components to "lands of long-term commercial significance." The first addresses the viability of the land in terms of its intrinsic attributes such as "growing capacity" and "productivity", which in large part rely on the suitability of soils.³⁸ But the second component involves the offsite factors and some degree of judgment by the County on how those factors will affect the long-term viability of the land.³⁹

And *Lewis County* similarly concluded "[...] to be guided strictly by the physical nature of the land would stifle economic development opportunities[.]"⁴⁰ But rather, counties "must consider development prospects (the 'possibility of more intense uses') in determining if land has the enduring commercial quality needed to fit the agricultural land definition."⁴¹

³⁸ *Grubb*, CPSGMHB No. 00-3-0004, at 9.

³⁹ *Id.*

⁴⁰ *Lewis County*, 157 Wn.2d. at 499.

⁴¹ *Id.* At 501.

Neither GMA nor the regulations prioritize the 10 listed factors.⁴²
And therefore a county may apply them with discretion.⁴³

In *Lewis County*, the court recognized that the county could consider industry needs without express authorization in GMA because such a consideration is relevant in connection with the possibility of more intense uses of the land, and RCW 36.70A.030(10) permits such considerations.⁴⁴ Further, the court held:

[I]t was not "clearly erroneous" for Lewis County to weigh the industry's anticipated needs above all else. If the farm industry cannot use the land for agricultural production due to economic, irrigation, or other constraints, the possibility of more intense uses is heightened.⁴⁵

More recently in the *Arlington* case, the court concluded:

Because clear error is such a high standard to meet, it follows that situations may exist where a county could properly designate land either agricultural or urban commercial depending on how the county exercises its discretion in planning for growth, without committing clear

⁴² *Futurewise v. Central Puget Sound Growth Management Hearings Board*, 141 Wn. App. 202, 211, 169 P.3d 499 (2007).

⁴³ *Id.*, citing *Lewis County* at 502, n.11.

⁴⁴ *Lewis County*, 157 Wn.2d at 503.

⁴⁵ *Id.*

error. [...] Because there is evidence in the record to support the County's conclusions, the Board should have deferred to the County.⁴⁶

In *Arlington*, the court held that the Hearings Board improperly dismissed "out of hand" analysis in the record in which the various WAC criteria were evaluated by a property owner's consultant. This consultant report provided evidence in the record to support the county's decision to redesignate agricultural resource land to commercial.

And therefore the question for the Court is whether the record supports that the County went through a process or analysis to de-designate agricultural land.⁴⁷ Clearly, in this case, the County's decision is supported by the record.

ii. *Application of GMA Definitions and WAC Factors.*

Agricultural lands were defined in the *Lewis County* case as follows:

⁴⁶ *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, 164 Wn.2d 768, 793-795, 193 P.3d 1077 (2008).

⁴⁷ *Citizens for Good Governance v. Walla Walla County*, EWGMHB Case No. 05-1-0013, Final Decision and Order (June 15, 2006), p. 31.

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. We further hold that counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance.⁴⁸

Each of these three criteria is discussed briefly below. Of the greatest importance in this case is the third – whether the relevant lands have long-term commercial significance. The County focused its detailed analysis on the WAC Factors.

iii. *Not Already Characterized By Urban Growth.*

Common sense dictates that most designated resource lands are not developed with urban uses. When the County originally designated the lands as agricultural, it stymied any urban development. On the other hand, because the action taken by the County was to expand its UGAs, it

⁴⁸ *Lewis County*, 157 Wn.2d at 502.

goes without saying that all areas, including subarea VA, were in proximity to existing UGAs and thus "located in relationship to an area with urban growth on it as to be appropriate for urban growth," which the GMA defines as being "characterized by urban growth."⁴⁹

The GMHB concluded that subarea VA was near the UGA, but not near areas characterized by urban growth.⁵⁰ But the GMHB cites no authority for such a conclusion other than the matrix and a map. This conclusion masquerades the fact that GMA recognizes that land can be characterized by its location "in relationship to an area with urban growth on it as to be appropriate for urban growth."⁵¹ Furthermore, the GMHB neglects the obligation that the County is trying to plan for twenty years of growth. If every parcel of agricultural lands were required to be immediately next to a parcel with urban development in order to expand boundaries, the County would be required to expand boundaries one or two parcels at a time. But this result would be absurd from a policy

⁴⁹ RCW 36.70A.030(18).

⁵⁰ FDO, p. 56, lines 12-13.

⁵¹ RCW 36.70A.030(18).

standpoint and it would further undermine the County's efforts for a long-range plan.

iv. *Primarily Devoted to the Commercial Production of Agricultural Products*

The County may consider a landowner's current or intended use of land in determining whether land is in an area "primarily devoted to"⁵² commercial agriculture.⁵³ Appellant presented evidence below that the property owners did not intend or currently use the site for agricultural production. And as stated above, the County's matrix noted that subarea VA did not have any commercial farming operations, according to the report by Globalwise.⁵⁴ The Globalwise report further concluded more broadly that almost 40% of the agricultural lands considered for new UGAs was in non-agricultural use.⁵⁵

⁵² RCW 36.70A.030(2).

⁵³ *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 42, 959 P.2d 1091 (1998). Neither the current use nor the owner's intent is conclusive.

⁵⁴ CP 24, AR 2245 (Exh. 6605).

⁵⁵ CP 24, AR 2172 (Exh. 6548).

The GMHB focused exclusively on the location of prime soils and decided that subarea VA was thus "capable of being farmed," regardless of other permitted factors, such as current use and owner intent.⁵⁶

v. *Long-Term Commercial Significance.*

As described above, there are two components to "lands of long-term commercial significance," the physical element (soil quality) and the off-site factors, or human element, for which the WAC Factors help guide the analysis.

(1) *The Physical Element.*

For the physical element, soil composition in subarea VA was identified as 86% prime soils.⁵⁷ However, the physical constraints for the subarea included 26% critical areas, with the use of the subarea limited by hydric soils, riparian habitat, and wetlands.⁵⁸ Appellants dismiss the critical area issue by stating that Clark County Code 40.50.450.010(C)(1)(c)(1) provides exemptions from wetland regulations

⁵⁶ FDO, p. 47, lines 28-29, p. 56.

⁵⁷ CP 24, AR 2245.

⁵⁸ CP 24, AR 2245.

for agricultural practices in the same footprint.⁵⁹ But Appellants fail to recognize that specific provision applies to existing agricultural uses. None exist in subarea VA. And furthermore, the Clark County Code does not exempt agricultural practices from other critical area regulations, for instance for riparian habitat areas.

And Appellants argument doesn't make sense in that besides the regulations which prohibit most activity in critical areas or their associated buffers, critical areas by their very nature are not physically suited for agricultural production. Simply put, the lands are burdened by physical characteristics that would limit their productivity (hydric soils, riparian habitat, and wetlands).

In the GMHB's discussion in its FDO, even after acknowledging that "soils alone do not mandate designation,"⁶⁰ it focused heavily on the classification of the soils in subarea VA, without even noting the physical constraints on the lands, characteristics clearly listed in the County's

⁵⁹ Futurewise Opening Brief p. 24.

⁶⁰ FDO, p. 36, lines 1-2.

matrix. It did so despite its acknowledgment earlier in the FDO that such constraints can make certain land difficult to farm.⁶¹ Similar to other considerations, the GMHB determined that critical areas are "not necessarily"⁶² a reason to de-designate, and then failed to even consider the concept.

(2) *The Human Element.*

The County properly weighed all of the WAC Factors, together with other considerations, to reach a conclusion with respect to subarea VA.

The GMHB first identified various factors that could be considered (but were not determinative), concluding as follows:

While proximity to urban areas is certainly a factor to be considered along with other lands [. . .] adjacency to UGAs was not a deciding factor[.]⁶³

[L]andowner intent can be considered but it is not a determinative factor[.]⁶⁴

⁶¹ FDO, p. 43, lines 12-13.

⁶² FDO, p. 43, lines 8-9.

⁶³ FDO, p. 38, lines 20-24.

⁶⁴ FDO, p. 39, lines 16-17.

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.⁶⁵

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.⁶⁶

In each of these instances, the GMHB recognized that these factors may be considered. And, the GMHB failed to identify any evidence that the County relied on just one of these factors when it evaluated subarea VA. When the GMHB later discussed the VA subarea specifically,⁶⁷ it failed to recognize that the above factors were meaningful to this subarea and that the County could properly give those factors weight.

Furthermore, the record substantially demonstrates that public facilities, as defined in RCW 36.70A.030(12), are available to the VA subarea in the nearby UGA. Water lines extend along the southern

⁶⁵ FDO, p. 40. lines 2-3 (emphasis in original).

⁶⁶ FDO, p. 42, lines 2-4.

⁶⁷ FDO, p. 56.

boundary of subarea VA.⁶⁸ Curiously, the GMHB dismissed this public facility because a sewer line did not accompany it.⁶⁹ We are aware of no authority that the presence of sewer justifies the re-designation of agricultural lands, but the presence of public water does not. Even more curious, when rejecting the availability of schools as a relevant factor, the GMHB distinguished schools from the "kind of facility [such] as a water line or sewer line that enhances the ability of property to be developed."⁷⁰ If a water line is different from a school because it enhances the ability of property to be developed, its presence supports the County's decision to include subarea VA in the UGA. The GMHB wants to have it both ways.

Other documented public facilities available to subarea VA include major roads and highways.⁷¹ Specifically, NE 179th Street, as it runs along the southern edge of subarea VA, is an urban principal arterial providing

⁶⁸ CP 24, AR 2245.

⁶⁹ FDO, p. 56, lines 22-24.

⁷⁰ FDO, p. 41, lines 13-14 (emphasis added).

⁷¹ CP 24, AR 2245.

direct access to a major freeway interchange.⁷² As noted in the materials submitted by Renaissance, the County plans to do significant improvements to the NE 179th Street corridor in the near future.⁷³ The Board of Commissioners discussed the future improvements to 179th Street in its deliberations.⁷⁴ As noted by the GMHB, the County Commissioners similarly discussed their plans in the arterial atlas for construction of NE 189th Street.⁷⁵ Earlier in the FDO, the GMHB distinguished rural public services from urban public services, but here the County has designated the roads in question as urban roads⁷⁶ due to their proximity to the urban area and the volume of traffic they must serve.

⁷² CP 24, AR 2812, 20-Year Comprehensive Growth Management Plan, Appendix G, Figure 5.

⁷³ CP 24, AR 1454 (Exh. 250, Tab 14).

⁷⁴ CP 24, AR 2615 (Exh. 6606, p. 331, line 11).

⁷⁵ CP 24, AR 2245.

⁷⁶ In fact, the County had designated NE 179th Street as it fronts Subarea VA as an urban principal arterial as early as 1998. See Exhibit D, an excerpt from the Arterial Atlas, of which this court may take judicial notice. This court takes judicial notice of the County's resolution adopting the arterial atlas as either an ordinance (RCW 5.44.080) or as a fact that is "not subject to reasonable dispute" and is "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned" when "requested by a party and supplied with the necessary information." *State v. Royal*, 122 Wn.2d 413, 418, 858 P.2d 259 (1993).

These public facilities support the County's decision to include subarea VA in the UGA.

Additional relevant factors for Subarea VA include the fact that only approximately 40% of the lands in Subarea VA are in the current use program, the areas to the south across 179th Street, to the east, to the west, and to the northwest are highly parcelized,⁷⁷ and the Globalwise report showed no existing commercial farms. In addition to no existing commercial farms, the Commissioners noted that no infrastructure existed to support farming activities.⁷⁸

Finally, the area surrounding these parcels is urbanizing. Washington State University Vancouver is located nearby just to the south on 50th Avenue, as is Legacy Hospital. But the GMHB ignored these intense urban level uses nearby. The Board of County Commissioners concluded that the land uses developing around these lands would be inconsistent in the future.

⁷⁷ See Exhibit A.

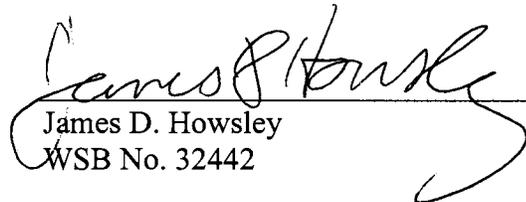
⁷⁸ AR 2616 (Exh. 6606, p. 332, lines 4-23).

The GMHB ignored all of the evidence and findings developed by the County used to determine that subarea VA belonged in the Vancouver UGA.

IV. CONCLUSION

The County's inclusion of subarea VA in the Vancouver UGA is consistent with the governing legal standards. The decision by the County is supported by substantial record evidence. Appellant fails to demonstrate how the County committed a clearly erroneous error and why the GMHB felt compelled to evaluate the facts without regard to the deference due the County. And therefore, for the reasons discussed above, this Court should deny the Appellant's claims for relief and affirm the decision of the Superior Court.

MILLER NASH LLP



James D. Howsley
WSB No. 32442

EXHIBIT A

**Agriculture Viability Study Areas
BOCC Tentative Urban Growth Area
Vancouver UGA - West**

Key

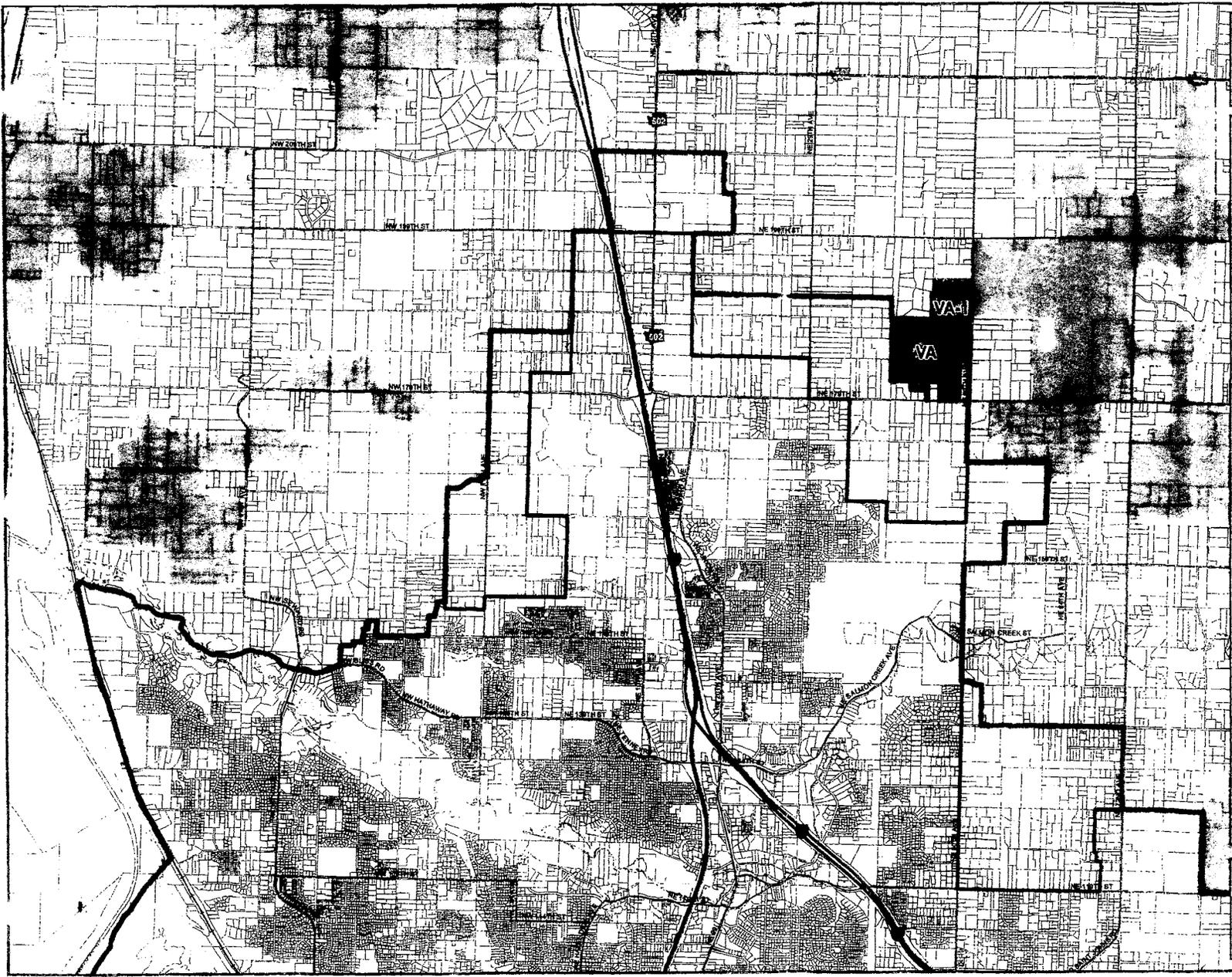
-  Study area boundary
-  BOCC Tentative UGA boundary
-  Adopted 2004 UGA boundary
-  City Limits

Zoning

-  Agriculture-20
-  Forest-Tier II

Zoning Overlay

-  Urban Reserve - 10
-  Industrial Urban Reserve - 20
-  Surface Mining Overlay District



CLARK COUNTY
 DEPARTMENT OF ASSESSMENT AND GIS
 1000 N. 30th Street, Vancouver, WA 98661
 Phone: (509) 526-3333 Fax: (509) 526-3334

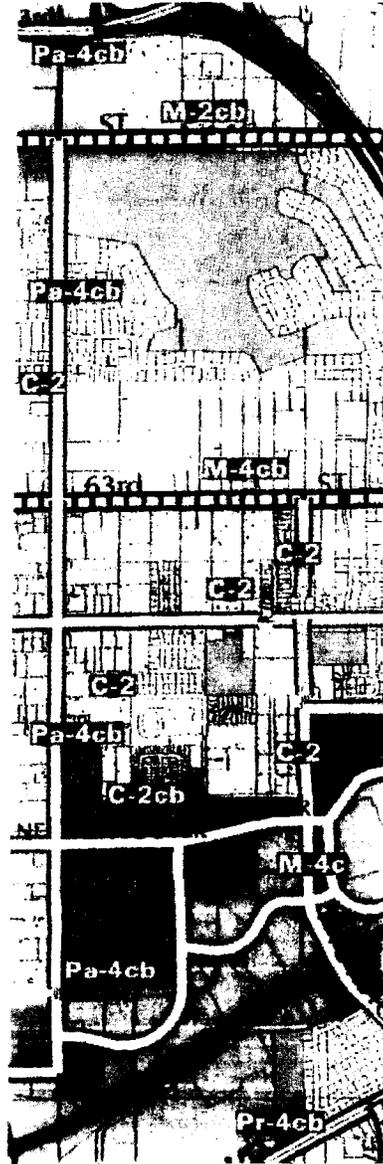
EXHIBIT B

AG SUB AREAS (See Attachment A for locations)	IS IT CHARACTERIZED BY URBAN GROWTH?	IS IT PRIMARILY DEVOTED TO COMMERCIAL PRODUCTION OF AGRICULTURAL PRODUCTS OR CAPABLE OF BEING USED FOR PRODUCTION?	DOES IT HAVE LONG TERM COMMERCIAL SIGNIFICANCE FOR AGRICULTURAL PRODUCTION?									
			PUBLIC FACILITIES/SERVICES	TAX STATUS	UGA	PARCEL SIZE	LAND USE SETTLEMENT PATTERNS AND COMPATIBILITY	INTENSITY OF NEARBY LAND USES	HISTORY OF LAND DEVL.P. PERMITS	LAND VALUES UNDER ALT USES (\$ in thousands)	PROX. TO MARKETS	BOCC DELIBERATION/ DECISION
<p>VA 125.02 acres (Vancouver)</p>	<ul style="list-style-type: none"> The 4 parcels range in size from 11-75 acres Water lines run along the southern border of sub area (179th Street) No sewer lines within sub area. The sub area has an Urban Reserve Overlay The sub area is surrounded by parcels zoned Urban Reserve 	<p><u>IN COMMERCIAL PRODUCTION?</u></p> <ul style="list-style-type: none"> None of the 4 parcels within this sub area were identified as commercial farms in the Globalwise report maps 39% in ag/farm current use program <u>CAPABLE?</u> 86% prime ag soils 26.35% critical land hydric soils, riparian habitat, wetland 	Water lines border the southern sub area boundary along NE 179 th Street.	39.99% in ag/farm current use program	Not adjacent to the UGA	Range 11.04-75.02 acres Median parcel size: 31.25 acres	The land within the sub area is mostly large parcels comprised of rural land uses (open fields, forested land, interspersed residential and farm buildings)	Surrounding area is rural land uses (rural residential, open fields, forested land)	No urban development permits within the vicinity.	AG-20: \$16/acre Proposed zoning: R1-7.5: \$218/acre	In close proximity to Vancouver and Battle Ground UGAs.	This was a landowner request to come into UGB. It has been in Urban Reserve since 1994. If 189 th Street is going to be built out, then it is important to fulfill the County's goal to utilize existing infrastructure as much as possible. Although, it has a high percentage of prime agricultural soils, other factors went into the decision to de-designate. Those include the proximity to urban areas and the fact that there are no existing farms on site. The area will be brought into UGB as Urban Low Density Residential.
<p>VA-2 22.89 acres (Vancouver)</p>	<ul style="list-style-type: none"> The 3 parcels range in size from .97-17.31 acres No public water No public sewer Within Urban Reserve Overlay 	<p><u>IN COMMERCIAL PRODUCTION?</u></p> <ul style="list-style-type: none"> None of the 3 parcels in this sub area were identified as commercial farms in the Globalwise report maps 0% of the land is enrolled in the ag/farm current use program <u>CAPABLE?</u> 58.98% prime agriculture soils 33.55% critical land hydric soils, riparian habitat, wetland, severe erosion 		0% of land is in ag/farm current use program	Not adjacent to existing UGA	Range: .97-18.04 acres Median parcel size: 5.08 acres	The land within the sub area boundary is characterized by rural land uses (open fields, rural residential, farm buildings)	Surrounding area consists of rural land uses (rural residential, open fields, forested land)	No urban development permits in process within vicinity	AG-20: \$16/acre Proposed zoning: ??	Vancouver, Battle Ground, Ridgefield	This area has been in Urban Reserve since 1994 and has been requested by the property owner to come into the UGB. Based on the agricultural analysis and the fact that the 189 th Street corridor will be developed, the decision was made to de-designate the sub area from agriculture and bring it into the UGB as Urban Low Density Residential.
<p>VB 780.43 acres (Vancouver)</p>	<ul style="list-style-type: none"> The 35 parcels range in size from 0.19-222 acres. Water lines are located within the sub area boundaries No sewer lines within the sub area. Sub area is within urban reserve overlay Surrounded by Urban Reserve zoning. 	<p><u>IN COMMERCIAL PRODUCTION?</u></p> <ul style="list-style-type: none"> 3 farms are located within the sub area as identified in the Globalwise report maps 85.76% in ag/farm current use program <u>CAPABLE?</u> 79% prime ag soils 66.78% critical land hydric soils, wetland, priority species buffer 	<ul style="list-style-type: none"> Water lines are located within the sub area boundaries. Education facilities adjacent. Airport adjacent. <p>The sub area is split by SR 503</p>	85.76% in ag/farm current use program	Southern tip of sub area boundary borders Vancouver's northern UGA boundary	Range 0.19-222.16 acres Median parcel size: 22.42 acres	The land within the sub area boundary is characterized by rural land uses (open fields, farms, rural residential) Farms are classified as: Livestock/Dairy; Vegetable/Fruit; and Specialty.	Surrounding area is comprised of open space, rural residential (R-5 zone) and there is a Rural Center to the North. Urban Holding overlay was recently lifted on parcels to the south of sub area.	150-unit condo project (Delyria) to south within UGA	AG-20: \$16/acre Proposed zoning: Employment Center/Business Park	In close proximity to Vancouver UGA market.	<p>This sub area provides unique opportunities for industry along the railroad, SR 503, and 119th Street by utilizing existing high capacity infrastructure. In addition, a circulation plan is already in place. This area is an opportunity to provide a greater tax base for Battle Ground School District. Educational purposes were extremely important during the discussion. Commissioner Boldt noted that the current dairy farm receives all supplies from east of the mountains and that once the transportation costs become too high for the farm to sustain, the farmer will have to move to make his business economically viable.</p> <p>The area will be de-designated from agriculture and brought in as Employment center/Business Park</p>

EXHIBIT C

LEGEND

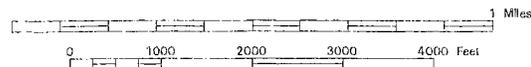
- Urban low density residential
- Urban medium density residential
- Urban high density residential
- Neighborhood commercial
- Community commercial
- General commercial
- Rural commercial
- Light industrial
- Heavy industrial
- Rural industrial
- Office park
- Mixed use
- Public facility
- Parks / open space
- Urban reserve
- Mining lands
- Rural -5
- Forest Tier I
- Forest Tier II
- Agriculture
- Agri-Wildlife
- Rural -10
- Rural -20
- Rural Center Residential
- State route
- Urban Principal Arterials
- Urban Minor Arterial
- Urban Collector Arterial
- Rural Major Collector
- Rural Minor Collector
- Scenic Highway
- Proposed roads
- Area of special interest (see Appendix B for details)



- Pa-4cb** Principal Arterial Parkway - 4 lanes & regional trail
- Pa-4b** Principal Arterial Parkway - 4 lanes w/barrier median & bike facility
- Pr-6cb** Principal Arterial - 6 lanes w/CLT* & bike lanes
- Pr-6c** Principal Arterial - 6 lanes w/ CLT
- Pr-4cb** Principal Arterial - 4 lanes w/CLT & bike lanes
- Pr-4c** Principal Arterial - 4 lanes w/CLT
- Pr-2cb** Principal Arterial - 2 lanes w/CLT & bike lanes
- M-4cb** Minor Arterial - 4 lanes w/CLT & bike lanes
- M-4c** Minor Arterial - 4 lanes w/CLT
- M-4b** Minor Arterial - 4 lanes w/ bike lanes
- M-4** Minor Arterial - 4 lanes
- M-2cb** Minor Arterial - 2 lanes w/CLT & bike lanes
- C-2cb** Collector - 2 lanes w/CLT & bike lanes
- C-2** Collector - 2 lanes
- R-2** Rural Major Collector - 2 lanes w/shoulders
- Rm-2** Rural Minor Collector - 2 lanes w/shoulders

*CLT means center left turn or median

Scale 1:24000



This product was prepared by Clark County Department of Assessment and GIS. Every effort has been made to ensure the accuracy of this document. Clark County expressly disclaims any liability for any inaccuracies which may yet be present. Parcelization is based on best available data as of August 29, 1998

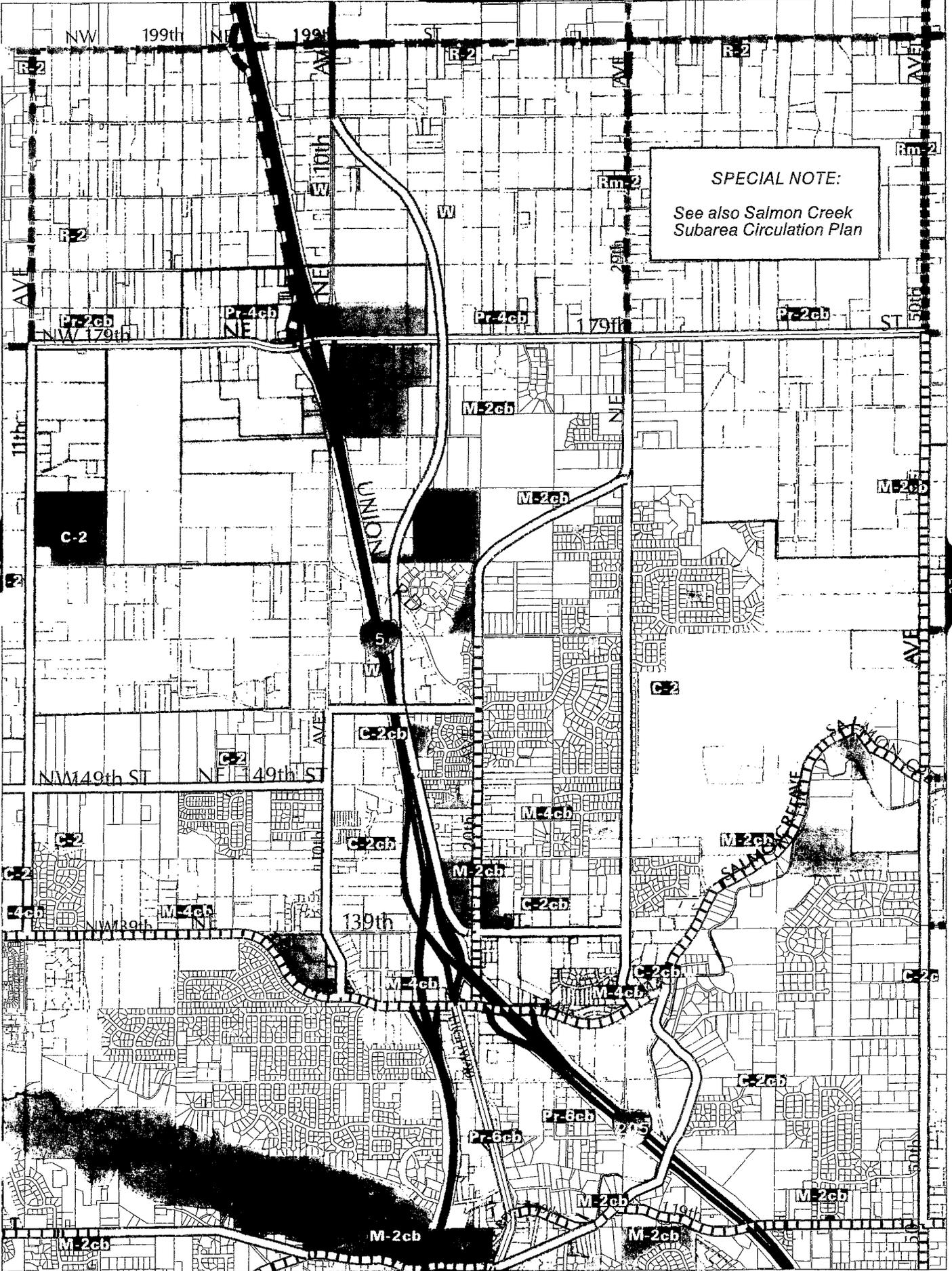


EXHIBIT D

About the Arterial Atlas

This arterial atlas unites long-range roadway system plans of Clark County and the cities of Battle Ground, Camas, Ridgefield, Vancouver, and Washougal. It is an outcome of Clark County's *Comprehensive Growth Management Plan*, originally adopted in December 1994, which sets the course of future growth in our community and that promotes strong linkages between transportation and land use. This atlas provides guidance for developing the roadway system that will help fulfill the objectives of the comprehensive plan.

The base for this arterial atlas is a map of the *Comprehensive Growth Management Plan's* land use designations, which is a full color document available from the county's Department of Assessment and GIS. The map pages in this atlas and the 1998 Road Atlas correspond directly to each other. A high resolution printing process was used to ensure readability.

Another aid in interpreting the map pages of this atlas is its appendices. Appendix A provides diagrams of the standard cross-sections that relate to the classifications illustrated on the map pages. Appendix C provides overviews of subarea circulation plans adopted subsequent to the comprehensive plan.

One last note on the use of this document: the information shown within incorporated cities and towns ought to be considered initial guidance only for development construction. For detailed information regarding roadway requirements related to construction, the best resource is staff from that particular jurisdiction.

Although Clark County's Department of Community Development guided the preparation of this arterial atlas, it could not have been completed without the assistance of other county departments and other local government agencies. We would like to recognize the assistance the county's Department of Assessment and GIS and Public Works, and the cities of Battle Ground, Camas, Ridgefield, Vancouver, and Washougal.

We hope you find this arterial atlas helpful. And we encourage you to let us know if there are ways we can make upcoming editions even more useful in the future. For that purpose, a comment form is included inside the back cover.

**Clark County Department of Community Development
January 1998**

ARTERIAL ATLAS

Clark County

WASHINGTON

As last amended by Resolution 1997-09-15

Board of County Commissioners:

Betty Sue Morris, District #1

Mel Gordon, District #2

Judie Stanton, District #3

Glen Olson, Interim County Administrator

Produced by:

Department of Community Development

1408 Franklin Street

Vancouver, WA 98660

(360) 699-2375

In conjunction with:

Department of Public Works

1300 Esther Street

Vancouver, WA 98660

and

Department of Assessment and GIS

1200 Franklin Street

Vancouver, WA 98660

I hereby certify that on the 18th day of December, 2009, I caused to be served by mailing full, true and correct copies of Brief of Respondent and Intervenor-Respondent Renaissance Homes and Birchwood Farms, L.L.C., in sealed, first-class postage-prepaid envelopes addressed to the attorneys and parties shown below, and deposited with the United States Postal Service at Vancouver,

Washington:

Daniel H. Kearns
Reeve Kearns PC
621 S.W. Morrison Street
Suite 1225
Portland, Oregon 97205

Christine Cook
Clark County Prosecuting
Attorney's Office
Post Office Box 5000
Vancouver, Washington 98666

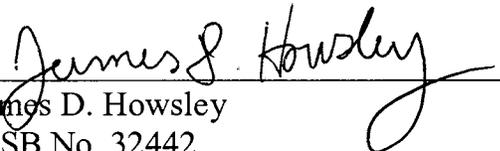
Randall B. Printz
Brian Gerst
Landerholm, Memovich, Lansverk
& Whitesides, P.S.
805 Broadway Street, Suite 1000
Post Office Box 1086
Vancouver, Washington 98666

Jerald Anderson
Assistant Attorney General
Licensing & Administrative Law
Division
Post Office Box 40110
Olympia, Washington 98504

COURT OF APPEALS
DIVISION II
09 DEC 21 PM 12:09
STATE OF WASHINGTON
BY cm
DEPUTY

Tim Trohimovich
Robert Beattey
Futurewise
814 Second Avenue, Suite 500
Seattle, Washington 98104

Dated this 18th day of December, 2009.


James D. Howsley
WSB No. 32442