

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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**BRIEF OF RESPONDENT, PACIFIC COUNTY**

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## TABLE OF CONTENTS

<u>Topic</u>	<u>Page Number</u>
TABLE OF AUTHORITIES .....	ii, iii
A. INTRODUCTION.....	1
B. PACIFIC COUNTY'S RESPONSE TO FUTUREWISE'S ASSIGNMENTS OF ERROR AND ISSUES.....	3
C. STATEMENT OF THE CASE.....	5
D. ARGUMENT.....	6
E. CONCLUSION .....	28

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page Number</u>
<u>Arco Products Co. v. Washington Utilities and Transportation Commission</u> , 125 Wash.2d 805, 888 P.2d 728 (1995) .....	8
<u>Callecod v. Washington State Patrol</u> , 84 Wash.App. 663, 929 P.2d 510 (1997) .....	7
<u>City of Redmond v. Central Puget Sound Growth Management Hearings Board</u> , 136 Wash.2d 38, 959 P.2d 1091 (1998) .....	7
<u>Clallam County v. Dry Creek Coalition</u> , 161 Wash.App. 366, 255 P.3d 709 (2011) .....	17, 18
<u>Gold Star Resorts Inc. v. Futurewise</u> , 140 Wash.App. 378, 166 P.3d 748 (2007) .....	18
<u>King County v. Central Puget Sound Growth Management Hearings Board</u> , 142 Wash.2d 543, 14 P.3d 133 (2000) .....	6, 7
<u>Kittitas County v. Eastern Washington Growth Management Hearings Board</u> , 172 Wash.2d 144, 256 P.3d 1193, 1198 (2011) .....	7
<u>Lewis County v. Western Washington Growth Management Hearings Board</u> , 157 Wash.2d 488, 139 P.3d 1096 (2006) .....	2, 22, 26
<u>Thurston County v. Cooper Point Association</u> , 148 Wash.2d 1, 57 P.3d 1156 (2002) .....	8
<u>Thurston County v. Western Washington Growth Management Hearings Board</u> , 164 Wash.2d 329, 190 P.3d 38 (2008) .....	7, 8, 17, 18
<u>Statutes</u>	<u>Page Number</u>
Chapter 207 of Washington Laws, 2004 .....	9
Chapter 209 of Washington Laws, 2004 .....	9
Chapter 147 of Washington Laws, 2006 .....	10
Chapter 353 of Washington Laws, 2007 .....	10

RCW 34.05.....	6
RCW 34.05.570(1)(a).....	7
RCW 34.05.570(3)(c).....	8
RCW 34.05.570(3)(d).....	7
RCW 34.05.570(3)(e).....	7
RCW 36.70A.....	10
RCW 36.70A.030(2) .....	3, 4, 24
RCW 36.70A.130.....	5
RCW 36.70A.170.....	10, 11, 18
RCW 36.70A.170(1)(a) .....	3, 4, 27
RCW 36.70A.177.....	9, 10

**Other Authorities**

**Page Number**

<u>1,000 Friends of Washington v. Thurston County, Western Washington Growth Management Hearings Board Case No. 05-2-0002, Compliance Order on Rural Densities and Agricultural Lands Issues (October 22, 2007)</u> .....	19
<u>Seaview Coast Conservation Coalition v. Pacific County, Western Washington Growth Management Hearings Board Case No. 95-2-0076, Order Finding Compliance (Corrected), April 25, 2006</u> .....	1

**Regulations**

**Page Number**

WAC 365-190-050.....	10, 11, 16, 18
----------------------	----------------

## A.

### INTRODUCTION

In 1997, Pacific County adopted a Critical Lands and Resource Ordinance which designated Agricultural Lands of Long-Term Commercial Significance (hereinafter ALLTCS). The following year, Pacific County adopted a Growth Management Act (GMA) Comprehensive Plan and subsequently enacted a series of development regulations to implement the Comprehensive Plan. The Western Washington Growth Management Hearings Board (hereinafter "Board") did not find Pacific County to be fully in compliance with the GMA until 2006. See Seaview Coast Conservation Coalition v. Pacific County, Western Washington Growth Management Hearings Board Case No. 95-2-0076, Order Finding Compliance (Corrected), April 25, 2006. By implication, the Board gave its imprimatur on the County's Comprehensive Plan. In 2010, the County updated its Comprehensive Plan because it was mandated to do so under the GMA. While the new plan contained "updated" language, no substantive changes were made pertaining ALLTCS. The Board agreed with the County that there were not any legislative changes to the GMA since 1997 that altered the criteria for designating ALLTCS. Futurewise v. Pacific County,

Case No. 10-2-0021, Final Decision and Order (June 22, 2011) at 8 (hereinafter FDO). See Appendix A.

The Board also agreed with Pacific County that “there have been no changes in the Pacific County Comprehensive Plan that adopt new classification criteria so as to open up the County’s agricultural lands designations to a challenge.” FDO at 9. Further, the Board rejected Futurewise’s claim that the County’s use of the “Rural Agricultural” comprehensive plan designation improperly included ALLTCS in the rural element. FDO at 10. The Board also concluded that Futurewise’s claim that the County erred in failing to map its ALLTCS was untimely. Id. The Board also chided Futurewise for failing “to cite any authority for the proposition that the County was required to map its ALLTCS.” Id. Additionally, the Board found that the GMA did not require the County to use “mandatory language” contained in Lewis County v. Western Washington Growth Management Hearings Board, 157 Wash.2d 488, 139 P.3d 1096 (2006), FDO at 10-12.

Finally, the Board referenced the planning process that occurred in 1996-1997 which identified what agricultural activities were viable in Pacific County. The Board did not overrule the County’s determination that aquaculture and cranberry production

were the only agricultural activities that have long-term commercial significance. FDO at 12-13. The Board also determined that the County did not have to enumerate in its Comprehensive Plan all of the agricultural products listed in RCW 36.70A.030(2). Id. The Board also was not troubled by the fact that the County did not formally find that ALLTCS could not be located in urban growth areas. FDO at 13.

Pacific County asserts the substantive findings and conclusions of the Board are correct. For the reasons delineated below, the Court should reject the argument of Futurewise.

**B.**

**PACIFIC COUNTY'S RESPONSE TO FUTUREWISE'S  
ASSIGNMENTS OF ERROR AND ISSUES**

- 1. Pacific County agrees that Issue 1 as articulated by the Board is the only matter that has been appealed by Futurewise to Superior Court.**

Issue No. 1 reads as follows:

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)? FDO at 6.

- 2. Pacific County's Response to Futurewise's Assignment of Error 1:**

Pacific County did not adopt new design criteria for ALLTCS; therefore, the County's agricultural land designations were not open to challenge and Futurewise's challenge to the mapping of agricultural lands is not timely.

**3. Pacific County's Response to Futurewise's Assignment of Error 2:**

Pacific County did not designate ALLTCS as "Rural Agricultural."

**4. Pacific County's Response to Futurewise's Assignment of Error 3:**

Pacific County's Comprehensive Plan is consistent with the provisions of RCW 36.70A.030(2) and RCW 36.70A.170(1)(a).

**5. Pacific County's Response to Futurewise's Assignment of Error 4:**

Pacific County agrees with the factual assertions delineated at 5-13 of the Board's Final Decision and Order.

**6. Pacific County's Response to Futurewise's Denominated Issue 1:**

The Board did not erroneously interpret the GMA; there is substantial evidence to support the conclusion that Pacific County did not adopt new substantive provisions for ALLTCS and that Pacific County was not required to update its designation of ALLTCS.

**7. Pacific County's Response to Futurewise's Denominated Issue 2:**

The Board's conclusion that the agricultural language in the 2010 Pacific County Comprehensive Plan complies with the GMA is not an erroneous interpretation or application of the GMA; there is substantial evidence to support the position of the Board.

**C.**

**STATEMENT OF THE CASE**

Pacific County accepts Futurewise's short recitation of the Statement of the Case with the following caveats. Pacific County Growth Management Act (GMA) adopted a new Comprehensive Plan under RCW 36.70A.130 in October 2010. This plan updated the original GMA Comprehensive Plan which was adopted in October 1998.

Futurewise appealed the 2010 GMA Comprehensive Plan to the Growth Management Hearings Board for the Western Washington Region alleging that Pacific County committed a number of errors. The Board conducted a hearing and issued an opinion on June 23, 2011, which addressed Futurewise's concerns. The Board sided with Pacific County in upholding the Comprehensive Plan language pertaining to Agricultural Lands of Long-Term Commercial Significance (ALLTCS). See Appendix A. Futurewise only chose to appeal the Board's decision pertaining to ALLTECS. This appeal was heard by the Thurston County Superior Court. Judge Lisa Sutton issued a letter opinion on April 26, 2012, upholding the decision of the Growth Management Hearings Board pertaining to ALLTECS. See Appendix B. Formal

Conclusions of Law and an Order were entered on May 24, 2012. See Appendix C. Futurewise then appealed the decision of the Thurston County Superior Court to the Court of Appeals.

Pacific County agrees that Futurewise has accurately delineated at 3-6 of its Brief the language changes in the 2010 Pacific County Comprehensive Plan that pertain to agriculture. As delineated below, the County disputes the implications that Futurewise derives from these changes. Appendix D contains Section 3 of the 1998 Comprehensive Plan which includes agricultural provisions. Appendix E contains Section 3 of the 2010 Comprehensive Plan which likewise includes agricultural provisions.

#### D.

#### ARGUMENT

**1. The Standard of Review is governed by the Administrative Procedures Act (APA) and case law.**

The Administrative Procedure Act (APA) applies to judicial review of challenges to decisions by the Board. King County v. Central Puget Sound Growth Management Hearings Board, 142 Wash.2d 543, 552, 14 P.3d 133 (2000). "Courts apply the standards of Administrative Procedure Act, chapter 34.05 RCW,

and look directly to the record before the board.” Kittitas County v. Eastern Washington Growth Management Hearings Board, 172 Wash.2d 144, 155, 256 P.3d 1193, 1198 (2011). Futurewise bears the burden of demonstrating that the decision of the Board is invalid. RCW 34.05.570(1)(a); King County, 142 Wash.2d at 552. Substantial weight is given to the Board’s interpretation of the GMA, but a court is not bound by the Board’s determinations. City of Redmond v. Central Puget Sound Growth Management Hearings Board, 136 Wash.2d 38, 46, 959 P.2d 1091 (1998).

Futurewise asserts that the Board erroneously interpreted or applied the law. RCW 34.05.570(3)(d). Brief of Appellant at 9. Alleged errors of law are reviewed de novo. Thurston County v. Western Washington Growth Management Hearings Board, 164 Wash.2d 329, 341, 190 P.3d 38 (2008). Futurewise also believes that the Board’s decision is not supported by substantial evidence. Brief of Appellant at 9. Substantial evidence has been defined as “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” Callecod v. Washington State Patrol, 84 Wash.App. 663, 673, 929 P.2d 510 (1997). However, it must be noted that the “substantial evidence” standard (RCW 34.05.570(3)(e)) is highly deferential to the decision of an

agency and has been deemed to be the equivalent of the arbitrary and capricious standard (RCW 34.05.570(3)(c)). See Arco Products Co. v. Washington Utilities and Transportation Commission, 125 Wash.2d 805, 812, 888 P.2d 728 (1995). On mixed questions of law and fact, a court independently determines the law and then applies it to the facts as found by the Board. Thurston County v. Cooper Point Association, 148 Wash.2d 1, 8, 57 P.3d 1156 (2002).

- 2. The Board did not err in concluding that Pacific County was not required to update its designation of Agricultural Lands of Long-Term Commercial Significance (ALLTCS) and that the 2010 Pacific County Comprehensive Plan did not adopt new criteria for ALLTCS.**
  - a. Futurewise cannot challenge Pacific County's designation of ALLTCS because no substantive changes in law pertaining to ALLTCS occurred between the adoption of ALLTCS in 1997 and the 2010 amended Comprehensive Plan; also, Pacific County did not change its designation of ALLTCS.**

In Thurston County v. Western Washington Growth Management Hearings Board, 164 Wash.2d 329, 344, 190 P.3d 38 (2008), the Court held that "...a party may challenge a county's failure to revise a comprehensive plan only with respect to those provisions that are directly affected by new or recently amended

GMA provisions, meaning those provisions related to mandatory elements of a comprehensive plan that have been adopted or substantively amended since the previous comprehensive plan was adopted ....” Pacific County has not amended its designation of, or policies and regulatory standards pertaining to, ALLTCS after the initial adoption of the Critical Areas and Resource Lands Ordinance (Pacific County Ordinance No. 147) in 1997, and the adoption of the initial GMA Pacific County Comprehensive Plan in 1998.

Pacific County is unaware of any legislative changes that have fundamentally altered criteria for designation of ALLTCS since they were initially designated by Pacific County. Pacific County has been able to identify four instances in which the legislature has amended the law since 1997 that pertain to ALLTCS generally. None of these amendments, however, relates to a change in the designation criteria. These amendments include the following:

- (1) Chapter 207 of Washington Laws, 2004, amended RCW 36.70A.177 and allows for certain accessory uses to support, promote, or sustain agricultural operations and production. This amendment uses permissive language (i.e., a County is not required to do anything) and pertains to agricultural zoning.
- (2) Chapter 209 of Washington Laws, 2004, amended the GMA to direct development of a report regarding the designation of ALLTCS in King, Chelan, Lewis and Yakima Counties. Because this statute does not pertain to Pacific County, it is inapposite.

- (3) Chapter 147 of Washington Laws, 2006, amended RCW 36.70A.177 and allows for the permissive use of certain innovative zoning techniques and certain accessory uses and activities in areas designated as ALLTCS. This amendment primarily changes language pertaining to accessory uses and focuses on zoning strictures. It does not pertain to the designation of ALLTCS.
- (4) Chapter 353 of Washington Laws, 2007, amended Chapter 36.70A RCW by temporarily placing a moratorium on amending or adopting critical areas ordinances. This amendment does not affect the designation of ALLTCS.

Pacific County is unaware of any other statutory changes since 1997 that pertain to ALLTCS, and certainly none that change the criteria for designation. Consequently, Pacific County asserts that it has not "opened the door" to allow Futurewise to challenge how ALLTCS are designated.

Futurewise claims that Pacific County extensively amended its Comprehensive Plan pertaining to agriculture. Brief of Appellant at 11-13. This assertion is incorrect. The County listed the requirements of RCW 36.70A.170 in Section 3.5.2. The County also referred to WAC 365-190-050, which contains language pertaining to the designation of ALLTCS. In both instances, the County merely was making reference to the relevant statutory and regulatory provisions pertaining to ALLTCS. Other language in the Comprehensive Plan pertaining to agriculture modified out-of-date information.

In particular, the reference to WAC 365-190-050 was meant to be precatory in nature. There are no findings of fact or other references in the record that would indicate that the County intended to change or readdress its classification of ALLTCS. The references to RCW 36.70A.170 and WAC 365-190-050 were included to help readers to locate relevant information. It would have been disingenuous for the County to put its head in the sand and not reference the relevant statute or the language promulgated by the Department of Commerce. However, the mere reference to WAC 365-190-050 does imply that the County intended to “reopen” how it classified ALLTCS. There was no need to readdress this issue because it had been put to rest during the long and arduous hearing process that culminated in the adoption of the Critical Areas and Resource Lands Ordinance in 1997. The record from the adoption of the Critical Areas and Resource Lands Ordinance contains the following information:

- (1) Correspondence from Michael Mandere, County Executive Director USDA, Farm Service Agency dated January 8, 1997, which notes “...in Pacific County we are not aware of anyone that produces an annually tilled crop. Annually tilled meaning a crop ... such as wheat, green peas, corn, etc.”

“None of the farms in Pacific County has a Crop Acreage Base (CAB). A Crop Acreage Base indicates historic crop rotations for federally subsidized crops such as wheat, barley, oats and corn. I can only speculate that due to

climatic conditions as well as the economics of production that exist, annually tilled crop production just isn't conducive to the county" [See Appendix F: Index of Record 474 (49)].

- (2) Letter from the North Pacific County Dairy and Beef Produces, signed by 34 beef and dairy farmers, dated January 8, 1997, which notes "Pacific County does not have any prime agricultural land capable of growing crops such as peas and corn primarily due to the high rainfall and lack of sun during the growing season." "... [A]ll we grow in Pacific County is grass and grass hay eaten by dairy cattle to make milk or beef cattle to produce meat."

"All grain is imported from other areas for feed to Pacific County."

"All beef feeder cattle are trucked to eastern Washington or Oregon to be fed for market to be close to feed supplies."

"North Pacific County has twelve (12) operating dairies today. Dairy Herd Improvement Association and Pacific County Fair records show twenty four (24) operating dairies in the 1970's."

"North Pacific County has only three (3) self supporting beef ranches today."

"Economics and climate have forced production agriculture to other more conducive counties."

"Commercial Agricultural land under Open Space in Pacific County is valued at fifty (50) to one hundred ninety two (192) dollars per acre based on rent for farm ground and sells from one (1) to eight (8) thousand dollars per acre on the open market. Cash rent per acre on rented farm ground is twenty (20) to eighty (80) dollars per acre in Pacific County. It takes from two (2) to four (4) acres to support one (1) beef cow which would gross two hundred fifty (250) to three hundred (300) dollars for the two to four acres. By contrast, cranberry ground can gross as much as twenty thousand (20,000) dollars per acre. Ag land has limited value in Pacific County" [See Appendix G: Index of the Record 474(48)].

- (3) Correspondence from Robert & Jane Rose, dated February 19, 1997, discusses soil types and growing capacity listing 14 soil types mentioned in the draft critical areas and resource lands ordinance. The Roses state that “these soil types are almost totally in woodlands in Pacific County and have no significance agricultural productive capability....” These statements are borne out by a review of the United States Department of Agriculture, Soil Conservation Service, Soil Survey of Grays Harbor County Area, Pacific County and Wahkiakum County Washington, publication.”

The Roses go on to note that “Pacific County commercial ag land is severely limited as a whole from being an economically viable industry because of the wet weather and distance to market. Also, the size of most farms makes it impossible to own modern equipment that is capable of farming large acreages economically” [See Appendix H: Index of Record 474(75)].

- (4) Correspondence from Camenzind Farms reads as follows:

“The problems facing survival of agriculture in Pacific County will be plain and simple. Economics!”

“The next important issue facing agriculture will be marketability. Our product which is dairy replacement heifers and beef calves have to be shipped hundreds of miles to market. Except for the grass feed such as grass hay and silage that we are able to produce on our own land, all alfalfa, grain, and etc., also has to be trucked, usual source either eastern Oregon or Washington at a significance expense. We do not have the prime farm land that would grow wheat, peas-corn-significant berry products-barley-alfalfa-vegetables-etc. Nor do we have the right climate for these types of crops” [See Appendix I: Index of Record 474(76)].

- (5) Correspondence dated March 19, 1997, from Peter & Chris Portmann, who are dairy farmers, reads as follows:

“Family farms are ending here in Pacific County. The extremely high cost of manure management, nearness to the

river and ocean, high water tables, quantity of rain causing runoff, government involvement, in the way you do business, all contribute to the decisions of future "factory farms" to locate in eastern Washington and Idaho. Farmers considering buying property look for larger land parcels than we have and no water problems first. The future farms will be these which can accommodate thousands of cows not just hundreds. We cannot sell our farms to new farmers, as they can't make a living milking or ranching the few number of cows as we do. It isn't cost effective" [See Appendix J: Index of Record 474(78)].

Finally, although other letters could be quoted, perhaps the most relevant item emanates from the Planning Commission meeting on July 9, 1996, in which State agencies were invited to participate [The State agencies included CTED (Commerce), DOE, NRCS, WDFW and DNR]. With the input of the State agencies, there was a broad consensus concerning what constituted valuable agricultural land. The participants at the Planning Commission meeting came to the following conclusions pertaining to agriculture lands:

- The valuable crops are cranberries and forestry and shellfish.
- There are 12 dairies in the Valley now. Resource Conservation Service states that most dairies are moving east of the mountains because of feed and hauling costs, environmental concerns, etc.
- Prime agriculture lands may not include these dairies. The true prime agriculture land may in fact be the shellfish industry.

- County needs to designate Agricultural Lands of Long-Term Commercial Significance. The dairies and cattle ranches may not be terribly valuable as agricultural resources in the long run.

The information delineated above, along with the USDA Soil Conservation Service Soil Survey of Pacific County [See Appendix K: Index of Record 474(6) and 474(202)], caused Pacific County to limit ALLTCS to the production of aquaculture, cranberries, and/or other bog related crops. The live testimony that was taken during the hearing process for the Critical Areas and Resource Lands Ordinance indicated that all but one of the existing dairies and beef operations were passed down via inheritance. 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.

The upshot of this short summary of the record that was developed during the adoption of the Critical Areas and Resource Lands Ordinance indicates that Pacific County made a conscious decision based on a plethora of information to limit the designation of ALLTCS to aquaculture, cranberries, and/or other bog related crops. The “changes” to agriculture that Futurewise sets out at 11-13 of its Brief do not constitute an “opening of the door” which would allow the Petitioner to address the issue of ALLTCS. As

mentioned previously, the reference to WAC 365-190-050 was meant to be precatory; it was not meant to adopt a new standard over which litigation could ensue. The remaining “changes” identified by Futurewise at 11-13 of its Brief pertain to agricultural land in general, not to ALLTCS. Field location of agricultural land in general was deleted because the County now has a zoning map which identifies agricultural areas. However, this map does not delineate areas that comprise ALLTCS. Also, changes to the Comprehensive Land Use Map in Seaview and Menlo, along with alterations that delineated changes in state and federal ownership of land, do not affect the designation of ALLTCS.

On balance, it appears that Futurewise is arguing that any change, no matter how de minimis, can be appealed to the Board. Under Futurewise’s logic, updating a comprehensive plan with new information that creates no substantive changes could trigger an appeal. Pacific County disagrees with this assertion. Moreover, the changes that Futurewise lists at 11-13 of its Brief do not pertain to Agricultural Lands of Long-Term Commercial Significance, with the exception of the reference to WAC 365-190-050 and the need to exclude cranberry bogs from the Seaview Urban Growth Area. Pacific County does not believe that the mere reference to this

WAC, without any discussion of how the County intended to modify the consensus that was reached in 1996-1997 pertaining to ALLTCS, constitutes a substantive change that is appealable.

Additionally, Pacific County asserts that a change in provision in the WAC does not constitute a change in law that would allow Futurewise to appeal. Under Thurston County, “if the laws have not changed, the comprehensive plan remains GMA compliant.” 164 Wash.2d at 345. Further, because the “changes” to the Comprehensive Plan that Futurewise cites are outside the ambit of Issue No. 1 as posed by the Board, and because the County did not change its approach in dealing with the question of ALLTCS, Futurewise’s challenge is not timely.

Likewise, there have been no relevant changes in law pertaining to ALLTCS that would give Futurewise a bite of the apple. If Futurewise were upset about how the County handled ALLTCS, it needed to raise this challenge back in 1997 when the Critical Areas and Resources Lands Ordinance was adopted or in 1998 when the Comprehensive Plan was passed. “Simply because a party desires review of an issue after an appeal period has passed does not mean that a reviewing body has jurisdiction to entertain the challenge.” Clallam County v. Dry Creek Coalition,

161 Wash.App. 366, 390, 255 P.3d 709 (2011). The GMA creates no “open season” for challenges that are time barred. Thurston County, 164 Wash.2d at 344, quoting Gold Star Resorts Inc. v. Futurewise, 140 Wash.App. 378, 390, 166 P.3d 748 (2007). Thus, Futurewise’s argument should be rejected.

**b. Pacific County did not violate the GMA by failing to use WAC 365-190-050 in designating ALLTCS on the land use maps.**

Futurewise erroneously argues that RCW 36.70A.170 and WAC 365-190-050 require Pacific County to apply new criteria in designating ALLTCS. Additionally, Futurewise also wrongly asserts that the ALLTCS must be mapped on a land use map with an agricultural designation. Brief of Appellant at 18. As the Board points out in its Final Decision and Order, “the amendments under appeal recite the statutory requirements of RCW 36.70A.170 and make reference to WAC 365-190-050 which contains language pertaining to the designations of ALLTCS. Such references cannot be read as adopting new designation standards.” FDO at 9-10. The Board goes on to say that “the challenged language is nothing more than a reference to a relevant WAC provision, not the adoption of a new standard for designating ALLTCS.” FDO at 12. The gravamen of the County’s position is that there is not

“mandatory language” that must be applied to ALLTCS. Indeed, the Board opined that a jurisdiction is given wide latitude in choosing how it complies with the statute. Further, the Board determined that the language in Section 3.5.2 of the Comprehensive Plan met the requirements of the statute. FDO at 12.

Futurewise cites 1,000 Friends of Washington v. Thurston County, Western Washington Growth Management Hearings Board Case No. 05-2-0002, Compliance Order on Rural Densities and Agricultural Lands Issues (October 22, 2007) for the proposition that designation criteria must be applied to a map or otherwise specified. Brief of Appellant at 17-18. In the current case, the County never has mapped ALLTCS but has specifically stated that ALLTCS encompass all land devoted to the production of aquaculture, cranberries and/or other bog related crops. In other words, the County has defined ALLTCS with specificity without delineating the precise location of ALLTCS on a map. This approach protects ALLTCS because in any given situation the boundary of ALLTCS can be determined. However, the County specifically chose not to map all of its ALLTCS because of the cost of this project. Nevertheless, the County always has maintained

that it has no duty under GMA to map ALLTCS, provided that the ALLTCS are readily discernible. The Board agreed with this assertion. FDO at 10.

In short, Futurewise argues that ALLTCS must be mapped, but it provides no authority for this proposition. The Board went out its way to specifically mention this point. FDO at 10. Equally important, Futurewise misses the mark in arguing that ALLTCS are not sufficiently protected, because they are designated within "Rural Agriculture" rather than "Agriculture." Brief of Appellant at 18-20. ALLTCS are a category within a category. Changing a designation from "Rural Agriculture" to "Agriculture" would not change the fact land that which is being used for agriculture is not necessarily ALLTCS. Hence, Futurewise's contention that there is a significant difference between labeling land "Rural Agriculture" vs. "Agriculture" is specious. Regardless of the designation, ALLTCS will reside within a portion of the overall category.

In a similar vein, Futurewise places undue weight on the boundary change involving cranberry bogs and the Seaview Urban Growth Area. Brief of Appellant at 18-19. This change really amounts to nothing more than a scrivener's error. The initial 1998 Comprehensive Plan mistakenly included some cranberry bogs

within the Seaview Urban Growth Area. The 2010 Comprehensive Plan merely rectified this oversight.

Lastly, Futurewise's posits that the County's definition of ALLTCS needs to be expanded. Futurewise argues that there is prime farmland in Willapa Valley that needs to be designated as ALLTCS. Brief of Appellant at 19-20. Just because an area is currently being used for agriculture does not mean that the property is agricultural land of long-term commercial significance. What Futurewise fails to recognize is that the term "commercial significance" implies ongoing profitability. The hearing record developed in 1996-1997 indicated that the viability of farming activities in Willapa Valley over the long run was questionable. See supra at 11-15.

Based on this prior analysis, the County concluded that there was no need to reopen the issue of ALLTCS during the 2010 amendment process. The relevant question here is not whether Futurewise disagrees with the assessment of the County. Rather, the key issue is whether the County "opened up" this issue so that Futurewise can challenge the manner in which the County designates ALLTCS. The Board properly found that the answer to this question is "no." Given the deference that the Court must give

to the Board's interpretation of the GMA, the argument of Futurewise fails.

- 3. The 2010 amendments to the Pacific County Comprehensive Plan which pertain to agriculture comply with the GMA; the Board's decision which sided with the County is supported by substantial evidence.**
  - a. Section 3.5.2 of the Pacific County Comprehensive Plan complies with the GMA.**

Futurewise takes Pacific County to task for not applying the three-part test articulated in Lewis County v. Western Washington Growth Management Hearings Board, 157 Wash.2d 488, 139 P.3d 1096 (2006). Brief of Appellant at 21-28. The upshot of the Petitioner's criticism is that the 2010 Comprehensive Plan did not, inter alia, apply the relevant criteria for designating agricultural resource lands. What Futurewise fails to recognize is that Pacific County in 1996-1997 went through the difficult process of analyzing what agricultural activities were viable in Pacific County. Pacific County examined soil types based on information provided by the Soil Conservation Service (which is now called the Natural Resources Conservation Service). Pacific County also considered a variety of other factors in determining what agricultural land was

of long-term commercial significance. These other factors included, but were not limited to:

- (1) The availability of public facilities;
- (2) Tax status;
- (3) The availability of public services;
- (4) Relationship of proximity to urban growth areas;
- (5) Predominant parcel size;
- (6) Land use settlement patterns and their compatibility with agricultural practices;
- (7) Intensity of nearby land uses;
- (8) History of land development permits issued nearby;
- (9) Land values under alternative use; and
- (10) Proximity of markets.

After extensive debate, Pacific County determined that aquaculture and cranberry production were the only agricultural activities that had long-term commercial significance. See supra at 11-15.

In the ensuing years nothing has changed to alter the fundamental truth that Pacific County does not have the climate to foster other forms of agriculture. Consequently, there was no need to engage in a long colloquy in the 2010 Comprehensive Plan that rehashed what was decided in the late 1990s. Because Pacific County examined the agricultural activities listed in RCW

36.70A.030(2) and determined what constituted ALLTCS, there was no need to engage in this exercise again when nothing of significance had changed. While it is true that Pacific County could have made a formal finding that the designation of ALLTCS pertains to land that is not already characterized by urban growth, this “oversight” is not salient, because cranberry bogs and commercial shellfish beds are not found in urban areas.

Moreover, Futurewise places form over substance when it criticizes the County for not referring to RCW 36.70A.030(2) in Section 3.5.2 of the Comprehensive Plan. Brief of Appellant at 22-27. The fact of the matter is that Pacific County did look at agricultural products enumerated in RCW 36.70A.030(2) when ALLTCS were designated in the late 1990s. The overwhelming consensus at that time was that only land being used for aquaculture and bog related crops constituted ALLTCS. Consequently, there was no need in 2010 to reopen an issue that firmly settled in 1997.

Futurewise cites a number of statistics in an attempt to demonstrate that other agricultural crops besides aquaculture and cranberries are of long-term commercial significance. Brief of Appellant at 24-26. The assertion that the number of acres devoted

to farming has increased substantially between 1997 and 2007 is a dubious claim. A “boots on the ground” approach would indicate that this claim is based on some sort of statistical aberration. Local farmers know that there has not been a 50 percent increase in the amount of land devoted to farming. Obviously, small fluctuations in agricultural acreage is to be expected, e.g., cranberry bogs go in and out of production depending on the price of the commodity. Nevertheless, a purported 50 percent increase in agricultural lands flies in the face of reality.

Additionally, while the value of agricultural products assuredly rose between 1997 and 2007, a good portion of this increase can be attributed to inflation. More importantly, the real question which Futurewise fails to address is how much profit was made from various agricultural activities. Gross sales are at best an imperfect measure of profitability. And profitability is the benchmark by which long-term commercial viability should be measured.

On balance, regardless of the purported validity of the statistics cited by Futurewise, it cannot be said that the Board lacked substantial evidence (a low threshold) to conclude that Pacific County’s designation of ALLTCS complies with the GMA.

On a more fundamental level, Futurewise is engaging in pedantry by arguing that any deviation from the exact language approved in Lewis County is proscribed. The Board, on the other hand, rejected this formalistic approach and instead focused on whether the actions of Pacific County adequately protects ALLTCS.

In the end, Pacific County agrees with the Board's conclusions that the 2010 Comprehensive Plan amendment process did not "open the door" for Futurewise to challenge the County's designation of ALLTCS and that the manner in which the County determined what constituted ALLTCS complied with the strictures of the GMA. The County's 2010 amendments to the Comprehensive Plan can best be described as "wordsmithing" with the intent of updating the written text. It also should be noted that the Comprehensive Plan is just that -- a plan. While a Comprehensive Plan sets the direction for land use regulations, it does not contain substantive rules. Futurewise, in focusing on minutia, has missed the forest from the trees. Pacific County had no duty to update its categorization of ALLTCS and the County did not open up this issue by making textual changes to the Comprehensive Plan to correct inaccuracies. The fact that Futurewise disagrees with the actions taken by the County does not

make their contentions meritorious. The Board rightly determined that Futurewise is trying to put the County in a legal straightjacket which is unjustified. As such, Futurewise has failed to carry its burden of proof in demonstrating that the County's actions violated RCW 36.70A.170(1)(a).

**b. Pacific County did not designate ALLTCS as “Rural Agriculture.”**

Futurewise argues that Pacific County has made an egregious mistake using the term “Rural Agriculture,” because this designation is a subject of rural lands rather than natural resource areas. Brief of Appellant at 28-30. Futurewise asserts that references to “agricultural lands” are equivalent to ALLTCS. Brief of Appellant at 28-29. In fact, Futurewise’s analysis has it backwards. Rural Agricultural refers to all agriculture, i.e., agriculture which is of long-term commercial significance and agriculture which is not of long-term commercial significance. The moniker “Rural Agriculture” is used to denote that land which is being used for agricultural purposes in rural, as opposed to urban, areas. ALLTCS is a separate resource designation that is contained within the Critical Areas and Resource Lands Element of

the Comprehensive Plan. It is not, as Futurewise suggests, part of the Rural Element.

In part, the confusion demonstrated by Futurewise stems from the fact that the precise location of ALLTCS has never been delineated on a map. Instead, this designation is applicable to all land that is devoted to the production of aquaculture, cranberries and/or other bog related crops. Including a Rural Agricultural category in the Land Use Element of the Comprehensive Plan does not undercut ALLTCS which is a "stand alone" category in the Critical Areas and Resource Lands Element of the Comprehensive Plan. Hence, Futurewise's claim that Pacific County has improperly shifted agriculture into a rural lands designation is incorrect. Neither the County nor the Board has erroneously interpreted the GMA.

#### **E.**

#### **CONCLUSION**

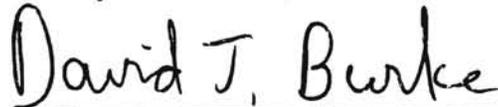
Based on the argument delineated above, Pacific County has shown that Futurewise has not met its burden of proof. Pacific County's Comprehensive Plan is presumed valid upon adoption; Futurewise has not overcome this presumption, giving due deference to the decision of the Board. Judge Lisa Sutton of the

Thurston County Superior Court correctly held that there was substantial evidence in the record to support the decision of the Growth Management Hearings Board. See Appendix B and Appendix C. Pacific County properly designated its Agricultural Lands of Long-Term Commercial Significance (ALLTCS) in 1997 and there has been no change in law that requires this decision to be revisited. Moreover, the County did not “open the door” and allow Futurewise to litigate the issue of ALLTCS. The 2010 Comprehensive Plan Amendments did not adopt new criteria for ALLTCS. Futurewise’s argument is also untimely. In addition, the County did not err in failing to map its ALLTCS. Also, the County did not violate the GMA by failing to use WAC 365-190-050 in designating ALLTCS. Finally, the County did not err in using the term “Rural Agriculture,” because the delineation of ALLTCS is a separate resource designation.

Accordingly, the Court should hold that the 2010 amendments to the Pacific County Comprehensive Plan are valid. The Court should reject the tendentious arguments of Futurewise

and uphold the decision of the Board. The relief requested by  
Futurewise should be denied.

DATED this 18<sup>th</sup> day of October, 2012.



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David J. Burke, WSBA #16163  
Pacific County Prosecuting Attorney

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
2 WESTERN WASHINGTON REGION  
3 STATE OF WASHINGTON  
4

5 FUTUREWISE,

6 Petitioner,

7 v.  
8

9 PACIFIC COUNTY,  
10

11 Respondent,

12 And,  
13

14 CITY OF LONG BEACH,  
15

16 Intervenor.  
17

CASE NO. 10-2-0021

FINAL DECISION AND ORDER

RECEIVED  
PACIFIC COUNTY

JUN 23 2011

GENERAL ADMINISTRATION  
BOARD OF COMMISSIONERS

18 I. PROCEDURAL BACKGROUND  
19

20 *Petition for Review*

21 On December 28, 2010, Futurewise (Petitioner) filed a timely Petition for Review with the  
22 Board.<sup>1</sup> An Amended PFR was filed the same day. The Amended PFR (PFR) challenges  
23 Pacific County's adoption of Resolution No. 2010-036 which amended the County's  
24 Comprehensive Plan. Petitioner alleges this update failed to review and revise the County's  
25 Comprehensive Plan and development regulations to: include and properly designate and  
26 conserve agricultural lands of long-term commercial significance; properly size its urban  
27

28  
29  
30  
31 <sup>1</sup> RCW 36.70A.290(2) requires a PFR to be filed within 60 days of publication of the challenged action.  
32 Resolution 2010-036, which is the subject of these proceedings, was adopted on October 26, 2010.  
Futurewise's PFR does not denote the date of publication but no challenge was raised as to the timeliness of  
the PFR based on Resolution 2010-036's publication date.

1 growth areas; and properly designate its Limited Areas of More Intensive Rural  
2 Development on the Long Beach Peninsula.

3  
4 *Motions*

5 On February 15, 2011 the Board granted intervention to the City of Long Beach.

6 On March 22, 2011 the Board denied the County's motion to dismiss Issues 1 and 3, and,  
7 as well, denied the City of Long Beach's motion to dismiss those portions of the PFR  
8 relating to the North Urban Growth Area.  
9

10 *Hearing on the Merits*

11 The Hearing on the Merits was held on May 17, 2011, in South Bend, Washington. Board  
12 members Nina Carter, William Roehl and James McNamara, were present; Board Member  
13 McNamara presiding. Petitioner was represented by Tim Trohimovich; Pacific County was  
14 represented by David Burke; Intervenor City of Long Beach did not appear at the hearing.  
15  
16

17 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,  
18 AND STANDARD OF REVIEW**

19 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and  
20 amendments to them, are presumed valid upon adoption.<sup>2</sup> This presumption creates a high  
21 threshold for challengers as the burden is on Futurewise to demonstrate that any action  
22 taken by Pacific County is not in compliance with the GMA.<sup>3</sup>  
23

24 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating  
25 noncompliant plans and development regulations.<sup>4</sup> The scope of the Board's review is  
26  
27

28  
29 <sup>2</sup> RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable  
30 development regulations] comprehensive plans and development regulations, and amendments thereto,  
31 adopted under this chapter are presumed valid upon adoption.

32 <sup>3</sup> RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the  
burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this  
chapter is not in compliance with the requirements of this chapter.

<sup>4</sup> RCW 36.70A.280, RCW 36.70A.302

1 limited to determining whether Pacific County has achieved compliance with the GMA only  
2 with respect to those issues presented in a timely petition for review.<sup>5</sup> The GMA directs that  
3 the Board, after full consideration of the petition, shall determine whether there is  
4 compliance with the requirements of the GMA.<sup>6</sup> The Board shall find compliance unless it  
5 determines that Pacific County's action is clearly erroneous in view of the entire record  
6 before the Board and in light of the goals and requirements of the GMA.<sup>7</sup> In order to find  
7 Pacific County's action clearly erroneous, the Board must be "left with the firm and definite  
8 conviction that a mistake has been committed."<sup>8</sup>  
9

10  
11 In reviewing the planning decisions of cities and counties, the Board is instructed to  
12 recognize "the broad range of discretion that may be exercised by counties and cities" and  
13 to "grant deference to counties and cities in how they plan for growth."<sup>9</sup> However, Pacific  
14 County's actions are not boundless; their actions must be consistent with the goals and  
15 requirements of the GMA.<sup>10</sup>  
16  
17  
18

---

19  
20 <sup>5</sup> RCW 36.70A.290(1)

21 <sup>6</sup> RCW 36.70A.320(3)

22 <sup>7</sup> RCW 36.70A.320(3)

23 <sup>8</sup> *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing *Dept. of Ecology v. PUD*  
*District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al*  
*v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,  
497-98, 139 P.3d 1096 (2006).

24 <sup>9</sup> RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be  
25 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the  
26 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements  
27 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities  
28 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that  
29 while this chapter requires local planning to take place within a framework of state goals and requirements, the  
30 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and  
31 implementing a county's or city's future rests with that community.

32 <sup>10</sup> *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the  
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the  
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The  
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give  
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and  
capricious standard. *Id.* at 435, Fn.8.

1 Thus, the burden is on Futurewise to overcome the presumption of validity and demonstrate  
2 that the challenged action taken by Pacific County is clearly erroneous in light of the goals  
3 and requirements of the GMA.  
4

### 5 III. BOARD JURISDICTION

6 The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2).  
7 The Board finds the Petitioner has standing to appear before the Board, pursuant to RCW  
8 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the petition  
9 pursuant to RCW 36.70A.280(1).  
10

### 11 IV. ISSUES AND DISCUSSION

12  
13 The Futurewise PFR challenges the October 26, 2010 adoption of Resolution 2010-036.  
14 With this Resolution, Pacific County adopted its 2010 Comprehensive Plan pursuant to  
15 RCW 36.70A.130's mandate that the County conduct a periodic update of its  
16 comprehensive plan to ensure compliance with the requirements of the GMA. The County's  
17 update primarily included "updating statistics, facts, figures, and tracking the most recent  
18 census & OFM data trends"<sup>11</sup> but the update also addressed Agricultural Lands, LAMIRDS,  
19 and Urban Growth Areas which serve as the foundation for Futurewise's issues.<sup>12</sup>  
20

21  
22 As noted *supra*, the City of Long Beach was granted intervention in this matter. Although  
23 Long Beach did file a dispositive motion during the motions phase,<sup>13</sup> it did not file a brief nor  
24 appear at the hearing on the merits. Therefore, the Presiding Officer concluded Long Beach  
25 has withdrawn from the matter.  
26  
27  
28

29 <sup>11</sup> Resolution 2010-036, Finding of Fact No. 12

30 <sup>12</sup> See e.g., Resolution 2010-036 – Agricultural Lands (Findings of Fact Nos. 97-100, No. 113); LAMIRDS  
31 (Findings of Fact Nos. 28-30, Nos. 32-33, No. 61, Nos. 65-66, No. 74); UGAs (Findings of Fact Nos. 38-50,  
32 Nos. 75-78).

<sup>13</sup> Long Beach's Dispositive Motion, filed February 28, 2011, was denied by the Board in its March 22, 2011  
Order on Dispositive Motions.

1 Although the Board finds its has jurisdiction over the general subject matter of the PFR  
2 pursuant to RCW 36.70A.280(1), a preliminary question affects the scope of the Board's  
3 jurisdiction as to the three issues presented in this case based on the County's action in  
4 adopting a new Comprehensive Plan.

5  
6 Futurewise has taken the position that, because the County adopted the amendments to its  
7 Comprehensive Plan by repealing and replacing the prior Plan in its entirety,<sup>14</sup> all aspects of  
8 the newly adopted plan are subject to challenge. The County, in arguments at the HOM,  
9 states this would be elevating form over substance, as the revisions adopted by Resolution  
10 No. 2010-036 are relatively few in number and a new Plan was adopted for purposes of  
11 administrative efficiency.  
12

13  
14 The Board agrees with the County's position in this regard. A review of Resolution No. 2010-  
15 036 makes it clear that it was intended, and served, as the County's mandated  
16 Comprehensive Plan update as required by RCW 36.70A.130.<sup>15</sup> Our State Supreme Court  
17 has held that a party may challenge a county's failure to revise a comprehensive plan with  
18 respect to those provisions that are directly affected by new or recently amended GMA  
19 provisions.<sup>16</sup> In addition, of course, a party may challenge amendments to the Plan and  
20 Development Regulations actually made during a RCW 36.70A.130 update, pursuant to  
21 RCW 36.70A.290. But an annual update "creates no 'open season' for challenges  
22 previously decided or time-barred."<sup>17</sup> Therefore, the scope of permissible challenges in this  
23 appeal is limited to those areas amended by the County or affected by new or recently  
24 amended GMA provisions.  
25  
26

## 27 **A. Agricultural Lands**

---

28  
29 <sup>14</sup> See Resolution 2010-036 at 2: *IT IS FURTHER RESOLVED that the Board of Pacific County*  
30 *Commissioners rescinds the following conflicting resolutions, plans and/or studies: 1998 Pacific County*  
31 *Comprehensive Plan - Resolution 98-089.*

<sup>15</sup> Resolution No. 2010-036, Finding of Fact No. 2.

<sup>16</sup> *Thurston County v. WWGMHB*, 164 Wn.2d 329, 344 (2008).

<sup>17</sup> *Id.*, citing *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn.App. 378, 390 (2007).

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

4  
5 Applicable Law

6 RCW 36.70A.170(1) a) provides:

- 7 • On or before September 1, 1991, each county, and each city, shall designate  
8 where appropriate:

9 (a) Agricultural lands that are not already characterized by urban growth and  
10 that have long-term significance for the commercial production of food or other  
11 agricultural products;

12 Board Discussion and Analysis

- 13 • Jurisdiction

14 Pacific County's February 28 Motion to Dismiss asserted the Board lacked jurisdiction to  
15 rule on this issue based on *Thurston County v. WWGMHB*. In its March 22 Order on  
16 Motions, the Board reserved consideration of this jurisdictional issue until the HOM.<sup>18</sup>

17 Futurewise argues the Board has jurisdiction in this appeal because the County extensively  
18 amended Section 3.5, Agricultural Resources, when it adopted the Resolution.<sup>19</sup> It points to  
19 new material added to Section 3.5.2 on Identifying and Classifying Agricultural Lands as well  
20 as to Sections 3.5.1 and 3.5.3 Maps and References.  
21

22 In response to this argument, the County asserts the Board is without jurisdiction over this  
23 issue because the Resolution did not alter any "substantive provisions pertaining to how  
24 Pacific County handles agricultural issues".<sup>20</sup> The County states it has not amended its  
25 designation of, or policies and regulatory standards pertaining to, Agricultural Lands of Long  
26 Term Commercial Significance (ALLTCS) after the initial adoption of Pacific County  
27  
28  
29

30  
31 <sup>18</sup> March 22, 2011 Order on Motions at 3

32 <sup>19</sup> Futurewise Opening Brief at 9.

<sup>20</sup> County Brief at 6.

1 Ordinance No. 147 in 1987, and the adoption of the initial GMA Pacific County  
2 Comprehensive Plan in 1998.<sup>21</sup> Further, the County states there have not been any  
3 legislative changes fundamentally altering the criteria for the designation of ALLTCS since  
4 they were initially designated by Pacific County. Consequently, the County asserts it has not  
5 "opened the door" to allow Petitioner to challenge the designation process for ALLTCS.  
6

7 As noted above, while a RCW 36.70A.130 Plan revision does not create an open season on  
8 unamended provisions, or those unaffected by legislative changes, the Board clearly has  
9 jurisdiction over amendments the County chose to make on its own initiative. Further, the  
10 County misreads *Thurston County* in asserting that the Court held the Board's jurisdiction is  
11 limited to substantive changes in a Plan. In fact, the Court stated that "a party may  
12 challenge a county's failure to revise a comprehensive plan only with respect to those  
13 provisions that are directly affected by new or recently amended GMA provisions, meaning  
14 those provision related to mandatory elements of a comprehensive plan that have been  
15 adopted or substantively amended since the previous comprehensive plan was adopted . . ."

16  
17 <sup>22</sup> The Court was clearly referring to substantive amendments to the GMA, not to a  
18 comprehensive plan. The County has not cited any authority that would restrict this Board's  
19 jurisdiction to review only "substantive" amendments of the Plan. Nothing in the plain  
20 language of RCW 36.70A.290 so limits the Board's jurisdiction.<sup>23</sup> Because there is no  
21 dispute that Resolution 2010-036 made amendments to the County's Comprehensive Plan,  
22 the Board has jurisdiction to determine if those amendments are compliant with the GMA.  
23 The issue of whether there have been substantive changes to the GMA with regard to  
24 Agricultural Land of Long-Term Commercial Significance is a matter the Board considers  
25 below.  
26  
27

28  
29  
30 <sup>21</sup> County Brief at 7.

31 <sup>22</sup> *Thurston County v. WWGMHB*, 164 W.2d 329, 344 (2008).

32 <sup>23</sup> RCW 36.70A.280 and .290 grants the Board jurisdiction over "amendments" to comprehensive plans. The Legislature did not include as a modifying adjective, nor will the Board read it into the GMA, the use of substantive.

1 The Board agrees with the County there have not been any legislative changes to the GMA  
2 that have altered the criteria for designation of ALLTCS. The County identifies four areas  
3 where the Legislature has amended the law since such lands were designated by the  
4 County in 1998. As noted by the County, RCW 36.70A.177 was amended in 2004 with  
5 regard to accessory uses, to add permissive language pertaining to agricultural zoning.<sup>24</sup>  
6 Another 2004 amendment<sup>25</sup> by its terms did not apply to Pacific County. Chapter 147 of  
7 Washington Laws, 2006 amended RCW 36.70A.177 and allows for the permissive use of  
8 certain innovative zoning techniques and certain accessory uses and activities. It did not  
9 require the County to amend its Plan. Finally, Chapter 353 of Washington Laws, 2007  
10 amended the GMA by placing a moratorium on amending or adopting critical areas  
11 ordinances. No additional relevant legislative amendments pertaining to ALLTCS were  
12 brought to the Board's attention by Futurewise in its Reply Brief. Thus, none of the  
13 legislative amendments adopted since the County first designated ALLTCS would require  
14 the County to amend its agricultural lands designations, or open that portion of its Plan to  
15 challenge during the update process.  
16  
17

18  
19 • Application of Designation Criteria

20 Futurewise argues that, in making amendments to its Comprehensive Plan during the 2010  
21 update, Pacific County made several changes that do not comply with the GMA. Futurewise  
22 asserts the County committed clear error by giving agricultural lands a "Rural Agricultural"  
23 designation rather than using an "agriculture" natural resource lands of long-term  
24 commercial significance designation in its Comprehensive Plan land use map.<sup>26</sup>  
25

26 Next, Futurewise argues the County erred by failing to apply the new designation criteria to  
27 designate agricultural lands of long term commercial significance "Agriculture" on the future  
28  
29  
30

31 <sup>24</sup> Chapter 207 of Washington Laws, 2004.  
32 <sup>25</sup> Chapter 209 of Washington Laws, 2004.  
<sup>26</sup> Futurewise Opening Brief at 7 and 13-14.

1 land use map.<sup>27</sup> It states that the County has failed to apply or map its agricultural lands,  
2 following the adoption of new designation criteria.

3  
4 The County disputes Futurewise's claim that it extensively amended its Comprehensive  
5 Plan pertaining to agriculture. It notes that the listing of the requirements of RCW  
6 36.70A.170 in Section 3.5.2 and the reference to WAC 365-190-050 were mere citations to  
7 the relevant statutory and regulatory provisions pertaining to ALLTCS meant to help the  
8 reader locate relevant information, not to open the process of reclassifying ALLTCS.<sup>28</sup> The  
9 County states there is nothing in the record to suggest the County intended to change or  
10 readdress its classification of these lands and that referring to the WAC was simply to help  
11 readers locate relevant information; not that the WAC applied to the County's  
12 comprehensive plan.<sup>29</sup>

13  
14  
15 The County notes it did not field locate agricultural land because the County now has a  
16 zoning map which identifies these areas, although it does not delineate nor specifically  
17 identify areas that comprise ALLTCS. The County also notes properties designated  
18 ALLTCS have never been delineated on maps because it is applicable to all land that is  
19 devoted to the production of aquaculture, cranberries and/or other bog related products.  
20 Thus, the County argues including a Rural Agricultural category in the land use element of  
21 the Comprehensive Plan did not undercut ALLTCS which is a "stand alone" category in the  
22 critical areas and resource lands element of the Comprehensive Plan.

23  
24  
25 The Board agrees with the County that there have been no changes in the Pacific County  
26 Comprehensive Plan that adopt new classification criteria so as to open up the County's  
27 agricultural lands designations to a challenge. At most, the amendments under appeal  
28 recite the statutory requirements of RCW 36.70A.170 and *make reference* to WAC 365-190-  
29

30  
31 \_\_\_\_\_  
32 <sup>27</sup> Futurewise Opening Brief at 18.

<sup>28</sup> County Brief at 8-9.

<sup>29</sup> Id.

1 050 which contains language pertaining to the designation of ALLTCS. Such references  
2 cannot be read as adopting new designation standards.

3  
4 As to the County's use of the "Rural Agriculture" comprehensive plan designation, it appears  
5 Futurewise's objection is that the County thereby improperly included ALLTCS in the rural  
6 element. In fact, it is clear that the term "Rural Agriculture" is not a designation exclusively  
7 of ALLTCS but of all agricultural activities outside of urban areas. Instead ALLTCS is  
8 contained in the Critical Areas and Resource Lands Element of the Pacific County  
9 Comprehensive Plan.<sup>30</sup> There has been no showing of clear error in this regard.

10  
11 As the Board has concluded the County has not adopted ALLTCS criteria, and that un-  
12 amended portions of the Plan are not subject to challenge in this appeal, Futurewise's  
13 assertion that the County erred by failing to map its ALLTCS is not timely. In addition,  
14 Futurewise has failed to cite any authority for the proposition that the County was required to  
15 map its ALLTCS. Thus, there is no basis for finding clear error.

16  
17  
18 • *Section 3.5.2 and Lewis County v. WWGMHB*

19 Finally, Futurewise asserts Section 3.5.2 of the County Comprehensive Plan violates the  
20 GMA. Section 3.5.2, "Identifying and Classifying Agriculture Lands", contains the County's  
21 criteria for designating agricultural lands of long term commercial significance. It provides:

22  
23 Section 17 of the GMA (RCW 36.70A.170) requires counties to identify  
24 agricultural lands of long-term commercial significance. RCW 36.70A.030(2)  
25 defines agricultural land as "land primarily devoted to the commercial production  
26 of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal  
27 products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to  
28 the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
29 hatcheries, or livestock, and that has long-term commercial significance for  
30 agricultural production.

31  
32 <sup>30</sup> See Section 3.5 of the Pacific County Comprehensive Plan. Rural areas are addressed in Section 2.6.2

1 WAC 365-190-050 identifies a three part test for designating agricultural land of  
2 long-term commercial significance. First, the land is not already characterized by  
3 urban growth. **Second, the land is used or capable of being used for**  
4 **agricultural production.**

5 **This factor evaluates whether lands are well suited to agricultural uses**  
6 **based primarily on their physical and geographic characteristics.** (emphasis  
7 added) Third, the land has long-term commercial significance for agriculture  
8 based on several applicable criteria including the following:

- 9 • Classification of prime and unique soils as mapped by the Natural Resources  
10 Conservation Services;
- 11 • Availability of public facilities, including roads;
- 12 • Tax status;
- 13 • Availability of public services;
- 14 • Relationship or proximity to urban growth areas and to markets and suppliers;
- 15 • Predominant parcel size;
- 16 • Land use settlement patterns and their compatibility with agricultural practices;
- 17 • Intensity of nearby land uses;
- 18 • History of land development permits issued nearby; and
- 19 • Land values under alternative uses.

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

28 Futurewise challenges the portion of this definition which provides:

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

32 Futurewise claims this language fails to contain a reference to the "commercial production  
of agricultural products enumerated in RCW 36.70A.030(2)" – language contained in the  
Supreme Court's Lewis County decision's three part test for designating agricultural land of  
long term commercial significance. Futurewise contends that "The failure to use this

1 mandatory language is clearly erroneous”.<sup>31</sup> However, nothing in the GMA mandates cities  
2 and counties to use any “mandatory language”. Instead, jurisdictions are given a great deal  
3 of flexibility in the means by which they choose to comply with the statute. The Board’s role  
4 is not to look for the use of any so-called “mandatory language” within a comprehensive  
5 plan. Instead, the relevant question is whether the language employed satisfies the  
6 statutory requirement to identify ALLTCS. Futurewise fails to demonstrate the language in  
7 Section 3.5.2 does not meet the requirements of the statute. Instead, the Board agrees with  
8 the County that the challenged language is nothing more than a reference to a relevant  
9 WAC provision, not the adoption of a new standard for designating ALLTCS.

11  
12 Futurewise also asserts that if the Board concludes the last paragraph of Section 3.5.2,  
13 “Identifying and Classifying Agriculture Lands”, is not a classification of part of the County’s  
14 agricultural lands then this paragraph is clearly erroneous.<sup>32</sup> Futurewise fails to explain why  
15 that would be so and the Board does not find clear error in this regard.

16  
17 Futurewise argues that in attempting to incorporate updates to the definition of agricultural  
18 land into its comprehensive plan it failed to list all the agricultural products enumerated in  
19 RCW 36.70A.030(2) including Christmas trees, dairy, hay or animal products<sup>33</sup>. However, in  
20 1996 – 1997 the County went through the process of analyzing what agricultural activities  
21 were viable in Pacific County. In doing so it considered a variety of factors in determining  
22 what agricultural land was of long-term commercial significance including soil type,  
23 availability of public facilities, tax status, availability of public services, relationship of  
24 proximity to urban growth areas, predominant parcel size, land use settlement patterns and  
25 their compatibility with agricultural practices, intensity of nearby land uses, history of land  
26 development permits issued nearby, land values under alternative use, and proximity of  
27  
28  
29  
30

31 <sup>31</sup> Futurewise Opening Brief at 20.

32 <sup>32</sup> Futurewise Opening Brief at 21.

<sup>33</sup> Futurewise Opening Brief at 21.

1 markets.<sup>34</sup> After extensive debate, the County determined that aquaculture and cranberry  
2 production were the only agricultural activities that have long-term commercial significance.  
3 While the County could have made a formal finding that ALLTCS pertains to land that is not  
4 already characterized by urban growth, this “oversight” does not constitute error because  
5 cranberry bogs and commercial shellfish beds are not found in urban areas.  
6

7 Conclusion

8 The Board concludes Petitioner has failed to carry its burden of proof in demonstrating the  
9 County's action in the adoption of Resolution 2010-036 violated RCW 36.70A.170(1)(a).  
10

11 **B. Urban Growth Areas**

12  
13 Issue 2: Did Pacific County fail to review and revise its updated comprehensive plan to  
14 properly size all of its urban growth areas as required by RCW 36.70A.110, RCW  
15 36.70A.115, and RCW 36.70A.130?

16 Board Discussion and Analysis

17 • Jurisdiction as to UGAs

18  
19 Futurewise notes the Washington State Supreme Court held that if the urban growth  
20 projection for a county changes, a county must revise its comprehensive plan to reflect this  
21 fact. And, if it fails to do so, a challenge to whether the UGA is appropriately sized based on  
22 these projections can be raised.<sup>35</sup> Futurewise further points out there have been two new  
23 OFM population projections since the 1998 Pacific County Comprehensive Plan was  
24 adopted; one in 2002 and another in 2007.<sup>36</sup> Futurewise thus asserts that the sizing of the  
25 County's UGAs are therefore open to challenge in this appeal.<sup>37</sup>  
26  
27  
28

29 <sup>34</sup> County Brief at 16-17.

30 <sup>35</sup> Futurewise Brief at 23-24 (citing *Thurston County v. WWGMHB*, 164 Wn.2d 329, 347 (2008))

31 <sup>36</sup> OFM actually produces population projections every year, issuing them as of April 1. However, it only  
32 produces the 20-year growth projections that serve as the foundation for UGAs every five years. RCW  
43.62.035.

<sup>37</sup> Futurewise Brief at 24-25 (citing OFM Projections for Pacific County).

1 In response, the County points out that all of the 2002 and 2007 projections for 2025 (low,  
2 medium, or high) on average vary by about one tenth of one percent, and are close to a "flat  
3 line" in terms of population growth projections.<sup>38</sup> Consequently, the County asserts under  
4 *Thurston County* a challenge to its UGAs is permissible only if the population projection has  
5 changed. It states the County's population projection has not changed given this "flat line"  
6 growth which shows no meaningful difference.<sup>39</sup>  
7

8 As acknowledged by both parties, the Supreme Court has held:  
9

10 *A party may challenge a county's failure to revise its UGA designations during a*  
11 *10 year update only if there is a different OFM population projection for the*  
12 *county ... If the urban growth projection changes, a county must revise its*  
13 *comprehensive plan. If the county fails to revise its plan, a party may challenge*  
14 *whether the UGA accommodates the most recent OFM population projection.*<sup>40</sup>

15 It is clear from the text of Resolution 2010-036 that the County was conducting not only a  
16 RCW 36.70A.130 periodic update but also a review of its UGAs.<sup>41</sup> The County's adopted  
17 Findings of Fact indicate that it sought to justify the size of certain UGAs during the update  
18 process which was to encompass the 2010-2030 planning horizon. Finding of Fact No. 39  
19 recites, in relevant part:

20 Pacific County has completed the mandatory 10 year evaluation of the Urban  
21 Growth Areas as required by RCW 36.70A.130(3) ... The four UGAs [Ilwaco,  
22 Long Beach, Raymond, and South Bend] are adequately sized to accommodate  
23 the future growth over the next 20 years.

24 Further Findings of Fact were adopted in support of these UGAs: Ilwaco (Finding No. 75);  
25 Long Beach (Finding No. 76); Raymond (Finding No. 77); and South Bend (Finding No. 78).  
26 *In addition, Findings of Fact Nos. 40 through 50 seek to lay the factual support for the*  
27 *Seaview UGA expansion. Thus, Pacific County's UGAs were clearly under review.*  
28

29  
30  
31 <sup>38</sup> County Brief at 19

<sup>39</sup> County Brief at 19

<sup>40</sup> *Thurston County v. WWGMHB*, 164 Wn.2d 329, 347 (2008)[Emphasis added, Internal citations omitted].

<sup>41</sup> Resolution 2010-036 at 1

1 The question, at least as posed by the County, is - was there a "different OFM population  
2 projection"? It is undisputed that OFM issued GMA population projections in 2002 and 2007  
3 and that these projections were not mirror images of each other. It is undeniable that the  
4 1998 Comprehensive Plan designated UGAs based on a planning horizon ending in 2016  
5 and an expected population of 27,107.<sup>42</sup> It is also undeniable that the County's 2010 Land  
6 Capacity Analysis, which serves as the foundation for the present UGA sizing, states that  
7 the County developed projections so as to establish a 2030 population projection of  
8 26,770.<sup>43</sup> In addition, Table 2-8 *Residential Lands Needs* in the County's 2010  
9 Comprehensive Plan bases its figures of "Projected New Residents" from which it calculated  
10 "Land Area Needed" on the difference between projected population in year 2010 and 2030  
11 population.<sup>44</sup> In short, the County cannot be heard to argue that its UGA sizing decisions  
12 cannot be challenged where it is evident that it has based those decisions on new  
13 population projections. Having determined that the County's UGAs are subject to challenge,  
14 the Board turns now to a determination of whether those UGAs are oversized.

15  
16  
17  
18 • UGA Sizing

19 OFM issued a new urban growth projection for the year 2030 planning horizon in 2007. The  
20 2007 OFM Projections set forth the following for Pacific County:<sup>45</sup>

Low Series Projection	Medium Series Projection	High Series Projection
19,906	22,985	28,043

21  
22  
23  
24  
25 The Board notes, from the Land Capacity Analysis, the County did not utilize OFM's  
26 projections. Rather, the County utilized population data obtained from the 2000 Federal  
27 Census, adjusted those numbers based on site reconnaissance and discussions with county  
28  
29

30  
31 <sup>42</sup> County Exhibit 8, Page 2-32 – Table 2-7; Page 2-34 – Table 2-8

<sup>43</sup> Appendix A, Land Capacity Analysis of Comprehensive Plan

<sup>44</sup> See, Pacific County Comprehensive Plan, Table 2-8, footnote 1, page 2-45.

<sup>45</sup> Futurewise IR 20, OFM Forecasting Final Projections 2000-2030 (October 2007)

1 staff, then developed projections using a 1.4 percent growth rate based on April 1, 2009's  
2 population estimates resulting in a 2030 population projection of 26,770.<sup>46</sup> Under the  
3 discretion granted to it by the GMA, Pacific County is free to plan for population at any of  
4 OFM's projected levels. In other words, Pacific County was free to plan for population  
5 ranging from 19,906 to 28,043. The County's estimate of 26,770 clearly falls within that  
6 range despite the fact its' origins were not in OFM's projections.  
7

8 Collectively, Futurewise argues there is a need for 180 acres of land in the Ilwaco, Long  
9 Beach, Raymond, Seaview and South Bend UGAs, yet there are 368 vacant buildable acres  
10 in these UGAs, an excess supply of 104 percent.<sup>47</sup> Futurewise suggests that lands in excess  
11 of the needed supply should be removed from the UGAs.  
12

13  
14 As to the size of the County UGAs, the County argues much of the land around the four  
15 cities and the unincorporated community of Seaview is developmentally constrained by  
16 wetlands, floodplains, steep slopes, dunes, or water.<sup>48</sup> Further, the County asserts the  
17 historical community boundaries of these areas predate the GMA with little regard for a  
18 "neat and tidy urban growth area."<sup>49</sup>  
19

20 Turning to the specifics of these communities, the **Ilwaco UGA** includes a large land area  
21 devoted to a master planned community, and includes land areas for a future golf course,  
22 future single and multi-family residential projects, commercial enterprises, and open space  
23 areas. In addition, the Ilwaco UGA includes large tracts of undevelopable wetlands, steep  
24 slopes, and floodplains that were included in the UGA to provide consistency with existing  
25 service boundaries and to ease mapping administration.<sup>50</sup>  
26  
27  
28  
29

30 <sup>46</sup> Appendix A, Land Capacity Analysis of Comprehensive Plan

31 <sup>47</sup> Futurewise Brief at 26.

32 <sup>48</sup> County Brief at 19.

<sup>49</sup> County Brief at 19

<sup>50</sup> County Brief at 20.

1 The **Long Beach UGA** includes large wetland/upland areas the City of Long Beach intends  
2 to include in their proposed trail network on the east side of town and, for purposes of grant  
3 funding, needs to be included in the Long Beach UGA.<sup>51</sup> In addition, this UGA includes  
4 dunal areas tied to upland properties that are not available for development because they  
5 are westerly of the City's Shoreline Master Program building setback line, but still associated  
6 with upland building sites.<sup>52</sup>  
7

8 With regard to the **Raymond, South Bend, and Seaview UGAs**, the County points out that  
9 the difference between the lands needed to accommodate the residential land needs of  
10 future population growth and the lands actually available is quite small. In the case of  
11 Raymond, the land needed is 70 acres, with 75 vacant buildable acres available. For South  
12 Bend, it has identified a need for 40 acres, with 45 vacant buildable acres available. For  
13 Seaview, the need is 20 acres, with 26 acres available.<sup>53</sup>  
14  
15

16 The County contends the excess acreage within its UGAs allows for the "myriad of  
17 development constraints that impact the amount of land that is truly available for  
18 development" and, therefore, given this consideration the County's UGAs are not  
19 oversized.<sup>54</sup>  
20

21 RCW 36.70A.110 requires counties to designate UGAs and RCW 36.70A.130 requires  
22 UGAs to be reviewed at least every ten years.<sup>55</sup> The GMA further provides that UGAs "shall  
23 be revised to accommodate the urban growth projected to occur in the county for the  
24 succeeding twenty-year period."<sup>56</sup>  
25  
26  
27  
28

29 <sup>51</sup> County Brief at 21.

30 <sup>52</sup> County Brief at 21

31 <sup>53</sup> County Brief at 21 (Citing Table 2-8 at Page 2-45 of Exhibit 4 Pacific County Comprehensive Plan)

32 <sup>54</sup> County Brief at 22

<sup>55</sup> RCW 36.70A.110(1); 36.70A.130(3)(a).

<sup>56</sup> RCW 36.70A.130(3)(b)

1 In sizing a UGA, our Supreme Court has held:<sup>57</sup>

2 The size of a UGA must be “[b]ased upon” an OFM projection and a county must  
3 include “areas and densities sufficient to permit the urban growth projected to  
4 occur over the next 20 years. RCW 36.70A.110(2). While the statute explicitly  
5 states the UGA must be large enough to accommodate the projected population  
6 increase, it does not specifically state the projected population limits the amount  
7 of land that may be designated as urban. In *Diehl*, the Court of Appeals held an  
8 OFM projection constitutes both the minimum and maximum size of a UGA. 94  
9 Wn. App. at 653. The court reasoned that although the GMA does not explicitly  
10 restrict the size of a UGA, “[o]ne of the goals of the GMA is to ‘[r]educe the  
11 inappropriate conversion of undeveloped land into sprawling, low-density  
12 development.’” *Id.* (second alteration in original) (quoting RCW 36.70A.020(2)). If  
13 the size of a UGA is not limited, rural sprawl could abound. *Id.* Thus, although  
14 the GMA does not explicitly limit the size of a UGA, to give meaning to the  
15 market supply factor provision and in light of the GMA goal of reducing sprawl,  
16 we hold **a county's UGA designation cannot exceed the amount of land  
17 necessary to accommodate the urban growth projected by OFM, plus a  
18 reasonable land market supply factor.**

16 Thus, two things come into play when sizing a UGA – OFM projected growth and a  
17 reasonable land market supply factor. Futurewise does not challenge the reasonableness of  
18 the County's market factor<sup>58</sup> rather it contends the UGAs originally delineated in 1998 are  
19 now oversized due to the current population projections and cannot be justified by such  
20 things as municipal water service or development limitations, such as critical areas, which  
21 have already been accounted for in the calculation process.<sup>59</sup>

28 <sup>57</sup> *Thurston County v. WWGMHB*, 164 Wn.2d 329, 351-52 [Emphasis Added]

29 <sup>58</sup> According to the County's Land Capacity Analysis (Appendix A, 2010 Comprehensive Plan), Pacific County  
30 used a 25 percent market factor for both the incorporated and unincorporated portions of the Ilwaco, Long  
31 Beach, Raymond, and South Bend UGAs. For the Seaview UGA, the County does not expressly reference a  
32 market factor but does reduce available land by 123 acres (or 30 percent) which it states represents “not for  
sale during plan period, critical areas, and physically limited land.”

<sup>59</sup> Futurewise Brief at 26-27; Futurewise Reply Brief at 13-14

1 Looking at the County's Land Capacity Analysis for its UGAs, the Board finds Pacific County  
 2 used the following reductions when developing available acreage amounts:<sup>60</sup>

	Ilwaco	Long Beach	Raymond	South Bend	Seaview
3 Land Unavailable 4 due to Wetlands/ 5 Slopes	20%/20%	25%/48% <sup>61</sup>	40%/25% <sup>62</sup>	0%/25% <sup>63</sup>	--
6 Land Unavailable 7 due to Parks, Roads	20%/25%	22%/25%	20%/20%	15%/20%	15%
8 Market Unavailability	25%/25%	25%/25%	25%/25%	25%/25%	30% <sup>64</sup>

10 It is entirely appropriate for Pacific County to take these reductions as this has been the  
 11 methodology promoted by the Department of Commerce and endorsed in Board decisions.<sup>65</sup>

12 It is also clear from these numbers that the County's LCA took into consideration  
 13 circumstances unique to each of these communities as the reduction percentage varies.  
 14 However, once these reductions have been applied Pacific County cannot attempt to justify  
 15 excessive acreage utilizing the same factors; it cannot reduce its acreage once by the Land  
 16 Capacity Analysis and then again by claiming some land is not usable due to local  
 17 circumstances. This amounts to a "double counting" for which the Board has previously  
 18 found non-compliant with the GMA's mandates.<sup>66</sup>

21 The Board acknowledges the competing concerns that must be addressed in sizing a UGA:  
 22 if the UGA is too large it encourages sprawl, yet if it is too small this can drive up land prices  
 23

24  
 25 <sup>60</sup> Based on Appendix A, Land Capacity Analysis – 2010 Comprehensive Plan. First number represents the  
 26 reduction applied within the incorporated area of the UGA. Second number represents the reduction applied  
 27 within the unincorporated area of the UGA.

28 <sup>61</sup> Reduction for Wetlands Only.

29 <sup>62</sup> Reduction for Slopes.

30 <sup>63</sup> For City of South Bend, denotes that critical areas already excluded from vacant lands

31 <sup>64</sup> Represents land not for sale during plan period, critical areas, and physically limited land – the Land  
 Capacity Analysis does not distinguish between percentage amounts.

32 <sup>65</sup> See Commerce's *Issues in Designated Urban Growth Areas: Part 1 Providing Adequate Urban Land  
 Supply, Art & Science in Designation of Urban Growth Areas (1992); Caitac, et al v. Whatcom County,*  
 WWGMHB Case 08-2-0021c, FDO at 29 (October 13, 2008); *Zillah v. Yakima County,* EWGMHB Case 08-1-  
 0001, FDO at 25 (Aug. 10, 2009).

<sup>66</sup> *Panesko, et al v. Lewis County,* WWGMHB Case 08-2-0007c, FDO (Aug. 15, 2008)

1 and force development away from urban areas, in contravention of GMA's goals to  
2 encourage compact urban growth. The UGA sizing process is not an exact science and  
3 requires that assumptions be made regarding future development patterns. Because of this,  
4 and because the calculations of land capacity do not always conform perfectly with existing  
5 local circumstances, the Legislature has granted local governments discretion in making  
6 such decisions:

7  
8 "Cities and counties have discretion in their comprehensive plans to make many  
9 choices about accommodating growth." RCW 36.70A.110(2)

10 This Board previously held that the market supply factor is designed to account for land  
11 unavailable due to the nature of the land and its devotion to public uses, and that a further  
12 reduction for "market unavailability" amounts to a double counting of the market supply  
13 factor.  
14

15  
16 As we held in *Stalheim v. Whatcom County*:

17 "The County's error in this case is not that it cannot rely on "local circumstances"  
18 but that it failed to recognize that by employing the use of a market supply factor  
19 in its land capacity analysis it has already accounted for local circumstances.  
20 *Thurston County* cannot be read to allow the "double counting" that would result  
21 from sizing a UGA based upon considerations of both a market supply factor and  
22 "local circumstances". In *Thurston County*, the State Supreme Court noted that a  
23 market factor represents the estimated percentage of net developable acres  
24 contained within a UGA that, due to idiosyncratic market forces, is likely to  
25 remain undeveloped over the course of the twenty-year planning cycle.<sup>67</sup> That a  
26 county may not rely upon *both* a market supply factor and "local circumstances"  
27 can be seen in the Court's discussion of how a Growth Management Hearings  
28 Board should scrutinize the use of the market supply factor. First, the Court held  
29 that:

30 [I]n determining whether a market supply factor is reasonable, a  
31 board must recognize counties have great discretion in making choices  
32 about accommodating growth and the land market supply factor may be  
based on local circumstances.<sup>68</sup>

31  
32 <sup>67</sup> *Thurston County v. WWGMHB*, 164 Wn.2d 329, 352 (2008)

<sup>68</sup> *Id.* at 353.

1 The Court continued:

2 If the Board finds that a land market supply factor was not used, the  
3 Board must determine whether the UGA designations were clearly  
4 erroneous after taking into account local circumstances and deferring to  
5 the County's discretion in making choices to accommodate future  
6 growth.<sup>69</sup>

7 Pacific County developed a summary of its UGA analysis which is telling. Table A-10 of the  
8 Land Capacity Analysis shows the total land needed versus the total vacant, buildable land  
9 and from which the Board develops the following:<sup>70</sup>

10

11 Location	12 Land Area Needed (Acres) <sup>71</sup>	13 Vacant Buildable Land in City (Acres) <sup>72</sup>	14 Vacant Buildable Land in UGA (Acres) <sup>73</sup>	15 Total Vacant Buildable Land – City + UGA (Acres)	16 Land in Excess of Need (Acres)
17 Ilwaco	18	149	150	249	231
18 Long Beach	32	77	66	143	111
19 Raymond	70	75	98	173	103
20 South Bend	40	18	74	92	52

21 The information on this table demonstrates, except for South Bend, there is enough vacant,  
22 buildable land within the municipal boundary of each City alone to accommodate future  
23 growth. The GMA requires lands within the municipal boundaries of a city to be a UGA<sup>74</sup> so  
24 the incorporated portion of these UGAs cannot be reduced without a correlating de-

25  
26  
27  
28 <sup>69</sup> Id.

29 <sup>70</sup> Appendix A of 2010 Comprehensive Plan. Footnote references are Board's.

30 <sup>71</sup> Based on average household size of 2.27 person/household

31 <sup>72</sup> Acreage has already been reduced by critical areas (e.g. wetlands (coastal and inland), slopes, dunes),  
public uses (e.g. roads/parks), and a market factor.

32 <sup>73</sup> Acreage has already been reduced by critical areas (e.g. wetlands (coastal and inland), slopes, dunes),  
public uses (e.g. roads/parks), and a market factor.

<sup>74</sup> RCW 36.70A.110(1)

1 annexation. However, the land within the unincorporated UGA is available for reduction and  
2 Pacific County has provided no rational basis for UGAs of this size.

3  
4 Conclusion

5 The Board concludes that Petitioner has carried its burden in demonstrating the County's  
6 action in the adoption of Resolution 2010-036 violated RCW 36.70A.110 and RCW  
7 36.70A.130 in sizing its UGAs.

8  
9 **C. LAMIRDs**

10 Issue 3: Did Pacific County fail to review and revise its updated comprehensive plan to  
11 properly designate its Limited Areas of More Intensive Rural Development (LAMIRDs) on  
12 the Long Beach Peninsula including areas designated as Shoreline Development, as  
13 required by RCW 36.70A.070(5)(d) and RCW 36.70A.130?

14 Applicable Law

15 RCW 36.70A.070

16 Each comprehensive plan shall include a plan, scheme, or design for each of the following:

17 \*\*\*

18  
19 (5) Rural element. Counties shall include a rural element including lands that are not  
20 designated for urban growth, agriculture, forest, or mineral resources. The following  
21 provisions shall apply to the rural element:

22 \*\*\*

23  
24 (d) Limited areas of more intensive rural development. Subject to the requirements of this  
25 subsection and except as otherwise specifically provided in this subsection (5)(d), the rural  
26 element may allow for limited areas of more intensive rural development, including  
27 necessary public facilities and public services to serve the limited area as follows:

28 (i) Rural development consisting of the infill, development, or redevelopment of existing  
29 commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline  
30 development, villages, hamlets, rural activity centers, or crossroads developments.  
31  
32

1 Board Discussion and Analysis

2 With its February 28 Motion to Dismiss, Pacific County asserted the Board lacked  
3 jurisdiction to rule on this issue based on *Thurston County v. WWGMHB*. In its March 22  
4 Order on Motions, the Board reserved consideration of this jurisdictional issue until the  
5 HOM.<sup>75</sup>  
6

7 Futurewise points out there have been substantial amendments to the GMA provisions  
8 regarding LAMIRDs since the 1998 adoption of the Pacific County Comprehensive Plan.<sup>76</sup>  
9 In particular, Futurewise points to the changes made in 2003 and 2004.<sup>77</sup> In 2003,  
10 Futurewise states that RCW 36.70A.070 (5)(d)(i) was amended regarding provisions for  
11 Type I LAMIRDs so as to provide that an industrial use within a mixed use area or an  
12 industrial area is not required to be principally designed to serve the existing and projected  
13 rural population.<sup>78</sup> In 2004, Futurewise notes, this same provision was amended again so  
14 that industrial areas were not required to be principally designed to serve the existing and  
15 projected rural population and that development and redevelopment shall be consistent with  
16 the character of the existing areas.<sup>79</sup> Futurewise contends the 2005 (*sic*) amendments make  
17 it clear that other forms of development/redevelopment are to be principally designed to  
18 serve the rural population and also limited size, scale, use, and intensity so as to be  
19 consistent with existing character. Thus, due to intervening changes in the GMA's LAMIRD  
20 provisions since the County's last plan update, Futurewise argues the Board has jurisdiction  
21 to review the County's LAMIRDs.  
22  
23  
24

25 Futurewise asserts the County's Long Beach LAMIRD violates GMA in three ways. First,  
26 Futurewise argues that provisions of the County Comprehensive Plan at page 2-38 and 2-29  
27  
28  
29

30 <sup>75</sup> March 22, 2011 Order on Motions at 3-4

31 <sup>76</sup> Futurewise Brief at 27.

32 <sup>77</sup> Futurewise Brief, at 27-28

<sup>78</sup> Futurewise Brief at 27-28 (Citing to 2003 c 152 §1)

<sup>79</sup> Futurewise Brief at 28 (Citing to 2004 c 196 §1)

1 referring to the sizing of LAMIRDs to accommodate 20 years of growth violate RCW  
2 36.70A.070(5)(d) because LAMIRDs are not to be sized for future residential growth.

3  
4 Second, Futurewise asserts the County has not established a Logical Outer Boundary  
5 (LOB) for the "Shoreline Development" Comprehensive Plan designation. Futurewise notes  
6 this designation is defined as a LAMIRD by the definition of "areas of more intensive  
7 development" but the zone is not mapped.<sup>80</sup>

8  
9 Finally, Futurewise argues the Shoreline Development designation has been applied to  
10 areas that include vast amounts of undeveloped land.<sup>81</sup>

11  
12 In response, the County first asserts the Board lacks jurisdiction over Issue 3. The County  
13 points out the Ocean Park Rural Village, Klipsan Crossing Community Crossroad and  
14 Surfside Community Crossroad LAMIRDs have remained unchanged since they were  
15 adopted in 1998.<sup>82</sup> The Nahcotta Rural Activity Center was adopted in 2002 and has  
16 remained unchanged since its initial adoption. The County points out there have been no  
17 changes to the criteria for designation of LAMIRDs since they were initially designated.

18  
19  
20 The County also notes there is no statutory mandate to designate specific rural land, such  
21 as those areas designated Shoreline Development, as a LAMIRD. It points out that while  
22 there is an area on the Long Beach Peninsula that was designated as Rural Shoreline  
23 Development in its 1998 Comprehensive Plan, this area was not designated as a LAMIRD  
24 and its boundaries and allowed uses have remained unchanged since.<sup>83</sup>

25  
26 The County also argues the fact that there have been changes in the GMA provisions  
27 pertaining to LAMIRDs is not relevant in this appeal because those statutory amendments  
28

29  
30  
31 <sup>80</sup> Futurewise Brief at 31.

32 <sup>81</sup> Futurewise Brief at 31.

<sup>82</sup> County Brief at 23.

<sup>83</sup> County Brief at 24-25.

1 address uses allowed in a LAMIRD. Issue 3, the County points out, does not challenge  
2 allowable uses, but the designation of LAMIRDs.<sup>84</sup>

3  
4 Aside from the issue of Board jurisdiction, the County maintains that its LAMIRDs are  
5 compliant with the GMA. It maintains that, contrary to Futurewise's assertion to the  
6 contrary, it did not size its LAMIRDs for future residential growth, but instead identified the  
7 Logical Outer Boundary (LOB) based on the built environment.  
8

9 With regard to the Shoreline Development Comprehensive Plan designation, the County  
10 states this area is not a LAMIRD, but an area of more intensive development that  
11 recognized the existing residential and recreational development uses and platted lots along  
12 the Pacific Ocean shoreline. It asserts that it is distinct from other LAMIRDs in the County  
13 that are unique communities with distinct geographic boundaries. Instead, the County  
14 asserts the Shoreline Development designation is a rural area that fits into the pastiche of  
15 rural designations that vary from one dwelling unit per acre to one dwelling unit per 40  
16 acres.<sup>85</sup>  
17

18  
19 In the Board's March 22, 2011 Order on Dispositive Motions, we denied the County and  
20 Long Beach's motion to dismiss Issue 3, holding:

21 It is not clear from the record presented by either the County or Futurewise  
22 whether the County was obligated to revise its comprehensive plan to properly  
23 "designate" previously established LAMIRDs during its ten year update.  
24 Additional briefing for the Hearing on the Merits should clarify how the County's  
25 comprehensive plan addresses LAMIRDs and whether recent changes in the  
26 GMA relative to LAMIRDs would require a revision of those provisions. The  
27 Board concludes that the County has not sufficiently demonstrated that a  
28 challenge to the County's LAMIRD *designations*, during the County's ten year  
29 update to its comprehensive plan, lies outside the scope of the Board's  
30 jurisdiction.  
31

32 <sup>84</sup> County Brief at 25.

<sup>85</sup> County Brief at 29.

1 Having now had the benefit of full briefing on this issue, it is apparent that there have not  
2 been any amendments to the GMA's provisions regarding LAMIRD designations that would  
3 require the County to revise its LAMIRD designations. At most, since the County's last  
4 comprehensive plan update, the intervening legislative amendments with regard to  
5 LAMIRDs have pertained to the uses permitted within LAMIRDs. Issue 3 challenges the  
6 County's LAMIRD designations, not the uses permitted within the LAMIRDs. Consistent  
7 with our Supreme Court's decision in *Thurston County*, absent legislative changes to the  
8 GMA's provisions regarding the designation of LAMIRDs, and absent any amendment by  
9 the County to such provisions in its Comprehensive Plan, Futurewise may not subject the  
10 County's LAMIRD designations to challenge.  
11

12  
13 Futurewise's challenge to the County's Shoreline Development Comprehensive Plan  
14 designation fails for the additional reason that there has been no clear showing that this is a  
15 LAMIRD designation. Clearly the County has never designated this as a LAMIRD. Instead  
16 Futurewise rests its assertion that the Shoreline Development Comprehensive Plan  
17 designation is a LAMIRD because it permits densities of one dwelling unit per acre, a  
18 density Futurewise considers urban. Nothing else in the County Comprehensive Plan  
19 suggests this is a LAMIRD designation. Instead, the County plan states this designation  
20 applies to small lots that can be supported "without requiring urban service levels."<sup>86</sup>  
21 LAMIRDs, by definition may include necessary public facilities and public services. RCW  
22 36.70A.070(5)(d). The Board concludes the Shoreline Development Comprehensive Plan  
23 designation is not a LAMIRD, actual or *de facto*.  
24  
25

26 Finally, the Shoreline Development Comprehensive Plan designation was adopted by the  
27 County in 1998.<sup>87</sup> While Futurewise asserts that recent amendments to the GMA pertaining  
28 to LAMIRDs permit its challenge, this argument fails. Not only has Futurewise failed to  
29 demonstrate that the Shoreline Development Comprehensive Plan designation is in fact a  
30

31  
32 <sup>86</sup> Pacific County Comprehensive Plan, page 2-30, sec 2.6.2.4

<sup>87</sup> County Brief at 27.

1 LAMIRD, but it has not demonstrated that there have been any legislative amendments to  
2 the GMA, regarding LAMIRDs or otherwise, that would permit a challenge to this Plan  
3 designation.  
4

5 Conclusion

6 The Board concludes that Petitioner has failed to carry its burden of proof in demonstrating  
7 the County's action in the adoption of Resolution 2010-036 violated RCW 36.70A.070(5)(d)  
8 and RCW 36.70A.130.  
9

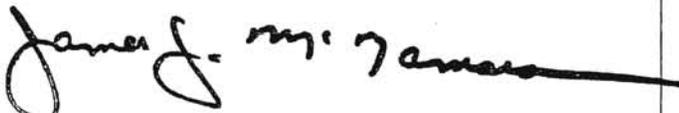
10 **V. ORDER**

11 Based upon the foregoing, the County is ordered to bring its Comprehensive Plan into  
12 compliance with the Growth Management Act pursuant to this decision within 180 days.  
13

14 The following schedule for compliance, briefing and hearing shall apply:

15 Compliance Due on identified areas of noncompliance	December 19, 2011
16 Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	January 2, 2012
17 Objections to a Finding of Compliance	January 16, 2012
18 Response to Objections	January 30, 2012
19 Compliance Hearing – (Telephonic) 20 360 407-3780 pin 433672#	February 7, 2012 21 10:00 a.m.

22 So ORDERED this 22<sup>nd</sup> day of June, 2011.

23   
24

25 James McNamara, Board Member

26   
27

28 William P. Roehl, Board Member

29   
30

31 Nina Carter, Board Member  
32

1 Pursuant to RCW 36.70A.300 this is a final order of the Board.<sup>88</sup>  
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21 <sup>88</sup> Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this  
22 Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration,  
23 together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise  
24 delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy  
25 served on all other parties of record. Filing means actual receipt of the document at the Board office.  
RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a  
prerequisite for filing a petition for judicial review.

26 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior  
27 Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition  
28 in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and  
29 Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and  
30 served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the  
31 final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail,  
32 but service on the Board means actual receipt of the document at the Board office within thirty days after  
service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic  
mail.

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



Superior Court of the State of Washington  
For Thurston County



Paula Casey, Judge  
Department No. 1  
Thomas McPhee, Judge  
Department No. 2  
Christine A. Pomeroy, Judge  
Department No. 3  
Gary R. Tabor, Judge  
Department No. 4

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502  
Telephone (360) 786-5560 • Fax (360) 754-4060

Chris Wickham, Judge  
Department No. 5  
Anne Hirsch, Judge  
Department No. 6  
Carol Murphy, Judge  
Department No. 7  
Lisa L. Sutton, Judge  
Department No. 8

April 26, 2012

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Attorney at Law  
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South Bend, WA 98586-0045

Re: *Futurewise v. Growth Management Hearings Board et al*  
Thurston County Cause No. 11-2-01594-4

Dear Counsel:

This matter came before the court on Futurewise's petition for review of the Growth Management Hearings Board's Final Decision and Order (FDO) regarding Pacific County's 2010 Comprehensive Plan amendments. There are only certain identified issues by Futurewise which are part of this current appeal. The court reviewed Futurewise's original and reply briefs, Pacific County's responsive brief and the administrative record of the hearing below. The court heard extensive oral arguments on this appeal on April 20, 2012. The court took the matter under advisement in order to review the pleadings and case law again. The court will not restate the parties' extensive arguments.

**Appendix B**  
**Letter Opinion by Judge Lisa Sutton**  
**Dated April 26, 2012**

PACIFIC COUNTY PROSECUTOR  
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Futurewise's main issue on appeal (Issue # 1) pertains to whether Pacific County made substantive changes in amending its 2010 Comprehensive plan, which amendments were made as required by the Growth Management Act. This issue was raised specifically as to whether substantive changes were made as to the designation of certain agricultural lands as having long term commercial significance. The Growth Management Hearings Board, who heard the initial appeal by Futurewise, agreed with Pacific County's position that the 2010 Comprehensive Plan did not make any substantive changes regarding this designation.

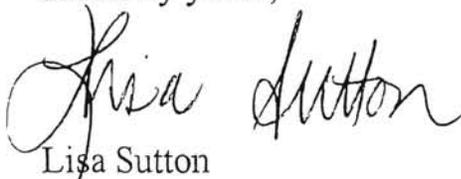
The standard of review is more appropriately the substantial evidence standard. Is there a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the Board's Final Decision and Order? This court concludes that there is a substantial amount of evidence to support the Board's Final Decision and Order (on the issues involved in this appeal). In reviewing the pleadings and the history of the development of the County's Comprehensive Plan, this court is not persuaded that Futurewise has met its burden of proof as required.

The record reviewed by this court provides ample evidence that the changes Pacific County made to the 2010 Comprehensive plan were not substantive in nature. For ease of reference, Futurewise identified the 2010 amendments on pages 12-13 of their initial brief. Each of the 2010 amendments claimed by Futurewise to be substantive were reviewed by the court during oral argument by the parties. Instead, these changes were designed to allow the reader a reference to the WAC 365-190-050 (the 3 part test) and also to the *Lewis County* decision by the Washington Supreme Court. A review of the prior 1998 Comprehensive Plan by Pacific County and the process leading to its adoption evidenced that the designation of certain lands as agricultural land of long term commercial significance was decided during and as part of that lengthy public process in order to protect aquaculture, cranberries, and or other bog related crops. Nothing has changed substantively since that initial decision by the County. The fact that the County listed the requirements of RCW 36.70A.170 in Section 3.5.2 of the 2010 Comprehensive Plan does not change the court's analysis. Also, in 2010, there was an update to the farm census data from 1997 to 2010. These updates were not substantive.

The County argued that these changes were designed to aid the lay person and reader of the new 2010 Comprehensive Plan, not to create a substantive change, which would give rise to a new process for designating agricultural lands having long term commercial significance. Nor have there been any relevant changes in the law. Further, there is no requirement that the County map all of the agricultural land designated as having long term commercial significance. Currently, the field location process is used to determine where cranberry bogs are. The County in 1998 decided that aquaculture and cranberry production were the only agricultural activities that have long-term commercial significance. *See* FDO at 12-13 (Appendix A to County's responsive brief). The Board also correctly rejected Futurewise's contention that the County's use of the phrase "Rural Agricultural" in the 2010 Comprehensive plan designation improperly included agricultural land having long term commercial significant in the Rural Element (FDO at 10).

As to petitioner's errors 2-4 discussed above, the Board's decision also is supported by substantial evidence. The planning choices of local government (here Pacific County) are accorded deference under RCW 36.70A.3201. Petitioner has failed to meet its burden of proof and overcome the presumption of validity that any action taken by Pacific County in amending its 2010 Comprehensive Plan is clearly erroneous or not supported by substantial evidence in light of the goals and requirements of Chapter 36.70A RCW (the State's Growth Management Act). The Board's Final Decision and Order is affirmed (as to the issues raised in this appeal). The County is directed to prepare an Order consistent with this court's letter opinion.

Sincerely yours,



Lisa Sutton  
Superior Court Judge

LS/dkr

cc: Court File

**FILED**  
MAY 24 2012  
SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

FUTUREWISE,  
Petitioner,  
v.  
GROWTH MANAGEMENT HEARINGS BOARD, an agency of the State of Washington; PACIFIC COUNTY; and the CITY OF LONG BEACH,  
Respondents/Intervenor.

NO. 11-2-01594-4  
(GMHB Case No. 10-2-0021)  
**CONCLUSIONS OF LAW AND ORDER.**

On April 20, 2012, the Thurston County Superior Court heard oral argument pertaining to *Futurewise v. Growth Management Hearings Board, et al.*, Cause No. 11-2-01594-4. Futurewise appealed the decision of the Growth Management Hearings Board which was entered on June 22, 2011 (Case No. 10-2-0021). After carefully considering the arguments of counsel, the pleadings, and case law, the Court issued a Memorandum Opinion on April 26, 2012. Pursuant to this Memorandum Opinion, the Court now enters the following Conclusions of Law and Order.

Pacific County Prosecuting Attorney  
P.O. Box 45  
Courthouse  
South Bend, WA 98586  
Phone: (360) 875-9361  
Fax: (360) 875-9362

## CONCLUSIONS OF LAW

1           1.     Futurewise timely appealed the final Decision and Order of the  
2  
3     Growth Management Hearings Board (hereinafter BOARD) pertaining to  
4     agricultural lands of long-term commercial significance in *Futurewise v. Pacific*  
5  
6     *County, et al.* (Case No.  
7     10-2-0021). Futurewise properly exercised its discretion to seek review in the  
8  
9     Thurston County Superior Court pursuant to RCW 34.05.514. This Court has  
10  
11    jurisdiction to hear the petition for judicial review filed by Futurewise.

12           2.     The Court is exercising appellate jurisdiction under Chapter 34.05  
13  
14    RCW. Thus, the Court is not entitled to make its own findings of fact, but is  
15  
16    charged with reviewing the administrative record to determine if Futurewise is  
17  
18    entitled to relief under RCW 34.05.570(3). Under RCW 34.05.570(1)(a),  
19  
20    Futurewise bears the burden of demonstrating the invalidity of the BOARD's  
21  
22    decision, viz., Pacific County did not violate RCW 36.70A.170(1)(a) which  
23  
24    pertains to the agricultural lands of long-term commercial significance.

25           3.     Futurewise asserts that the BOARD erroneously interpreted or  
26  
27    applied the law under RCW 34.05.570(3)(d) and that the BOARD's Final  
28  
29    Decision and Order pertaining to agricultural lands of long-term commercial  
30  
31    significance is not supported by substantial evidence under RCW  
32  
33    34.05.570(3)(e). The Court concludes that the issues raised by Futurewise  
34  
35    should be reviewed under the substantial evidence standard, i.e., is there a

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sufficient quantity of evidence to persuade a fair-minded person of the truth or  
1 correctness of the BOARD's Final Decision and Order?

2  
3 4. The Court is not persuaded that the BOARD erroneously  
4 interpreted or applied the law. Under *Thurston County v. Western Washington*  
5 *Growth Management Hearings Board*, 164 Wash.2d 329, 344, 190 P.3d 38  
6 (2008), "... a party may challenge a County's failure to revise a comprehensive  
7 plan only with respect to those provisions that are directly affected by new or  
8 recently amended GMA provisions, ...." Since the State legislature did not make  
9 any substantive changes to the law with regard to agricultural lands of long-term  
10 commercial significance during the time period covered by this appeal, the  
11 County did not have to readdress this issue. Further, the Court is not persuaded  
12 that the holding in *Lewis County v. Western Washington Growth Management*  
13 *Hearing Board*, 157 Wash.2d 1, 57 P.3d 1156 (2006) or that the language of  
14 WAC 365-190-050 requires the County to reopen how agricultural lands of long-  
15 term commercial significance are designated.

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24 5. The gravamen of Futurewise's argument is that Pacific County  
25 chose to make a number of substantive changes pertaining to agricultural lands  
26 of long-term commercial significance in its 2010 Comprehensive Plan. According  
27 to Futurewise, these substantive changes "open the door" and allow Futurewise  
28 to contest the validity of the 2010 Comprehensive Plan amendments pertaining  
29 to agricultural lands of long-term commercial significance. Pacific County, on the  
30 other hand, asserts that the changes were made to clarify and update the  
31  
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33

1 language of the Comprehensive Plan and that the changes were not meant to be  
2 substantive in nature. Because the disagreement between the parties boils down  
3 to whether the changes had substantive significance, this issue turns on factual  
4 considerations. Hence, this matter should be analyzed under the substantial  
5 evidence standard.  
6

7         6. The Court must give substantial weight to the BOARD's  
8 interpretation of the Growth Management Act. Also, the planning choices of  
9 Pacific County are accorded deference under RCW 36.70A.3201. The Final  
10 Decision and Order of the BOARD at 8-13 lays out the reasoning that the  
11 BOARD used to conclude that the County did not adopt new designation  
12 standards for agricultural lands of long-term commercial significance. The  
13 BOARD stated that references to the statutory requirements of RCW 36.70A.170  
14 and the language contained in WAC 365-190-050 cannot be read as a mandate  
15 to reassess the criteria for designating agricultural lands of long-term  
16 significance. The Court concludes that substantial evidence exists in the record  
17 to support this finding of the BOARD. The changes to the Comprehensive Plan  
18 which Futurewise cites at 12-13 of its initial brief involve legal citations,  
19 references to updated farm information, and technical corrections. As such,  
20 these changes are not substantive. Futurewise has not met its burden in  
21 demonstrating the invalidity of the BOARD's determination that the County did  
22 not have to reassess how it designates agricultural lands of long-term  
23 commercial significance.  
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7. As noted above, Pacific County did not make substantive changes  
1 to its Comprehensive Plan pertaining to agricultural lands of long-term  
2 commercial significance. Consequently, because Pacific County did not "open  
3 the door" and allow Futurewise to challenge how Pacific County designates  
4 agricultural lands of long-term commercial significance, Futurewise cannot now,  
5 litigate what was decided during 1997 and 1998, when the County adopted its  
6 Critical Areas and Resource Lands Ordinance and its first Comprehensive Plan  
7 under the Growth Management Act. In other words, Futurewise cannot now  
8 assert that Pacific County should have designated other farmland besides land  
9 devoted to bog crops as agricultural lands of long-term commercial significance.  
10  
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15 8. Futurewise has claimed that Pacific County's use of the words  
16 "Rural Agriculture" improperly places agricultural lands of long-term commercial  
17 significance within the Rural Element of the Comprehensive Plan. As the  
18 BOARD noted at 10 of its Final Decision and Order, the term "Rural Agricultural"  
19 is not a designation which exclusively comprises agriculture lands of long-term  
20 commercial significance. "Rural Agricultural" pertains to all agricultural activities  
21 outside of urban areas. Accordingly, there is substantial evidence to support the  
22 conclusion that Pacific County did not eliminate agricultural lands of long-term  
23 commercial significance from the Critical Areas and Resource Lands Element of  
24 the Comprehensive Plan. Hence, the argument of Futurewise on this point falls  
25 to pass muster.  
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9. The BOARD held at 10 of its Final Decision and Order that

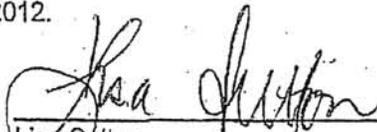
1 Futurewise's assertion that Pacific County failed to map its agricultural lands of  
2 long-term commercial significance was untimely. The Court concurs in this  
3 assessment. The Court also concludes that there is no per se mapping  
4 requirement for agricultural lands of long-term commercial significance. Thus,  
5 Futurewise's position on this point is incorrect.  
6  
7  
8

9 10. With regard to Futurewise's assignments of error at 2 of its opening  
10 brief, the Court concludes that the BOARD's decision is supported by substantive  
11 evidence.  
12  
13

#### 14 ORDER

15 Based on the Conclusions of Law delineated above, the decision of the  
16 Growth Management Hearings Board pertaining to agricultural lands of long-term  
17 commercial significance in *Futurewise v. Pacific County, et al.* (Case No. 10-2-  
18 0021 dated June 22, 2011) is affirmed. The Court takes no action on the  
19 portions of the Growth Management Hearings Board's decision that were not  
20 appealed to Superior Court.  
21  
22  
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24

25 DATED this 21 day of May, 2012.

26  
27 

28 Lisa Sutton  
29 Superior Court Judge  
30  
31  
32  
33

Presented by:

1 David J. Burke

2 David J. Burke, WSBA No. 16163  
3 Pacific County Prosecutor  
4

5 Approved as to Form:

6 Tim Trohimovich [Signed by David J. Burke per the  
7 authorization of Tim Trohimovich]  
8 Tim Trohimovich, WSBA No. 22367  
9 Attorney for Futurewise

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## SECTION 3 CRITICAL AREAS & RESOURCE LANDS ELEMENT

### 3.1 INTRODUCTION

This section of the comprehensive plan has been prepared in accordance with the Growth Management Act (GMA) to address conservation of critical areas and resource lands. Resource lands include agriculture, aquaculture, forest, and mineral resource activities. Critical areas are defined as one, or a combination of wetlands, critical aquifer recharge, frequently flooded, geologically hazardous, and fish and wildlife conservation areas. The GMA contains the following goal for natural resource industries: "Maintain and enhance nature resource based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020). The GMA further requires all local governments planning under RCW 36.70A.060 to identify critical areas and resource lands, and to adopt development regulations precluding land uses or development that are incompatible.

The purpose of this element is to carry forward the intent of the Pacific County Critical Areas and Resource Lands Ordinance No. 147. The ordinance provides guidelines for the designation and classification of these lands and establishes regulations for their protection. This Critical Areas and Resource Lands element further discusses classification and identification of such areas. By providing substantive policies and criteria that can be considered during the review of a development proposal, this element assures there is a tool not only to meet the requirements of the GMA, but also to maintain these valuable resources that help define the quality of life in Pacific County. It is not the intent, however, to require existing uses to be subjected to these policies unless a change in land use is proposed in the form of a development application.

### 3.2 GENERAL POLICY STATEMENT

It is a policy of Pacific County that the beneficial functions, and structure, and values of critical areas and resource lands be protected as identified herein and in Pacific County Critical Areas and Resource Lands Ordinance No. 147, and further that potential dangers or public costs associated with inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to, or directly affecting such areas. Reasonable regulation shall be achieved by the balancing of individual and collective interests.

All proposed critical areas alterations should include mitigation sufficient to maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts.

### 3.3 REVIEW PROCEDURES

No alteration of critical areas and resource lands as defined or designated by the Ordinance should occur in the absence of express approval by Pacific County. Any alteration of any critical areas and resource lands as defined or designated by this Ordinance should occur only through the issuance of a development permit. For any critical areas or resource lands alteration not requiring any other land development permit, such alteration should not proceed in the absence of approval of a critical areas alteration permit issued under the Pacific County Critical Areas and Resource Lands Ordinance No. 147.

In dealing with all of the critical areas and resource lands contained in this element, review procedures should be established through appropriate development ordinances, which allow for consideration of the goals, policies and implementation criteria established herein. This process is defined in the Critical Areas and Resource Lands Ordinance No. 147, and is summarized below.

1. The Administrator first must determine whether the proposed activity fits within any of the exemptions to the Critical Areas and Resource Lands Ordinance. If the proposed activity meets any of the listed exemptions, no critical areas and resource land review is required.
2. If the proposed activity is not exempt, then a person seeking a development permit, shall complete a critical areas and resource lands checklist on the forms to be provided by the Department of Community Development. Staff will then review the checklist together with the maps and other critical areas resources identified in the relevant sections of the Critical Areas and Resource Lands Ordinance and make a site visitation to determine whether critical areas, resource lands, or their required buffers are affected by the proposed activity. The person seeking to develop is responsible for providing the County with sufficient information so that the Administrator can make this determination.
3. If the checklist, maps, other references, site visitation and other information supplied by a person seeking a development permit, do not indicate the presence of any critical areas or resource lands associated with the project, the review required pursuant to the Critical Areas and Resource Lands Ordinance is complete.
4. If at any time prior to completion of the applicable public input process on the proposed project, the Administrator receives new evidence that critical areas or resource lands may be associated with the proposed project, the Administrator may reopen the critical areas and resource lands review process pursuant to the Critical Areas and Resource Lands Ordinance and may require the requisite level of critical areas and resource lands review and mitigation as is required by the Critical Areas and Resource Lands Ordinance. Once the public input process on the associated permit or approval is completed and the record is closed, then the County's determination regarding critical areas and resource lands pursuant to the Critical

Areas and Resource Lands Ordinance shall be final, unless appealed as described in the Critical Areas and Resource Lands Ordinance.

5. If the checklist, maps, site visitation, and other references indicate that critical areas or resource lands are associated with the proposed project area, then a critical areas and resource lands assessment shall be completed.
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 Notification**

The Critical Areas and Resource Lands Ordinance No. 147 may require that notification be placed

## SECTION 3...

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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 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 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, reduction of soil erosion, lessening of

## SECTION 3...

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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 65 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. CTED 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.

### **3.6.4 Maps and References**

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

### **3.6.5 Major Issues**

Forestry activities can have a major impact on adjacent land uses and the general environment. The use of chemicals may pose a public health threat and logging practices may cause erosion and adversely impact water quality. The amended RCW 7.48.305 states that forest practices undertaken in conformity with all applicable laws and established prior to surrounding non-forestry uses, are presumed to not constitute a nuisance unless the activity has a substantial

adverse effect on the public health and safety. However, forestry operations do need to minimize the potential impacts. Policies in this element try to strike a balance between forestry management and other activities and environmental concerns.

### 3.6.6 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 forest lands:

- potential of land to support forest growth;
- 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 forest 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.

## 3.7 MINERAL RESOURCES

### 3.7.1 Mineral Lands in Pacific County

The mineral lands in Pacific County consist primarily of sand and gravel mining operations. These operations are important from the standpoint of providing vitally needed construction materials. Residential, commercial, and industrial construction, in addition to road construction and repair, depend on a stable, low-cost source of gravel. In addition, beach sand is readily available along much of the county's Pacific coastline. Beach sand is used as general site fill and is important for agricultural purposes. Conservation of these resources must be assured through measures designed to prevent incompatible development in or adjacent to resource lands.

### 3.7.2 Identifying and Classifying Mineral Lands

The Growth Management Act (RCW 36.70A.170) states that "...each county...shall designate where appropriate...mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals." The GMA defines "minerals" as gravel, sand, and valuable metallic substances. Other minerals may be designated as appropriate. In addition, the GMA directs CTED to provide guidelines to counties for how to classify and identify resource lands of long-term commercial significance.

## SECTION 3...

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Mineral lands in Pacific County are identified as land that has long-term significance for the extraction of minerals. Mineral lands are further classified as any area in Pacific County presently covered under a valid Washington State Department of Natural Resources (DNR) surface mining permit and any beach area where sand is removed for commercial purposes. Any other area shall be classified as mineral land when a surface mining permit is granted by the DNR.

### 3.7.3 Maps and References

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

### 3.7.4 Major Issues

Mining operations are often considered poor neighbors and nuisance claims against operators are common. To assure the long-term use of these resources, residential and other incompatible uses should be prevented from locating adjacent to these deposits. Because of this potential conflict, mineral extraction sites are primarily located in rural areas. While this will serve to lessen the impact on neighboring land uses, the movement of large amounts of mineral resources necessitates good roads capable of handling significant numbers of heavily loaded trucks. Loaded trucks en route from the extraction site may lose a very small but potentially hazardous portion of their load, and track dirt or mud onto public roadways. Therefore, better prevention of such mining impacts on county residents is also needed.

Just as sand and gravel is a natural resource, so too is surface and ground water. Mining operations should minimize adverse impacts on the environment, and specifically, should minimize its effect on surface and ground waters. Restoration of mining sites is a crucial element of such protection measures. Existing, non-operating or abandoned mining sites pose a concern because they may leave aquifers vulnerably exposed, and invite illegal waste dumping.

### 3.7.5 Beach Sand Removal

The mining of beach sand is an activity that needs to be managed in a manner that facilitates a "win-win" situation. If managed properly, beach sand mining activities can rid a potential nuisance from County beach approaches while at the same time provide a useful resource for development activities. However, indiscriminate mining of beach sand can produce deleterious consequences by exacerbating dune erosion and flooding. Consequently, the mining of beach sand should be regulated through a permitting process that minimizes adverse effects on adjacent landowners. In addition, any permit which is issued for beach sand removal should proscribe illegal trespassing. In order to ensure that beach sand excavation and hauling activities comply with stated permit conditions, a sufficient permit fee should be levied to allow the County or a Flood Control Zone District to reasonably monitor such activities and to have the financial wherewithal to sanction violators through an administrative or judicial process.

### 3.7.6 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 mineral lands:

- type and extent of mineral deposits;
- proposed reclamation plan;
- 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;
- impacts of proposed activity to public rights-of-way; and
- suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

## 3.8 WETLANDS

### 3.8.1 Wetlands in Pacific County

Wetlands are transitional areas between upland and aquatic environments where water is present long enough to form distinct soils and where specialized "water loving" plants can grow. Wetlands include marshy areas along shorelines, inland swamps, and seasonal watercourses. Wetlands are typified by a water table that usually is at or near the surface, and there may be standing water all or part of the year. Soils that are present in wetlands are known as "hydric soils". Certain plant species, including trees, shrubs, grasses, and grasslike plants have adapted to the low oxygen content of wetland soils. These plants are known as "hydrophytes".

Another distinguishing characteristic of wetlands, in addition to soil type and types of plants present, is the wetness of the soil, or "hydrology" (i.e., how often is the soil saturated or flooded with water and how long does it last?) Indicators of wetland hydrology may include drainage patterns, sediment deposition, watermarks, stream gauge data, flood predictions, historic data, visual observation of saturated soils, or flooded soils. Many wetlands in Pacific County are influenced by tides and most of the wetland plants found are tolerant of the brackish water that results from the mixing of salt water and fresh water.

In their natural state, wetlands perform functions, which are impossible or difficult and costly to replace. Wetlands provide erosion and sediment control; the extensive root systems of wetland vegetation stabilize streambanks, floodplains, and shorelines. Wetlands improve water quality by decreasing the velocity of water flow, resulting in the physical interception and filtering of

## SECTION 3...

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waterborne sediments, excess nutrients, heavy metals, and other pollutants. Wetlands also provide food and shelter, essential breeding, spawning, nesting and wintering habitats for fish and wildlife, including migratory birds, anadromous fish, and other species.

### 3.8.2 Identifying and Classifying Wetlands

Pacific County has adopted the Washington State Department of Ecology Manual titled "Washington State Wetlands Identification and Delineation Manual, March 1997" as the Pacific County wetland delineation manual for purposes of this Ordinance.

If Pacific County has reason to believe that a wetland may exist on a parcel which is the subject of a development application or within one hundred (100) feet of the parcel, a written determination regarding the existence or nonexistence of wetlands must be submitted to the Department of Community Development.

If it is determined that wetlands exist, a wetland delineation must be obtained when an activity regulated under the Pacific County Critical Areas and Resource Lands Ordinance No. 147 is proposed within one hundred (100) feet of the boundary of a wetland. Requirements for wetland delineations are specified in the Pacific County Critical Areas and Resource Lands Ordinance No. 147.

Pacific County only accepts written determinations and delineations prepared by the U.S. Army Corps of Engineers, the Washington State Department of Ecology, the Natural Resources Conservation Service, or a qualified critical areas professional as to whether wetlands exist on or within one hundred (100) feet of a specific parcel.

Wetlands shall be classified as follows:

1. Class I Wetlands: All wetlands scoring a "Category I" rating under the Washington State Department of Ecology (WDOE) Washington State Wetlands Rating System for Western Washington, Second Edition, August 1993.
2. Class II Wetlands: All wetlands scoring a "Category II" on the WDOE rating scale.
3. Class III Wetlands: All wetlands scoring a "Category III" on the WDOE rating scale.
4. Class IV Wetlands: All wetlands scoring a "Category IV" rating on the WDOE scale.

### 3.8.3 Maps and References

The following references may provide an indication of wetland locations. However, these and

other similar resources were not prepared at a level of detail sufficient to accurately portray the exact location and extent of wetlands in Pacific County, and cannot be used in place of an on-site field determination of wetlands. Many wetlands in Pacific County will not appear on these resources.

1. National Wetland Inventory.
2. Natural Resources Conservation Service (formerly the Soil Conservation Service), soils map for Pacific County, hydric soils designations.

### **3.8.4 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 wetlands:

- wetland classification;
- proposed mitigation, restoration, creation, or enhancement;
- 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;
- impacts of proposed activity to public rights-of-way; and
- suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

## **3.9 AQUIFER RECHARGE AREAS**

### **3.9.1 Aquifer Recharge Areas in Pacific County**

As precipitation reaches the earth it can do several things: become part of a snow pack, enter into lakes, streams, rivers, oceans, or wetlands, seep into the soil to be taken up by plant roots, or filter into the ground and become groundwater. The land surface where this filtering process takes place is called an aquifer recharge zone. Aquifer recharge zones warrant special protection from surface pollution to protect the quality of the groundwater in the area. As groundwater moves through the ground it may discharge to surface water features, such as lakes, streams, or rivers, which will in turn recharge the groundwater. The water that remains in the ground makes up the aquifer. Groundwater sometimes flows underground to other locations. Where this is the case, pollution emanating from one area may contaminate the groundwater in another area. Groundwater pollution is very difficult, and often impossible, to clean.

The primary drainage basin in Pacific County is the Willapa Bay basin. The tributaries, which

## SECTION 3...

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enter Willapa Bay, drain an area approximately 900 square miles in size. Most of this area is within Pacific County although small areas of Grays Harbor, Lewis, and Wahkiakum County are also tributary to the basin. Three major stream drainages enter Willapa Bay. These are the North River (including Smith Creek), Willapa River and the Naselle River. Lesser streams entering Willapa Bay are the Cedar, Bone, Niawiakum, Palix, Nemah, and Bear Rivers. In addition, portions of the Long Beach peninsula and the north coast area drain into Willapa Bay by means of ditches and small streams.

Willapa Bay is designated as a Class A surface water according to the Water Quality Standards for the State of Washington (WAC 173-201). Class A waters are of excellent quality and are to be maintained as such. While characteristic uses for Class A waters include commerce and navigation, to maintain water quality, future development must consider point source discharges, non-point source discharges, and erosion.

Not all of Pacific County is drained by the tributaries of Willapa Bay. Portions of the coastal area drain to the Pacific Ocean. The southeastern portion of the county drains to Grays River and Deep River, both tributaries of the Columbia River. The east central portion of the county drains to the Chehalis River.

### **3.9.2 Identifying and Classifying Aquifer Recharge Areas**

Aquifer Recharge Areas in Pacific County are identified as any land within Pacific County that contains the soil types listed in Table 3-2 as defined in the "Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, July 1986, Soil Conservation Service, USDA".

### **3.9.3 Maps and References**

Aquifer recharge areas shall be field located based on applicable criteria.

### **3.9.4 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:

- potential impacts to groundwater quality;
- proposed groundwater protection and monitoring plan;
- 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;
- impacts of proposed activity to public rights-of-way; and
- suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

TABLE 3-2  
AQUIFER RECHARGE AREA SOIL TYPES

SCS Map Unit	Soils Series	SCS Map Unit	Soils Series
8	Beaches	133	Seastrand variant muck
35	Dune land	147	Udorthents, level
92	Netarts fine sand, 3-12 percent slopes	153	Westport fine sand, 3-10 percent slopes
108	Orcas peat	162	Yaquina loamy fine sand
132	Seastrand Mucky peat		

### 3.10 FREQUENTLY FLOODED AREAS

#### 3.10.1 Frequently Flooded Areas in Pacific County

The Federal Emergency Management Agency (FEMA) has defined the extent of the 100-year floodplain in order to establish actuarial flood insurance rates and to assist communities in efforts to promote sound floodplain management. Most river systems within Pacific County are included in the 100-year floodplain. Rivers are dynamic systems, and flooding is a normal occurrence. The proximity of the county's rivers to the Pacific Ocean compounds the problem as many are tidally influenced. Large areas of the Long Beach peninsula are also included in the 100-year floodplain.

To limit damage to individuals, property, and natural systems, Pacific County requires compliance with the provisions of the Flood Damage Prevention Ordinance (No. 116A) and the Shoreline Management Master Program. The Pacific County Flood Control Zone District No. 1 Ordinance Numbers 1, 2 and 3, which pertain to land alteration and drainage, also apply to the Long Beach Peninsula. The intent of these regulations is to promote an efficient use of land and water resources by allocating frequently flooded areas to the uses for which they are best suited. It is also important and necessary to discourage obstructions to floodways, as well as to prohibit uses that pollute or deteriorate natural waters and watercourses. The ordinances are administered through the permitting process for building and development.

## SECTION 3...

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### 3.10.2 Identifying and Classifying Frequently Flooded Areas

Frequently flooded areas within Pacific County are identified and classified using the following criteria:

1. Frequently flooded areas shall be those floodways and associated floodplains designated by the Federal Emergency Management Act (FEMA) flood hazard classifications as delineated on the area flood hazard maps for Pacific County dated September 27, 1985, or as subsequently revised by FEMA, as being within the 100-year floodplain, or those floodways and associated floodplains delineated by a comprehensive flood hazard management plan adopted by the Pacific County Board of County Commissioners, as being within the 100-years floodplain or having experienced historic flooding. In case of conflict between FEMA flood hazard maps and the comprehensive flood hazard management plan designations, the more restrictive designation shall apply.
2. If an area of interest is not included in a comprehensive flood hazard management plan adopted by the Board of County Commissioners, and the County Engineer believes that the FEMA flood hazard maps do not correctly delineate the 100-year floodplain, the County Engineer may delineate the 100-year floodplain based on documented historic flooding of the area. If such documentation is not adequate to allow the County Engineer to make such delineation, the person seeking development which is covered under the Pacific County Critical Areas and Resource Lands Ordinance shall provide a flood hazard study prepared by a qualified critical area professional assessing the extent of the 100-year floodplain, which shall be subject to approval by the County Engineer.

### 3.10.3 Maps and References

The following references may provide an indication of frequently flooded area locations. However, these and other similar resources may not be prepared at a level of detail sufficient to accurately portray the exact location and extent of frequently flooded areas in Pacific County, and cannot be used in place of an on-site field determination. Many frequently flooded areas in Pacific County will not appear on these resources.

1. Federal Emergency Management Agency Flood Hazard Maps, September 27, 1985.
2. Comprehensive Flood Hazard Management Plans prepared for specific drainage basins and adopted by the Pacific County Board of County Commissioners.
3. Frequently Flooded Area maps prepared by the County Engineer.

### 3.10.4 Critical Areas and Resource Lands Assessment Criteria

All development within designated frequently flooded areas shall be in compliance with Pacific County's Flood Damage Prevention Ordinance No. 116A, and the Shoreline Management Master Program, as now or hereafter amended. Development within the limits of the Pacific County Flood Control Zone District No. 1 shall also be consistent with any Land Alteration and Drainage requirements enacted by ordinance.

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 a frequently flooded area:

- 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; and
- impacts of proposed activity to public rights-of-way.

### 3.11 GEOLOGICALLY HAZARDOUS AREAS

#### 3.11.1 Geologically Hazardous Areas in Pacific County

Geologically hazardous areas are defined as "areas that, because of their susceptibility to erosion, sliding, earthquake or other geologic events, are not suited to the siting of commercial, residential or industrial development consistent with public health or safety concerns". When development is sited within these areas, there is a potential threat to the health and safety of citizens. In some cases the risk to development from geological hazards can be reduced or mitigated to acceptable levels by engineering design or modified construction practices. However, when the risks can not be sufficiently mitigated, development needs to be prohibited.

To better understand the particular aspects of the different types of geologic hazards, the following summary descriptions are provided.

#### Erosion Hazard Areas

Erosion is a common occurrence in Pacific County due to hydrologic and geologic characteristics, vegetative conditions, wind and human land use. By minimizing the negative impacts of human land use on these areas, the damage to the natural environment as well as to human-built systems is reduced. A major problem in Pacific County is erosion of shoreline areas. Such erosion is caused by tidal force and wave action, as well as by construction activity.

## SECTION 3...

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### Landslide Hazard Areas (Steep Slopes)

Landslide hazard areas are those areas within Pacific County that are subject to potential slope failure. The characteristics of landslide hazard areas include slopes of 15 percent or greater that are underlain by weak, fine grained unconsolidated sediments, jointed or bedded bedrock, or landslide deposits, including the top and toe of such areas. It is necessary to protect the public from damage due to development on, or adjacent to, landslides; preserve the scenic quality and natural character of Pacific County's hillsides; and to protect water quality.

### Seismic Hazard Areas

Seismic hazard areas are associated with active fault areas and earthquakes. While earthquakes cannot be eliminated, there have been no areas of Pacific County which have been identified to pose significant, predictable hazards to life and property resulting from the associated ground shaking, differential settlement, and or soil liquefaction.

### Mine Hazard Areas

Mine hazard areas are defined as "areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts." Mine hazards may also include steep and unstable slopes created by open mines. Because of the geology of Pacific County there has been little or no historical subsurface mining that could have left areas of Pacific County honeycombed with abandoned mine tunnels. Similarly, any open mining is required to have both an approved erosion control plan and an approved reclamation plan that will address steep and unstable slopes.

### **3.11.2 Identifying and Classifying Geologically Hazardous Areas**

Geologically hazardous areas in Pacific County are identified as follows:

#### Erosion Hazard Areas

Erosion hazard areas include lands that are classified by the SCS as having a potential for wind and/or water erosion as detailed in the soil descriptions contained in the "Soil Survey of Grays Harbor County Areas, Pacific County and Wahkiakum County", Washington, 1986, Soil Conservation Service, USDA. The legislative authority of Pacific County also may designate by resolution erosion hazard areas.

#### Land Slide Hazard Areas

Landslide hazard areas are those areas meeting any of the following criteria:

1. Areas of historic failure, such as areas designated as quaternary slumps, earthflows, mudflows, or landslides on maps published as the United States Geological Survey or Department of Natural Resources Division of Geology and Earth Resources;
2. Areas which are rated as unstable in the Department of Ecology Coastal Zone Atlas;

3. Any area with all of the following:
  - (a) a slope greater than 15%,
  - (b) hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock, and
  - (c) springs or groundwater seepage;
4. Slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
5. Slopes having gradients greater than 80% subject to rockfall during seismic shaking;
6. Areas potentially unstable as a result of rapid stream incision and streambank erosion;
7. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
8. Any area with a slope of forty percent (40% ) or steeper and with a vertical relief of ten (10) or more feet except areas composed of solid rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten (10) feet of vertical relief.

#### Seismic Hazard Areas

For the purposes of this classification, the entire County constitutes a seismic hazard area because all areas are subject to a Seismic Risk Zone 3 rating or higher. The County may require site specific field studies or special reports for the location of critical facilities within seismic hazard areas.

#### Mine Hazard Areas

Mine hazard areas are those areas within 100 horizontal feet of a mine opening at the surface.

### **3.11.3 Maps and References**

The following references may provide an indication of geologic hazard area locations. However, these and other similar resources may not be prepared at a level of detail sufficient to accurately portray the exact location and extent of hazard areas in Pacific County, and cannot be used in place of an on-site field determination. Many geologic hazard areas in Pacific County will not appear on these resources.

1. Erosion Hazard Areas: The approximate location and extent of erosion hazard areas is displayed in the Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA.

## SECTION 3...

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2. Landslide Hazard Areas: The Soil Survey may be relied upon by the Administrator as a basis for requiring field investigation and special reports. In the event of a conflict between information contained in the Soil Survey and information shown as a result of a field investigation, the latter shall prevail.
3. Seismic Hazard Areas: The Uniform Building Code Seismic Risk Zone Map of the United States.

### **3.11.4 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 geologically hazardous:

- geotechnical conditions;
- potential impact on geologic conditions;
- potential impact of geologic hazards on proposed activity;
- type of proposed activity;
- proposed erosion control plan;
- results and recommendations of special geotechnical or geological investigations prepared by qualified professional;
- proximity of proposed activity to urban growth areas;
- compatibility of proposed activity with adjacent land use;
- environmental impacts of proposed activity;
- impacts of proposed activity to public rights-of-way; and
- suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

### **3.12 FISHERIES, WILDLIFE, SHELLFISH, KELP, EELGRASS, HERRING, AND SMELT SPAWNING HABITAT CONSERVATION AREAS**

#### **3.12.1 Habitat Conservation Areas in Pacific County**

Pacific County is fortunate to have natural resources encompassing a large variety of environments. Many residents and visitors to the area participate in recreational activities that involve wildlife, including hunting, fishing, clamming, photography of wildlife, bird watching, and others. Pacific County has begun to capitalize on these numerous natural resources through promotion of the area as a recreational paradise, and many of the smaller, more remote communities would like to use recreationally oriented tourist activities to promote economic development. To that extent, as well as for the inherent importance of wildlife and the natural environment to the quality of life in Pacific County, it is the intent of these policies to recognize the importance of protecting fish, wildlife, shellfish, kelp, eelgrass, herring, and smelt spawning

habitat areas.

At the same time, it is important to encourage the continuation of historical forestry, agricultural and aquacultural practices. It is also the intent of these policies to protect the habitat resources and encourage their enhancement and preservation when development influences are proposed. It is not intended that these policies be applied to, or create a burden to, existing land uses.

### **3.12.2 Policy Regarding Protection of Habitat Conservation Areas**

Pacific County's policy is to protect habitat conservation areas for endangered, threatened, or sensitive species listed by the Washington State Department of Fish & Wildlife. Pacific County adopts the Department of Natural Resources' Official Water Type Maps. Definitions are as identified in the water typing criteria in WAC 222-16-030; provided, however, that artificially created structures, ditches, canals, ponds, irrigation return ditches, and stormwater channels of every type shall not be considered a stream for purposes of this section. Streams are classified Type 1-5 for critical area protection purposes based on the water typing criteria in WAC 222-16-030.

Pacific County has adopted the designations listed at WAC 232-12-014 (Endangered), WAC 232-12-011 (Threatened and Sensitive), WAC 232-12-292 (Bald Eagle), and federally designated threatened or endangered species categories legally applicable to Pacific County.

### **3.12.3 Identifying and Classifying Habitat Conservation Areas**

Habitat conservation areas in Pacific County are identified as follows:

#### Fisheries and Wildlife

Fish and wildlife habitat conservation areas in Pacific County are identified as:

1. Areas with which endangered, threatened, and sensitive species have a primary association;
2. Commercial and recreational shellfish areas;
3. Kelp and eelgrass beds; herring and smelt spawning areas;
4. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat;
5. Waters of the State;
6. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; or

## SECTION 3...

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7. State natural area preserves and natural resource conservation areas.

### Shellfish, Kelp, Eelgrass, Herring, and Smelt Spawning

Shellfish, Kelp, Eelgrass, Herring, and Smelt Spawning critical areas in Pacific County are identified as those public and private saltwater tidelands or beds that are devoted to the process of growing, farming, or cultivating shellfish, including commercial clam and oyster grounds, oyster and mussel raft areas, and recreational shellfish harvesting areas. In addition, all property located three hundred (300) feet landward from the boundary of upland vegetation (or highest tide if so designated by the Administrator of Ordinance No. 147) shall be designated as a critical area.

#### **3.12.4 Maps and References**

The following references may provide an indication of habitat area locations. However, these and other similar resources may not be prepared at a level of detail sufficient to accurately portray the exact location and extent of habitat areas in Pacific County, and cannot be used in place of an on-site field determination. Many habitat areas in Pacific County will not appear on these resources.

1. Fisheries: DNR base maps for stream types and topography provide an indication of the location of fisheries resources. Field conditions shall be used to determine the existence or extent of any classified stream area.
2. Wildlife: Wildlife critical areas shall be field located based on applicable criteria by a qualified, critical areas professional. Department of Fish and Wildlife maps of bald eagle, sensitive, threatened, and endangered species and habitat shall be consulted.
3. Shellfish, kelp, eelgrass, herring, and smelt spawning areas shall be field located by a qualified, critical areas professional.

#### **3.12.5 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:

- proposed mitigation plan;
- type of proposed activities;
- proposed revegetation plan;
- 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 aquaculture 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.

### 3.13 GOALS AND POLICIES

The goals and policies of the Pacific County Comprehensive Plan are intended to provide guidance for decision-making processes subject to this plan. These goals and policies were initially developed by separate groups of citizens across the various regions of the County, and by the incorporated cities within the County. To reflect the desired direction of the County as a whole, the work of these individual regions and cities have been combined as presented below. Goals and policies do not apply to incorporated cities, but rather, only to unincorporated areas of the County.

**Goal R-1: Agriculture land of long-term commercial significance should be preserved in order to encourage an adequate land base for long-term farm use.**

*Policy R-1.1:* Agriculture land of long-term commercial significance should be identified and designated as such.

*Policy R-1.2:* Residential uses adjacent to agricultural land of long term commercial significance should be developed in a manner which minimizes potential conflicts and reduces unnecessary conversion of farmland.

*Policy R-1.3:* Commercial farmland owners should be informed of available agriculture tax programs and should be encouraged to retain their land in commercial farm production.

*Policy R-1.4:* In order to reduce development pressure on agricultural land of long-term commercial significance, future development should be directed toward areas of more intense development where existing and planned services can more easily accommodate growth. Outside these areas, densities should remain low.

*Policy R-1.5:* Designated agricultural lands of long-term commercial significance should be zoned at very low densities to ensure the conservation of the resource for continued agricultural use.

*Policy R-1.6:* Non-agricultural development within agricultural land of long-term commercial significance should be more compactly developed, in order to conserve the largest area possible for continued agricultural use.

SECTION 3...

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*Policy R-1.7:* Except within urban growth areas, land uses that are adjacent to agricultural land of long-term commercial significance should be compatible with agriculture, i.e. sawmill operations, warehousing, agribusinesses, and low density residential.

**Goal R-2: Areas devoted to the process of growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be protected and preserved in order to promote an adequate resource base for long-term use.**

*Policy R-2.1:* Critical areas for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be identified and designated as such.

*Policy R-2.2:* Use of lands that are adjacent to areas identified for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be compatible, such as forestry and low density rural residential. Those uses should not increase stormwater runoff or otherwise degrade water quality for aquacultural use.

*Policy R-2.3:* Facilities for land based and marine operations related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be protected from incompatible adjacent or nearby land uses.

*Policy R-2.4:* Land based and marine activity related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should not be considered a nuisance if carried out in a reasonable manner and within applicable regulations. Restrictions should not be imposed on such activities unless they are necessary for preserving the public health, welfare, and safety.

*Policy R-2.5:* Proposed residential and other uses in areas used for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be developed in a manner which minimizes potential conflicts with such operations.

*Policy R-2.6:* Activities related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be undertaken in a way that minimizes adverse impacts, such as views from upland property and general environmental quality.

*Policy R-2.7:* Activities related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt that draw on ground water supplies should not degrade the quality nor substantially reduce the quantity of ground water.

- Policy R-2.8:* Water quality in the county's marine and inland waters, and ground water in the county should be protected from degradation. Degraded waters should be restored within the drainage basins of areas identified as critical for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt.
- Goal R-3: Forest lands of long-term commercial significance should be conserved in order to maintain a viable forestry industry for long-term economic use while protecting environmental values.**
- Policy R-3.1:* The County supports and encourages the maintenance of forest lands in timber and current use property tax classifications consistent with RCW 84.33, and 84.34.
- Policy R-3.2:* Residential development adjacent to forestry uses should occur in a manner which minimizes potential conflicts and reduces unnecessary conversion of forest land through use of such mechanisms as clustering, buffers, etc.
- Policy R-3.3:* The primary land use activities in forest lands of long-term commercial significance should be commercial forest management, agriculture, mineral extraction, accessory uses, wildlife habitat enhancement programs, and other non-forest related economic activities relying on forest lands.
- Policy R-3.4:* Land use activities within or adjacent to forest lands of long-term commercial significance should be sited and designed to minimize conflicts with forest management, and other activities on forest land.
- Policy R-3.5:* The County discourages the establishment or expansion of utility local improvement districts, or sewer, water or public utility districts on forest lands of long-term commercial significance which result in the imposition of assessments, rates, or charges on designated forest land.
- Policy R-3.6:* Clustering of residential development on adjacent rural lands is encouraged. The open space in clustered development should be adjacent to the forest lands of long-term commercial significance.
- Policy R-3.7:* The County encourages the continuation of commercial forest management by supporting land trades that result in consolidated forest ownerships and are in the public interest.
- Policy R-3.8:* Subject to any state or local regulation of critical areas, the County encourages the multiple economic use of forest land for a variety of natural

SECTION 3...

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resource and other land use activities particularly suited for forest lands because of physical and topographical characteristics; remoteness from populated areas; availability of water supplies; the quality of the forest environment; or where the efficient provision of statewide or regional utilities, energy generating and/or transmission facilities, or public facilities require access across or use of such forest lands.

*Policy R-3.9:* Forest practices within Pacific County should be given protection from nuisance claims in accordance with state law.

**Goal R-4: Forest lands of long-term commercial significance should accommodate public recreation and conservation of fish and wildlife habitats, scenic vistas, and nearby property values.**

*Policy R-4.1:* Public trails, camping facilities, and other low intensity recreation uses are encouraged in forest lands, subject to available financial resources.

*Policy R-4.2:* The County endorses the concept of cooperative resource management as developed in the Timber, Fish and Wildlife agreement, which is an agreement among industrial timber landowners, environmental groups, state resource agencies, and Indian tribes for managing the state's public and private timber lands and public resources.

*Policy R-4.3:* Forest land considered desirable for acquisition for public purposes should first be evaluated for its impact on a viable forest industry and local government revenue and programs.

*Policy R-4.4:* When timber harvesting is for conversion to other uses, the County should ensure that harvesting is done in a manner compatible with land uses of the surrounding area and which maintains water quality, environmentally sensitive features, and fish habitat.

*Policy R-4.5:* Owners of forest lands of long-term commercial significance planned for conversion to another use should provide buffers between their property and adjacent forestry uses.

**Goal R-5: Mineral resource lands of long-term commercial significance should be allowed to be used by extraction industries, while minimizing conflicts between other land uses and general environmental concerns.**

*Policy R-5.1:* Designated mineral resource lands of long-term commercial significance

should be conserved for mineral extraction, and the use of adjacent lands should not interfere with the continued use of the designated mining sites that are being operated in accordance with applicable best management practices and other laws and regulations.

*Policy R-5.2:* Designated mineral resource sites that are being operated in accordance with applicable best management practices and other laws and regulations should be given protection from nuisance claims from landowners who have been notified of the presence of the long-term mineral extraction site.

*Policy R-5.3:* Restoration of mineral extraction sites should occur as the site is being mined. The site should be restored for appropriate future use and should blend with the adjacent landscape and contours.

*Policy R-5.4:* Agriculture and aquaculture land should not be used for mining purposes unless they can be restored to their original production capacity after mining ceases.

*Policy R-5.5:* Extraction industries should not adversely impact adjacent or nearby land uses, or public health and safety. Mineral extraction activities also should not negatively effect or endanger surface and ground water flows and quality.

*Policy R-5.6:* Areas where existing residential uses predominate should be protected against intrusion by mineral extraction operations.

**Goal R-6: Wetlands should be protected because they provide important functions which add to the quality of life in Pacific County.**

*Policy R-6.1:* Wetland areas should be identified and designated as such.

*Policy R-6.2:* Based on their quality demonstrated by the classification system, wetlands will be protected from alterations due to land use changes, which may create adverse impacts to the wetland.

*Policy R-6.3:* Whenever feasible, new technologies which enhance a wetland and promote it as a useful, functioning part of the development should be encouraged.

*Policy R-6.4:* Wetland preservation strategies and efforts should be coordinated with appropriate local, state and federal agencies and private conservation

organizations to take advantage of both technical and financial assistance, and to avoid duplication of efforts.

**Goal R-7: Areas demonstrated to be critical aquifers and/or which play a crucial role in recharging our groundwater supplies should be carefully monitored and regulations developed to protect potable water sources.**

*Policy R-7.1:* Critical groundwater supply areas, aquifer recharge areas, and areas with a high groundwater table and/or unconfined aquifers that are used for potable water should be identified.

*Policy R-7.2:* The establishment of land use intensity limitations based on the availability of sanitary sewers should be encouraged. Cluster developments are encouraged because of the potential for shared, community sewage disposal systems instead of dispersed individual septic systems.

*Policy R-7.3:* Forestry, agricultural, and aquacultural activities should incorporate best management practices concerning waste disposal, fertilizer, use, pesticide use, and stream corridor management.

*Policy R-7.4:* Fertilizer and pesticide management practices of new schools, parks, golf courses and other recreational or institutional facilities that maintain large landscaped areas should incorporate best management practices (BMPs) as recommended by the Cooperative Extension Service. Existing facilities are strongly encouraged to also incorporate these BMPs.

*Policy R-7.5:* It is the responsibility of the developer to reasonably demonstrate that their proposal would not significantly affect the recharge of an aquifer. Development which could substantially and negatively impact the quality of an aquifer should not be allowed unless it can be demonstrated that these negative impacts can be mitigated.

*Policy R-7.6:* Within aquifer recharge areas, short and long subdivisions and other divisions of land should be evaluated for their impact on groundwater quality and quantity.

*Policy R-7.7:* The installation of underground fuel or storage tanks within a known critical recharge area should be prohibited. Installation in any other areas will be to applicable federal, state and local regulations.

**Goal R-8: Frequently flooded areas of Pacific County that are known to be vital to maintaining the integrity of natural drainage systems should be protected by adopting regulations to prevent potential alterations and obstructions to those areas.**

*Policy R-8.1:* Frequently flooded areas should be identified as such and mapped.

*Policy R-8.2:* Growth and development patterns compatible with natural drainage features should be encouraged, and alteration of natural drainage features should be discouraged.

*Policy R-8.3:* Control of erosion at its source as a means of controlling water pollution, flooding, and habitat damage downstream should be encouraged.

*Policy R-8.4:* A drainage ordinance that directs all land development activities to make provisions for control of surface water discharge impacts should be implemented for any portion of the County with a flood control zone district.

*Policy R-8.5:* New development in frequently flooded areas that pose a threat to human health and property by reason of flooding, unsanitary conditions, or other hazards, should be limited and/or mitigated.

**Goal R-9: Appropriate measures should be provided to either avoid or mitigate significant risks to public and private property and to public health and safety that are posed by geologic hazard areas.**

*Policy R-9.1:* When probable significant adverse impacts from geologically hazardous areas are identified during the review of a development application, documentation which addresses these potential impacts and identifies alternative mitigation measures to eliminate or minimize the impacts should be required.

*Policy R-9.2:* Grading and clearing for both private developments and public facilities or services should be limited to the minimum necessary to accomplish engineering design, with reclamation of disturbed areas being a top priority.

*Policy R-9.3:* To minimize blowing soil during land development or alteration such as dune modification or development, appropriate water and mulch material should be required on any areas without a vegetative cover.

SECTION 3...

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*Policy R-9.4:* To maintain the natural integrity of landslide hazard areas and to protect the environment, and the public health and safety, an adequate buffer of existing vegetation should be maintained around all sides of the landslide hazard areas.

**Goal R-10: Fish and wildlife habitat areas should be protected as an important natural resource for Pacific County, particularly in regard to their economic, aesthetic, and quality of life values.**

*Policy R-10.1:* Pacific County should recognize critical fish and wildlife habitat conservation areas that have been recognized by state and federal agencies with jurisdiction.

*Policy R-10.2:* The impacts of new development on the quality of land, wildlife and vegetative resources should be considered as part of the environmental review process. Any appropriate mitigating measures should be required. Such mitigation may involve the retention and/or enhancement of habitats.

*Policy R-10.3:* The preservation of blocks of habitat and the connections between them, as well as the restoration of lost and damaged fish habitat, should be encouraged.

*Policy R-10.4:* Proper riparian management that maintains existing riparian habitat and is consistent with best agricultural management practices should be encouraged.

*Policy R-10.5:* Land uses adjacent to naturally occurring water bodies and other fish and wildlife habitat areas should not negatively impact the habitat areas. If a change in land use occurs, adequate buffers should be provided to the habitat areas.

*Policy R-10.6:* Activities allowed in fish and wildlife habitat conservation areas and open space should be consistent with the species located there, and in accordance with all applicable state and federal regulations and/or best management practices for the activity regarding that species.

### 3.1 INTRODUCTION

This section of the Comprehensive Plan has been prepared in accordance with the Growth Management Act (GMA) to address conservation of critical areas and resource lands. Resource lands include agriculture, aquaculture, forest, and mineral resource activities. Critical areas are defined as one, or a combination of wetlands, critical aquifer recharge, frequently flooded, geologically hazardous, and fish and wildlife conservation areas. The GMA contains the following goal for natural resource industries: "Maintain and enhance nature resource based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses" (RCW 36.70A.020). The GMA further requires all local governments planning under RCW 36.70A.060 to identify critical areas and resource lands, and to adopt development regulations precluding land uses or development that are incompatible.

The purpose of this element is to carry forward the intent of the Pacific County Critical Areas and Resource Lands Ordinance No. 147. The ordinance provides guidelines for the designation and classification of these lands and establishes regulations for their protection. This Critical Areas and Resource Lands element further discusses classification and identification of such areas. By providing substantive policies and criteria that can be considered during the review of a development proposal, this element assures there is a tool not only to meet the requirements of the GMA, but also to maintain these valuable resources that help define the quality of life in Pacific County. It is not the intent, however, to require existing uses to be subjected to these policies unless a change in land use is proposed in the form of a development application.

### 3.2 GENERAL POLICY STATEMENT

It is a policy of Pacific County that the beneficial functions, and structure, and values of critical areas and resource lands be protected as identified herein and in Pacific County Critical Areas and Resource Lands Ordinance No. 147, and further that potential dangers or public costs associated with inappropriate use of such areas be minimized by reasonable regulation of uses within, adjacent to, or directly affecting such areas. Reasonable regulation shall be achieved by the balancing of individual and collective interests.

All proposed critical areas alterations should include mitigation sufficient to maintain the functional values of the critical area or to prevent risk from a critical area hazard and shall give adequate consideration to the economically viable use of the property. Mitigation of one critical area impact should not result in unmitigated impacts to another critical area. Mitigation may include, but is not limited to: buffers, setbacks, limits on clearing and grading, best management practices for erosion control and maintenance of water quality, or other conditions appropriate to avoid or mitigate identified adverse impacts.

### 3.3 REVIEW PROCEDURES

No alteration of critical areas and resource lands as defined or designated by the Ordinance should occur in the absence of express approval by Pacific County. Any alteration of any critical

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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areas and resource lands as defined or designated by this Ordinance should occur only through the issuance of a development permit. For any critical areas or resource lands alteration not requiring any other land development permit, such alteration should not proceed in the absence of approval of a critical areas alteration permit issued under the Pacific County Critical Areas and Resource Lands Ordinance No. 147.

In dealing with all of the critical areas and resource lands contained in this element, review procedures should be established through appropriate development ordinances, which allow for consideration of the goals, policies and implementation criteria established herein. This process is defined in the Critical Areas and Resource Lands Ordinance No. 147, and is summarized below.

1. The Administrator first must determine whether the proposed activity fits within any of the exemptions to the Critical Areas and Resource Lands Ordinance. If the proposed activity meets any of the listed exemptions, no critical areas and resource land review is required.
2. If the proposed activity is not exempt, then a person seeking a development permit, shall complete a critical areas and resource lands checklist on the forms to be provided by the Department of Community Development. Staff will then review the checklist together with the maps and other critical areas resources identified in the relevant sections of the Critical Areas and Resource Lands Ordinance and make a site visitation to determine whether critical areas, resource lands, or their required buffers are affected by the proposed activity. The person seeking to develop is responsible for providing the County with sufficient information so that the Administrator can make this determination.
3. If the checklist, maps, other references, site visitation and other information supplied by a person seeking a development permit, do not indicate the presence of any critical areas or resource lands associated with the project, the review required pursuant to the Critical Areas and Resource Lands Ordinance is complete.
4. If at any time prior to completion of the applicable public input process on the proposed project, the Administrator receives new evidence that critical areas or resource lands may be associated with the proposed project, the Administrator may reopen the critical areas and resource lands review process pursuant to the Critical Areas and Resource Lands Ordinance and may require the requisite level of critical areas and resource lands review and mitigation as is required by the Critical Areas and Resource Lands Ordinance. Once the public input process on the associated permit or approval is completed and the record is closed, then the County's determination regarding critical areas and resource lands pursuant to the Critical Areas and Resource Lands Ordinance shall be final, unless appealed as described in the Critical Areas and Resource Lands Ordinance.
5. If the checklist, maps, site visitation, and other references indicate that critical areas or resource lands are associated with the proposed project area, then a critical areas and resource lands assessment shall be completed.

## ...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**

<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.

**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;

## ...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.

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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### 3.6.4 MAPS AND REFERENCES

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

### 3.6.5 MAJOR ISSUES

Forestry activities can have a major impact on adjacent land uses and the general environment. The use of chemicals may pose a public health threat and logging practices may cause erosion and adversely impact water quality. Forest practices undertaken in conformity with all applicable laws and established prior to surrounding non-forestry uses, are presumed to not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety. However, forestry operations do need to minimize the potential impacts. Policies in this element try to strike a balance between forestry management and other activities and environmental concerns.

### 3.6.6 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 forest lands:

- Potential of land to support forest growth;
- 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 forest structure of area;
- Impacts of proposed activity on public rights-of-way;
- Potential impacts to surface and groundwater; and
- Suitability to accommodate on-site wastewater disposal and domestic water facilities.

## 3.7 MINERAL RESOURCES

### 3.7.1 MINERAL LANDS IN PACIFIC COUNTY

The mineral lands in Pacific County consist primarily of sand and gravel mining operations. These operations are important from the standpoint of providing vitally needed construction materials. Residential, commercial, and industrial construction, in addition to road construction and repair, depend on a stable, low-cost source of gravel. Beach sand is available along much of the Pacific County coastline. Beach sand is used as general site fill and is important for agricultural purposes. Conservation of these resources must be assured through measures designed to prevent incompatible development in or adjacent to resource lands.

### 3.7.2 IDENTIFYING AND CLASSIFYING MINERAL LANDS

The Growth Management Act (RCW 36.70A.170) states that "...each county...shall designate where appropriate...mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals." The GMA defines "minerals" as gravel, sand, and valuable metallic substances. Other minerals may be designated as appropriate. In addition, the GMA directs Commerce to provide guidelines to counties for how to classify and identify resource lands of long-term commercial significance. Mineral lands in Pacific County are identified as land that has long-term significance for the extraction of minerals. Mineral lands are further classified as any area in Pacific County presently covered under a valid Washington State Department of Natural Resources (DNR) surface mining permit and any beach area where sand is removed for commercial purposes. Any other area shall be classified as mineral land when a surface mining permit is granted by the DNR.

### 3.7.3 MAPS AND REFERENCES

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

### 3.7.4 MAJOR ISSUES

Mining operations are often considered poor neighbors and nuisance claims against operators are common. To assure the long-term use of these resources, residential and other incompatible uses should be prevented from locating adjacent to these deposits. Because of this potential conflict, mineral extraction sites are primarily located in rural areas. While this will serve to lessen the impact on neighboring land uses, the movement of large amounts of mineral resources necessitates good roads capable of handling significant numbers of heavily loaded trucks. Loaded trucks en route from the extraction site may lose a very small but potentially hazardous portion of their load, and track dirt or mud onto public roadways. Therefore, better prevention of such mining impacts on county residents is also needed.

Just as sand and gravel is a natural resource, so too is surface and ground water. Mining operations should minimize adverse impacts on the environment, and specifically, should minimize its effect on surface and ground waters. Restoration of mining sites is a crucial element of such protection measures. Existing, non-operating or abandoned mining sites pose a concern because they may leave aquifers vulnerably exposed, and invite illegal waste dumping.

### 3.7.5 BEACH SAND REMOVAL

The mining of beach sand is an activity that needs to be managed in a manner that facilitates a "win-win" situation. If managed properly, beach sand mining activities can help maintain public access to the beaches on the County beach approaches while at the same time provide a useful resource for development activities. However, indiscriminate mining of beach sand can produce deleterious consequences by exacerbating dune erosion and flooding. Consequently, the mining of beach sand is regulated through a permitting process that minimizes adverse effects on adjacent landowners, minimizes impacts to the beaches, helps to ensure illegal trespass does not

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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occur during mining activities, and monitors the placement of the mined sand to ensure indiscriminate wetland fills are not occurring.

### 3.7.6 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 mineral lands:

- Type and extent of mineral deposits;
- Proposed reclamation plan;
- 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;
- Impacts of proposed activity on public rights-of-way;
- Potential impacts to surface and groundwater; and
- Suitability to accommodate on-site wastewater disposal and domestic water facilities.

## 3.8 WETLANDS

### 3.8.1 WETLANDS IN PACIFIC COUNTY

Wetlands are transitional areas between upland and aquatic environments where water is present long enough to form distinct soils, and where specialized "water loving" plants can grow. Wetlands include marshy areas along shorelines, inland swamps, and seasonal watercourses. Wetlands are typified by a water table that usually is at or near the surface, and there may be standing water all or part of the year. Soils that are present in wetlands are known as "hydric soils". Certain plant species, including trees, shrubs, grasses, and glasslike plants have adapted to the low oxygen content of wetland soils. These plants are known as "hydrophytes".

Another distinguishing characteristic of wetlands, in addition to soil type and types of plants present, is the wetness of the soil, or "hydrology" (i.e., how often is the soil saturated or flooded with water and how long does it last?) Indicators of wetland hydrology may include drainage patterns, sediment deposition, watermarks, stream gauge data, flood predictions, historic data, visual observation of saturated soils, or flooded soils. Many wetlands in Pacific County are influenced by tides and most of the wetland plants found are tolerant of the brackish water that results from the mixing of salt water and fresh water.

In their natural state, wetlands perform functions, which are impossible or difficult and costly to replace. Wetlands provide erosion and sediment control; the extensive root systems of wetland vegetation stabilize streambanks, floodplains, and shorelines. Wetlands improve water quality by decreasing the velocity of water flow, resulting in the physical interception and filtering of

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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waterborne sediments, excess nutrients, heavy metals, and other pollutants. Wetlands also provide food and shelter, essential breeding, spawning, nesting and wintering habitats for fish and wildlife, including migratory birds, anadromous fish, and other species.

### 3.8.2 IDENTIFYING AND CLASSIFYING WETLANDS

Pacific County has adopted the Washington State Department of Ecology Manual titled the "Washington State Wetland Rating System for Western Washington (published August, 2004, revised August 2006)" as the Pacific County wetland delineation manual for purposes of this Ordinance.

If Pacific County has reason to believe that a wetland may exist on a parcel which is the subject of a development application or within one hundred (100) feet of the parcel, a written determination regarding the existence or nonexistence of wetlands must be submitted to the Department of Community Development.

If it is determined that wetlands exist, a wetland delineation must be obtained when an activity regulated under the Pacific County Critical Areas and Resource Lands Ordinance No. 147 is proposed within one hundred (100) feet of the boundary of a wetland. Requirements for wetland delineations are specified in the Pacific County Critical Areas and Resource Lands Ordinance No. 147.

Pacific County only accepts written determinations and delineations prepared by the U.S. Army Corps of Engineers, the Washington State Department of Ecology, the Natural Resources Conservation Service, or a qualified critical areas professional as to whether wetlands exist on or within one hundred (100) feet of a specific parcel.

Wetlands shall be classified as follows:

1. Class I Wetlands: All wetlands scoring a "Category I" rating under the Washington State Department of Ecology (WDOE) Washington State Wetlands Rating System for Western Washington, August 2004, revised August 2006.
2. Class II wetlands: All wetlands scoring a "Category II" on the WDOE rating scale.
3. Class III wetlands: All wetlands scoring a "Category III" on the WDOE rating scale.
4. Class IV wetlands: All wetlands scoring a "Category "IV" on the WDOE rating scale.

### 3.8.3 MAPS AND REFERENCES

The following references may provide an indication of wetland locations. However, these and other similar resources were not prepared at a level of detail sufficient to accurately portray the exact location and extent of wetlands in Pacific County, and cannot be used in place of an on-site field determination of wetlands. Many wetlands in Pacific County will not appear on these

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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resources.

1. National Wetland Inventory.
2. Natural Resources Conservation Service (formerly the Soil Conservation Service), soils map for Pacific County, hydric soils designations.

### 3.8.4 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 wetlands:

- Wetland classification;
- Proposed mitigation, restoration, creation, or enhancement;
- 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;
- Impacts of proposed activity to public rights-of-way; and
- Suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

### 3.9 AQUIFER RECHARGE AREAS

#### 3.9.1 AQUIFER RECHARGE AREAS IN PACIFIC COUNTY

As precipitation reaches the earth it can do several things: become part of a snow pack, enter into lakes, streams, rivers, oceans, or wetlands, seep into the soil to be taken up by plant roots, or filter into the ground and become groundwater. The land surface where this filtering process takes place is called an aquifer recharge zone. Aquifer recharge zones warrant special protection from surface pollution to protect the quality of the groundwater in the area. As groundwater moves through the ground it may discharge to surface water features, such as lakes, streams, or rivers, which will in turn recharge the groundwater. The water that remains in the ground makes up the aquifer. Groundwater sometimes flows underground to other locations. Where this is the case, pollution emanating from one area may contaminate the groundwater in another area. Groundwater pollution is very difficult, and often impossible, to clean.

The primary drainage basin in Pacific County is the Willapa Bay basin. The tributaries, which enter Willapa Bay, drain an area approximately 900 square miles in size. Most of this area is within Pacific County although small areas of Grays Harbor, Lewis, and Wahkiakum County are also tributary to the basin. Three major stream drainages enter Willapa Bay. These are the North River (including Smith Creek), Willapa River and the Naselle River. Lesser streams entering Willapa Bay are the Cedar, Bone, Niawiakum, Palix, Nemah, and Bear Rivers. In addition, portions of the Long Beach peninsula and the north coast area drain into Willapa Bay

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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by means of ditches and small streams.

Willapa Bay is designated as a Class A surface water according to the Water Quality Standards for the State of Washington (WAC 173-201). Class A waters are of excellent quality and are to be maintained as such. While characteristic uses for Class A waters include commerce and navigation, to maintain water quality, future development must consider point source discharges, non-point source discharges, and erosion.

Not all of Pacific County is drained by the tributaries of Willapa Bay. Portions of the coastal area drain to the Pacific Ocean. The southeastern portion of the County drains to Grays River and Deep River, both tributaries of the Columbia River. The southwestern portion of the County drains to the Chinook River and the Wallicut River, both of which drain into Baker Bay and the Columbia River. The east central portion of the County drains to the Chehalis River.

Pacific County conducts annual groundwater sampling throughout the Long Beach Peninsula testing for Nitrates, Chlorides, pH, temperature and Dissolved Oxygen in order to detect any potential contaminants and to determine whether the freshwater drinking supply on the Peninsula is threatened by saltwater intrusion.

### 3.9.2 IDENTIFYING AND CLASSIFYING AQUIFER RECHARGE AREAS

Aquifer Recharge Areas in Pacific County are identified as any land within Pacific County that contains the soil types listed in Table 3-2 as defined in the "Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, July 1986, Soil Conservation Service, USDA".

### 3.9.3 MAPS AND REFERENCES

Aquifer Recharge areas shall be field located based on applicable criteria.

### 3.9.4 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 an Aquifer Recharge Area:

- Potential impacts to groundwater quality;
- Proposed groundwater protection and monitoring plan;
- 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;
- Impacts of proposed activity to public rights-of-way; and
- Suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

Table 3-2  
Aquifer Recharge Area Soil Types

SCS Map Unit	Soil Series	SCS Map Unit	Soils Series
8	Beaches	133	Seastrand variant muck
35	Dune land	147	Urdorthents, level
92	Netarts fine sand, 3-12 percent slope	153	Westport fine sand, 3-10 percent slope
108	Orcas peat	162	Yaquina loamy fine sand
132	Seastrand mucky peat		

### 3.10 FREQUENTLY FLOODED AREAS

#### 3.10.1 FREQUENTLY FLOODED AREAS IN PACIFIC COUNTY

The Federal Emergency Management Agency (FEMA) has defined the extent of the 100-year floodplain in order to establish actuarial flood insurance rates and to assist communities in efforts to promote sound floodplain management. Most river systems within Pacific County are included in the 100-year floodplain. Rivers are dynamic systems, and flooding is a normal occurrence. The proximity of the county's rivers to the Pacific Ocean compounds the problem as many are tidally influenced. Large areas of the Long Beach peninsula are also included in the 100-year floodplain.

To limit damage to individuals, property, and natural systems, Pacific County requires compliance with the provisions of the Flood Damage Prevention Ordinance (No. 116A) and the Shoreline Master Program. The Pacific County Flood Control Zone District No. 1 Ordinance Numbers 1, 2 and 3, which pertain to land alteration and drainage, also apply to the Long Beach Peninsula. The intent of these regulations is to promote an efficient use of land and water resources by allocating frequently flooded areas to the uses for which they are best suited. It is also important and necessary to discourage obstructions to floodways, as well as to prohibit uses that pollute or deteriorate natural waters and watercourses. The ordinances are administered through the permitting process for building and development.

#### 3.10.2 IDENTIFYING AND CLASSIFYING FREQUENTLY FLOODED AREAS

Frequently flooded areas within Pacific County are identified and classified using the following criteria:

1. Frequently flooded areas shall be those floodways and associated floodplains designated by the Federal Emergency Management Act (FEMA) flood hazard classifications as delineated on the area flood hazard maps for Pacific County dated September 27, 1985, or as subsequently revised by FEMA, as being within the 100-year floodplain, or those floodways and associated floodplains delineated by a comprehensive flood hazard management plan adopted by the Pacific County Board of County Commissioners, as

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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being within the 100-year floodplain or having experienced historic flooding. In case of conflict between FEMA flood hazard maps and the comprehensive flood hazard management plan designations, the more restrictive designation shall apply.

2. If an area of interest is not included in a comprehensive flood hazard management plan adopted by the Board of County Commissioners, and the County Engineer believes that the FEMA flood hazard maps do not correctly delineate the 100-year floodplain, the County Engineer may delineate the 100-year floodplain based on documented historic flooding of the area. If such documentation is not adequate to allow the County Engineer to make such delineation, the person seeking development which is covered under the Pacific County Critical Areas and Resource Lands Ordinance shall provide a flood hazard study prepared by a qualified critical area professional assessing the extent of the 100-year floodplain, which shall be subject to approval by the County Engineer.

### 3.10.3 MAPS AND REFERENCES

The following references may provide an indication of frequently flooded area locations. However, these and other similar resources may not be prepared at a level of detail sufficient to accurately portray the exact location and extent of frequently flooded areas in Pacific County, and cannot be used in place of an on-site field determination. Many frequently flooded areas in Pacific County will not appear on these resources.

1. Federal Emergency Management Agency Flood Hazard Maps, September 27, 1985, or as subsequently revised by FEMA.
2. Comprehensive Flood Hazard Management Plans prepared for specific drainage basins and adopted by the Pacific County Board of County Commissioners.
3. Frequently Flooded Area maps prepared by the County Engineer for specific areas experiencing seasonal and/or historic flooding.

### 3.10.4 CRITICAL AREAS AND RESOURCE LANDS ASSESSMENT CRITERIA

All development within designated frequently flooded areas shall be in compliance with Pacific County's Flood Damage Prevention Ordinance No. 116B, and the Shoreline Management Master Program, as now or hereafter amended. Development within the limits of the Pacific County Flood Control Zone District No. 1 shall also be consistent with any Land Alteration and Drainage requirements enacted by ordinance.

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 a frequently flooded area:

- Availability of public facilities and services;
- Proximity of proposed activity to urban growth areas;

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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- Compatibility of proposed activity with adjacent land use;
- Environmental impacts of proposed activity; and
- Impacts of proposed activity to public rights-of-way.

### 3.11 GEOLOGICALLY HAZARDOUS AREAS

#### 3.11.1 GEOLOGICALLY HAZARDOUS AREAS IN PACIFIC COUNTY

Geologically hazardous areas are defined as "areas that, because of their susceptibility to erosion, sliding, earthquake or other geologic events, are not suited to the siting of commercial, residential or industrial development consistent with public health or safety concerns". When development is sited within these areas, there is a potential threat to the health and safety of citizens. In some cases the risk to development from geological hazards can be reduced or mitigated to acceptable levels by engineering design or modified construction practices. However, when the risks cannot be sufficiently mitigated, development needs to be prohibited.

To better understand the particular aspects of the different types of geologic hazards, the following summary descriptions are provided.

##### Erosion Hazard Areas

Erosion is a common occurrence in Pacific County due to hydrologic and geologic characteristics, vegetative conditions, wind and human land use. By minimizing the negative impacts of human land use on these areas, the damage to the natural environment as well as to human-built systems is reduced. A major problem in Pacific County is erosion of shoreline areas. Such erosion is caused by tidal force and wave action, as well as by construction activity.

##### Landslide Hazard Areas (Steep Slopes)

Landslide hazard areas are those areas within Pacific County that are subject to potential slope failure. The characteristics of landslide hazard areas include slopes of 15 percent or greater that are underlain by weak, fine grained unconsolidated sediments, jointed or bedded bedrock, or landslide deposits, including the top and toe of such areas. It is necessary to protect the public from damage due to development on, or adjacent to, landslides; preserve the scenic quality and natural character of Pacific County's hillsides; and to protect water quality.

##### Seismic Hazard Areas

Seismic hazard areas are associated with active fault areas and earthquakes. While earthquakes cannot be eliminated, there are areas of Pacific County which have been identified to pose hazards to life and property resulting from the associated ground shaking, differential settlement, and/or soil liquefaction.

##### Mine Hazard Areas

Mine hazard areas are defined as "areas directly underlain by, adjacent to, or affected by mine workings such as adits (mine entrance), tunnels, drifts, or air shafts." Mine hazards may also include steep and unstable slopes created by open mines. Because of the geology of Pacific County there has been little or no historical subsurface mining that could have left areas of

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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Pacific County honeycombed with abandoned mine tunnels. Similarly, any open mining is required to have both an approved erosion control plan and an approved reclamation plan that will address steep and unstable slopes.

### 3.11.2 IDENTIFYING AND CLASSIFYING GEOLOGICALLY HAZARDOUS AREAS

Geologically hazardous areas in Pacific County are identified as follows:

#### Erosion Hazard Areas

Erosion hazard areas include lands that are classified by the SCS as having a potential for wind and/or water erosion as detailed in the soil descriptions contained in the "Soil Survey of Grays Harbor County Areas, Pacific County and Wahkiakum County", Washington, 1986, Soil Conservation Service, USDA. The legislative authority of Pacific County also may designate by resolution erosion hazard areas. The Washaway Beach area in North Cove and the western side of Bay Center are considered Erosion hazard areas. Ordinance No. 147 has specific development standards for these areas based on a predicted rate of erosion over a 30 year period of time.

#### Landslide Hazard Areas

Landslide hazard areas are those areas meeting any of the following criteria:

1. Areas of historic failure, such as areas designated as quaternary slumps, earthflows, mudflows, or landslides on maps published as the United States Geological Survey or Department of Natural Resources Division of Geology and Earth Resources;
2. Areas which are rated as unstable in the Department of Ecology Coastal Zone Atlas;
3. Any area with all of the following:
  - a. a slope greater than 15%;
  - b. hillsides containing geologic contacts between a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
  - c. springs or groundwater seepage.
4. Slopes that are parallel or sub-parallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
5. Slopes having gradients greater than 80% subject to rockfall during seismic shaking;
6. Areas potentially unstable as a result of rapid stream incision and streambank erosion;
7. Areas located in a canyon or on an active alluvial fan, presently or potentially subject to inundation by debris flows or catastrophic flooding; and
8. Any area with a slope of forty percent (40% ) or steeper and with a vertical relief of ten (10) or more feet except areas composed of solid rock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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(10) feet of vertical relief.

### Seismic Hazard Areas

For the purposes of this classification, the entire County constitutes a seismic hazard area because all areas are subject to a Seismic Risk Zone D-2 rating or higher. The County may require site specific field studies or special reports for the location of any new construction within seismic hazard areas and/or within areas susceptible to soil liquefaction.

### Mine Hazard Areas

Mine hazard areas are those areas within 100 horizontal feet of a mine opening at the surface.

### 3.11.3 MAPS AND REFERENCES

The following references may provide an indication of geologic hazard area locations. However, these and other similar resources may not be prepared at a level of detail sufficient to accurately portray the exact location and extent of hazard areas in Pacific County, and cannot be used in place of an on-site field determination. Many geologic hazard areas in Pacific County will not appear on these resources.

1. Erosion Hazard Areas: The approximate location and extent of erosion hazard areas is displayed in the Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington, 1986, Soil Conservation Service, USDA, and on erosion hazard zone maps prepared by the USGS and Pacific County.
2. Landslide Hazard Areas: The Soil Survey may be relied upon by the Administrator as a basis for requiring field investigation and special reports. In the event of a conflict between information contained in the Soil Survey and information shown as a result of a field investigation, the latter shall prevail.
3. Seismic Hazard Areas: The International Building Code (IBC) Seismic Risk Zone Map of the United States and the Washington State Department of Natural Resources' Liquefaction Susceptibility and Site Class Maps for Pacific County.

### 3.11.4 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 geologically hazardous:

- Geotechnical conditions;
- Potential impact on geologic conditions;
- Potential impact of geologic hazards on proposed activity;
- Type of proposed activity;
- Proposed erosion control plan;
- Results and recommendations of special geotechnical or geological investigations

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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prepared by qualified professional;

- Proximity of proposed activity to urban growth areas;
- Compatibility of proposed activity with adjacent land use;
- Environmental impacts of proposed activity;
- Impacts of proposed activity to public rights-of-way; and
- Suitability to accommodate on-site wastewater disposal and domestic water supply facilities.

### 3.12 FISHERIES, WILDLIFE, SHELLFISH, KELP, EELGRASS, HERRING, AND SMELT SPAWNING HABITAT CONSERVATION AREAS

#### 3.12.1 HABITAT CONSERVATION AREAS IN PACIFIC COUNTY

Pacific County is fortunate to have natural resources encompassing a large variety of environments. Many residents and visitors to the area participate in recreational activities that involve wildlife, including hunting, fishing, clamming, photography of wildlife, bird watching, and others. Pacific County has begun to capitalize on these numerous natural resources through promotion of the area as a recreational paradise, and many of the smaller, more remote communities would like to use recreationally oriented tourist activities to promote economic development. To that extent, as well as for the inherent importance of wildlife and the natural environment to the quality of life in Pacific County, it is the intent of these policies to recognize the importance of protecting fish, wildlife, shellfish, kelp, eelgrass, herring, and smelt spawning habitat areas.

At the same time, it is important to encourage the continuation of historical forestry, agricultural and aquacultural practices. It is also the intent of these policies to protect the habitat resources and encourage their enhancement and preservation when development influences are proposed. It is not intended that these policies be applied to, or create a burden to, existing land uses.

#### 3.12.2 POLICY REGARDING PROTECTION OF HABITAT CONSERVATION AREAS

Pacific County's policy is to protect habitat conservation areas for endangered, threatened, or sensitive species listed by the Washington State Department of Fish & Wildlife. Pacific County adopts the Department of Natural Resources' Official Water Type Maps. Definitions are as identified in the water typing criteria in WAC 222-16-030; provided, however, that artificially created structures, ditches, canals, ponds, irrigation return ditches, and stormwater channels of every type shall not be considered a stream for purposes of this section. Streams are classified as Type S, F, Np or Ns for critical area protection purposes based on the water typing criteria in WAC 222-16-030.

Pacific County has adopted the designations listed at WAC 232-12-014 (Endangered), WAC 232-12-011 (Threatened and Sensitive), WAC 232-12-292 (Bald Eagle), and federally designated threatened or endangered species categories legally applicable to Pacific County.

### 3.12.3 IDENTIFYING AND CLASSIFYING HABITAT CONSERVATION AREAS

Habitat conservation areas in Pacific County are identified as follows:

#### Fisheries and Wildlife

Fish and Wildlife habitat conservation areas in Pacific County are identified as:

1. Areas with which endangered, threatened, and sensitive species have a primary association;
2. Commercial and recreational shellfish areas;
3. Shellfish, kelp and eelgrass beds; herring and smelt spawning areas;
4. Naturally occurring ponds under twenty (20) acres and their submerged aquatic beds that provide fish or wildlife habitat;
5. Waters of the State;
6. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity; or
7. State natural area preserves and natural resource conservation areas.

#### Shellfish, Kelp, Eelgrass, Herring, and Smelt Spawning

Shellfish, Kelp, Eelgrass, Herring, and Smelt Spawning critical areas in Pacific County are identified as those public and private saltwater tidelands or beds that are devoted to the process of growing, farming, or cultivating shellfish, including commercial clam and oyster grounds, oyster and mussel raft areas, and recreational shellfish harvesting areas. In addition, all property located three hundred (300) feet landward from the boundary of upland vegetation (or highest tide if so designated by the Administrator of Ordinance No. 147) shall be designated as a critical area. The importance of this 300' strip is that within this area, the requirements governing the use and installation of on-site sewage disposal standards have been enhanced to help protect water quality within the Bay. New septic systems being installed adjacent to Willapa Bay are meeting effluent treatment standards that exceed State standards for new systems. The County also administers a low interest loan program targeting failed systems immediately adjacent to the Bay.

### 3.12.4 MAPS AND REFERENCES

The following references may provide an indication of habitat area locations. However, these and other similar resources may not be prepared at a level of detail sufficient to accurately

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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portray the exact location and extent of habitat areas in Pacific County, and cannot be used in place of an on-site field determination. Many habitat areas in Pacific County will not appear on these resources.

1. Fisheries: DNR base maps for stream types and topography provide an indication of the location of fisheries resources. Field conditions shall be used to determine the existence or extent of any classified stream area.
2. Wildlife: Wildlife critical areas shall be field located based on applicable criteria by a qualified, critical areas professional. Department of Fish and Wildlife maps of bald eagle, sensitive, threatened, and endangered species and habitat shall be consulted.
3. Shellfish, kelp, eelgrass, herring, and smelt spawning areas should be field located by a qualified, critical areas professional.

### 3.12.5 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:

- Proposed mitigation plan;
- Type of proposed activities;
- Proposed revegetation plan;
- 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 on commercial aquaculture 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.

### 3.13 GOALS AND POLICIES

The goals and policies of the Pacific County Comprehensive Plan are intended to provide guidance for decision-making processes subject to this plan. These goals and policies were initially developed by separate groups of citizens across the various regions of the County, and by the incorporated cities within the County. To reflect the desired direction of the County as a whole, the work of these individual regions and cities, have been combined as presented below. Goals and policies do not apply to incorporated cities, but rather, only to unincorporated areas of the County.

**Goal R-1:** Agricultural land of long-term commercial significance should be preserved in order to encourage an adequate land base for long-term farm use.

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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- Policy R-1.1:** Agricultural land of long-term commercial significance should be identified and designated as such.
- Policy R-1.2:** Residential uses adjacent to agricultural land of long term commercial significance should be developed in a manner which limits potential conflicts and reduces unnecessary conversion of farmland.
- Policy R-1.3:** Commercial farmland owners should be encouraged to retain their land in commercial farm production.
- Policy R-1.4:** In order to reduce development pressure on agricultural land of long-term commercial significance, future development should be directed toward areas of more intense development where existing and planned services can more easily accommodate growth. Outside these areas, densities should remain low.
- Policy R-1.5:** Designated agricultural land of long-term commercial significance should be zoned at very low densities to ensure the conservation of the resource for continued agricultural use.
- Policy R-1.6:** Except within urban growth areas, land uses that are adjacent to agricultural land of long-term commercial significance should be compatible with agriculture, i.e., sawmill operations, warehousing, agri-businesses, and low density residential.
- Policy R-1.7:** In addition to those agricultural lands considered lands of long-term commercial significance, the County should encourage small “truck farms” to ensure a variety of agricultural products are available for the public.
- Goal R-2:** Areas devoted to the process of growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be protected and preserved in order to promote an adequate resource base for long-term use.
- Policy R-2.1:** Critical areas for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be identified and designated as such.
- Policy R-2.2:** Use of lands that are adjacent to areas identified for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be compatible, such as forestry and low density rural residential. Those uses should not appreciably increase stormwater runoff or otherwise degrade water quality for aquacultural use.

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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- Policy R-2.3:** Facilities for land based and marine operations related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be protected from incompatible adjacent or nearby land uses.
- Policy R-2.4:** Land based and marine activity related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should not be considered a nuisance if carried out in a reasonable manner and within applicable regulations. Restrictions should not be imposed on such activities unless they are necessary for preserving the public health, welfare, and safety.
- Policy R-2.5:** Proposed residential and other uses in areas used for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be developed in a manner which lessens potential conflicts with such operations.
- Policy R-2.6:** Activities related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt should be undertaken in a way that reduces adverse impacts.
- Policy R-2.7:** Activities related to growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt that draw on ground water supplies should not degrade the quality nor substantially reduce the quantity of ground water.
- Policy R-2.8:** Water quality in the County's marine estuaries, inland waters, and ground water should be protected from degradation. Waters within drainage basins of areas identified as critical for growing, farming, or cultivating shellfish, kelp, eelgrass, herring, and smelt, that fail to meet water quality standards, should be restored.
- Goal R-3:** Forest lands of long-term commercial significance should be conserved in order to maintain a viable forestry industry for long-term economic use while protecting environmental values.
- Policy R-3.1:** The County supports and encourages the maintenance of forest lands in timber and current use property tax classifications consistent with RCW 84.33, and 84.34.
- Policy R-3.2:** Residential development adjacent to forestry uses should occur in a manner which reduces potential conflicts and reduces unnecessary conversion of forest land through use of such mechanisms as clustering, buffers, etc.

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

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- Policy R-3.3:** The primary land use activities in forest land of long-term commercial significance should be commercial forest management, agriculture, mineral extraction, accessory uses, wildlife habitat enhancement programs, and other non-forest related economic activities relying on forest land.
- Policy R-3.4:** Land use activities within or adjacent to forest land of long-term commercial significance should be sited and designed to minimize conflicts with forest management, and other activities on forest land.
- Policy R-3.5:** The County discourages the establishment or expansion of utility local improvement districts, or sewer, water or public utility districts on forest lands of long-term commercial significance which result in the imposition of assessments, rates, or charges on designated forest land.
- Policy R-3.6:** Clustering of residential development on adjacent rural lands is encouraged. The open space in clustered development should be adjacent to the forest land of long-term commercial significance.
- Policy R-3.7:** The County encourages the continuation of commercial forest management by supporting land trades that result in consolidated forest ownerships that are in the public interest.
- Policy R-3.8:** Subject to any state or local regulation of critical areas, the County encourages the multiple economic use of forest land for a variety of natural resource and other land use activities particularly suited for forest lands because of physical and topographical characteristics; remoteness from populated areas; availability of water supplies; the quality of the forest environment; or where the efficient provision of statewide or regional utilities, energy generating and/or transmission facilities, or public facilities require access across or use of such forest lands.
- Policy R-3.9:** Forest practices within Pacific County should be given protection from nuisance claims in accordance with state law.
- Goal R-4:** Forest lands of long-term commercial significance should accommodate public recreation.
- Policy R-4.1:** Public trails, camping facilities, and other low intensity recreation uses are encouraged in forest lands, subject to available financial resources.

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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- Policy R-4.2:** Forest land considered desirable for acquisition for public purposes should first be evaluated for its impact on a viable forest industry and local government revenue and programs.
- Policy R-4.3:** When timber harvesting is for conversion to other uses, the County should ensure that harvesting is done in a manner compatible with land uses of the surrounding area and which maintains water quality and environmentally sensitive features. Conversion of forest land that has not been designated as being of long term commercial significance should be accommodated.
- Policy R-4.4:** Owners of forest land planned for conversion to another use should provide buffers between their property and adjacent forestry uses.
- Goal R-5:** **Mineral resource land of long-term commercial significance should be allowed to be used by extraction industries, while minimizing conflicts between other land uses and general environmental concerns.**
- Policy R-5.1:** Designated mineral resource land of long-term commercial significance should be conserved for mineral extraction, and the use of adjacent lands should not interfere with the continued use of the designated mining sites that are being operated in accordance with applicable best management practices and other laws and regulations.
- Policy R-5.2:** Designated mineral resource sites that are being operated in accordance with applicable best management practices and other laws and regulations should be given protection from nuisance claims from landowners who have been notified of the presence of the long-term mineral extraction site.
- Policy R-5.3:** Restoration of mineral extraction sites should occur as the site is being mined. The site should be restored for appropriate future use and should blend with the adjacent landscape and contours.
- Policy R-5.4:** Agriculture and aquaculture land should not be used for mining purposes unless it can be restored to its original production capacity after mining ceases.
- Policy R-5.5:** Extraction industries should not adversely impact adjacent or nearby land uses, or public health and safety. Mineral extraction activities also should not negatively affect or endanger surface and ground water flows and quality.
- Policy R-5.6:** Areas where existing residential uses predominate should be

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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protected against intrusion by mineral extraction operations.

**Goal R-6: Wetlands should be protected because they provide important functions which add to the quality of life in Pacific County.**

**Policy R-6.1:** Wetland areas should be identified by the applicant and reviewed by the County prior to development.

**Policy R-6.2:** Wetlands should be protected from alterations due to land use changes, which may create unmitigated adverse impacts to the wetland.

**Policy R-6.3:** Whenever feasible, new technologies which enhance a wetland and promote it as a useful, functioning part of the development should be encouraged.

**Policy R-6.4:** Wetland preservation strategies and efforts, including wetland banking, should be coordinated with appropriate local, state and federal agencies and private conservation organizations to take advantage of both technical and financial assistance, and to avoid duplication of efforts.

**Goal R-7: Areas demonstrated to be critical aquifers and/or which play a crucial role in recharging our groundwater supplies should be carefully monitored and regulations developed to protect potable water sources.**

**Policy R-7.1:** Critical groundwater supply areas, aquifer recharge areas, and areas with a high groundwater table and/or unconfined aquifers that are used for potable water should be identified.

**Policy R-7.2:** The establishment of land use intensity limitations based on the availability of sanitary sewers should be encouraged. Cluster developments are encouraged because of the potential for shared, community sewage disposal systems instead of dispersed individual septic systems.

**Policy R-7.3:** Forestry, agricultural, and aquacultural activities shall incorporate best management practices concerning waste disposal, fertilizer, use, pesticide use, and stream corridor management.

**Policy R-7.4:** Fertilizer and pesticide management practices of new schools, parks, golf courses and other recreational or institutional facilities that maintain large landscaped areas shall incorporate best management practices (BMPs) as recommended by the Cooperative Extension Service. Existing facilities are strongly encouraged to also incorporate these BMPs.

...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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- Policy R-7.5:** It is the responsibility of the developer to reasonably demonstrate that their proposal would not significantly affect the recharge of an aquifer. Development which could substantially and negatively impact the quality of an aquifer shall not be allowed unless it can be demonstrated that these negative impacts can be mitigated.
- Policy R-7.6:** Within aquifer recharge areas, short and long subdivisions and other divisions of land should be evaluated for their impact on groundwater quality and quantity.
- Goal R-8:** **Frequently flooded areas of Pacific County that are known to be vital to maintaining the integrity of natural drainage systems should be protected by adopting regulations to prevent potential alterations and obstructions to those areas.**
- Policy R-8.1:** Frequently flooded areas within active flood control zone districts should be identified as such and mapped.
- Policy R-8.2:** Growth and development patterns compatible with natural drainage features should be encouraged, and alteration of natural drainage features should be discouraged.
- Policy R-8.3:** Control of erosion at its source as a means of controlling water pollution, flooding, and habitat damage downstream shall be encouraged.
- Policy R-8.4:** A drainage ordinance that directs all land development activities to make provisions for control of surface water discharge impacts should be implemented for any portion of the County within an active flood control zone district.
- Policy R-8.5:** New development in frequently flooded areas that poses a threat to human health and property shall be prohibited unless the deleterious impacts can be mitigated.
- Goal R-9:** **Appropriate measures should be provided to either avoid or mitigate significant risks to public and private property and to public health and safety that are posed by geologic hazard areas.**
- Policy R-9.1:** Probable significant adverse impacts from geologically hazardous areas should be identified during the review of a development application.
- Policy R-9.2:** Within active flood control zone districts, grading and clearing for

## ...CRITICAL AREAS AND RESOURCE LANDS ELEMENT

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both private developments and public facilities or services should be limited to the minimum necessary to accomplish engineering design.

**Policy R-9.3:** To minimize blowing soil during land development or alteration such as dune modification or development, appropriate water and mulch material should be required on any areas without a vegetative cover.

**Policy R-9.4:** To maintain the natural integrity of landslide hazard areas and to protect the environment, and the public health and safety, an adequate buffer of existing vegetation shall be maintained around all sides of the landslide hazard areas.

**Goal R-10: Fish and Wildlife habitat areas should be protected as an important natural resource for Pacific County.**

**Policy R-10.1:** Pacific County should recognize critical fish and wildlife habitat conservation areas that have been recognized by state and federal agencies with jurisdiction.

**Policy R-10.2:** The impacts of new development on the quality of land, wildlife and vegetative resources should be considered as part of the environmental review process. Appropriate mitigating measures should be required. Such mitigation may involve the retention and/or enhancement of habitats.

**Policy R-10.3:** Restoration of lost and damaged fish habitat, should be encouraged.

**Policy R-10.4:** Proper riparian management that maintains existing riparian habitat and is consistent with best agricultural management practices should be encouraged.

**Policy R-10.5:** Land uses adjacent to naturally occurring water bodies and other fish and wildlife habitat areas should not significantly impact the habitat areas. If a change in land use occurs, adequate buffers should be provided to the habitat areas.

**Policy R-10.6:** Activities allowed in fish and wildlife habitat conservation areas and open space should be consistent with the species located there, and in accordance with all applicable state and federal regulations and/or best management practices. Low impact recreational activities should be encouraged.

United States  
Department of  
Agriculture

Farm  
Service  
Agency

Grays Harbor & Pacific FSA Office  
330 Pioneer Ave West  
Montesano, WA 98563  
(360) 249-5900

DATE: January 8, 1997

Pacific County Planning Commission  
PO Box 68  
South Bend, WA 98586

Dear Commissioners:

Jane Rose asked me to provide you with information concerning agricultural conditions in Pacific County. Through our involvement in administering the Federal Farm programs to agricultural producers in Pacific County we are not aware of anyone that produces an annually tilled crop. Annually tilled meaning a crop such as wheat, green peas, corn, etc.

None of the farms in Pacific County has a Crop Acreage Base (CAB). A Crop Acreage Base indicates historical crop rotations for federally subsidized crops such as wheat, barley, oats and corn. I can only speculate that due to climactic conditions as well as the economics of production that exist, annually tilled crop production just isn't conducive to the county.

If you have any questions please feel free to contact me.

Sincerely,



Michael T. Mandere  
County Executive Director  
Grays Harbor & Pacific County FSA

OPTIONAL FORM NO (7-90)

FAX TRANSMITTAL

1 of 1 pages

To	Jane	From	Grays Harbor & Pacific FSA
Dept./Agency	East Rent Seafood	Phone #	360-249-5900
		Fax #	

January 8, 1997

North Pacific County Dairy & Beef Producers  
R. Jane Rose, Recording Secretary  
HCR 61, Box 250  
South Bend, Washington 98586

State Senator Sid Snyder  
312 Legislative Building  
Olympia, WA 98504-0419

State Representative Brian Hatfield  
317 John L. O'Brien Building  
Olympia, WA 98504

State Representative Mark Doumit  
309 John L. O'Brien Building  
Olympia, WA 98504

✓ Pacific County Planning Commission  
P.O. Box 68  
South Bend, Washington 98586

Commissioners:

The Draft Pacific County Critical Areas and Resource Lands document on page 44, Section 11, B, 2, classifies Agricultural Lands of Pacific County according to the USDA Handbook No. 210 as follows: "This system of classification and identification for long-term commercially significant agricultural lands is based upon identified prime agricultural land derived from the land capability classification system of the United States Department of Agriculture Handbook No. 210. The classes of agricultural lands are based upon consideration of growing capacity, productivity, and soil composition. In further defining categories of agricultural lands of long-term commercial significance, the reference standard is the use of the classification of prime agricultural land soils as mapped by the Natural Resource Conservation Service (NRCS), USDA."

Pacific County does not have any prime agricultural land capable of growing crops such as peas and corn primarily due to the high rainfall and lack of sun during the growing season. One has to go as far as Northeast Grays Harbor County or Lewis County to grow crops. All we grow in Pacific County is grass and grass hay eaten by dairy cattle to make milk or beef cattle to produce meat. Please find attached a corroborating statement from Mike Mandere, County Executive Director, Farm Service Agency, USDA, Montesano, Washington.

Farm Service Agency, USDA, for Grays Harbor and Pacific County, in Montesano, Washington, tracks weather patterns in both counties for disaster payments to producers under federal programs. Farm Service Agency also cost shares with producers on crops grown.

All grain is imported from other areas for feed to Pacific County.

All beef feeder cattle are trucked to Eastern Washington or Oregon to be fed for market to be close to feed supplies.

North Pacific County has twelve (12) operating dairies today. Dairy Herd Improvement Association and Pacific County Fair Records show twenty four (24) operating dairies in the 1970's.

North Pacific County has only three (3) self supporting beef ranches today.

Economics and climate have forced production agriculture to other more conducive counties.

Commercial Agriculture land under Open Space in Pacific County is valued at fifty (50) to one hundred ninety two (192) dollars per acre based on rent for farm ground and sells for from one (1) to eight (8) thousand dollars per acre on the open market. Cash rent per acre on rented farm ground is twenty (20) to eighty (80) dollars per acre in Pacific County. It takes from two (2) to four (4) acres to support one (1) beef cow which would gross two hundred fifty (250) to three hundred (300) dollars for the two to four acres. By contrast cranberry ground can gross as much as twenty thousand (20,000) dollars per acre. Ag land has limited economic value in Pacific County.

The Draft Pacific County Critical Areas and Resource Lands document, Section 11, G, 1, Commercial Agricultural Land, Page 52, states that the minimum residential lot size is proposed that each parcel created on average must be at least five (5) acres.

Five (5) acre minimum lot size in agricultural areas is more land than families can maintain. People often make mud of it with a collection of enterprises. Public services such as utilities, roads and fire protection are burdened.

Forty (40) acre minimum lot size as proposed by some reduces the value of the land instantly. The county or state better serves the interests of its citizens by buying development rights to commercial ag land in order to preserve it than to steal it by regulation. Forty (40) acre lots do not allow for clustering of homes to provide community services such as water, power, septic, and fire protection, to name a few.

One-half (1/2) acre minimum building lot size for commercial ag land preserves more ag land than five (5) acre lot size because the remaining four and one-half (4 1/2) acres is left in the production of forage or trees.

Forty (40) acre lot size is unconscionable. It is theft.

The following page has thirty three (33) signatures of agricultural landowners' signatures to this letter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "R. Jane Rose", with a horizontal line extending to the right.

R. Jane Rose  
Recording Secretary

Enclosures

The following people propose that the minimum residential lot size for commercial agriculture be one-half (1/2) acre:

David Bale  
Iue Bale  
Lamy Bale  
John Wildhaber  
Joe Cameron  
Kristine L. Cameron  
Donald Schmidt  
Opal Schmidt  
Elizabeth O. Kettlet  
Paul Walden  
Carlene Walden  
at New Haven  
Mary Newman  
Jerry Martin  
Mary Wildhaber

Jay Crady  
R. Jane Rose  
Lana Smacay  
Lyn Smacay  
Bernard W. Heelzick  
Geneva B. Fitzpatrick  
Jim Wilson  
Peter M. Potma  
Bob Zieoth  
Wynne Gerritt  
M. L. Conroy  
Elizabeth J. Cameron  
Joseph R. Conroy  
Eleanor Cameron  
Robert P. Rose  
Donald J. Lagergren  
James R. Rose  
Thomas Weaver

Respectfully submitted,

R. Jane Rose

R. Jane Rose  
Recording Secretary

February 19, 1997

Robert P. & R. Jane Rose  
Rose Ranch  
HCR 61, Box 250  
South Bend, Washington 98586

Pacific County Planning Commission  
P.O. Box 68  
South Bend, Washington 98586

Commissioners:

We are submitting comment on the Commercial Agricultural Lands section of the Pacific County Critical Areas and Resource Lands Ordinance with regard to the naming of soil types as in Section 11, a., Prime Agricultural Lands of Long Term Commercial Significance, of the Pacific County Critical Areas and Resource Lands Ordinance, Page 68. Basing ag lands of long term commercial significance upon soil types seems to be a logical approach. However, we fail to see why, on Pages 68 and 69 of this draft, you have included more soil types than Map Units No. 1, Aabab silt loam, No. 2, Arta Silt loam, No. 9, Bear Prairie silt loam, No. 43 Grehalem silt loam, No. 91, Nemah silty clay loam, No. 102, Nuby silt loam, No. 104, Ocosta silty clay loam, No. 125, Rennie silty clay loam and No. 127, Salzer silty clay, as these seem to be the only ones that are of commercial agricultural significance in Pacific County. The rest are mainly uplands on small acreages and used mainly for forest ground and have no significance for commercial ag production in Pacific County.

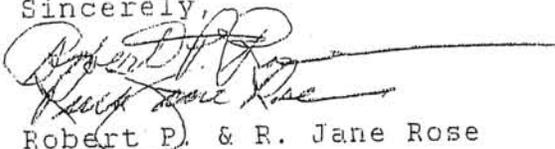
Soil types No. 5, Bear Prairie silt loam, No. 10, Boistfort silt loam, No. 36, Elochoman silt loam, No. 48 Humptulips silt loam, No. 49, Ilwaco silt loam, No. 65, Lebam silt loam, No. 79, Montesa silt loam, No. 94 Newskah loam, No. 134, Skamo silt loam, No. 138, Stimson silt loam, No. 141, Sylvia silt loam, No. 149 Vesta silt loam, No. 155, Willapa silt loam, and No. 161, Wishkah silty clay loam need to be deleted from the list of commercial ag lands of significance because these soil types are almost totally in woodlands in Pacific County and have no significant agricultural productive capability. Naming them as commercially significant is totally wrong and will only cause hardship when other uses are needed. These statements are born out by a review of the United States Department of Agriculture, Soil Conservation Service, Soil Survey of Grays Harbor County Area, Pacific County and Wahkiakum County, Washington, publication. This publication was created in cooperation with Washington State Department of Natural Resources and Washington State University Agriculture Research Center.

Pacific County commercial ag land is severely limited as a whole from being an economically viable industry because of the wet weather and distance to market. Also, the size of most farms makes it impossible to own modern equipment that is capable of farming large acreages economically. This can be seen now by most marginal farms being converted to limited production or to residential development.

We have lost half our dairy farms in the last twenty years as taken from Pacific County Fair Records. We only have four

self supporting beef ranches. On top of this we have many environmental problems facing the present farming in Pacific County. The Shorelines Management Act is undergoing revisions at this time that will affect us. The Endangered Species Act and the Clean Water Act will affect us more and more. It is questionable how long any of the remaining farms will continue to be economical operations in the near future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert P. & R. Jane Rose", is written over a horizontal line. The signature is written in dark ink and is somewhat stylized.

Robert P. & R. Jane Rose

Sincerely,

CAMENZING FARMS  
Joe And Eleanor CAMENZING  
JR And Kris CAMENZING  
MARK And Beth CAMENZING

1. In response to the question? Why if our farm has been in agriculture for 100 years, should it not be protected and remain in agriculture for another 100 years. First I would like to say that has been the goal of each generation, to pass it on to their heirs. Unless you have had the privilege of working the land, living in partnership with your environment and mother nature it probably is hard to realize the land is part of your very soul.

If you look closely at history, you'll find most wars are fought over land. The most important factor we see in farming at this time is how will government regulations affect the economics and profitability of agriculture.

At this time we are being governed with the following government agencies. Please note they are also in transition, with changes being made continually, such as the Shoreline Management Act and Growth Management.

Shoreline Management Act  
Corp of Engineers  
Environmental Protection Agency EPA  
Growth Management Act GMA  
Endangered Species Act  
Department of Community (PA CO Planning)  
Critical and Resource Land Regulations  
Wash Department of Fish and Game  
Wetland Rules and Regulations  
Clean Water Act  
Willapa Watershed and Estuary  
Habitat Protection and Regulations  
Clean Air Act  
Salmon and Fisheries Protection  
Coastal Corridor  
Pacific Conservation District (BPM's)  
Labor and Industries  
Department of Ecology (DOE)  
SEPA  
State Wetlands Intergrated Strategy SWIS  
Coastal Zone Management CZMA  
United States Department of Agriculture USDA  
NAFTA

2. The problems facing survival of agricultural in Pacific County will be plain and simple. Economics! Farmers are used to downturns as well as the good times, unfortunately it is part of the business. Most of agriculture is market driven. With the government's decision to implement NAFTA and with the cattle market already going into a cyclical downturn, it was devastating to the cattle market. Mexico was in a severe drought, Canada had the advantage of our currency rate and we were undunated with additional cattle. The promises are that in time, this will be beneficial to

agricultural, this remains to be seen, as to how this will turn out.

The next important issue facing agricultural will be marketability. Our product which is dairy replacement heifers and beef calves have to be shipped hundreds of miles to market. Except for the grass feed such as grass hay and silage that we are able to produce on our own land, all alfalfa, grain and etc. also has to be trucked, usual source either eastern Oregon or Washington at a significant expense. We do not have the prime farm land that would grow wheat, peas-corn-significant berry products-barley-alfalfa-vegetables-etc. Nor do we have the right climate for these types of crops.

The harsh times facing the beef industry today is not our biggest concern. In order to be a good manager, it is necessary to have long term planning, this is essential information that needs to be provided to our lending institution, it is necessary because farming is based on long-term planning. Planning is the key to success. Equipment, buildings, cattle expenses are all expensive and long term commitments, we have to know a direction for our future. We as diked tideland farmers will be governed by so many different government agencies that this has now become the nightmare in which we live. Is there going to be a

future for our heirs? We no longer can make that our decision, it will be dictated to us. At this time our heirs would like the opportunity to farm, that is the premise of our planning, however, if in the future we see these rights being taken away from us by regulations, we want the right for our heirs to be able to plan for their future by having control over the balance of their land. It is necessary.

The availability of sewer and water should be one deciding factor for density and not acreage size. Also cluster housing should be encouraged, which provides not only a green belt but habitat.

Another issue will be age and health.

What we ask for is common sense and to be treated with fairness. You will be the first decision-makers, with many more to come, we ask that you consider that the bulk of our property is diked tideland with a small portion being hill ground, there is no possible way you could make a living off the hill ground, please take that into consideration when you make the decision for density. It is our personal plan and hope that the farm will remain a farm for the next 100 years, but we see many dark clouds that we cannot do anything about and that decision may very well not be ours to make.

GMA for instance was supposed to be local planning and we all know that is not true. Even for you as a Planning Commission and for our Pacific County Planners, it appears that instead of being able to use your expertise in rural planning and we all know the value of good planning, it has become necessary to please the three-person hearing board a board that was appointed (not elected) by a Governor that is no longer in office and they will be there for a 6-year term.

Thank you for taking the time to read the concerns we have at this time. It is appreciated. Good luck!

P

February 19, 1997

Peter & Chris Portmann  
Rt 1 Box 193  
Raymond, WA 98577

Dear Bryan Harrison

We think we know how you would feel if the county decided for the "good of the people", Bryan Harrison's IRA was going to be diminished by half. Money that Bryan had worked hard for and sacrificed things to set aside for retirement, would be in jeopardy through a judgement of the county. I am very sure that you would be more than a little concerned.

We are very concerned when we heard the county is considering taking away some of our rights to sell the land that we have worked so hard and long to keep. The dairy business and the beef business, have been so very bad in the last five years that many farmers have taken their savings to just keep in business, still paying bills that should have already been paid.

Now, we hear that, "for the good of the county", we who have paid taxes... high real estate, personal property, use taxes, and county taxes; who have had to figure that someday when we retire, we'll be able to see that it's been a profit and worthwhile.... now we hear that "for the good of the county" and without paying for the right to limit landowners, the county is considering taking our rights. In essence taking away some of our savings, some of our retirement money, some of our future.

How many people do you think can afford large parcels of land? Not many, and so that narrows down further whom we can sell land to. Most buyers don't want to have to make hay and take care of the manure according to the EPA, deal with inspections and soil conservation districts. They just want a place in the county, some peace and quiet, maybe a few acres for a horse or a cow so their kids can learn about life and animals. We are not the only ones who lose.

Family farms are ending here in Pacific County. The extremely high cost of manure management, nearness to the river and ocean, high water tables, quantity of rain causing runoff, government involvement in the way you do business, all contribute to the decisions of future "factory farms" to locate in Eastern Washington and Idaho. Farmers considering buying property look for larger land parcels than we have and no water problems first. The future farms will be those which can accommodate thousands of cows not just hundreds. We cannot sell our farms to new farmers, as they can't make a living milking or ranching the few number of cows as we do. It isn't cost effective. Our farms are becoming obsolete as dairies and beef ranches going into the next fifty years. Dictating the number of acres we can sell puts limits on our future. And all of this is taking away our rights without just compensation.

In our opinion many of the land owners would compromise with a 5 acre limit, but more than that and it will be seen as a "taking" with no just compensation. We have gathered other signatures on the reverse side, who feel the way we do.

Sincerely  
Pete & Chris Portmann

Appendix J  
Index of the Record - Item No. 474:78

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In cooperation with  
Washington State  
Department of Natural  
Resources and  
Washington State  
University Agriculture  
Research Center

# Soil Survey of Grays Harbor County Area, Pacific County, and Wahkiakum County, Washington



TABLE 3.--GROWING SEASON

Probability	Length of growing season if daily minimum temperature exceeds---		
	50° F	55° F	60° F
	Days	Days	Days

## ABERDEEN

[Recorded in the period 1951-77]

9 years in 10	290	247	183
8 years in 10	314	262	192
5 years in 10	365	293	209
2 years in 10	365	365	226
1 year in 10	365	365	226

## ELMA

[Recorded in the period 1951-77]

9 years in 10	251	186	132
8 years in 10	266	201	141
5 years in 10	298	228	159
2 years in 10	343	255	177
1 year in 10	365	270	186

## GRAYS RIVER

[Recorded in the period 1962-77]

9 years in 10	236	183	126
8 years in 10	256	200	137
5 years in 10	300	233	156
2 years in 10	365	269	175
1 year in 10	365	296	186

## WILLAPA HARBOR

[Recorded in the period 1951-77]

9 years in 10	267	218	165
8 years in 10	289	233	175
5 years in 10	365	262	193
2 years in 10	365	293	212
1 year in 10	365	312	222

TABLE 2.--FREEZE DATES IN SPRING AND FALL--Continued

Probability	Temperature		
	24° F or lower	28° F or lower	32° F or lower

GRAYS RIVER

[Recorded in the period 1962-77]

Last freezing temperature in spring:			
1 year in 10 later than--	April 8	April 23	June 7
2 years in 10 later than--	March 20	April 15	May 29
5 years in 10 later than--	February 9	March 30	May 12
First freezing temperature in fall:			
1 year in 10 earlier than--	November 15	October 12	September 20
2 years in 10 earlier than--	November 24	October 25	September 29
5 years in 10 earlier than--	December 11	November 20	October 15

WILLAPA HARBOR

[Recorded in the period 1951-77]

Last freezing temperature in spring:			
1 year in 10 later than--	March 23	April 20	May 12
2 years in 10 later than--	March 7	April 7	May 5
5 years in 10 later than--	February 2	March 13	April 22
First freezing temperature in fall:			
1 year in 10 earlier than--	November 13	October 26	October 15
2 years in 10 earlier than--	December 4	November 8	October 21
5 years in 10 earlier than--	January 16	December 3	November 2

TABLE 1.--TEMPERATURE AND PRECIPITATION--Continued

WILLAPA HARBOR

[Recorded in the period 1951-77]

Month	Temperature						Precipitation				
	Average daily maximum	Average daily minimum	Average daily	2 years in 10 will have--		Average number of growing degree days <sup>1</sup>	Average	2 years in 10 will have--		Average number of days with 0.1 inch or more	Average snowfall
				Maximum temperature higher than--	Minimum temperature lower than--			Less than--	More than--		
	°F	°F	°F	°F	°F	Units	In	In	In		In
January---	46.5	34.9	40.7	59	17	103	14.52	8.92	19.55	20	2.2
February--	50.8	36.1	43.5	64	23	128	9.72	6.09	13.00	16	0.8
March-----	52.8	35.8	44.3	69	25	146	9.74	6.22	12.92	17	1.8
April-----	57.9	38.7	48.3	79	29	252	6.01	3.49	8.07	13	0.0
May-----	64.2	43.8	54.0	89	31	434	3.55	2.06	4.75	10	0.0
June-----	67.5	48.6	58.1	89	38	543	2.95	1.41	4.20	8	0.0
July-----	72.1	51.6	61.9	94	42	679	1.38	.39	2.17	4	0.0
August----	72.4	52.2	62.3	94	43	691	2.18	.73	3.33	6	0.0
September-	70.6	49.4	60.0	90	37	600	3.52	1.24	5.34	7	0.0
October---	62.3	43.8	53.1	81	31	406	7.95	4.10	11.09	13	0.0
November--	53.1	38.6	45.8	65	24	181	11.36	6.84	15.41	18	0.3
December--	47.7	36.3	42.1	58	21	113	13.98	9.96	17.69	20	0.5
Yearly:											
Average-	59.8	42.5	51.2	---	---	---	---	---	---	---	---
Extreme-	---	---	---	97	14	---	---	---	---	---	---
Total---	---	---	---	---	---	4,276	86.86	75.92	97.45	152	5.6

<sup>1</sup>A growing degree day is an index of the amount of heat available for plant growth. It can be calculated by adding the maximum and minimum daily temperatures, dividing the sum by 2, and subtracting the temperature below which growth is minimal for the principal crops in the area (40° F).

RLCA  
202

July 9, 1996 Planning Commission Workshop with state agencies

Present: Planning Commission, Bryan Harrison, David Burke, Attached Attendance roster: Rex Hutchins of DNR, Sue Simms Hedia Adelsman and Bill Leonard of DOE, John Kendig of NRCS, Steve Penland of WDFW, Bill Satoris of CTED. Missing - DOH representation.

A tape was produced of the meeting. These are a compilation of ideas, issues, conclusions that I have gleaned from the meeting:

Steve Penland, Fish and Wildlife:

1. The county has the obligation to recognize endangered, threatened and sensitive species. The county has the option of additionally recognizing habitat and species of local importance. These optional habitats and species could include commercial and recreational shellfish, eelgrass, smelt spawning areas, water of the state, water bodies and game fish, naturally occurring ponds, natural area preserves and natural resource conservation areas, great blue herons and their habitat, etc.
2. Candidate Species may also be identified. These species meet the criteria for listing as ET or S, but have not yet been listed.
3. Steve will request that the area habitat and wildlife biologists list the ETS and C species in Pacific County.
4. Steve mentioned that he could provide the county with maps of existing habitat resources.
5. Steve mentioned that F&W would be willing to review site development plans and wouldn't mind the opportunity to provide comments on local land use application.
6. F&W has compiled a draft document with excerpts and compilations of ordinances developed around the state to protect habitat and species, however, "I don't expect anyone to adopt this as is"
7. Steve also stated that he didn't expect the RLCA ord to preclude use of property per se.
8. A review of the scientific literature has been completed by F&W. The conclusion is that 100' stream buffers protect anadromous fish species. The 100' should be natural undisturbed vegetation. The stream "buffers aren't too bad in this ordinance" However, some terrestrial species need more than 100'. Reductions proposed on type 4 and 5 streams are probably not OK as proposed.
9. There is no issue with on-going agricultural practices. An exemption is allowable for areas with approved farm plans. There is no agreement as to whether existing forestry riparian area practices are acceptable. However, we don't raise an issue with DNR approved forest practices.
10. The F&W approach to the stream side management issue depends on whether a return to forestry production is proposed, or whether the site is converted.

DOE: Hedia and Bill.

1. The county should consider replacing the broad categorical exemptions within the current draft with the Skagit County language for reasonable use exemptions. The critical structures should not be located in geologically hazardous areas, etc.
2. There should be an approach that allows for mitigation and buffer increase as well as buffer. Reduction.
3. The county may wish to differentiate between urban and rural buffers, in some cases it may be more important to protect urban wetlands from more intense land uses.
4. The reasonable use exemption should only be used after following an analysis based upon use of the mitigation priorities.
5. The 401/404 process in Pacific County relies on minimization of fill.
6. The DOE class 1-4 system of wetland categorization is appropriate. The GMA and Corps delineation manuals are acceptable.

4. Prime agricultural lands may not include these dairies. The true prime agr. Land may in fact be the shellfish industry.
5. County needs to designate agricultural lands of long term commercial significance. The dairies and cattle ranches may not be terribly valuable agricultural resources in the long run.
6. CTED: 5 acre infrastructure can cost as much as 1 acre. Perhaps a variety of rural densities is appropriate. This issue could be revisited annually.

#### Forestry Lands:

1. Setbacks between incompatible land uses is appropriate (DOE)
2. Rex Hutchins referred to the map developed by FLAG and/or Willapa Valley Planning Committee. The map indicates 429,000 acres of "green" forest land of long term commercial significance.
3. The map indicates white areas that are flat and incorporated cities and community growth areas (non forestry non-agricultural lands).
4. The green areas are remote, steep, in large commercial timber company ownership, have no access or utilities. They are unlikely to develop any time soon. This boundary could be reviewed and shifted up to +-one mile at some time in the future.
5. The pink zone in the Agri-forestry zone (better slope, utility extension and access possible). This is the area likely to convert. One unit per five acres or so might be beneficial here. Some on FLAG committee wanted 1/2 acre lots. Some disagreement.
6. Yellow areas are intended to ID shoreline forest areas, were tied to soil maps and septic development potential. It is intended that conditions be placed on these areas to protect the east side of Willapa Bay.
7. The forestry area should be toughened up.
8. The pink and white areas that conduct forestry and agricultural uses should be protected by neighbors that may be bothered by agr and forestry practices through notification.
9. The county should encourage the agr and forestry uses in the transitional (white and pink and yellow) areas, but should recognize that these areas will convert in the long term to residential.

During the July 11, 1996 Planning Commission meeting, the PC directed BH to substantially ~~rewrite the~~ Draft ordinance within the next two months, in compliance with the hearings and workshop direction/information provided.

7. Size of wetland is important. Some jurisdictions have exempted buffers and mitigation on small wetlands.
8. Doe prefers consistency with the SMP and RLCA and Clean Water Act, in wetland management
9. Doe is interested in cumulative impacts. However, this requires a detailed analysis of a wetland system, and the DOE and Corps of Engineers are months to year (s?) away from this.
10. Banking is a good concept, however, it is hard to manage, and the Corps and DOE haven't completed the process yet, it is premature. Pacific County "is moving in this direction more than any other county to mitigate and minimize" etc. WE are months from setting up this process, we address this on a case by case basis for now.
11. Some counties exempt class 4 wetlands.
12. DOE is interested in overall protection. DOE wants to review the overall protection to wetlands throughout the RLCA ord, their review is not limited to approval/denial of a particular standard, the overall package is more important.
13. DOE is more concerned with conversion of agricultural land, than with the regulation of existing agricultural practices.
14. The issue of prior converted wetlands and/or farmed wetlands need to be defined, however, this is probably not an issue for Pacific County, because there aren't many of these situations here.
15. DOE prefers buffers rather than setbacks

#### Aquifer recharge areas:

1. WE may want to conduct an in-house review of all the county soil types and group sensitive soils. Use the USGS study, etc. as a basis
2. Existing and on-going agricultural activities could be exempted
3. CTED: cumulative impacts should be monitored
4. Nitrate modeling/testing is a good tool. Set a concentration to trigger response (sewer, density, public water).
5. Inputs should be identified beyond septic; i.e. fertilizer, storm water, cranberry chemicals, etc.
6. Quantity versus quality issues should be separated. Long beach issues surround potential quality issues and not necessarily quantity.

#### Geologically Hazardous Areas:

1. Need to address earthquake, tsunami and floods. CTED refers to its guidelines, and to existing building codes. Check the county seismic rating and wind rating. This county is high on both.
2. Tsunami - recognize, but how address any infrequent event is difficult. CTED = doesn't know what county should do about them, other than quality of construction standards and mobile home strapping standards.
3. DOE: county should address landslide and unstable slopes. The county should rely on its flood hazard prevention ordinance.
4. Mineral lands should be identified.

#### Agricultural Lands:

1. Agricultural lands are now being divided in the Valley at 5 acres to avoid government review. Could be divided at 1/2 acre lots if provide city water and abide by platting requirements.
2. The valuable crops are cranberries and forestry and shellfish.
3. There are 12 dairies in the Valley now. RCS states that most dairies are moving east of the mountains because of feed hauling costs, environ concerns. Etc.

**IN THE COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON  
No. 43643-4-II  
FUTUREWISE v. GROWTH MANAGEMENT HEARINGS BOARD and  
PACIFIC COUNTY**

**DECLARATION OF SERVICE**

I, Kelli D. Buchanan, Administrative Assistant for Pacific County,  
under penalty of perjury under the laws of the State of Washington,  
declare as follows:

On October 18, 2012, I caused **BRIEF OF RESPONDENT,  
PACIFIC COUNTY (with Appendices)** to be served on the persons listed  
below in the manner shown:

Washington State Court of Appeals  
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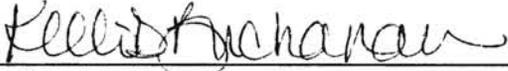
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DATED this 18<sup>th</sup> day of October, 2012 at South Bend, Washington.

  
\_\_\_\_\_  
Kelli D. Buchanan