

No. 43643-4-II

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**IN THE COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON**

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FUTUREWISE,

Appellant,

v.

GROWTH MANAGEMENT HEARINGS BOARD, an agency of the  
State of Washington, and PACIFIC COUNTY, a political subdivision of  
the State of Washington,

Respondents.

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**FUTUREWISE'S OPENING BRIEF**

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## I. INTRODUCTION

The Washington State Supreme Court has held that “[w]hen read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.”<sup>1</sup> The Washington State Supreme Court has also held that “[i]f a county amends a comprehensive plan, the amendment must comply with the [Growth Management Act] GMA and may be challenged within 60 days of publication of the amendment adoption notice.”<sup>2</sup> Here the Growth Management Hearings Board (Board) failed to follow these holdings when the Board upheld Pacific County’s amendments to the agricultural provisions of the *Pacific County Comprehensive Plan*.<sup>3</sup> In upholding these amendments, the Board misinterpreted and misapplied the GMA, chapter 36.70A RCW, and the Board’s order is not supported by substantial evidence. So this Court should reverse the Board’s order on these issues.

## II. ASSIGNMENTS OF ERROR, ISSUES, AND SHORT ANSWERS

This appeal before the Board had three issues. Only one of those issues has been appealed:

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<sup>1</sup> *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wn.2d 543, 562, 14 P.3d 133, 143 (2000).

<sup>2</sup> *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 347, 190 P.3d 38, 46 (2008).

<sup>3</sup> Administrative Record (AR) 1686 – 91, *Futurewise v. Pacific County*, Case No. 10-2-0021, Final Decision and Order (June 22, 2011), at 8 – 13 of 28. Hereinafter FDO. The AR references are to the “Bates” numbers placed on the pages of the Administrative Record by the Growth Management Hearings Board.

Issue 1: Does Pacific County under its updated comprehensive plan fail to include and properly designate agricultural lands that have long-term significance for the commercial production of food or other agricultural products as required under RCW 36.70A.170(1)(a)?<sup>4</sup>

**Assignment of Error 1:** The Board erred in concluding that the *Pacific County Comprehensive Plan* did not adopt new designation criteria for agricultural lands of long-term commercial significance and therefore the County’s agricultural lands designations were not open to challenge and that Futurewise’s challenge to the mapping of agricultural lands was not timely.<sup>5</sup>

**Assignment of Error 2:** The Board erred in upholding the County’s amendment to its comprehensive plan to designate agricultural lands of long-term commercial significance as “Rural Agricultural” rather than as “Agriculture.”<sup>6</sup>

**Assignment of Error 3:** The Board erred in concluding that Pacific County’s provisions for designating and classifying agricultural lands did not need to be consistent with the GMA including the definition of “agricultural land” in RCW 36.70A.030(2) and RCW 36.70A.170(1)(a)’s requirement that agricultural lands of long-term

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<sup>4</sup> AR 1684, FDO at 6 of 28.

<sup>5</sup> AR 1687 – 88, FDO at 9 – 10 of 28.

<sup>6</sup> AR 1688, FDO at 10 of 28.

commercial significance are not to be already characterized by urban growth.<sup>7</sup>

**Assignment of Error 4:** If any of the Board's Final Decision and Order on pages 5 through 13 (AR 1683 – 91) are findings of fact, Futurewise assigns error to them.

**Issue 1:** Was the Board's conclusion that the Pacific County Comprehensive Plan did not adopt new designation and classification criteria for agricultural lands of long-term commercial significance and that the County was not required to update its designations of agricultural lands using the new criteria an erroneous interpretation or application of the GMA and not support by substantial evidence? Yes. (Assignment of Error 1.)

**Issue 2:** Was the Board's conclusion that the Pacific County Comprehensive Plan amendments complied with the GMA an erroneous interpretation or application of the GMA and not supported by substantial evidence? Yes. (Assignments of Error 2, 3, and 4.)

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<sup>7</sup> AR 1688 – 91, FDO at 10 – 13 of 28.

### III. FACTS

In October 1998, Pacific County adopted a GMA Comprehensive Plan.<sup>8</sup> The County reviewed and revised its comprehensive plan as required by RCW 36.70A.130 in October 2010.<sup>9</sup> The GMA defines a “comprehensive plan” as “a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.”<sup>10</sup>

The amendments to comprehensive plan related to agricultural resources policies are shown in the following quote. The additions to the *1998 Comprehensive Plan* adopted by the *2010 Comprehensive Plan* are underlined and the deletions from the *1998 Comprehensive Plan* adopted by *2010 Comprehensive Plan* are struck through.

#### 3.5 AGRICULTURAL RESOURCES

##### 3.5.1 AGRICULTURE IN PACIFIC COUNTY

Although Pacific County is not often noted as a farming county, local agriculture does account for over five percent of the county's land ~~use~~ area with the predominate agricultural land uses being hay production, cattle grazing and cranberry production. The county's ~~farm products range from hay to cranberries and include~~ farming community produces a variety of goods including hay, cranberries, shellfish, and includes numerous beef and dairy products. The county also has a diversity of farm types. ~~They include~~ including larger-scale commercial

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<sup>8</sup> AR 11, Pacific County Resolution No. 2010 – 36 p. 1 (Oct. 26, 2010).

<sup>9</sup> AR 11 – 12, Pacific County Resolution No. 2010 – 36 pp. 1 – 2 (Oct. 26, 2010).

<sup>10</sup> RCW 36.70A.020(4).

farms, historic family farms, and part-time farming operations.

Evidence from the 1992 Federal Farm Census shows a slight decrease in the number of farms and farm acreage in Pacific County as compared with the 1987 Census. In 1992, the total land in farms was 32,637 acres, a 6.4 percent decrease from 1987. The number of farms declined from 270 in 1987 to 248 in 1992. The market value of all agricultural products sold in Pacific County in 1992 totaled 12.7 million dollars. This includes approximately \$6.4 million worth of cranberry products, \$5.8 million worth of dairy, cattle, and other livestock, and \$500,000 in nursery and hay.

The 2007 Federal Farm Census shows an increase in the number of farms, farm acreage and values of agricultural products sold since the 1998 Comprehensive Plan. In 1992, the total land in farms was 32,637 acres; in 1997 the total land in farms was 40,228 acres, while in 2007 the total land in farms was approximately 61,749 acres. The total number of farms in 1992 was 248; the total number of farms in 1997 was 253 while the total number of farms in 2007 was 390. The market value of all agricultural products sold in Pacific County in 1992 was \$12.7 million dollars; the total market value of all agricultural products was \$16.9 million dollars in 1997 while the total market value of all agricultural products sold in 2007 was \$34.9 million dollars. Of the 2007 total amount, approximately \$8.6 million was for dairy, cattle and other livestock while \$7.1 million was for cranberry products, hay and nursery products. Equally important to the Pacific County agricultural community is the aquaculture industry. According to the 2007 Federal Farm Census, there were 21 shellfish farms with a total market value of shellfish products at \$19.2 million dollars.

Since the 1940s, conventional crop production (corn, oats, wheat, etc.) has shifted to Eastern Washington. Regardless of the presence of prime soils as mapped by the Natural Resource Conservation Service, conventional crops and modern farming practices do not fit with the wet climate

and small-scale nature characteristic to farming in this area. In addition, farmers in Pacific County are affected by labor shortages and limited infrastructure within the county, such as transportation routes, processing plants, and agricultural suppliers.

### **3.5.2 IDENTIFYING AND CLASSIFYING AGRICULTURE LANDS**

~~Section 16 of the GMA (RCW 36.70A.160)~~ Section 17 of the GMA (RCW 36.70A.170) requires counties to identify agricultural lands of long-term commercial significance. In addition, the GMA directs the Washington State Department of Community, Trade and Economic Development (CTED) to provide guidelines to counties for how to classify and designate such resource lands. RCW 36.70A.030(2) defines agricultural land as “land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.”

WAC 365-190-050 identifies a three part test for designating agricultural land of long-term commercial significance. First, the land is not already characterized by urban growth. Second, the land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural uses based primarily on their physical and geographic characteristics. Third, the land has long-term commercial significance for agriculture based on several applicable criteria including the following:

- Classification of prime and unique soils as mapped by the Natural Resources Conservation Services;
- Availability of public facilities, including roads;
- Tax status;
- Availability of public services;

- Relationship or proximity to urban growth areas and to markets and suppliers;
- Predominant parcel size;
- Land use settlement patterns and their compatibility with agricultural practices;
- Intensity of nearby land uses;
- History of land development permits issued nearby; and
- Land values under alternative uses.

Agricultural land in Pacific County is classified as: (1) “agricultural land of long-term commercial significance” ~~to include~~ which includes all land ~~that is~~ devoted to the production of aquaculture, cranberries, and/or other bog related crops; and (2) “agricultural land of local importance” ~~as any~~ which includes diked tidelands involved in existing and ongoing agricultural activities as of the adoption date of Ordinance No. 147/147A ~~becomes effective on April 13, 1999~~ and containing the soil types listed in Table 3-1 as defined in the “Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA”.

**Table 3-1  
Agricultural Land of Local Importance Soil Types**

<b>SCS Map Unit</b>	<b>Soil Series</b>	<b>SCS Map Unit</b>	<b>Soils Series</b>
104	Ocosta silty clay loam	147	Seastrand variant muck

### 3.5.3 MAPS AND REFERENCES

Agricultural lands are identified on the Pacific County Comprehensive Land Use Map as Rural Agriculture while they are designated as Agriculture on the zoning maps. Shellfish areas are not mapped on the Pacific County Comprehensive Land Use Map, rather their location is identified in the text of Pacific County Ordinance No. 153, Land Use. Agricultural land areas shall be field located based on applicable criteria.

### 3.5.4 CRITICAL AREAS AND RESOURCE LANDS ASSESSMENT CRITERIA

If a critical areas and resource lands assessment is required by the Critical Areas and Resource Lands Ordinance No. 147, the following criteria may be considered when reviewing a proposed activity in areas identified as agriculture lands of long-term commercial significance:

- Soil types;
- Parcel size;
- Local and regional economic conditions and market trends;
- Availability of public facilities and services;
- Proximity of proposed activity to urban growth areas;
- Compatibility of proposed activity with adjacent land use;
- Environmental impacts of proposed activity;
- Impact of proposed activity on commercial agricultural structure of area;
- Impacts of proposed activity to public rights-of-way; and
- Suitability to accommodate on-site wastewater disposal and domestic water supply facilities.<sup>11</sup>

#### IV. STANDARD OF REVIEW

The Administrative Procedure Act (APA) governs judicial review of challenges to decisions by the Board.<sup>12</sup> “Courts apply the standards of the Administrative Procedure Act, chapter 34.05 RCW, and look directly

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<sup>11</sup> AR 165 – 68, *Pacific County Comprehensive Plan* pp. 3-3 – 3-6 (2010 – 2030) in Appendix A to this Brief; AR 531 – 23, *1998 Pacific County Comprehensive Plan* pp. 3-4 – 3-5 in Appendix B to this Brief.

<sup>12</sup> *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 233, 110 P.3d 1132 (2005).

to the record before the board.”<sup>13</sup> “Under the judicial review provision of the APA, the ‘burden of demonstrating the invalidity of [the Board's decision] is on the party asserting the invalidity.’”<sup>14</sup> In this case that is Futurewise.

Relief from a Board decision may be granted on nine different grounds – two of which Futurewise asserts in this appeal. First, Futurewise asserts the Board erroneously interpreted or applied the law.<sup>15</sup> The “courts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) *de novo*.”<sup>16</sup> “Substantial weight is accorded to a board’s interpretation of the GMA, but the court is not bound by the board’s interpretations.”<sup>17</sup> In interpreting the GMA, the courts do not give deference to local government interpretations of the law.<sup>18</sup>

Futurewise also argues that the Board’s order is not supported by substantial evidence. “In reviewing agency findings under RCW 34.05.570(3)(e), substantial evidence is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the

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<sup>13</sup> *Kittitas County v. Eastern Washington Growth Management Hearings Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193, 1198 (2011).

<sup>14</sup> *Thurston County v. Cooper Point Ass'n.*, 148 Wn.2d 1, 7 – 8, 57 P.3d 1156, 1159 – 60 (2002) citing RCW 34.05.570(1)(a).

<sup>15</sup> RCW 34.05.570(3)(d).

<sup>16</sup> *Kittitas County*, 172 Wn.2d at 155, 256 P.3d at 1198.

<sup>17</sup> *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38, 44 (2008).

<sup>18</sup> *Kittitas County*, 172 Wn.2d at 156, 256 P.3d at 1199.

order.”<sup>19</sup> On mixed questions of law and fact, the court determines the law independently, and then applies it to the facts as found by the Board.<sup>20</sup> The reviewing court does not weigh the evidence or substitute its view of the facts for that of the Board.<sup>21</sup>

In considering this appeal, it is important to note that appeals by citizens and citizen groups are the mechanism that the Governor and Legislature adopted to enforce the GMA.<sup>22</sup> Unlike some laws, such as Washington’s Shoreline Management Act, there is no state agency that reviews and approves or disapproves GMA comprehensive plans and development regulations. The responsibility to appeal noncompliant comprehensive plans to the Board is that of citizens and groups such as Futurewise.

## V. ARGUMENT

- A. Issue 1: Was the Board’s conclusion that the Pacific County Comprehensive Plan did not adopt new designation and classification criteria for agricultural lands of long-term commercial significance and that the County was not required to update its designations of agricultural lands using the new criteria an erroneous interpretation or application of the GMA and not support by substantial evidence? (Assignment of Error 1.)**

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<sup>19</sup> *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091, 1094 (1998).

<sup>20</sup> *Thurston County v. Cooper Point Ass’n*, 148 Wn.2d 1, 8, 57 P.3d 1156, 1160 (2002).

<sup>21</sup> *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 676, 929 P.2d 510, 516 n.9 (1997) review denied *Callecod v. Wash. State Patrol*, 132 Wn.2d 1004, 939 P.2d 215 (1997).

<sup>22</sup> *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 175 – 77, 979 P.2d 374, 380 – 82 (1999).

**1. Pacific County adopted new designation criteria for agricultural lands of long-term commercial significance.**

In *Thurston County v. Growth Management Hearings Board*, the Supreme Court held that “[i]f a county amends a comprehensive plan, the amendment must comply with the GMA and may be challenged within 60 days of publication of the amendment adoption notice.”<sup>23</sup> As Futurewise documented in the Part III, Pacific County extensively amended Section 3.5, Agricultural Resources, of the *2010 Comprehensive Plan*. Compared to the *1998 Pacific County Comprehensive Plan* the amendments include:

- Section 3.5.1 was amended to incorporate the 2007 Census of Agriculture and to expand the explanation of why agriculture is an important part of the County economy.<sup>24</sup>
- For the first time, Section 3.5.2 referred to “Section 17 of the GMA” and “RCW 36.70A.170,” which requires the designation of agricultural lands of long-term commercial significance.<sup>25</sup> Section 17 is a reference to 1990 Washington Laws 1<sup>st</sup> Ex. S. Chapter 17 § 17, the provision from the 1990 GMA that adopted RCW 36.70A.170.

Previously the first line of Section 3.5.2 referred to “Section 16 of the

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<sup>23</sup> *Thurston County v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 347, 190 P.3d 38, 46 (2008).

<sup>24</sup> AR 165 – 166, *Pacific County Comprehensive Plan* pp. 3-3 – 3-4 (2010 – 2030); AR 531, *1998 Pacific County Comprehensive Plan* p. 3-4.

<sup>25</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030); AR 531, *1998 Pacific County Comprehensive Plan* p. 3-4.

GMA” and “RCW 36.70A.160” which is the GMA section requiring the designation of open space corridors.<sup>26</sup>

- The definition of agricultural lands from RCW 36.70A.030(2) was added to the section and adopted for the first time.<sup>27</sup>
- The three part definition for designating agricultural lands of long-term commercial significance from the *Lewis County* decision and WAC 365-190-050 was adopted for the first time.<sup>28</sup>
- The long-term commercial significance factors from the then current version of WAC 365-190-050(3)(c) were adopted for the first time.<sup>29</sup>
- The provision providing that “[a]gricultural land areas shall be field located based on applicable criteria” was repealed.<sup>30</sup>
- A provision providing that “[a]gricultural lands are identified on the Pacific County Comprehensive Land Use Map as Rural Agriculture ...” was adopted for the first time.<sup>31</sup>

Pacific County also amended the Comprehensive Plan Land Use Maps.<sup>32</sup>

These amendments included:

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<sup>26</sup> AR 531, *1998 Pacific County Comprehensive Plan* p. 3-4.

<sup>27</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030); AR 531, *1998 Pacific County Comprehensive Plan* p. 3-4.

<sup>28</sup> AR 166 – 167, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030); AR 531, *1998 Pacific County Comprehensive Plan* p. 3-4; *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 433, 502, 139 P.3d 1096, 1103 (2006)..

<sup>29</sup> AR 166 – 167, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030); AR 531, *1998 Pacific County Comprehensive Plan* p. 3-4.

<sup>30</sup> AR 532, *1998 Pacific County Comprehensive Plan* p. 3-5.

<sup>31</sup> AR 167, *Pacific County Comprehensive Plan* p. 3-5 (2010 – 2030).

- The expansion of the Seaview urban growth area.<sup>33</sup>
- Some “cranberry bogs/agricultural lands were removed from the Seaview urban growth area because the County did not have a transfer of development rights program so they cannot be included in an urban growth area.”<sup>34</sup> Finding of Fact 68 explains that that “these cranberry bogs are designated as agricultural lands of long-term commercial significance ....”<sup>35</sup>
- The land use maps were amended to reflect changes in state and federal ownership.<sup>36</sup>
- The Menlo Rural Activity Center in the Willapa Valley was expanded east of Highway 6.<sup>37</sup>

The amendments listed above must comply with the GMA.<sup>38</sup> As to the designation of agricultural lands, the Washington State Supreme Court has held:

¶ 17 In sum, based on the plain language of the GMA and its interpretation in *Benaroya I*, we hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the

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<sup>32</sup> AR 503 – 508, *Pacific County Comprehensive Plan* pp. 2-24 – 2-29 (2010 – 2030); AR 533, Figure E-2 Land Use Map.

<sup>33</sup> AR 19 – 20, Findings of Fact and Conclusions of Law Pacific County Comprehensive Plan and SEPA pp. 6 – 7, Finding of Facts 40 – 46.

<sup>34</sup> AR 20, *Id.* at p. 7, Finding of Fact 48.

<sup>35</sup> AR 23, *Id.* at p. 10 Finding of Fact 68.

<sup>36</sup> AR 23, *Id.* at p. 10, Finding of Fact 72.

<sup>37</sup> AR 508, *Pacific County Comprehensive Plan* p. 2-29 (2010 – 2030); AR 533, 1998 *Pacific County Comprehensive Plan* Comprehensive Plan Land Use Map Figure E-2.

<sup>38</sup> *Thurston County*, 164 Wn.2d at 347, 190 P.3d at 46.

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.<sup>39</sup>

This definition must be used in “designating” and “mapping” agricultural lands of long-term commercial significance.<sup>40</sup> The Washington State Supreme Court has also held that:

We further hold that counties may consider the development-related factors enumerated in WAC 365-190-050(1) [now in WAC 365-190-050(3)(c)] in determining which lands have long-term commercial significance.<sup>41</sup>

So by adopting the three part definition from the *Lewis County* decision and the factors from WAC 365-190-050(3)(c) in Section 3.5.2, Identifying and Classifying Agriculture Lands, in the County’s *2010 Comprehensive Plan*,<sup>42</sup> Pacific County adopted new designation criteria for agricultural lands of long-term commercial significance.

The Board’s conclusion that Pacific County had not adopted new designation is not supported by substantial evidence and is erroneous interpretation of the GMA. The *Pacific County 2010 Comprehensive Plan* and *1998 Pacific County Comprehensive Plan* provide substantial

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<sup>39</sup> *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006) emphasis in the original.

<sup>40</sup> *Lewis County*, 157 Wn.2d at 499 & 504, 139 P.3d at 1101 & 1103 – 04.

<sup>41</sup> *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

<sup>42</sup> AR 166 – 67, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030).

evidence that the new designation criteria were adopted.<sup>43</sup> Section 3.5.2 of the Comprehensive Plan is entitled “Identifying and Classifying Agriculture Lands.”<sup>44</sup> The second paragraph in Section 3.5.2 of the *2010 Comprehensive Plan* states that “WAC 365-190-050 identifies a three part test for designating agricultural land of long-term commercial significance.”<sup>45</sup> The test is then set out in the comprehensive plan.<sup>46</sup> There is no evidence the new criteria were not adopted.

Pacific County may argue, as it did below, that the County did not really amend its comprehensive plan. The County, it argued, “merely was making reference to the relevant statutory and regulatory provisions pertaining to” the designation of agricultural lands of long-term commercial significance.<sup>47</sup> This argument fails. A “comprehensive plan” is “a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.”<sup>48</sup> The *Pacific County 2010 Comprehensive Plan* was adopted by Pacific County’s governing body, the Board of County Commissioners, pursuant to the GMA.<sup>49</sup> So the *Pacific County 2010 Comprehensive Plan* as

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<sup>43</sup> AR 166 – 67, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030); AR 531 – 32, *1998 Pacific County Comprehensive Plan* pp. 3-4 – 3-5.

<sup>44</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030).

<sup>45</sup> *Id.*

<sup>46</sup> AR 166 – 67, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030).

<sup>47</sup> Clerks Papers (CP) p. 183 – 84, Reply Brief of Pacific County pp. 7 – 8.

<sup>48</sup> RCW 36.70A.030(4).

<sup>49</sup> AR 11 – 13, Pacific County Resolution No. 2010 – 36 pp. 1 – 3 (Oct. 26, 2010).

amended is a policy statement, not a reference to the law of designating agricultural lands. Indeed the comprehensive plan does not say that if you want to learn the GMA requirements for designating agricultural lands of long-term commercial significance see these laws and regulations.<sup>50</sup> Rather Section 3.5.2 of the Comprehensive Plan is entitled “Identifying and Classifying Agriculture Lands.”<sup>51</sup> In the first paragraph the comprehensive plan states that “Section 17 of the GMA (RCW 36.70A.170) requires counties to identify agricultural lands of long-term commercial significance.”<sup>52</sup> The second paragraph in Section 3.5.2 of the *2010 Comprehensive Plan* provides that “WAC 365-190-050 identifies a three part test for designating agricultural land of long-term commercial significance.”<sup>53</sup> The test is then set out.<sup>54</sup> Since the test is in a comprehensive plan, the law, the GMA, provides that it is part of a “generalized coordinated land use policy statement.”<sup>55</sup>

The Board’s conclusion that the County had not adopted the new criteria is a misinterpretation of the GMA. It is also not supported by substantial evidence. So this Court must overturn that portion of the Board’s Final Decision and Order.

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<sup>50</sup> AR 165 – 68, *Pacific County Comprehensive Plan* pp. 3-3 – 3-6 (2010 – 2030).

<sup>51</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> AR 166 – 67, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030).

<sup>55</sup> RCW 36.70A.030(4).

**2. Failing to apply the new designation criteria and failing to designate agricultural lands of long-term commercial as “Agriculture” on the future land use map violated the GMA.**

Further, in the *Lewis County* decision, the Supreme Court remanded the case “for the Board to apply the correct definition of agricultural land in determining whether” Lewis County had complied with RCW 36.70A.170(1) in designating agricultural land.<sup>56</sup> Similarly here, after adopting the new designation criteria, Pacific County should have used them to determine whether the County’s designated agricultural lands were consistent with the amended criteria. The Board’s conclusion that the County did not need to reanalyze its agricultural lands designations because the County had not adopted new designation criteria both misinterprets and misapplies RCW 36.70A.170(1) and is not supported by substantial evidence because the comprehensive plan provides the evidence the new criteria were adopted.<sup>57</sup>

This result is also consistent with Growth Management Hearings Board precedent. As the Board concluded in an earlier decision:

The Board finds that the County had a duty to apply the revised criterion (Criterion Three) to lands which were not designated for conservation and protection previously, and not just to adopt revised criteria. Designation criteria that are not applied to map or otherwise specify the lands that

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<sup>56</sup> *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

<sup>57</sup> AR 165 – 67, *Pacific County Comprehensive Plan* pp. 3-3 – 3-5 (2010 – 2030); AR 531 – 23, *1998 Pacific County Comprehensive Plan* pp. 3-4 – 3-5.

are designated for conservation fail to meet the requirements of RCW 36.70A.060 and 36.70A.170(1)(a) to designate those lands.<sup>58</sup>

The facts are similar here. As we have seen, Pacific County adopted new designation criteria for agricultural lands of long-term commercial significance and amended its future land use maps, but the county has not applied the amended criteria and mapped the agricultural lands of long-term commercial significance that meet these criteria. The amendments to the *2010 Comprehensive Plan* creates a duty to update the designation of agricultural lands to comply with RCW 36.70A.170(1)(a) and RCW 36.70A.130.<sup>59</sup> The County's *1998 Comprehensive Plan* makes no mention of this three-part test.<sup>60</sup> This is a material difference between the *1998 Comprehensive Plan* and the *2010 Comprehensive Plan* and one that creates a duty to update the agricultural lands designations and the 2010 land use map adopted in the comprehensive plan.

Further, as Findings of Fact 68 documented, Pacific County amended its Comprehensive Plan Land Use map to designate the existing cranberry bogs excluded from the Southwestern portion of the Seaview

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<sup>58</sup> *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002, Compliance Order on Rural Densities and Agricultural Lands Issues Growth Management Hearings Board (Oct. 22, 2007), at 2 of 25.

<sup>59</sup> AR 166 – 67, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030).

<sup>60</sup> AR 531 – 32, *1998 Pacific County Comprehensive Plan* pp. 3-4 – 3-5.

UGA as agricultural lands of long-term commercial significance.<sup>61</sup> Having amended its Comprehensive Plan Land Use map for this and other amendments as we documented above, the County should have applied its new criteria consistently, designated all lands that qualify as agricultural lands of long-term commercial significance, and given them a GMA complaint agricultural comprehensive plan designation.

Areas meeting the newly amended definition of agricultural lands of long-term commercial significance meet the criteria in Comprehensive Plan Policy 2.6.3.1 for the “Agriculture” designation.<sup>62</sup> But instead of designating the existing cranberry bogs excluded from the Southwestern portion of the Seaview UGA as “Agriculture” the County designated them “Rural Agriculture.”<sup>63</sup> As we will show in the next section, “Rural Agriculture” is a rural designation, not a natural resource lands designation.

An example of an area the County failed to designate as agricultural lands of long-term commercial significance using the new criteria are the County’s productive agricultural valleys, where many livestock operations occur. These areas are not devoted to urban growth,

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<sup>61</sup> AR 23, Findings of Fact and Conclusions of Law Pacific County Comprehensive Plan and SEPA p. 10 Finding of Fact 68.

<sup>62</sup> AR 510 – 11, *Pacific County Comprehensive Plan* pp. 2-34 – 2-35 (2010 – 2030) in Appendix A of this Brief.

<sup>63</sup> AR 507, *Pacific County Comprehensive Plan* p. 2-28 (2010 – 2030).

are actively farmed, have prime soils, and meet the other criteria in the minimum guidelines. This is illustrated by the soils map for part of the Willapa Valley south of Menlo between Lilly Wheaton Road and Green Creek Road in the record.<sup>64</sup> This map shows the area is actively farmed. Ninety-four percent of this area is classified as “prime farmland” and there are even 4.6 acres of Seastrand variant muck, one of the two soils of local significance the County specifically identifies in its comprehensive plan.<sup>65</sup>

The Board erroneously concluded that Pacific County did not need to use the Supreme Court’s definition of agricultural lands in designating agricultural lands of long-term commercial significance.<sup>66</sup> But as we have seen, that is contrary to the holding in *Lewis County* that the three part definition must be used. Further, the Supreme Court of Washington based this definition on the plain language of the GMA in RCW 36.70A.170, RCW 36.70A.030(2), and the court’s earlier decision in *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d

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<sup>64</sup> AR 588, Natural Resources Conservation Service National Cooperative Soil Survey, Soil Map – Grays Harbor County Area, Pacific and Wahkiakum Counties, Washington (Willapa River Valley south of Menlo) p. 1 of 3; AR 591 – 92, Prime and Unique Farmland Soils pp. 1 – 2 of 2.

<sup>65</sup> AR 590, Natural Resources Conservation Service National Cooperative Soil Survey, Soil Map – Grays Harbor County Area, Pacific and Wahkiakum Counties, Washington (Willapa River Valley south of Menlo) p. 3 of 3; AR 591 – 92, Prime and Unique Farmland Soils pp. 1 – 2 of 2; AR 167, *Pacific County Comprehensive Plan* p. 3-5 (2010 – 2030).

<sup>66</sup> AR 1689 – 90, FDO at 11 – 12 of 28.

38, 959 P.2d 1091 (1998).<sup>67</sup> So the Board's conclusion that Pacific County did not have to follow the *Lewis County* definition was an erroneous interpretation of the GMA. Further, the Board's decision that the County did not need to apply the new designation criteria to determine if it had correctly mapped agricultural lands was also an erroneous interpretation of the GMA. This court must reverse those parts of the Board's Final Decision and Order.<sup>68</sup>

The next question is whether these amendments comply with the GMA requirements to designate agricultural lands of long-term commercial significance. As this brief shows in the following section, several of the amendments do not comply with the GMA.

**B. Issue 2: Was the Board's conclusion that the Pacific County Comprehensive Plan amendments complied with the GMA an erroneous interpretation or application of the GMA and was not supported by substantial evidence? (Assignments of Error 2, 3, and 4.)**

**1. Parts of Comprehensive Plan Section 3.5.2 fail to comply with the GMA.**

As we have seen, the Washington State Supreme Court has held that there is a three part definition of agricultural lands of long-term commercial significance.

¶ 17 In sum, based on the plain language of the GMA and its interpretation in *Benaroya I*, we hold that agricultural

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<sup>67</sup> *Lewis County*, 157 Wn.2d at 499 – 01, 139 P.3d at 1101 – 02.

<sup>68</sup> AR 1688 – 90, FDO at 10 – 12 of 28.

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.<sup>69</sup>

The language in second part of the test in Section 3.5.2 does not  
track this language, which as we discussed above is based on the GMA.

That language from Section 3.5.2 reads:

Second, the land is used or capable of being used for  
agricultural production. This factor evaluates whether lands  
are well suited to agricultural uses based primarily on their  
physical and geographic characteristics.

A comparison of (b) in the *Lewis County* quote with the language from  
Section 3.5.2 shows there is no reference to the “commercial production of  
agricultural products enumerated in RCW 36.70A.030(2).” This language  
was taken from RCW 36.70A.170(1)(a) by the Washington State Supreme  
Court. In addition, the *2010 Comprehensive Plan* adopts the definition  
from RCW 36.70A.030(2). The Board’s conclusion that Pacific County  
did not have to follow the *Lewis County* holding which was based on the  
plain language of the GMA is an erroneous interpretation of the law.<sup>70</sup>

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<sup>69</sup> *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d  
488, 502, 139 P.3d 1096, 1103 (2006).

<sup>70</sup> AR 1689 – 90, FDO pp. 11 – 12 of 28.

The last paragraph in Section 3.5.2, Identifying and Classifying Agriculture Lands, also does not comply with the *Lewis County* holding. That paragraph, which was amended by the *2010 Comprehensive Plan* update, now reads:

Agricultural land in Pacific County is classified as: (1) “agricultural land of long-term commercial significance” which includes all land devoted to the production of aquaculture, cranberries, and/or other bog related crops; and (2) “agricultural land of local importance” which includes diked tidelands involved in existing and ongoing agricultural activities as of the adoption date of Ordinance No. 147/147A on April 13, 1999 and containing the soil types listed in Table 3-1 as defined in the “Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA”.<sup>71</sup>

RCW 36.70A.130(1)(a) provides in relevant part that “a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.” As was noted in the Facts (Section III), the 2010 Comprehensive Plan is the County’s RCW 36.70A.130 update.<sup>72</sup> It cannot be doubted that the Washington State Supreme Court’s holding in *Lewis County* on the

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<sup>71</sup> AR 167, *Pacific County Comprehensive Plan* p. 3-5 (2010 – 2030).

<sup>72</sup> AR 11 – 12, *Pacific County Resolution No. 2010 – 36* pp. 1 – 2 (Oct. 26, 2010).

definition of agricultural land is based on the requirements of the GMA.<sup>73</sup> Pacific County, by making its extensive amendments to Section 3.5, Agricultural Resources, attempted, imperfectly, to incorporate those requirements in the *Pacific County Comprehensive Plan*. In particular the County adopted the definition of agricultural lands in RCW 36.70A.030(2) and the three part definition.<sup>74</sup> The last paragraph in Section 3.5.2 does not list all of the agricultural products in RCW 36.70A.030(2) such as Christmas trees, dairy, hay, or animal products. Only “aquaculture, cranberries, and/or other bog related crops” are mentioned. Pacific County’s agricultural products include dairy, cattle and other livestock, cranberry products, hay and nursery products, and shellfish.<sup>75</sup> Including all of the agricultural products grown in Pacific County is required by RCW 36.70A.030(2) and *Lewis County*.<sup>76</sup>

The Board justified excluding the other agricultural products because the County argued in 1996 and 1997 it considered a variety of factors and concluded that only aquaculture and cranberry production have long-term commercial significance.<sup>77</sup> However, between 1997 and 2007, the land in farms in Pacific County increased from 40,228 acres to 61,749

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<sup>73</sup> *Lewis County*, 157 Wn.2d at 499 – 01, 139 P.3d at 1101 – 02.

<sup>74</sup> AR 166 – 67, *Pacific County Comprehensive Plan* pp. 3-4 – 3-5 (2010 – 2030).

<sup>75</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030).

<sup>76</sup> *Lewis County*, 157 Wn.2d at 499 – 01, 139 P.3d at 1101 – 02.

<sup>77</sup> AR 1690 – 91, FDO at 12 – 13 of 28.

acres.<sup>78</sup> During the same period, the number of farms increased from 253 to 390 and the value of agricultural products sold more than doubled from \$16.9 million in 1997 to \$34.9 million 2007.<sup>79</sup> In contrast to this evidence of significant change in the long-term commercial significance of agriculture, neither the County nor the Board cite to any evidence that the 1996 and 1997 decision is still relevant.<sup>80</sup> The closest the County came was testimony that all but one of the existing dairies and beef operations were passed down via inheritance, that there is no evidence that any beef/dairy farms have successfully operated with sufficient income to provide for a family and pay a land mortgage, that the one dairy that involved purchasing an existing dairy operation has since ceased operations, and that the number of dairies is down to seven.<sup>81</sup> But none of this address in the 137 new farms or the doubling of the dollar value of the agricultural products sold.<sup>82</sup> And between 1992 and 2007, the market value of dairy, cattle, and other livestock sold increased by \$2.8 million to \$8.6 million.<sup>83</sup>

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<sup>78</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030).

<sup>79</sup> *Id.*

<sup>80</sup> AR 1684 – 91, FDO at 6 – 13 of 28; AR 683 – 700, Brief of Respondent, Pacific County pp. 1 – 18 (April 27, 2011).

<sup>81</sup> AR 694, Brief of Respondent, Pacific County p. 12 (April 27, 2011).

<sup>82</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030).

<sup>83</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030); AR 531, 1998 *Pacific County Comprehensive Plan* p. 3-4.

This failure to consider all of the agricultural products identified in RCW 36.70A.030(2) is similar to Lewis County’s exclusion of Christmas tree farms from its designation of agricultural land of long-term commercial significance in the *Lewis County* decision. In that decision, the supreme court questioned why Christmas tree farms had been excluded from the designation of agricultural lands “in light of the Christmas tree industry's relatively robust \$19.8 million in annual sales ...”<sup>84</sup> It was unclear to the supreme court why the county would exclude Christmas tree farms just because they do not need as high a qualify farmland as the other agricultural products need.<sup>85</sup>

In Pacific County there were \$8.6 million in sales of dairy products, cattle and other livestock and \$7.1 million in sales of cranberry products, hay and nursery products.<sup>86</sup> Pacific County excluded dairy products, cattle, other livestock, hay and nursery products, but included cranberry products even though dairy products, cattle and other livestock had greater sales. And some of the hay grown in the river valleys has the same soils and is part of existing and ongoing agricultural activities just like the diked tidelands the county did designate as agricultural lands.<sup>87</sup>

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<sup>84</sup> *Lewis County*, 157 Wn.2d at 504, 139 P.3d at 1104.

<sup>85</sup> *Id.*

<sup>86</sup> AR 166, *Pacific County Comprehensive Plan* p. 3-4 (2010 – 2030).

<sup>87</sup> AR 588 – 590, Natural Resources Conservation Service National Cooperative Soil Survey, Soil Map – Grays Harbor County Area, Pacific and Wahkiakum Counties,

The Board’s conclusion that Pacific County did not need to include these other crops in its comprehensive plan designation provisions is an erroneous interpretation of the GMA because the *Lewis County* decision and the GMA requires including all of the agricultural products in RCW 36.70A.030(2). It is also not supported by substantial evidence.

The last paragraph also includes no mention of “not already characterized by urban growth.” The Board excused this error on the grounds that cranberry bogs and commercial shellfish beds are not found in urban areas, but the County did have some cranberry bogs within the Seaview urban growth area.<sup>88</sup> So the Board’s decision is not based on substantial evidence and is inconsistent with the *Lewis County* holding that agricultural land is not already characterized by urban growth.<sup>89</sup>

Finally, the last paragraph in Section 3.5.2 does not include any of the long-term commercial significance provisions.<sup>90</sup> Again, this violates the *Lewis County* holding and the GMA.<sup>91</sup>

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Washington (Willapa River Valley south of Menlo) pp. 1 – 3 of 3; AR 591 – 92, Prime and Unique Farmland Soils pp. 1 – 2 of 2; AR 167, Pacific County Comprehensive Plan p. 3-5 (2010 – 2030).

<sup>88</sup> AR 20, Findings of Fact and Conclusions of Law Pacific County Comprehensive Plan and SEPA p. 7, Finding of Fact 48.

<sup>89</sup> *Lewis County*, 157 Wn.2d at 502, 139 P.3d at 1103.

<sup>90</sup> AR 167, *Pacific County Comprehensive Plan* p. 3-5 (2010 – 2030).

<sup>91</sup> RCW 36.70A.030(10) “‘Long-term commercial significance’ includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land.”

So having undertaken amendments to its comprehensive plan, RCW 36.70A.130(1)(a) and the *Thurston County* decision requires the County to fully and accurately incorporate the GMA provisions it seeks include in the update to its comprehensive plan.<sup>92</sup> To do otherwise means that the County has not “ensure[d] the plan and regulations comply with the requirements” of the GMA.<sup>93</sup>

**2. Designating agricultural lands of long-term commercial significance “Rural Agricultural” is an erroneous interpretation of the GMA.**

As we have seen in 2010, Section 3.5.3 of the comprehensive plan was amended to provide that “[a]gricultural lands are identified on the Pacific County Comprehensive Land Use Map as Rural Agriculture ....”<sup>94</sup> The state Supreme Court has held “natural resource areas, including agricultural and forestry lands of long-term commercial significance, are not included in a rural element.”<sup>95</sup> The “Rural Agriculture” comprehensive plan designation is a “subset of the Rural Lands category”<sup>96</sup> Table 2-2, Existing Land Use, in the *Pacific County Comprehensive Plan*, lists Rural Agriculture as a “Rural Land,” not a “Resource Land.”<sup>97</sup> So “agricultural

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<sup>92</sup> *Thurston County*, 164 Wn.2d at 347, 190 P.3d at 46.

<sup>93</sup> RCW 36.70A.130(1)(a).

<sup>94</sup> AR 167, *Pacific County Comprehensive Plan* p. 3-5 (2010 – 2030); AR 532, 1998 *Pacific County Comprehensive Plan* p. 3-5.

<sup>95</sup> *Thurston County*, 164 Wn.2d at 357, 190 P.3d at 51 *citing* RCW 36.70A.070(5).

<sup>96</sup> AR 509, *Pacific County Comprehensive Plan* p. 2-30 (2010 – 2030) as in Appendix A of this Brief.

<sup>97</sup> *Id.*

lands,” which are agricultural lands of long-term commercial significance, cannot be designated “Rural Agriculture.” Instead they should be given the Pacific County “Agriculture” resource lands designation. Pacific County Comprehensive Plan Policy 2.6.3.1 “Agriculture” provides:

This designation includes lands meeting the definition for agricultural and aquaculture lands of long-term commercial significance as defined in Section 3, Critical Areas and Resource Lands, of this Comprehensive Plan. The criteria for locating agriculture and aquaculture lands of long-term commercial significance are based on the Washington State Department of Commerce guidelines for the classification and designation of resource lands, as well as existing County policies, and an analysis of local conditions.<sup>98</sup>

The County comprehensive plan distinguishes between rural comprehensive plan designations, such as the “Rural Agriculture” designation, and natural resource designations such as the “Agriculture” designation.<sup>99</sup>

Designating agricultural lands of long-term commercial significance as rural and not as “Agriculture” is an erroneous interpretation of the GMA. Having mapped these lands as part of the 2010 comprehensive plan update, the County had a duty to do it right. Instead of mapping them as agricultural lands of long-term commercial significance as required by RCW 36.70A.170(1)(a), the County mapped them in a rural

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<sup>98</sup> AR 510 – 11, *Pacific County Comprehensive Plan* pp. 2-34 – 2-35 (2010 – 2030) in Appendix A of this Brief.

<sup>99</sup> AR 509, *Pacific County Comprehensive Plan* p. 2-30 (2010 – 2030); AR 510 – 11, *Pacific County Comprehensive Plan* pp. 2-34 – 2-35 (2010 – 2030).

comprehensive plan designation in violation of the GMA.<sup>100</sup> The Board's confused contrary conclusion is not supported by any evidence in the record much less substantial evidence and is contrary to the GMA.<sup>101</sup> So that part of the Board's decision must be reversed.

## VI. CONCLUSION

In sum, having amended its criteria for agricultural lands of long-term commercial significance which designates agricultural lands and the Agricultural Resources provisions of its comprehensive plan, Pacific County was required to revise its policies and comprehensive plan designations to comply with the GMA. The Board's conclusions that the *Pacific County Comprehensive Plan's* agricultural comprehensive plan provisions complied with the GMA are not supported by substantial evidence and rest on misinterpretations of the GMA. The Board's Final Decision and Order related to the agricultural policies and designations must be reversed by this Court.

Respectfully submitted this 20<sup>th</sup> day of September 2012.



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Tim Trohimovich, WSBA No. 22367  
Attorney for Futurewise

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<sup>100</sup> AR 509, *Pacific County Comprehensive Plan* p. 2-30 (2010 – 2030); RCW 36.70A.170(1)(a); *Thurston County*, 164 Wn.2d at 357, 190 P.3d at 51.

<sup>101</sup> AR 1688, FDO at 10 of 28.

**CERTIFICATE OF SERVICE**

Under penalty of perjury, I certify that on the 20<sup>th</sup> day of September 2012, I caused the following document to be served on the persons and organizations listed below in the manner and on the date shown: Futurewise's Opening Brief and Appendices in *Futurewise v. Growth Management Hearings Board and Pacific County*, Court of Appeals Case No. 43643-4-II.

Washington State Court of Appeals  
Division Two  
950 Broadway, Suite 300  
Tacoma, Washington 98402-4454  
Original and one copy.  
By United States Mail, postage prepaid and properly addressed.

The Hon. David Burke  
Pacific County Prosecuting Attorney's Office  
300 Memorial Dr.  
PO Box 45  
South Bend, WA 98586  
Email: [dburke@co.pacific.wa.us](mailto:dburke@co.pacific.wa.us)  
Pacific County Prosecuting Attorney  
True and correct copy by United States Mail, postage prepaid and properly addressed and email.

Ms. Faith Taylor-Eldred  
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True and correct copy by United States Mail, postage prepaid and properly addressed and email.

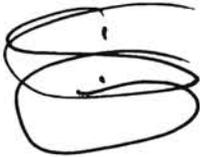
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Attorney for the City of Long Beach  
True and correct copy by United States Mail, postage prepaid and properly  
addressed and email.

Signed and certified on this 20<sup>th</sup> day of September, 2012,



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Tim Trohimovich

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## Appendix A

# PACIFIC COUNTY, WASHINGTON



## COMPREHENSIVE PLAN UPDATE

2010 - 2030

OCTOBER 2010

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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6. If, as a result of the critical areas and resource lands assessment recommendations, a person believes that he or she is entitled to a variance from one or more of the requirements of the Critical Areas and Resource Lands Ordinance, then a person may request a variance as described in the Critical Areas and Resource Lands Ordinance.
7. If, as a result of the critical areas and resource lands assessment recommendations, a person believes that the requirements of the Critical Areas and Resource Lands Ordinance, including any request for a variance, leave the applicant with no economically viable use of his property, then a person may apply for a viable use exception pursuant to the Critical Areas and Resource Lands Ordinance.

The review process utilizes reference maps indicating areas containing potential critical areas or resource lands. It is recognized that the reference maps mentioned above may be subject to change throughout the planning period. However, to maintain the integrity of the planning process associated with this comprehensive plan, and to ensure the intent of the plan is carried out in the future, those reference maps will only be changed and/or adopted during the annual, formal, comprehensive plan amendment process established in this document.

### 3.4 PROTECTION STANDARDS, LAND USE, AND NOTIFICATION

#### 3.4.1 PROTECTION STANDARDS

The Critical Areas and Resource Lands Ordinance No. 147 may identify specific protection standards, including buffers, setbacks, and mitigation, for critical areas and resource lands.

#### 3.4.2 LAND USE

The Critical Areas and Resource Lands Ordinance No. 147 may identify specific land use restrictions or requirements, including requirements for primary use, accessory use, and incidental use for critical areas and resource lands.

#### 3.4.3 NOTIFICATIONS

The Critical Areas and Resource Lands Ordinance No. 147 may require that notification be placed on property title and/or land division documents or for regulated activities for properties within an area identified as critical areas and resource lands. Such notification shall be as specified in the Critical Areas and Resource Lands Ordinance No. 147.

### 3.5 AGRICULTURAL RESOURCES

#### 3.5.1 AGRICULTURE IN PACIFIC COUNTY

Although Pacific County is not often noted as a farming county, local agriculture does account for over five percent of the county's land area with the predominate agricultural land uses being

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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hay production, cattle grazing and cranberry production. The county's farming community produces a variety of goods including hay, cranberries, shellfish, and includes numerous beef and dairy products. The county also has a diversity of farm types including larger-scale commercial farms, historic family farms, and part-time farming operations.

The 2007 Federal Farm Census shows an increase in the number of farms, farm acreage and values of agricultural products sold since the 1998 Comprehensive Plan. In 1992, the total land in farms was 32,637 acres; in 1997 the total land in farms was 40,228 acres, while in 2007 the total land in farms was approximately 61,749 acres. The total number of farms in 1992 was 248; the total number of farms in 1997 was 253 while the total number of farms in 2007 was 390. The market value of all agricultural products sold in Pacific County in 1992 was \$12.7 million dollars; the total market value of all agricultural products was \$16.9 million dollars in 1997 while the total market value of all agricultural products sold in 2007 was \$34.9 million dollars. Of the 2007 total amount, approximately \$8.6 million was for dairy, cattle and other livestock while \$7.1 million was for cranberry products, hay and nursery products. Equally important to the Pacific County agricultural community is the aquaculture industry. According to the 2007 Federal Farm Census, there were 21 shellfish farms with a total market value of shellfish products at \$19.2 million dollars.

Since the 1940s, conventional crop production (corn, oats, wheat, etc.) has shifted to Eastern Washington. Regardless of the presence of prime soils as mapped by the Natural Resource Conservation Service, conventional crops and modern farming practices do not fit with the wet climate and small-scale nature characteristic to farming in this area. In addition, farmers in Pacific County are affected by labor shortages and limited infrastructure within the county, such as transportation routes, processing plants, and agricultural suppliers.

### 3.5.2 IDENTIFYING AND CLASSIFYING AGRICULTURE LANDS

Section 17 of the GMA (RCW 36.70A.170) requires counties to identify agricultural lands of long-term commercial significance. RCW 36.70A.030(2) defines agricultural land as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production."

WAC 365-190-050 identifies a three part test for designating agricultural land of long-term commercial significance. First, the land is not already characterized by urban growth. Second, the land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural uses based primarily on their physical and geographic characteristics. Third, the land has long-term commercial significance for agriculture based on several applicable criteria including the following:

- Classification of prime and unique soils as mapped by the Natural Resources Conservation Services;

**...CRITICAL AREAS AND RESOURCE LANDS ELEMENT**

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- Availability of public facilities, including roads;
- Tax status;
- Availability of public services;
- Relationship or proximity to urban growth areas and to markets and suppliers;
- Predominant parcel size;
- Land use settlement patterns and their compatibility with agricultural practices;
- Intensity of nearby land uses;
- History of land development permits issued nearby; and
- Land values under alternative uses.

Agricultural land in Pacific County is classified as: (1) "agricultural land of long-term commercial significance" which includes all land devoted to the production of aquaculture, cranberries, and/or other bog related crops; and (2) "agricultural land of local importance" which includes diked tidelands involved in existing and ongoing agricultural activities as of the adoption date of Ordinance No. 147/147A on April 13, 1999 and containing the soil types listed in Table 3-1 as defined in the "Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA".

**Table 3-1  
Agricultural Land of Local Importance Soil Types**

SCS Map Unit	Soil Series	SCS Map Unit	Soils Series
104	Ocosta silty clay loam	147	Seastrand variant muck

**3.5.3 MAPS AND REFERENCES**

Agricultural lands are identified on the Pacific County Comprehensive Land Use Map as Rural Agriculture while they are designated as Agriculture on the zoning maps. Shellfish areas are not mapped on the Pacific County Comprehensive Land Use Map, rather their location is identified in the text of Pacific County Ordinance No. 153, Land Use.

**3.5.4 CRITICAL AREAS AND RESOURCE LANDS ASSESSMENT CRITERIA**

If a critical areas and resource lands assessment is required by the Critical Areas and Resource Lands Ordinance No. 147, the following criteria may be considered when reviewing a proposed activity in areas identified as agriculture lands of long-term commercial significance:

- Soil types;
- Parcel size;
- Local and regional economic conditions and market trends;
- Availability of public facilities and services;
- Proximity of proposed activity to urban growth areas;
- Compatibility of proposed activity with adjacent land use;
- Environmental impacts of proposed activity;

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## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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- Impact of proposed activity on commercial agricultural structure of area;
- Impacts of proposed activity to public rights-of-way; and
- Suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

### 3.6 FOREST RESOURCES

#### 3.6.1 FOREST RESOURCES IN WASHINGTON STATE

Forest lands are a paramount economic resource for the State of Washington. This valuable resource must be conserved and protected to ensure that the production of timber and forest products continues into the future. It is the State's policy to encourage forestry and restocking of forests (RCW 84.33.010). It is through proper forestry management that environmental benefits will be enhanced in the areas of water quality, air quality, reducing soil erosion, lessening of storm and flood damage, protection of valuable wildlife habitats, and the provision of scenic and recreational spaces.

#### 3.6.2 FOREST RESOURCES IN PACIFIC COUNTY

Forestry production activities have had a long history in Pacific County evolving from the timber "mining" days of the late 19th and early 20th centuries to the sustained yield forestry management that occurs today. Approximately 70 percent of the county's land area is managed for long-term forestry production. Of this land, approximately 85 percent is private commercial timberland, and 15 percent is Department of Natural Resources (DNR) managed land. There are no federally owned forest resource lands within the county. In addition to timber and timber by-products, a variety of other economic products are harvested from forests in Pacific County including salal, ferns, and moss for the floral industry and mushrooms for a growing food market.

#### 3.6.3 IDENTIFYING AND CLASSIFYING FOREST LANDS

The GMA specifies that forest lands of long-term commercial significance be designated as such. These lands are to be defined by the growing capacity, productivity, and soil composition of the land for long-term commercial production, and in consideration of the land's proximity to population areas, and the possibility of more intense uses of the land. Commerce recommends that classification of forest lands be based, among other criteria, on the private forest land grades of the Department of Revenue (WAC 458-40-530) and further recommends that each county determine which land grades constitute forest land of long-term commercial significance based on local and regional physical, biological, economic, and land use considerations.

Forest land in Pacific County is identified as land that is not already characterized by urban growth and that is significant for the commercial production of timber and forest products. Forest lands are further classified as either of Long-Term Commercial Significance or as Transitional Forest Land.

Table 2-2  
Existing Land Use

Land Use Designation	Total Acres	Percentage of Total Area
<b>Rural Land</b>		
Remote Rural	13,212	2.2
General Rural	100,023	16.9
Rural Agriculture	7,177	1.3
Shoreline Development	1,572	0.3
Rural Village	581	0.1
Rural Activity Center	3,073	0.4
Community Crossroad	195	<0.1
Industrial	358	<0.1
Public Preserve	16,309	4.0
Coast Guard	164	<0.1
<b>Resource Land</b>		
Forest LTCS	411,675	69.2
Transitional Forest	32,792	5.5
<b>Urban Areas (City/UGA)</b>		
City of Ilwaco	1,965	0.2
City of Long Beach	1,100	0.2
City of Raymond	2,970	0.4
City of South Bend	1,281	0.2
Unincorporated Seaview	413	<0.1
<b>Total Land Area</b>	<b>594,860</b>	

**2.6.2.3 Rural Agriculture – One Unit per Five Acres to One Unit per Ten Acres**

The purpose of this designation is to recognize the historic areas dedicated to cranberry production, areas of potential cranberry expansion, and to provide appropriate buffering from surrounding incompatible rural land uses. This designation should be considered representational in manner, and shall serve as a subset of the Rural Lands category. Lot size, permitted uses, and general zoning for the Rural Agriculture land use designation shall be determined after an analysis of existing land uses, the capability of soils to contain on-site sewage disposal systems, and the location of the cranberry industry. Generally, the typical density within the Rural Agriculture designation is one-dwelling unit per five acres.

**2.6.2.4 Rural Shoreline Development – One Unit per Acre**

The purpose of this designation is to recognize existing residential development related to marine shorelines, or other recreational amenities in rural areas. This designation provides for residential development on parcels that are surrounded by smaller lots and which can physically support it without requiring urban service levels. The shoreline development areas are characterized by activities including, but not limited to, a predominance of existing one-acre lots

development should be areas with minimal environmental constraints, should have access to public infrastructure, and should be located away from existing residential areas.

**2.6.2.9 Public Preserve**

The purpose of this designation is to identify and protect unique and outstanding examples of publicly owned areas pertaining to recreation, fish and wildlife habitat conservation, or unique geologic features. This land use designation also acknowledges the ongoing responsibility of the county, state and federal government to protect critical areas and other valued resources on lands within this designation. These lands are owned by a federal, state or local governmental entity and are maintained as closely as possible to their natural state. This is one land use designation that has increased in the overall amount of acreage since 1998 as the amount of publicly owned land within the County is increasing due to expansions at the Willapa National Wildlife Refuge, Leadbetter State Park area, the Ellsworth Creek natural area and the Potter's Slough area. It is anticipated that the amount of acreage in the Public Preserve land use designation will continue to increase as diked tidelands are restored to their pre-dike status, and lands around Willapa Bay and other important watersheds are purchased for restorative activities by various public and/or quasi public entities.

**2.6.2.10 Military Lands**

The purpose of this designation is to recognize military lands and their associated missions within the County. This designation includes the Cape Disappointment Coast Guard Station located on the Long Beach Peninsula. These lands are owned by the federal government.

**2.6.3 Resource Area Designations**

**2.6.3.1 Agriculture**

The purpose of this designation is to:

- Conserve agricultural lands of long-term commercial significance used for the production of crops, livestock or other agricultural products;
- Conserve aquaculture lands of long-term commercial significance used for marine life raising, research and labs, and harvesting of seafood;
- Discourage residential encroachment and other incompatible development from long-term agricultural and aquaculture lands of long-term commercial significance;
- Encourage the continued viability of agriculture and aquaculture; and
- Protect the shellfish and fishing industries.

This designation includes lands meeting the definition for agricultural and aquaculture lands of long-term commercial significance as defined in Section 3, Critical Areas and Resource Lands,

of this Comprehensive Plan. The criteria for locating agriculture and aquaculture lands of long-term commercial significance are based on the Washington State Department of Commerce guidelines for the classification and designation of resource lands, as well as existing County policies, and an analysis of local conditions.

#### **2.6.3.2 Forest Land of Long Term Commercial Significance**

The purpose of this designation is to:

- Conserve forest lands of long-term commercial significance;
- Maintain and enhance resource-based industries;
- Discourage residential encroachment and other incompatible development from long-term forest lands; and
- Promote and protect forestry and its dependent community through the enhancement, protection and perpetuation of the ability of private and public landowners to grow and harvest timber.

This designation includes lands meeting the definition for forest lands of long-term commercial significance as defined in Section 3, Critical Areas and Resource Lands, of this Comprehensive Plan. Existing designated forest lands include much of Pacific County's mainland areas. Within designated Forest Land of Long Term Commercial Significance, residential densities are limited to one unit per 40 acres. The criteria for locating Forest Land of Long-Term Commercial Significance are based on the Washington State Department of Commerce guidelines for the classification and designation of resource lands, and an analysis of local conditions.

#### **2.6.3.3 Transitional Forest Land**

The purpose of this designation is to protect transitional forest areas, primarily located adjacent to rural shoreline areas along Willapa Bay, the Naselle River and the Columbia River. This designation provides for rural types of residential development along with commercial forestry production on parcels in accordance with the protection standards of this subsection and the Critical Areas and Resource Lands Ordinance No. 147. Small-scale farms and forestry activities, dispersed single-family dwellings and open space characterize the transitional forest areas. Lands are typically too far from the urban area to enable cost-effective provisions of public services at this time. Within designated Transitional Forest Lands, residential densities are limited to one unit per five (5) acres, with the actual lot size determined by the presence of any critical area, the suitability of the site for on-site sewage disposal and the availability of potable water.

#### **2.6.4 Urban Growth Area Designations around Cities**

The County should develop Unified Development Ordinances (UDO) governing land use within the UGAs after consulting with the cities to solicit their input. Because it is the intent that these

## Appendix B

**PACIFIC COUNTY, WASHINGTON**

**COMPREHENSIVE PLAN**

**OCTOBER 1998**

**PACIFIC COUNTY BOARD OF COMMISSIONERS**

JON KAINO, JR., DISTRICT NO. 1  
NORMAN "BUD" CUFFEL, DISTRICT NO. 2  
PAT HAMILTON, DISTRICT NO. 3

**PCI**  
PROULX CONSULTING, INC.  
AND  
PACIFIC COUNTY DCD

## **SECTION 3...**

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### **3.4.3 Notification**

The Critical Areas and Resource Lands Ordinance No. 147 may require that notification be placed on property title and/or land division documents or for regulated activities for properties within an area identified as critical areas and resource lands. Such notification shall be as specified in the Critical Areas and Resource Lands Ordinance No. 147.

## **3.5 AGRICULTURE RESOURCES**

### **3.5.1 Agriculture in Pacific County**

Although Pacific County is not often noted as a farming county, local agriculture does account for over five percent of the county's land use. The county's farm products range from hay to cranberries and include numerous beef and dairy products. The county also has a diversity of farm types. They include larger-scale commercial farms, historic family farms, and part-time farming operations.

Evidence from the 1992 Federal Farm Census shows a slight decrease in the number of farms and farm acreage in Pacific County as compared with the 1987 Census. In 1992, the total land in farms was 32,637 acres, a 6.4 percent decrease from 1987. The number of farms declined from 270 in 1987 to 248 in 1992. The market value of all agricultural products sold in Pacific County in 1992 totaled 12.7 million dollars. This includes approximately \$6.4 million worth of cranberry products, \$5.8 million worth of dairy, cattle, and other livestock, and \$500,000 in nursery and hay.

Since the 1940s, conventional crop production (corn, oats, wheat, etc.) has shifted to Eastern Washington. Conventional crops and modern farming practices do not often fit the wet climate and small-scale nature characteristic to farming in this area. In addition, farmers in Pacific County are affected by labor shortages and limited infrastructure within the county, such as transportation routes, processing plants, and agricultural suppliers.

### **3.5.2 Identifying and Classifying Agriculture Lands**

Section 16 of the GMA (RCW 36.70A.160) requires counties to identify agricultural lands of long-term commercial significance. In addition, the GMA directs the Washington State Department of Community, Trade and Economic Development (CTED) to provide guidelines to counties for how to classify and designate such resource lands.

Agricultural land in Pacific County is classified as: (1) "agricultural land of long-term significance" to include all land that is devoted to the production of aquaculture, cranberries, and/or other bog related crops; and (2) "agricultural land of local importance" as any diked

...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

tideland involved in existing and ongoing agricultural activities on the date Ordinance No. 147 becomes effective and containing the soil types listed in Table 3-1 as defined in the "Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA".

TABLE 3-1  
AGRICULTURAL LAND OF LOCAL IMPORTANCE SOIL TYPES

SCS Map Unit	Soils Series	SCS Map Unit	Soils Series
104	Ocosta silty clay loam	147	Seastrand variant muck

### 3.5.3 Maps and References

Agricultural land areas shall be field located based on applicable criteria.

### 3.5.4 Critical Areas and Resource Lands Assessment Criteria

If a critical areas and resource lands assessment is required by the Critical Areas and Resource Lands Ordinance No. 147, the following criteria may be considered when reviewing a proposed activity in areas identified as agriculture lands of long-term commercial significance:

- soil types;
- parcel size;
- local and regional economic conditions and market trends;
- availability of public facilities and services;
- proximity of proposed activity to urban growth areas;
- compatibility of proposed activity with adjacent land use;
- environmental impacts of proposed activity;
- impact of proposed activity on commercial agricultural structure of area;
- impacts of proposed activity to public rights-of-way; and
- suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

## 3.6 FOREST RESOURCES

### 3.6.1 Forest Resources in Washington State

Forest lands are a paramount economic resource for the State of Washington. This valuable resource must be conserved and protected to ensure that the production of timber and forest