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Case No. 50847-8-II
(Consolidated with Case No. 51745-1-II)

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

CLARK COUNTY,
Petitioner, Respondent Below,

And

FRIENDS OF CLARK COUNTY and FUTUREWISE,
Cross-Petitioners, Petitioners and Intervenors Below,

And

CITY OF RIDGEFIELD, CITY OF LA CENTER, RDGB ROYAL
ESTATE FARMS LLC, RDGK REST VIEW ESTATES LLC, RDGM
RAWHIDE ESTATES LLC, RDGF RIVER VIEW ESTATES LLC,
RDGS REAL VIEW LLC, and 3B NORTHWEST LLC,
Petitioners, Intervenors Below,

v.

GROWTH MANAGEMENT HEARINGS BOARD,
Respondent,

And

CLARK COUNTY CITIZENS UNITED, INC.,
Petitioner, Petitioner and Intervenor Below,

And

CITY OF BATTLE GROUND, LAGLER REAL PROPERTY LLC,
and ACKERLAND LLC,
Intervenors below.

**BRIEF OF RESPONDENTS/CROSS APPELLANTS
FRIENDS OF CLARK COUNTY & FUTUREWISE**

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I. INTRODUCTION

The Washington State “Supreme Court has held that ‘[w]hen read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.’”¹ These Growth Management Act (GMA) sections also apply to forest lands of long-term commercial significance. As this brief will demonstrate, Clark County has failed to carry out its duties to designate and conserve agricultural and forest lands of long-term commercial significance contrary to the GMA.

Sections II and IV of this brief address the arguments raised in the Brief of 3B NW LLC (3B Opening Brief); the Opening Brief of Petitioner Clark County (County Opening Brief); Petitioner City of La Center’s Opening Brief (La Center Opening Brief); Petitioners RDGB Royal Farms LLC, RDGK Rest View Estates LLC, RDGM Rawhide Estates LLC, RDGF River View Estates LLC, and RDGS Real View LLCs’ (LLCs) Opening Brief (LCC Opening Brief); and the City of Ridgefield’s Opening Brief (Ridgefield Opening Brief).

¹ *Concerned Friends of Ferry Cty. v. Ferry Cty.*, 191 Wn. App. 803, 814, 365 P.3d 207, 213 (2015), *review denied*, 185 Wn.2d 1030, 377 P.3d 724 (2016) citing *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 562, 14 P.3d 133 (2000).

II. ASSIGNMENTS OF ERROR, ISSUES, AND BRIEF ANSWERS

The Friends of Clark County and Futurewise (FOCC) cross-appealed the Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidity, Stay Order, and Supplement the Record (January 10, 2018) in *Clark County Citizens United, Inc. v. Clark County, Western Washington Region Growth Management Hearings Board* (WWRGMHB) Case No. 16-2-0005c.² This section of the Brief of Respondents/Cross Appellants FOCC contains the assignments of error and issues for the cross appeal. The arguments related to these issues are in Section V of this brief.

Assignment of Error 1: The Growth Management Hearings Board (Board) erred in concluding that after Clark County (County) repealed the Agriculture 10 (AG-10) and Forest 20 (FR-20) zones and adopted the Agriculture 20 (AG-20) and Forest 40 (FR-40) zones and repealed the previous Future Land Use Map and adopted a new Future Land Use Map that the FOCC's challenge to these provisions was moot and the Board did not have authority to determine if the newly adopted provisions complied with the GMA, erroneously interpreting or applying the law in violation of

² Compliance Clerk's Papers for the Order on Compliance appealed in Court of Appeals Case No. 51745-1-II (CCP) 70 – 115.

RCW 34.05.570(3)(d) and the Board failed to decide all issues requiring resolution violating RCW 34.05.570(3)(f).³

Issue 1: Did the Order on Compliance erroneously interpret or apply the GMA and fail to decide all issues requiring resolution when the Board concluded it did not have jurisdiction to consider whether the comprehensive plan and zoning provisions adopted to address Issues 11 and 13 did not comply with the GMA or that these issues were moot?⁴
Yes.

Assignment of Error 2: The Board erred in making the finding fact and conclusion that “that the challenge to the future land use map was moot because the County re-adopted a previously GMA compliant variety of rural densities” erroneously interpreting or applying the law in violation of RCW 34.05.570(3)(d), is not supported by substantial evidence in violation of RCW 34.05.570(3)(e), and the Board failed to decide all issues requiring resolution in violation of RCW 34.05.570(3)(f).⁵

Issue 2: Did the Order on Compliance err in making the finding of fact and conclusion that the challenge to the future land use map was “moot

³ Administrative Record for the Order on Compliance appealed in Court of Appeals Case No. 51745-1-II (CAR) 001574 – 75, *Clark County Citizens United, Inc. v. Clark County*, WWRGMHB Case No. 16-2-0005c, Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidity, Stay Order, and Supplement the Record (Jan. 10, 2018), at 11 – 12 of 29. Hereinafter Order on Compliance.

⁴ The issue numbers are the issues from the Order on Compliance, at 9 of 29. CAR 001572.

⁵ CAR 001575, Order on Compliance, at 12 of 29.

because the County re-adopted a previously GMA compliant variety of rural densities[?]⁶ Yes.

Assignment of Error 3: The Board erred in failing to decide if the Agriculture 20 (AG-20) and Forest 40 (FR-40) zones and the Future Land Use Map adopted by Ordinance No. 2017-07-04 and the County's failure to address the developments that vested to the illegal Agriculture 10 (AG-10) and Forestry 20 (FR-20) zones and the illegal Future Land Use Map (FLUM) complied with the GMA erroneously interpreting or applying the law in violation of RCW 34.05.570(3)(d), is not supported by substantial evidence in violation of RCW 34.05.570(3)(e), and the Board failed to decide all issues requiring resolution in violation of RCW 34.05.570(3)(f).⁷

Issue 3: Did the Order on Compliance erroneously interpret or apply the GMA, is not supported by substantial evidence, and failed to decide all issues requiring resolution when the order concluded that Clark County was now in compliance with the GMA for Issues 11 and 13, the County did not have to address the developments that vested to the illegal AG-10 and FR-20 zones and the illegal FLUM, and that Issue 11 did not warrant a finding of invalidity? Yes.

⁶ CAR 001575, Order on Compliance, at 12 of 29.

⁷ CAR 001574 – 75, Order on Compliance, at 11 – 12 of 29.

Assignment of Error 4: The Board erred in making the finding fact or conclusion that the “agricultural and forestry parcel sizes and uses were previously found GMA compliant in the 2007 [comprehensive plan] CP” appeal erroneously interpreting or applying the law in violation of RCW 34.05.570(3)(d) and is not supported by substantial evidence in violation of RCW 34.05.570(3)(e).⁸

Issue 4: Did the Order on Compliance err in finding or concluding that the “agricultural and forestry parcel sizes and uses were previously found GMA compliant in the 2007”⁹ comprehensive plan appeal because it erroneously interpreted or applied the law or is not supported by substantial evidence? Yes.

III. STATEMENT OF THE CASE

The statement of the case by Clark County (County) is acceptable with one addition. This is the second time that the County illegally expanded its urban growth areas (UGAs) onto agricultural lands and cities have annexed those lands.¹⁰ In the 2007 comprehensive plan update it was

⁸ CAR 001574, Order on Compliance, at 11 of 29.

⁹ CAR 001574, Order on Compliance, at 11 of 29.

¹⁰ *Clark Cty. Washington v. W. Washington Growth Mgmt. Hearings Review Bd.*, 161 Wn. App. 204, 245 – 46, 254 P.3d 862, 881 (2011), *vacated in part sub nom. Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 298 P.3d 704 (2013); Administrative Record for the original appeal to the Court of Appeals in Case No. 50847-8-II (AR) 010477 – 79 & AR 010493 – 99, *Clark County Citizens United, Inc., Friends of Clark County, and Futurewise v. Clark County*, WWRGMHB Case No. 16-2-0005c, Final Decision and Order (March 23, 2017), at 21—23 & 37 – 43 of 101 hereinafter FDO.

Camas and Ridgefield.¹¹ In the 2016 update it was La Center and Ridgefield.¹²

IV. ARGUMENT

A. Motion to dismiss Clark County's and 3B Northwest LLC's appeals of the FDO due to a lack of subject matter jurisdiction

FOCC is the moving party. RAP 17.4(d) authorizes a motion in a brief that, if granted, would preclude hearing the case on the merits. Since a lack of subject matter jurisdiction would preclude hearing the merits of Clark County's and 3B Northwest LLC's (3B) appeals of the Final Decision and Order, this motion qualifies. FOCC respectfully requests that the Court dismiss Clark County's and 3B's appeals of the Final Decision and Order with prejudice due to a lack of subject matter jurisdiction.

1. Facts Relevant to the Motion.

On March 23, 2017, the Board mailed the Final Decision and Order which is the subject of this appeal to the attorneys for the parties including Christine Cook who represents Clark County and Stephen W. Horenstein who represents 3B.¹³ On April 24, 2017, Clark County mailed and emailed its petition for judicial review (PFJR) to the Board and the Office of the

¹¹ *Clark Cty.*, 161 Wn. App. at 245 – 46, 254 P.3d at 881.

¹² AR 010477 – 79 & AR 010493 – 99, FDO, at 21—23 & 37 – 43 of 101.

¹³ AR 010558 – 59, *Clark County Citizens United, Inc. v. Clark County*, WWRGMHB Case No. 16-2-0005c, FDO Declaration of Service pp. 1 – 2 of 2.

Attorney General.¹⁴ Also on April 24, 2017, 3B sent by Overnight Delivery via Fed Ex its PFJR to the Board and the Washington State Attorney General.¹⁵ April 22, 2017, 30 days from March 23, 2017, was a Saturday so April 24, 2017, was the following working day.

2. Grounds for Relief and Argument

(i) Standard of Review

Whether a court may exercise jurisdiction is a question of law subject to de novo review.¹⁶

(ii) To invoke appellate court jurisdiction, the County and 3B must have met all of the procedural requirements of the Washington Administrative Procedure Act (APA)

As the Washington Supreme Court has held: “An appeal from an administrative tribunal invokes the appellate, rather than the general, jurisdiction of the superior court. *Union Bay*, 127 Wn.2d at 617, 902 P.2d 1247. Acting in its appellate capacity, the superior court is of limited statutory jurisdiction, and all statutory procedural requirements must be met before jurisdiction is properly invoked.”¹⁷

¹⁴ CP 280 – 81, Clark County’s Petition For Judicial Review Certificate of Service pp. 8 – 9 Clark County Superior Court Case No. 17-2-00953-2.

¹⁵ Clark County Superior Court Case No. 17-2-05151-2 Clerk’s Sub No. 2 (CP __), 3B NW Petition For Judicial Review Certificate of Service pp. 10 – 11.

¹⁶ *Conom v. Snohomish Cty.*, 155 Wn.2d 154, 157, 118 P.3d 344, 345 (2005).

¹⁷ *Skagit Surveyors & Engineers, LLC v. Friends of Skagit Cty.*, 135 Wn.2d 542, 555, 958 P.2d 962, 968 (1998).

One of the statutory requirements is service of the PFJR. “Any party to an appeal, including one who was properly served, may raise the issue of lack of subject matter jurisdiction at any time.”¹⁸

In order to obtain judicial review of an agency action, a party must file a petition for review within 30 days of the final order. RCW 34.05.542(1), (2). The petitioner must file the petition with the court and serve the petition on the agency, the Office of the Attorney General, and all parties of record. RCW 34.05.542(2). Service on the attorney general and parties of record may be accomplished by use of the United States mail. RCW 34.05.542(4).

¶10 However, an agency must be served by delivery of a copy of the petition for review to the office of the agency’s director. *Id.* That requirement was softened when the legislature in 1998 amended the statute to add the provision at issue here:

For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

RCW 34.05.542(6).¹⁹

Neither Clark County nor 3B delivered a copy of their JFJR to the Board’s office within 30 days of the service of the Final Decision and Order.²⁰ Delivery means the “act of delivering up or over: transfer of the

¹⁸ *Id.* at 135 Wn.2d at 556, 958 P.2d at 969.

¹⁹ *Matter of Botany Unlimited Design & Supply, LLC*, 198 Wn. App. 90, 94 – 95, 391 P.3d 605, 607 – 08, *review denied*, 188 Wn.2d 1021, 398 P.3d 1143 (2017).

²⁰ AR 010558 – 59, *Clark County Citizens United, Inc. v. Clark County*, WWRGMHB Case No. 16-2-0005c, FDO Declaration of Service pp. 1 – 2 of 2; CP 280 – 81, Clark County’s Petition For Judicial Review Certificate of Service pp. 8 – 9 Clark County Superior Court Case No. 17-2-00953-2; Clark County Superior Court Case No. 17-2-

body or substance of a thing ...”²¹ Emailing a copy is not delivery, which is the transfer of the body of the PFJR and 3B did not email the PFJR.²²

To be an attorney of record, the attorney must file a formal notice of appearance in the case or represent the agency in the administrative proceedings as attorney in some way, such as filing a pleading.²³ In this case the attorney general did not file a notice of appearance until May 9, 2017, well after the appeal deadline.²⁴ No attorney general had appeared on behalf of the Board or filed legal papers for the Board in the administrative proceedings.²⁵ So the attorney general’s office was not an attorney of record for the Board within 30 days of the service of the Final Decision and Order. Mailing, emailing, and overnighting the PFJR to the attorney general did not serve the Board. Since Clark County and 3B did not deliver the PFJR to the Board within the 30-day appeal period, they

05151-2 Clerk’s Sub No. 2 (CP ___), 3B NW Petition For Judicial Review Certificate of Service pp. 10 – 11.

²¹ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 597 (2002). When the legislature has not defined a term used in a statute, the courts “apply its common meaning, which may be determined by referring to a dictionary.” *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 239, 110 P.3d 1132, 1140 (2005). The supreme court cited to Webster’s Third New International Dictionary. *Id.*

²² Clark County Superior Court Case No. 17-2-05151-2 Clerk’s Sub No. 2 (CP ___), 3B NW Petition For Judicial Review Certificate of Service pp. 10 – 11.

²³ *Matter of Botany Unlimited*, 198 Wn. App. at 96–97, 391 P.3d at 608.

²⁴ Clark County Superior Court Case No. 17-2-00953-2 Clerk’s Sub No. 7 (CP ___), Notice of Appearance of Counsel for Growth Management Hearings Board pp. 1 – 2; Clark County Superior Court Case No. 17-2-05151-2 Clerk’s Sub No. 9 (CP ___), Notice of Appearance of Counsel for Growth Management Hearings Board pp. 1 – 2.

²⁵ AR 010462, FDO, at 6 of 101.

did not invoke the appellate jurisdiction of this court. Their PFJR must be dismissed.

B. The Board correctly concluded the Urban Growth Area (UGA) expansions and Agriculture dedesignations violated the GMA

1. Standard of Review

“[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. . . . Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”²⁶ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”²⁷ “Substantial weight is accorded to a board’s interpretation of the GMA, but the court is not bound by the board’s interpretations.”²⁸ In interpreting the GMA, the courts do not give deference to local government interpretations of the law.²⁹ A correct decision “will not be reversed when it can be sustained on any theory, even though different from the one relied upon by the finder of fact.”³⁰

²⁶ *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193, 1198 (2011).

²⁷ *Thurston County v. Cooper Point Ass’n.*, 148 Wn.2d 1, 7 – 8, 57 P.3d 1156, 1159 – 60 (2002) citing RCW 34.05.570(1)(a).

²⁸ *Thurston Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38, 44 (2008).

²⁹ *Kittitas Cty.*, 172 Wn.2d at 156, 256 P.3d at 1199.

³⁰ *Whidbey Env’tl. Action Network v. Island Cty.*, 122 Wn. App. 156, 168, 93 P.3d 885, 891 (2004) *review denied* 153 Wn.2d 1025, 110 P.3d 756 (2005).

On mixed questions of law and fact, the court determines the law independently, and then applies it to the facts as found by the Board.³¹ The reviewing court does not weigh the evidence or substitute its view of the facts for that of the Board.³² “[U]nchallenged findings of fact become verities on appeal.”³³

2. The UGA issues are not moot

The County, cities, and developers argue that the UGA issues are now moot because La Center and Ridgefield have annexed the UGA expansions. However, the Board made a determination of invalidity for the La Center and Ridgefield agricultural land dedesignations and UGA expansions.³⁴ The Washington State Supreme Court has explained the effect of a determination of invalidity. “‘Upon a finding of invalidity, the underlying provision would be rendered void.’ *King County*, 138 Wn.2d at 181, 979 P.2d 374.”³⁵ “[V]oid’ ... means ‘[o]f no legal effect[,] null’ ...”³⁶

³¹ *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156, 1160 (2002).

³² *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 676, 929 P.2d 510, 516 fn. 9 (1997) review denied *Callecod v. Wash. State Patrol*, 132 Wn.2d 1004, 939 P.2d 215 (1997).

³³ *Manke Lumber Co. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App. 615, 628, 53 P.3d 1011, 1017 (2002).

³⁴ AR 010555, FDO, at 99 of 101.

³⁵ *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 175, 322 P.3d 1219, 1224 (2014).

³⁶ *Assocs. Hous. Fin. L.L.C. v. Stredwick*, 120 Wn. App. 52, 59, 83 P.3d 1032, 1036 (2004).

The State Supreme Court’s decision is consistent with the plain language of the GMA. After a Board determination of invalidity, the invalid policies or regulations have no legal effect except for certain limited permit applications.³⁷ Ending invalidity requires that a prior provision must be revived, new provisions must be “adopted” or “enacted” by “an ordinance or resolution,” or the Board must decide to modify or rescind the order finding invalidity.³⁸ And the Board must determine that the standard in RCW 36.70A.302(1) is met.

Consequently, Clark County’s agricultural lands dedesignations and UGA expansions are void.³⁹ The two UGA expansions have no legal effect. It is the same as if Clark County had never adopted them. UGAs can only be included in county comprehensive plans, not city comprehensive plans.⁴⁰ So the County must adopt new UGA designations for the expansions and the UGA designations must be GMA compliant.⁴¹

This case is also not moot since both the Board and this Court can provide FOCC with effective relief. As the State Supreme Court wrote:

[A lawsuit] is not moot, however, if a court can still provide effective relief. *Pentagram Corp. v. Seattle*, 28 Wn. App. 219, 223, 622 P.2d 892 (1981).

³⁷ RCW 36.70A.302(2), (3).

³⁸ RCW 36.70A.302(4), (5), (6), (7).

³⁹ AR 010555, FDO, at 99 of 101.

⁴⁰ RCW 36.70A.110(6) “[e]ach county shall include designations of urban growth areas in its comprehensive plan.”

⁴¹ RCW 36.70A.130(1)(d).

Here, we can still provide effective relief. The judgments for appellants' fines were not erased by their incarceration and nothing in the record indicates that the fines do not remain outstanding. Moreover, while this court can no longer prevent appellants' incarceration, that incarceration probably has collateral consequences of sufficient moment to make its validity a matter of more than academic interest. *Cf. Pennsylvania v. Mimms*, 434 U.S. 106, 108 n. 3, 98 S.Ct. 330, 332 n. 3, 54 L.Ed.2d 331 (1977); *Sibron v. New York*, 392 U.S. 40, 53 – 54, 88 S.Ct. 1889, 1897, 20 L.Ed.2d 917 (1968). This court can therefore supply effective relief by relieving appellants of their liabilities and cleansing their records.⁴²

The *Turner* court could not undo the appellants' incarceration, but the court could and did relieve the appellants of the collateral consequences of the incarceration. The court found that the court below lacked jurisdiction and so its order was void and the appellants contempt citations were reversed.⁴³ Here, FOCC recognizes that the Board does not have the authority to review the validity of La Center's and Ridgefield's annexation ordinances, but the Board can still order the County to comply with the GMA. So can this Court. The Board and the court can provide FOCC with effective relief.

La Center and Ridgefield can assist the County, either by de-annexing the land or designating it as agricultural lands of long-term commercial

⁴² *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658, 659 (1983).

⁴³ *Turner*, 98 Wn.2d at 739, 658 P.2d at 662.

significance (ALLTCS).⁴⁴ La Center and Ridgefield are parties to the case and so are bound by the Board and Court orders. City comprehensive plans and development regulations must comply with countywide planning policies (CPPs).⁴⁵ CPP 3.0.2 and CPP 4.1.2 provide in relevant part that “[t]he county and each municipality shall cooperate to ensure the preservation and protection of natural resources ... within and near the urban area through adequate and compatible policies and regulations.”⁴⁶ “[N]atural resources” include “farmland.”⁴⁷ So the cities could comply with the CPPs and FOCC will be given adequate relief, the conservation of the annexed agricultural land. Or if the existing CPPs are not adequate, the County could adopt a new one. Or the County could use its SEPA authority to condition the designation of the new UGAs to require the conservation of the agricultural land.⁴⁸

⁴⁴ RCW 35A.16.080; RCW 35A.16.010; RCW 36.70A.170(1) “each county, and each city, shall designate where appropriate: ... (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products”

⁴⁵ *King Cty.*, 138 Wn.2d at 175 – 76, 979 P.2d at 380. Countywide planning policies are binding on county and city comprehensive plans and development regulations, *accord* RCW 36.70A.210(1).

⁴⁶ AR 000421 & AR 000446.

⁴⁷ AR 000416.

⁴⁸ *Dep't of Nat. Res. v. Thurston Cty.*, 92 Wn.2d 656, 664, 601 P.2d 494, 498 (1979) “*See* RCW 43.21C.060, a provision of SEPA recognizing the authority of the governmental decision-making body to condition or deny a request for action on the basis of specific adverse environmental impacts.”

The Ridgefield Opening Brief argues that the City cannot simply de-annex or re-designate the Brown annexation pointing out that to de-annex the City must receive a petition signed by 100 percent of the landowners or the de-annexation must be approved by the voters. But the cities can ask the landowners to sign a petition. If they do not, the cities can put the de-annexation to a vote. The cities have the power to both.⁴⁹ The cities, after adopting a purchase or transfer of development rights program, also have the authority to designate the lands as ALLTCS.⁵⁰ The County could help fund a purchase of development rights program with Conservation Futures funding.⁵¹

The county, cities, and developers argue that RCW 36.70A.110(1) requires that land in cities must be included in UGAs. While that is true, RCW 36.70A.110(1) does not specify what that land must be designated. The UGA expansions could be designated as ALLTCS consistent with the CPPs.

The GMA, in RCW 36.70A.320(1), provides that “comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.” A presumption

⁴⁹ RCW 35A.16.080; RCW 35A.16.010.

⁵⁰ RCW 36.70A.170(1); RCW 36.70A.060(4).

⁵¹ AR 000527 – 28, AR 000761.

“relates only to a rule of law as to which party shall first go forward and produce evidence to sustain the matter in issue”⁵²

The legislature did not include in the GMA a provision that reads that any action a county or city takes under the color of a comprehensive plan or development regulation under appeal is valid if undertaken before the Board issues a decision. The legislature could have done that but did not.

Instead, RCW 36.70A.330 provides in relevant part that:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order.

So, after the Board concludes that the GMA is violated, the Board does not ask whether the county or city took actions that make compliance difficult. RCW 36.70A.330(2) requires the Board to “issue a finding of compliance or noncompliance ...” with the GMA.⁵³ RCW 36.70A.330 does not provide that if a county or city took some action during the pendency of an appeal that makes bringing the comprehensive plan or

⁵² *Bradley v. S.L. Savidge, Inc.*, 13 Wn.2d 28, 42, 123 P.2d 780, 786 – 87 (1942).

⁵³ *King Cty.*, 138 Wn.2d at 177 – 78, 979 P.2d at 382.

development regulation into compliance with the GMA harder, then the GMA violation complies with the GMA.

Invalidity does not have this effect either. While invalidity is prospective only, invalidity provides that a “development permit application not vested under state or local law before receipt of the board’s order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.”⁵⁴ While a determination of invalidity does not apply to previously vested development permits or certain excluded development permits, neither invalidity nor a lack of invalidity converts an illegal UGA into a legal UGA.⁵⁵ Annexations do not vest to existing policies and regulations.⁵⁶ And the LLC Opening Brief fails to identify any state law, court decision, or county or city ordinance that provides that an annexation vests any rights.⁵⁷

⁵⁴ RCW 36.70A.302(3)(a).

⁵⁵ RCW 36.70A.302; *King Cty.*, 138 Wn.2d at 177, 979 P.2d at 382.

⁵⁶ *Town of Woodway v. Snohomish Cty.*, 180 Wash. 2d 165, 173, 322 P.3d 1219, 1223 (2014) “While it originated at common law, the vested rights doctrine is now statutory. *Erickson & Assocs. v. McLerran*, 123 Wn.2d 864, 867 – 68, 872 P.2d 1090 (1994); RCW 19.27.095(1) (building permits); RCW 58.17.033(1) (subdivision applications); RCW 36.70B.180 (development agreements)[;]” *Vashon Island Comm. for Self-Gov’t v. Washington State Boundary Review Bd. for King Cty.*, 127 Wn.2d 759, 768 – 69, 903 P.2d 953, 958 (1995); Roger D. Wynne, *Washington’s Vested Rights Doctrine: How We Have Muddled a Simple Concept and How We Can Reclaim It*, 24 SEATTLE U. L. REV. 851, 866 fn. 38 (2001) the vested rights “doctrine does not apply to annexation proceedings ...”

⁵⁷ LLC Opening Brief pp. 29 – 32.

This is why the *Clark County* decision concluded that counties and cities cannot rely on appealed UGA expansions.⁵⁸ The County points to Justice Stephens' concurring opinion in *Clark County* for the proposition that this case is moot as to the annexed ALLTCS dedesignations. While Justice Stephens' did conclude that the appeal as it related to the annexed lands was moot, the majority did not.⁵⁹ Further, Justice Stephens did not address a County's duty to adopt a new UGA where the old one was invalid.⁶⁰ Nor did Justice Stephens consider the CPP requirements. This concurrence does not show this case is moot.

This reading of the GMA is also consistent with the *Miotke v. Spokane County* decision which required the county to show that it had brought an invalid provision into compliance with the GMA.⁶¹ In *Miotke*, Spokane County expanded its UGA to include additional land and the Board found this UGA expansion violated the GMA. The Board found the UGA expansion violated the GMA and entered an order of invalidity as the Board did in this case.⁶²

⁵⁸ *Clark Cty.*, 161 Wn. App. at 224 – 26, 254 P.3d at 870 – 71.

⁵⁹ *Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 149, 298 P.3d 704, 710 (2013) (concurring opinion); *Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 148, 298 P.3d 704, 710 (2013) (conclusion of the majority).

⁶⁰ *Clark Cty.*, 177 Wn.2d at 148–49, 298 P.3d at 710.

⁶¹ *Miotke v. Spokane Cty.*, 181 Wn. App. 369, 373, 325 P.3d 434, 436 – 37, *review denied*, 181 Wn.2d 1010, 335 P.3d 941 (2014).

⁶² *Id.*; AR 010554 – 55, FDO, at 98 – 99 of 101.

During the Board’s consideration of the appeal of the expanded UGA, urban development rights vested within the newly-expanded UGA⁶³ and urban development occurred within the expanded UGA.⁶⁴ While Spokane County repealed the UGA expansion in an attempt to cure this violation,⁶⁵ the repeal did not resolve the issue of allowing the vested urban development outside the UGA. The *Miotke* court concluded that just repealing the UGA did not comply with the GMA because it failed to address the development that had occurred in violation of the GMA.⁶⁶ Thus, the *Miotke* court ordered Spokane County to go back and to produce evidence that the county had fixed its GMA violation.⁶⁷

The *Miotke* court rejected Spokane County’s assertion that since the development had vested the county had no obligation to remedy that GMA violation, stating that: “[w]e reject the County’s argument that the vested rights doctrine relieved the County of its burden to show compliance with the GMA.”⁶⁸ Similarly, this Court should reject any arguments that any annexations excuse Clark County from complying with the GMA.

⁶³ *Miotke*, 181 Wn. App. at 373, 325 P.3d at 437. *Miotke* was decided by this Court.

⁶⁴ *Id.*

⁶⁵ *Miotke*, 181 Wn. App. at 374, 325 P.3d at 437.

⁶⁶ *Miotke*, 181 Wn. App. at 384 – 85, 325 P.3d at 442 – 43.

⁶⁷ *Miotke*, 181 Wn. App. at 385, 325 P.3d at 442–43.

⁶⁸ *Miotke*, 181 Wn. App. at 380, 325 P.3d at 440.

This reading of the GMA is also consistent with the Washington State Supreme Court’s *King County* decision which “reinstate[d] the Board’s Order on Reconsideration requiring the County to justify or redesignate the Bear Creek UGA.”⁶⁹ And in *King County* the Board had not issued a determination of invalidity and the County, relying on the UGA and the urban designation, had approved a permit,⁷⁰ but the County was still required to show the UGA complied with the GMA or to redesignate it.⁷¹

The County claims that the cities “could, as a matter of law, properly annex the land within their respective UGAs into their incorporated limits.”⁷² But as a matter of law, the cities can also properly de-annex those lands or designate them as ALLTCS.⁷³

The County, cities, and developers all cite various Board decisions concluding that annexations moot out appeals. But these decisions assume the County can no longer act to correct the GMA violations.⁷⁴ They do not discuss that County comprehensive plans designate UGAs, not city

⁶⁹ *King Cty.*, 138 Wn.2d at 177, 979 P.2d at 382.

⁷⁰ *King Cty.*, 138 Wn.2d at 182 – 83, 979 P.2d at 384 – 85.

⁷¹ *King Cty.*, 138 Wn.2d at 177, 979 P.2d at 382.

⁷² Opening Brief of Petitioner Clark County p. 11.

⁷³ RCW 35A.16.080; RCW 35A.16.010; RCW 36.70A.170(1) “each county, and each city, shall designate where appropriate: ... (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products ...”

⁷⁴ See for example *Karpinski v. Clark County*, WWGMHB Case No. 07-2-0027, Compliance Order (Oct. 28, 2009), at 9 of 11 accessed on Sept. 6, 2018 at: <http://www.gmhba.wa.gov/search/case>

comprehensive plans.⁷⁵ As was argued above, Clark County is required to take legislation action to readopt UGAs for the two UGA expansions. The cited Board decisions were wrongly decided.

The Ridgefield Opening Brief argues that the legislature’s failure to adopt a bill in 2007 implies legislative agreement with the current interpretation of the statute, apparently that annexations moot out appeals. The Washington Supreme Court concluded that the rule that failing to amend a law constitutes legislative acquiescence in an interpretation of a law “does not apply here, where the administrative interpretation is not by regulation or rule but is, instead, included in a ruling in a contested case and where the interpretation is not consistent within the tribunals charged with hearing petitions under the statute.”⁷⁶ The decisions on mootness the City and others cite are contested case rulings and the Board decisions in this case concluding the annexations do not moot out the appeals show the tribunal has different interpretations of the GMA on this question.⁷⁷

The LCC Opening Brief argues that the Board’s recognition that annexations do not moot UGA appeals is arbitrary and capricious. But as was argued above, this interpretation is supported by the GMA.

⁷⁵ RCW 36.70A.110(6).

⁷⁶ *Skagit Surveyors & Engineers, LLC v. Friends of Skagit Cty.*, 135 Wn.2d 542, 566, 958 P.2d 962, 974 (1998). This decision addressed the interpretation of the GMA. *Id.*

⁷⁷ AR 010477 – 81 & AR 010492 – 99, FDO, at 21 –25 & 36 – 43 of 101; CAR 001581, Order on Compliance, at 18 of 29.

3. The Board correctly concluded the UGA expansions were not needed to accommodate the next 20 years of planned growth violating the GMA

The Board held that the La Center and Ridgefield UGA expansions violated the GMA because they were not needed to accommodate the cities 20-year population and employment projections.⁷⁸ The State Supreme Court has held that an “UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by the [Washington State Office of Financial Management] OFM, plus a reasonable land market supply factor.”⁷⁹ The existing UGAs had a capacity for 136,820 more people and a projected increase of 128,596 people.⁸⁰ The Buildable Lands Report concluded the existing UGAs had a capacity for 101,153 jobs and a chosen target of 91,200 net new jobs.⁸¹ The employment target was later increased to 101,153 jobs equal to the capacity in the Buildable Lands Report.⁸²

La Center errs in assuming there is a direct connection between the population and employment targets. The County “chose to plan for a total of 91,200 net new jobs,” later increased to 101,153 jobs.⁸³ But if the jobs

⁷⁸ AR 010478 – 79, FDO, at 22 – 23 of 101.

⁷⁹ *Thurston Cty. v. Western Washington Growth Management Hearings Bd.*, 164 Wn.2d 329, 351 – 52, 190 P.3d 38, 48 – 49 (2008). See RCW 36.70A.110 and RCW 36.70A.115 which limit the size of UGAs.

⁸⁰ AR 002358; AR 007472; AR 007477.

⁸¹ AR 002358.

⁸² AR 007141; AR 002358.

⁸³ AR 002358; AR 007141.

projection was based on the net new increase in population, the net new jobs projection would be 48,341 jobs countywide.⁸⁴ If it was based on the total population increase it would be 72,779 net new jobs countywide.⁸⁵ Both of these numbers are much less than the target of 101,153 jobs.⁸⁶ This difference shows there is no direct connection between population and jobs in the County's projections. La Center's 20-year employment allocation is an increase of 1,324 jobs which exceeds the capacity of the expanded UGA and is equal to the capacity of the pre-expansion UGA.⁸⁷ The table La Center points to only includes "[p]opulation [a]llocations."⁸⁸

The city comprehensive plans confirm that the cities had adequate housing and employment capacity. The *La Center Comprehensive Plan* identifies the capacity for 1,324 new jobs exclusive of the UGA expansion, the UGA expansion was for employment capacity.⁸⁹ There is also additional capacity in the Mixed Use and Residential Professional

⁸⁴ AR 007472. The total net population increase was 128,586, dividing that by 2.66 persons per household yields 48,341 households and at one job per household that yields 48,341 net new jobs.

⁸⁵ If employment was calculated based on total population the target would be 577,431 divided by 2.66 yielding 217,079 total households and jobs. Subtracting the 144,300 jobs in the County in 2014, yields a net increase of 72,779 new jobs. AR 007472; AR 002354.

⁸⁶ AR 007141.

⁸⁷ AR 007141; AR 007478; AR 002361.

⁸⁸ AR 007472 Table 2.

⁸⁹ CAR 001006.

zoning districts.⁹⁰ La Center’s 20-year employment allocation is an increase of 1,324 jobs.⁹¹

The *City of Ridgefield Comprehensive Plan* identifies 1,070.2 net acres of developable land in the UGA capable of producing 7,392 housing units.⁹² At 2.66 people per housing unit, these are enough housing units to accommodate 19,662 net new residents, larger than the City’s population allocation of 18,919.⁹³ Therefore, the Board correctly concluded that Ordinance 2016-06-12 which expanded the La Center UGA by 56 acres and the Ridgefield UGA by 111 acres violates the GMA.⁹⁴

4. The Board correctly concluded the agricultural lands of long-term commercial significance (ALLTCS) dedesignations violated the GMA because the County did not do an area-wide analysis

WAC 365-190-050(1) requires that in “designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process.” WAC 365-190-040(10)(b) also requires “a county-wide or regional process” when amending designations of ALLTCS. These WACs were adopted under the authority of RCW 36.70A.050 and RCW 36.70A.190.⁹⁵ RCW 36.70A.190(4)(b) requires the State of Washington

⁹⁰ CAR 001006.

⁹¹ AR 007141.

⁹² CAR 001016.

⁹³ CAR 001016; AR 007477; AR 007472.

⁹⁴ AR 006868 – 71; AR 010478 – 79, FDO, at 22 – 23 of 101.

⁹⁵ See the squibs following WAC 365-190-040 and WAC 365-190-050.

Department of Commerce to “[a]dopt[] by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter.” WAC 365-190-040 and WAC 365-190-050 are rules adopting procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations so they are adopted under the authority of RCW 36.70A.190(4). RCW 36.70A.320(3) requires that when deciding appeals, the Board “shall consider the criteria adopted by the department under RCW 36.70A.190(4).” These WACs are also part of the “minimum guidelines that apply to all jurisdictions” and are to guide the designation of ALLTCS.⁹⁶ When WAC 365-190-050 uses mandatory language, local governments are required to use that provision.⁹⁷

In *Futurewise v. Benton County*, the Board reversed a county dedesignation of ALLTCS to put the land in an UGA.⁹⁸ Benton County dedesignated 1,263 acres without conducting a countywide or area-wide study of the agricultural lands in the area violating WAC 365-190-050 and RCW 36.70A.030, RCW 36.70A.050, and RCW 36.70A.170.⁹⁹ Contrary to argument of Ridgefield’s Opening Brief, on page 23, that “area” spans

⁹⁶ RCW 36.70A.050(3).

⁹⁷ *Clark Cty.*, 161 Wn. App. at 232 – 33, 254 P.3d at 875.

⁹⁸ *Futurewise v. Benton County*, EWGMHB Case No. 14-1-0003, Final Decision and Order (Oct. 15, 2014), at 37 of 38, 2014 WL 7505300, at *23 – 24.

⁹⁹ *Id.* at 35 & 37 of 38, 2014 WL 7505300, at *22 – 23.

from part of a town up to a part of the world, the most applicable first definition of “area” is “a definitely bounded piece of ground set aside for a specific use or purpose”¹⁰⁰ Applying this definition to the dedesignation of ALLTCS, the “area” studied should be the contiguous ALLTCS. The County did not do this for either La Center or Ridgefield.¹⁰¹ We also know what an area is not, both WAC 365-190-040(1)(b) and WAC 365-190-050(1) provide that “Counties and cities should not review natural resource lands designations solely on a parcel-by-parcel process.”¹⁰² The La Center dedesignation study only considered two of three parcels and the Ridgefield dedesignation study only considered the 18 dedesignated parcels for compliance with some of the ALLTCS criteria.¹⁰³

Similar to the 1,263 acres dedesignated in *Futurewise v. Benton County*, the 168 acres that Amended Ordinance 2016-06-12 dedesignated and included in the UGAs was part of a larger area.¹⁰⁴ The Agriculture (ALLTCS) designation runs from Ridgefield to north of La Center.¹⁰⁵ So

¹⁰⁰ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 115 (2002). When interpreting the GMA, courts often use Webster’s Third New International Dictionary. *Quadrant Corp.*, 154 Wn.2d at 239, 110 P.3d at 1140.

¹⁰¹ AR 007158 – 80; AR 008009 – 19.

¹⁰² WAC 365-190-050(1) omits the word “natural,” but otherwise the sentence is identical.

¹⁰³ AR 006868 – 71; AR 007158 – 66; AR 000639; AR 007998 – 19; AR 000640; AR 010408. Enclosed as Exhibit A to this brief.

¹⁰⁴ AR 002408; AR 002465 – 66.

¹⁰⁵ AR 002408; AR 002465 – 66; AR 006868 – 71.

considering the dedesignation of the 168 acres as two isolated areas, as Clark County did,¹⁰⁶ violates WAC 365-190-040, WAC 365-190-050, and the GMA, just as the land dedesignated in *Futurewise v. Benton County* did.

The 3B Opening Brief cited to the 2005 Globalwise report as an area-wide study, but the 2005 report only analyzed part of the land dedesignated, two parcels consisting of 44.1 acres out of the 55.04 acres dedesignated,¹⁰⁷ so it did not even analyze the entire dedesignation, let alone conduct an area-wide review of the ALLTCS in the area.¹⁰⁸ Contrary to the 3B Opening Brief, the LCC Opening Brief, and the Ridgefield Opening Brief, the 2007 Globalwise report did not analyze whether, either countywide or area-wide, the La Center or Ridgefield farmland met the GMA or county criteria for designating ALLTCS.¹⁰⁹ The “LB-1” analysis near La Center was not countywide, regional, or area-wide either, it only looked at 575.91 acres and did not include all of the “Agriculture” (ALLTCS) designation northwest of La Center.¹¹⁰ The 3B Opening Brief

¹⁰⁶ AR 005026.

¹⁰⁷ AR 000359; AR 007158 – 80.

¹⁰⁸ AR 007158 – 80; AR 002465 – 66; AR 010408; AR 010410; AR 010412; AR 010414.

¹⁰⁹ AR 007210 – 79; AR 033405 – 74.

¹¹⁰ AR 007205 – 06; AR 002458; AR 002459; AR 002465 – 66; AR 010408; AR 010410; AR 010412; AR 010414; AR 010447.

says that a 2016 Globalwise letter contains the area-wide analysis, but that letter just refers back to these two old studies.¹¹¹

The La Center Opening Brief, on pages 9 and 37, quotes that same letter as evidence that including the 55.04 acres in the UGA “will have no effect on the long-term commercial use of remaining Ag-20 designated land ...” But as the 3B Opening Brief writes, on page 20, “the grasses that grow on the property ... is cut by a neighbor who feeds it to his livestock.” How will the neighbor obtain livestock feed once the land is paved over? Globalwise seems unaware of this impact and the adverse effect of the ALLTCS dedesignation on the neighbor and the remaining ALLTCS in the area.¹¹²

The Ridgefield agricultural analysis only analyzed the 18 parcels owned by the LCCs against some of the long-term commercial significance criteria.¹¹³ Neither that report nor Globalwise’s March 5, 2015, letter analyzed any of the adjoining properties for compliance with the GMA or County criteria for agricultural lands.¹¹⁴

Contrary to arguments that WAC 365-190-040(10)(b)’s command that “[i]n classifying and designating natural resource lands, counties must

¹¹¹ AR 007202 – 09, Globalwise Letter (May 26, 2016) and enclosures.

¹¹² AR 007202 – 03.

¹¹³ AR 008009 – 19.

¹¹⁴ AR 008009 – 19; AR 008268 – 69; *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

approach the effort as a county-wide or regional process” does not apply to amendments or dedesignations of ALLTCS, WAC 365-190-040(3) provides in part that “[t]he process description and recommendations in this section incorporate those clarifications and describe both the initial designation and conservation or protection of natural resource lands and critical areas, as well as subsequent local actions to amend those designations and provisions.” Further, WAC 365-190-040(10)’s title is the “[d]esignation amendment process” and WAC 365-190-040(10)(b) is entitled “[r]eviewing natural resource lands designation.” The plain language of WAC 365-190-040 applies WAC 365-190-040(10)(b) to Clark County’s amendments dedesignating the ALLTCS in the La Center and Ridgefield UGA expansions. WAC 365-190-050 also applies to amendments to agricultural land dedesignations.¹¹⁵

When interpreting the GMA, it is read as a whole.¹¹⁶ RCW

36.70A.300(3) provides in relevant part that

the board shall either ... [f]ind that the state agency, county, or city is in compliance with the requirements of this chapter ... or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 ... or ... [f]ind that the state agency, county, or city is not in

¹¹⁵ *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 780–82, 193 P.3d 1077, 1083–84 (2008); *Yakima Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 688 – 96, 192 P.3d 12, 17–20 (2008).

¹¹⁶ *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000).

compliance with the requirements of this chapter or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city.

The La Center Opening Brief, on pages 29 to 31, argues the use of “is” in RCW 36.70A.300(3) means that since the cities annexed the UGA expansions before the Board issued its FDO, the Board had to find the County in compliance on the UGA issues since cities must be in UGAs, the cities did not have transfer or purchase of development rights programs prohibiting ALLTCS in the UGAs, and “is” implies currently. This argument fails. RCW 36.70A.300(3) requires the Board to decide compliance “as it relates to adoption of plans, development regulations, and amendments thereto ...” “Relate” means “to show or establish a logical or causal connection between ... <utterly unable to [relate] these two events>”¹¹⁷ So, the Board looks to the circumstances that have a logical or causal connection to the adoption of the amendments, not to the date the FDO is issued or some other date. When the County adopted the UGA expansions the lands were designated Agriculture and in the County outside UGAs.¹¹⁸

¹¹⁷ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1916 (2002)

¹¹⁸ AR 006877.

This Court recognized that when reviewing comprehensive plan and development regulation updates, the courts look to the “time of the County’s decision ...”¹¹⁹ As the court concluded when considering an ALLTCS dedesignation during the 2007 update of the *Clark County Comprehensive Plan*, “when the County made its decision under the then existing circumstances as we understand them, and in light of the deference to the 2004 ALLTCS land designations, the parcels continued to meet the requirements of the *Lewis County* test.”¹²⁰ This approach is well grounded in the plain language of the GMA.

Ridgefield’s Opening Brief confuses the WAC 365-190-050(1)’s and WAC 365-190-040(10)(b)’s requirements for a county-wide, area-wide, or regional analysis with WAC 365-190-050(5)’s requirement that when applying the designation criteria in WAC 365-190-050(3)(c) there must be designated enough agricultural land to maintain and enhance the economic viability of the industry. Blending these requirements together, the Ridgefield Opening Brief on page 23 concluded that the Board equated area with countywide. But this the Board did not do. The Board correctly interpreted them as separate but related requirements¹²¹ and concluded the

¹¹⁹ *Clark Cty.*, 161 Wn. App. at 243, 254 P.3d at 880.

¹²⁰ *Clark Cty.*, 161 Wn. App. at 244, 254 P.3d at 880.

¹²¹ AR 010493 – 99, FDO, at 37 – 43 of 101.

County should have complied with all of them by preparing an area- or county-wide analysis which the county failed to do.¹²²

The Ridgefield Opening Brief, on pages 25 to 27, argues that the Board failed to defer to the County's determination as to "area-wide." But Ridgefield never cites to the County determination. Amended Ordinance No. 2016-06-12 and the comprehensive plan and development regulations the ordinance adopted never determined what "area-wide" is.¹²³ The Board had nothing to defer to.

The Board correctly interpreted the GMA in concluding that an area wide approach is required to dedesignated ALLTCS. The Board's conclusion that Clark County did not take an area-wide approach to the ALLTCS dedesignations is supported by substantial evidence.¹²⁴

5. The ALLTCS dedesignations violated the GMA because the farmland meets the *Lewis County* criteria

If the Court concludes that Clark County undertook an area-wide analysis, the Board should be upheld because the land meets the *Lewis County* criteria. The state supreme court has identified a three-part test for designating agricultural land of long-term commercial significance.¹²⁵

¹²² AR 010499, FDO, at 43 of 101.

¹²³ AR 000238 – 773; AR 006868 – 76.

¹²⁴ AR 010495 – 99, FDO, at 39 – 43 of 101.

¹²⁵ *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

Clark County designated the properties in the La Center and Ridgefield UGA expansions as ALLTCS.¹²⁶ The La Center UGA expansion was part of LB-1, which the court of appeals found was illegally dedesignated in 2007 and illegally incorporated into the La Center UGA.¹²⁷ In designating agricultural land, Clark County followed a reasoned process and considered the GMA's mandate and goals and requirements, and found that these lands must be conserved.¹²⁸ That earlier decision was correct and the land in the two UGA expansions still meet the GMA, Clark County, and WAC 365-190-050 criteria.

(a) The expansions are not “characterized by urban growth”

The first *Lewis County* factor is that the agricultural land is not already characterized by urban growth.¹²⁹ None of the 56.66 acres added to the La Center UGA are characterized by urban growth.¹³⁰ Except for the convenience store and gas station at the northeast intersection of NW Paradise Park Road and NW La Center Road (parcel 209738000) and the school bus facility (parcel 209699000), neither are the adjoining lots in La Center or any of the nearby agricultural and rural lots.¹³¹

¹²⁶ AR 002465 – 66; AR 002408.

¹²⁷ *Clark Cty.*, 161 Wn. App. at 238, 254 P.3d at 878; AR 002459.

¹²⁸ AR 001416 – 17.

¹²⁹ *Lewis Cty.*, 157 Wn.2d at 502, 139 P.3d at 1103.

¹³⁰ AR 002480; AR 006794 – 96, AR 006735 – 41, AR 006747 – 6855.

¹³¹ AR 002480; AR 002475 – 79; AR 006730 – 006854; There is urban development, the school bus facility on parcel 209699000, AR 006735 – 41, but it is separated from the UGA expansion by the narrow part of parcel 209749000. AR 006812.

3B claims that its property is encircled by urban growth.¹³² This is simply not true. Immediately north of the 3B property, parcel 209746000, is parcel 209749000, an 18.43-acre parcel in the agricultural current use taxation program, with one house, currently used for agriculture, and in an Agriculture comprehensive plan designation.¹³³ There are other parcels of agricultural land adjacent to parcel 209749000.¹³⁴ The Cowlitz Tribe's casino is separated from the UGA expansion and La Center by the four lanes of I-5.¹³⁵

None of the 111 acres added to the Ridgefield UGA are characterized by urban growth.¹³⁶ Except for a few small lots, neither are the adjoining lots in Ridgefield or any of the nearby agricultural and rural lots.¹³⁷

(b) The land is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2)

The second *Lewis County* factor is that “agricultural land is land: ... that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics

¹³² Brief of 3B NW LLC pp. 8 – 9 and pp. 13 – 14.

¹³³ AR 006800; AR 006810 – 12.

¹³⁴ AR 006810; AR 002480.

¹³⁵ AR 007167.

¹³⁶ AR 006222 – 6313.

¹³⁷ AR 006222 – 6401.

....”¹³⁸ The agricultural products enumerated in RCW 36.70A.030(2) include “dairy, apiary, vegetable, or animal products or ... berries, grain, hay, straw, turf, seed, ... or livestock”

The area in which the La Center UGA expansion is located is both used and capable of being used for agriculture. The 2015 Google Earth image shows that the 56.66 acres and many of the properties in the vicinity are currently farmed.¹³⁹ Of the 56.66 acres, 44.1 acres are in the agriculture current use taxation program, so the property is used for agriculture.¹⁴⁰ The UGA expansion also has soils capable of agriculture.¹⁴¹

The area in which the Ridgefield UGA expansion is located is both used and capable of being used for agriculture. The 2015 Google Earth image shows that the 111 acres and many of the properties in the vicinity are currently farmed.¹⁴² The 111 acres are in the agriculture current use taxation program, so the property is used for agriculture.¹⁴³ The Clark County Food System Council has identified nearly all of the 111 acres and much of the land in its vicinity as “Clark County’s Best Farm Land.”¹⁴⁴ The Clark County Food System Council identified this land “by looking at

¹³⁸ *Lewis Cty.*, 157 Wn.2d at 502, 139 P.3d at 1103.

¹³⁹ AR 002480.

¹⁴⁰ AR 002475; AR 006747 – 49; AR 006797 – 6804.

¹⁴¹ AR 006720 – 28; AR 002425.

¹⁴² AR 002424.

¹⁴³ AR 002418 – 22; see also AR 006222 – 6313.

¹⁴⁴ AR 002432.

characteristics of the land that make it suitable for food production.”¹⁴⁵

These included land capability 1 through 4 soils, land that is flat and rolling, lands that have at least four acres outside the buffers around stream habitats, and “lands that are currently zoned for agriculture or rural residences.”¹⁴⁶

(c) The land has long-term commercial significance

The third *Lewis County* factor is that “agricultural land is land: ... (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses.”¹⁴⁷ The soil map and soil descriptions for the La Center UGA expansion document that over 97.3 percent of the UGA expansion has Land Capability 1 through 4 soils.¹⁴⁸ These are agriculturally productive soils.¹⁴⁹ Most of the nearby lands also have these high quality agricultural soils.¹⁵⁰

In addition, 44 percent of the La Center UGA expansion has prime farmland.¹⁵¹ “Prime farmland is land that has the best combination of

¹⁴⁵ AR 002433.

¹⁴⁶ AR 002433.

¹⁴⁷ *Lewis Cty.*, 157 Wn.2d at 502, 139 P.3d at 1103.

¹⁴⁸ AR 002468 – 70; AR 006720 – 28.

¹⁴⁹ AR 002425.

¹⁵⁰ AR 002458 – 59.

¹⁵¹ AR 002152; AR 002469; AR 006720 – 28. WAC 365-190-050(3)(c)(i) recommends considering prime and unique farmland soils as mapped by the Natural Resources Conservation Service when designating agricultural land.

physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water).”¹⁵² Another 29 percent has farmland of statewide importance soils.¹⁵³ These are productive agricultural soils.¹⁵⁴

Over 91 percent of the Ridgefield UGA expansion has Land Capability 1 through 4 soils.¹⁵⁵ These are agriculturally productive soils.¹⁵⁶ Most of the nearby lands also have these high quality agricultural soils.¹⁵⁷ In addition, 69 percent of the Ridgefield UGA expansion has prime farmland.¹⁵⁸ Another 11 percent has farmland of statewide importance soils.¹⁵⁹

The productivity of these soils is confirmed by the *County Comprehensive Plan 2004-2024*:

The maps were used [in the 1990s] to identify Clark County’s most productive farmland. This process identified farm areas that included major patterns of high quality soils and agricultural activity in areas with generally larger parcels.¹⁶⁰

¹⁵² 7 CFR § 657.5(a)(1).

¹⁵³ AR 002469; AR 006720 – 28.

¹⁵⁴ 7 CFR § 657.5(c).

¹⁵⁵ AR 002423; AR 006210 – 20.

¹⁵⁶ AR 002425.

¹⁵⁷ AR 002432 – 33.

¹⁵⁸ AR 002152; AR 002423; AR 006210 – 20.

¹⁵⁹ AR 002423; AR 006210 – 20.

¹⁶⁰ AR 001417, *accord* AR 000418, *Comp Plan 2015-2035* p. 86.

The soils, growing capacity, and productivity show the UGA expansions have long-term commercial significance. According to the Clark County “Building Permit History” webpages, there have not been any urban development permits issued within the UGA expansions.¹⁶¹ The only urban development permits nearby were for the convenience store and gas station on parcel 209738000 and the school bus facility on parcel 209699000, including adjacent parcels in La Center and Ridgefield.¹⁶² So these areas are not near population areas and are not vulnerable to more intense uses, especially if the areas retain their protective Agriculture designation and zoning. Since these lands qualify to be designated as ALLTCS, Clark County is “required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.”¹⁶³ Therefore, under the statutory factors in RCW 36.70A.030(10) the UGA expansions have long-term commercial significance.

The County also considered, and continues to use, long-term commercial significance factors based on an earlier version of WAC 365-

¹⁶¹ AR 002418 – 22; AR 002475 – 79.

¹⁶² AR 002418 – 22; AR 002475 – 79; AR 006730 – 6855 (La Center UGA expansion); AR 006222 – 6401 (Ridgefield UGA expansion).

¹⁶³ *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000) emphasis in original.

190-050.¹⁶⁴ The current version of WAC 365-190-050 calls for considering additional factors. One was noted above in the soils discussion; the rest are analyzed below with the County factors. All of the factors except land values under alternative uses show the UGA expansions qualify as ALLTCS.

(i) The availability of public facilities. WAC 365-190-050(3)(c)(ii)

Neither La Center, nor any other public facility provider, has water or sewer facilities to serve any of the UGA expansion and the vicinity.¹⁶⁵ 3B claims water and sewer services are a “very short distance” from their property but does not cite to any evidence in the record for this claim.¹⁶⁶ No other urban public facilities within the UGA expansion, other than streets and roads, serve the UGA expansion area.¹⁶⁷ The City of Ridgefield does not have water or sewer facilities to serve the UGA expansion or its vicinity.¹⁶⁸ There is no evidence of any other urban public facilities serving the UGA expansions.¹⁶⁹

(ii) Tax status. WAC 365-190-050(3)(c)(iii)

¹⁶⁴ AR 001416; AR 000417 – 18, *Comp Plan 2015-2035* pp. 85 – 86.

¹⁶⁵ AR 006614 – 15, AR 006619, *La Center Junction Subarea Plan*.

¹⁶⁶ 3B Opening Brief p. 10, see also p. 9 & pp. 16 – 19 which include similar claims, but no citation to the record. 3B provides no evidence that any of the claimed facilities were in place when the County approved the dedesignations or are now in place.

¹⁶⁷ AR 006613 – 17.

¹⁶⁸ AR 006006 – 07.

¹⁶⁹ AR 006747 – 61, AR 006797 – 6808 (La Center UGA expansion); AR 006222 – 6313 (Ridgefield UGA expansion).

In the La Center UGA expansion, 44.1 acres of the 56.66 acres, 78 percent, is in the agriculture current use taxation program.¹⁷⁰ So the property is used for agriculture and many neighboring parcels are in the agriculture current use taxation program.¹⁷¹ All of the land in the Ridgefield UGA expansion and many neighboring parcels are in the agriculture current use taxation program.¹⁷²

(iii) The availability of public services. WAC 365-190-050(3)(c)(iv)

No urban public services served the UGA expansions or vicinity when they were dedesignated.¹⁷³

(iv) Relationship or proximity to urban growth areas. WAC 365-190-050(3)(c)(v)

While the La Center UGA expansion abuts the City, most of the area is separated from the UGA by a road, was outside the UGA, and was designated as ALLTCS.¹⁷⁴ Except for the convenience store and gas station, there is currently no urban development on the UGA expansion or immediately south in La Center.¹⁷⁵ As was documented above, there are no

¹⁷⁰ AR 002475; AR 006747 – 61, AR 006797 – 6808.

¹⁷¹ AR 002475 – 79; AR 006730 – 6855 (La Center UGA expansion vicinity); AR 002458 – 59.

¹⁷² AR 2418 – 22; AR 006222 – 6313; AR 006314 – 6401 (Ridgefield UGA expansion vicinity).

¹⁷³ AR 006613 – 17, AR 006619; AR 006730 – 6855; AR 006006 – 07; AR 006222 – 6401.

¹⁷⁴ AR 006747 – 61, AR 006797 – 6808.

¹⁷⁵ AR 002480; AR 006730 – 6855.

urban serving public facilities or services available to the UGA expansion. As was documented in Section IV.B.3 of this brief, there is no need to expand the La Center UGA for commercial uses as is proposed here. So, this area does not have a relationship with the UGA that indicates it needs to be included.

While the Ridgefield UGA expansion abuts the city and the UGA, it was outside of the UGA and designated as ALLTCS.¹⁷⁶ When the County approved the UGA expansion, there was no urban development on the UGA expansion or immediately south in Ridgefield.¹⁷⁷ As was documented above, there were no urban serving public facilities or services available to the UGA expansion when it was approved. As was also documented in Section IV.B.3, there is no need to expand the Ridgefield UGA. This area does not have a relationship with the UGA that indicates it needs to be included.

(v) Predominant parcel size. WAC 365-190-050(3)(c)(vi)

The La Center UGA expansion has a 24.1-acre lot, a 12.45-acre lot, and a 20-acre lot.¹⁷⁸ The 24.1 and 20 acre lots have a common owner.¹⁷⁹

¹⁷⁶ AR 002424; AR 006222 – 6313.

¹⁷⁷ AR 002424; AR 006222 – 6401.

¹⁷⁸ AR 006747 – 61; AR 006797 – 6808.

¹⁷⁹ AR 006747 – 61; AR 006797 – 6808; AR 002475.

Farms are often composed of multiple parcels of land.¹⁸⁰ The 44.1 acres is larger than Clark County's average farm size of 39 acres.¹⁸¹

The Ridgefield UGA expansion has lots ranging from just over five to 14 acres, the owners are related companies, and the land is managed as a unit.¹⁸² This can be seen in the aerial images where the plowing and fields cross property lines.¹⁸³ Farms are often composed of multiple parcels of land.¹⁸⁴ The 111 acres is larger than Clark County's average farm size of 39 acres.¹⁸⁵

(vi) Land use settlement patterns and their compatibility with agricultural practices. WAC 365-190-050(3)(c)(vii)

As was documented above, the uses near the La Center UGA expansion, including land in La Center, with only two exceptions, consist of agriculture and rural uses.¹⁸⁶ And most of La Center is across the road from the UGA expansion.¹⁸⁷ The uses near the proposed Ridgefield UGA expansion, including land in the City, consist of agriculture and rural

¹⁸⁰ AR 006133.

¹⁸¹ AR 006129.

¹⁸² AR 002418 – 22; AR 006222 – 6313.

¹⁸³ AR 002424; AR 006222 – 6313.

¹⁸⁴ AR 006133.

¹⁸⁵ AR 006129.

¹⁸⁶ AR 002480; AR 006730 – 6855.

¹⁸⁷ AR 002480; AR 006747 – 61, AR 006797 – 6808.

uses.¹⁸⁸ So the land settlement patterns are generally compatible with agriculture.

(vii) Intensity of nearby land uses. WAC 365-190-050(3)(c)(viii)

Again, the uses near the proposed La Center UGA expansion, including land in the City, with two exceptions, consisted of agriculture and rural type uses.¹⁸⁹ Most of La Center is across the road from the UGA expansion.¹⁹⁰ The uses near the Ridgefield UGA expansion, including land in Ridgefield, consisted of agriculture and rural type uses.¹⁹¹ So the intensity of nearby land uses are generally compatible with agriculture.

(viii) History of land development permits issued nearby. WAC 365-190-050(3)(c)(ix)

According to the Clark County “Building Permit History” webpages, there have not been any urban development permits in the La Center UGA expansion.¹⁹² The only urban development permits nearby were for the convenience store gas station on parcel 209738000 and the school bus facility on parcel 209699000, including adjacent parcels in La Center.¹⁹³ According to the “Building Permit History” webpages, there have not

¹⁸⁸ AR 002424; AR 006222 – 6401.

¹⁸⁹ AR 002480; AR 006730 – 6855.

¹⁹⁰ AR 002480; AR 006747 – 61, AR 006797 – 6808.

¹⁹¹ AR 002424; AR 006222 – 6401.

¹⁹² AR 002475; AR 006747 – 61, AR 006797 – 6808.

¹⁹³ AR 002475 – 79; AR 006730 – 6855; AR 2480.

been any urban development permits in the vicinity of the Ridgefield UGA expansion, including adjacent parcels in Ridgefield.¹⁹⁴

(iix) Land values under alternative uses. WAC 365-190-050(3)(c)(x)

The Washington State Supreme Court has noted that uses other than agriculture will always be more profitable and this alone does not justify the loss of natural resource land.¹⁹⁵ In the present case, there are numerous parcels that could be included in the La Center and Ridgefield UGAs without converting the agricultural land.¹⁹⁶ In addition, there is no need to expand the La Center or Ridgefield UGAs for residential or commercial development as was documented under Section IV.C.3 of this brief. Most of the land in the La Center UGA across from the UGA expansion is zoned commercial and vacant.¹⁹⁷ So land prices should not be the steering factor.

(ix) Proximity to markets. WAC 365-190-050(3)(c)(xi)

The La Center UGA expansion is close to La Center and has good access to I-5.¹⁹⁸ The Ridgefield UGA expansion is close to Ridgefield and has good access to I-5.¹⁹⁹ There are roads in both areas that can bring

¹⁹⁴ AR 006222 – 6401.

¹⁹⁵ *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 52 – 53, 959 P.2d 1091, 1097 (1998).

¹⁹⁶ AR 002885; AR 010408; AR 006868 – 71.

¹⁹⁷ AR 002480.

¹⁹⁸ AR 002480.

¹⁹⁹ AR 002424.

agricultural products to market.²⁰⁰ County farmers sell their products at local markets.²⁰¹ Two major poultry processors are in Western Washington,²⁰² so these areas have good access to them. The areas have access to I-5, which provides good access to regional livestock markets.²⁰³

(x) Purchase or transfer of development rights. WAC 365-190-050(3)(c)(iii)

In addition to considering tax status, WAC 365-190-050(3)(c)(iii) recommends that local governments consider whether there is the ability to purchase or transfer land development rights. Washington State has a purchase of development rights (PDR) program and agricultural land in Clark County, including the land in the UGA expansions, is eligible to participate.²⁰⁴ So does the Federal Government.²⁰⁵

(xi) Lands sufficient to maintain and enhance the economic viability of the agricultural industry.

WAC 365-190-050(5) provides that:

When applying the criteria in subsection (3)(c) of this section [the long-term commercial significance criteria], the process should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term; and to retain supporting

²⁰⁰ AR 002480; AR 002424. WAC 365-190-050(3)(c)(ii) recommends considering roads used in transporting agricultural products in designating agricultural land of long-term commercial significance.

²⁰¹ AR 006201.

²⁰² AR 006200.

²⁰³ AR 006205.

²⁰⁴ RCW 79A.15.130.

²⁰⁵ The Agricultural Act of 2014 (Public Law 113-79).

agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

Unfortunately, “[o]ne of the key obstacles [to agriculture] in Clark County is the limited access to high quality agricultural land at an affordable cost.”²⁰⁶ This is one of the reasons why the *Washington Agriculture Strategic Plan 2020 and Beyond* documents the need to conserve existing agricultural lands to maintain the agricultural industry and the industry’s jobs and incomes.²⁰⁷ The plan concludes “[t]he future of farming in Washington is heavily dependent on agriculture’s ability to maintain the land resource that is currently available to it.”²⁰⁸

In sum, all but one of the comprehensive plan and WAC 365-190-050 factors (land values under alternative uses) show that the two areas have long-term commercial significance. The State Supreme Court has concluded that land values under alternative uses should not be the deciding factor. The two areas also meet the statutory factors. So dedesignating the UGA expansions violated the GMA. The Board’s conclusion that the UGA expansions qualified as ALLTCS should be upheld.

²⁰⁶ AR 006445.

²⁰⁷ AR 006448 – 50.

²⁰⁸ AR 006448.

C. The Board correctly concluded that the County and Cities were required to adopt reasonable measures to remedy development inconsistencies and failed to adopt them violating the GMA

1. Standard of Review

“[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. . . . Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”²⁰⁹ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”²¹⁰

2. The Board’s correctly concluded that the County and La Center and Ridgefield failed to adopt and implement reasonable measures in violation of the GMA

No party argued that the Board incorrectly determined that the County, La Center, and Ridgefield had inconsistencies between the County comprehensive plan and residential development and the County and Ridgefield have inconsistencies for commercial development, so the County and cities must adopt reasonable measures.²¹¹ A party abandons an

²⁰⁹ *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 155, 256 P.3d 1193, 1198 (2011).

²¹⁰ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

²¹¹ 3B Opening Brief pp. 6 – 20, County Opening Brief pp. 8 – 33, La Center Opening Brief pp. 12 – 37, LCC Opening Brief pp. 14 – 39, Ridgefield Opening Brief pp. 9 – 24, and Amended Opening Brief of Clark County Citizens United, Inc. pp. 6 – 50.

assignment of error if it is not argued or discussed in an opening brief.²¹²

This Court should uphold the Board's conclusion that the County and cities must adopt reasonable measures for residential development and the County and Ridgefield must adopt reasonable measures for commercial development.

The Board concluded that Clark County, La Center, and Ridgefield violated the GMA by failing to adopt reasonable measures to remedy inconsistencies between planned and actual densities and intensities.²¹³ La Center's planned density was four housing units per net acre and its actual density was 1.9 housing units.²¹⁴ Ridgefield's planned density was six housing units per net acre and its actual density was 5.2 housing units.²¹⁵ The *Buildable Lands Report* also found inconsistencies between planned and actual employment growth. Planned employees per net acre was 20 for commercial developments.²¹⁶ From 2006 to 2014, new permits show employees per net acre for commercial development at 9.3.²¹⁷

RCW 36.70A.215(1)(b) provides that where there is an inconsistency, the county and its cities shall "[i]dentify reasonable measures, other than

²¹² *Dickson v. U.S. Fid. & Guar. Co.*, 77 Wn.2d 785, 787, 466 P.2d 515, 517 (1970).

²¹³ AR 010479 – 80, FDO, at 23 – 24 of 101.

²¹⁴ AR 002352, AR 002356 – 57; AR 000343 – 44.

²¹⁵ AR 002352, AR 002356 – 57; AR 000343 – 44.

²¹⁶ AR 002367.

²¹⁷ AR 002367.

adjusting urban growth areas, that will be taken to comply with the requirements of this chapter. Reasonable measures are those actions necessary to reduce the differences between growth and development assumptions and targets contained in the countywide planning policies and the county and city comprehensive plans with actual development patterns.”²¹⁸

Rather than adopting and monitoring reasonable measures, on compliance the County and cities adopted a revised Buildable Lands Report.²¹⁹ That report relies on preexisting or un-adopted provisions.²²⁰ La Center does not identify any newly adopted reasonable measures under Measure G to increase the number of jobs per acre, an inconsistency identified by the *Buildable Lands Report*.²²¹ The La Center and Ridgefield “reasonable measures” in effect during the time period analyzed in the *Buildable Lands Report* are like the reasonable measures rejected by the Court of Appeals in the *Kitsap County* decision because they were

²¹⁸ When the Board decided this appeal, the reasonable measures requirements were in former RCW 36.70A.215(4). But the result is the same either under that version or the current law.

²¹⁹ CAR 000934 – 94; CAR 000233 – 37.

²²⁰ CAR 000233 – 37; CAR 001578 – 80, Order on Compliance, 15 – 17 of 29; CAR 000943 – 94; CAR 001008, La Center Municipal Code Section (LCMC) 18.130.080; CAR 001009, LCMC 18.145.040(1); CAR 001010 – 13, LCMC 18.165.050(1)(b); CAR 001020, Ridgefield Development Code Section (RDC) 18.210.050; CAR 001021, RDC 18.220.050; CAR 001022, RDC 18.280.070; CAR 001028, RDC 18.235.020; CAR 001035, RDC 18.235.030; CAR 000943 – 45; CAR 000957.

²²¹ CAR 000953 – 54; CAR 000991.

regulations that were “in existence during the time of an ‘inconsistency’” and are “not likely to cause any different result and are not ‘reasonable measures’ that are likely to increase consistency during the subsequent five-year period.”²²² The County Compliance Report failed to identify a single reasonable measure adopted and implemented by Clark County for the La Center and Ridgefield UGAs.²²³ Thus, the County and cities violated the GMA²²⁴ by failing to adopt GMA compliant reasonable measures. The County’s and Cities’ failures to adopt and implement reasonable measures matter because the *Buildable Lands Report* documents that if La Center does not meet its density target, it will have a 200-acre residential land deficiency by 2035.²²⁵

The La Center Opening Brief argues the Board selectively quoted from the *Buildable Lands Report* as to the County’s employment densities and the inconsistency with the comprehensive plan. But that is not the case.²²⁶ The La Center Opening Brief argues on page 33 that inconsistencies in employment densities do not trigger a need for reasonable measures other than an UGA expansion. But RCW 36.70A.215(1)(b) excludes UGA

²²² *Kitsap Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn. App. 863, 876 – 77, 158 P.3d 638, 644 (2007).

²²³ CAR 000233 – 39, County Compliance Report pp. 12 – 16 of 25.

²²⁴ RCW 36.70A.215(1)(b).

²²⁵ CAR 000944.

²²⁶ AR 010480, FDO, at 24 of 101 citing AR 002367.

adjustments from allowable reasonable measures. La Center argues that in the *City of Arlington* decision submitting a land capacity analysis cured the noncompliance with RCW 36.70A.215. But in *City of Arlington* the violation was that “the record did not contain a valid land capacity analysis demonstrating a need for additional commercial land.”²²⁷ The violation that requires the reasonable measures is the inconstancy between the comprehensive plan and the densities.²²⁸ The revised Buildable Lands Report did not change the conclusion that the expansion is not needed or that there are inconsistencies between the planned and built densities.²²⁹

The Board’s conclusions on reasonable measures correctly interpreted the GMA and are supported by substantial evidence. The Court should uphold them.

D. The Board correctly concluded that the Rural Industrial Land Banks (RILB) qualify as agricultural lands of long-term commercial significance (ALLTCS)

Only Clark County appealed and argued the RILB issues. If FOCC’s motion to dismiss the County’s PFJR in Section IV.A of this brief is granted, the Court cannot reach the merits of the County’s RILB issues. FOCC argues them in case the motion to dismiss is denied.

²²⁷ *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 789, 193 P.3d 1077, 1087 (2008).

²²⁸ AR 010480, FDO, at 24 of 101.

²²⁹ CAR 000943 – 48; CAR 000953 – 54; CAR 000989 – 94.

1. Standard of Review

“[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. ... Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”²³⁰ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”²³¹

2. The Board correctly concluded that Clark County failed to conduct an area- or county-wide analysis of the effects of the dedesignation on agricultural lands

RCW 36.70A.170(1) requires that Clark County shall designate where appropriate ... [a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products” RCW 36.70A.060(1)(a) provides that the County “shall adopt development regulations ... to assure the conservation of agricultural ... resource lands designated under RCW 36.70A.170.” There is no exception for RILBs.²³² The RILBs are in Area VB from the County’s illegal 2007

²³⁰ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

²³¹ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

²³² RCW 36.70A.367.

dedesignation.²³³ The Board and superior court found the County illegally dedesignated Area VB.²³⁴

The Board concluded that Clark County failed to conduct an area-wide analysis for this RILB site including the effects of the dedesignation on the agricultural industry.²³⁵ The RILBs are designated as “Rural Industrial” on the County/UGA Comprehensive Plan Future Land Use Map (FLUM) south of Brush Prairie on either side of State Highway 503.²³⁶ The County first claims that it conducted an area-wide analysis studying 3,196 acres in the vicinity of the RILBs. But the County only dedesignated the 602.4 acres even through the County’s study did not conclude that the 602.4 acres did not qualify as ALLTCS and the remaining 2,594 acres did qualify as ALLTCS.²³⁷ The 602.4 acres have ALLTCS to both the west and the east.²³⁸ The study acknowledges that for many of the WAC 195-190-050 criteria the 602.4 acres, referred to as Site 1, met them as well or better than the remaining 2,594 acres.²³⁹ The County only dedesignated the 602.4 acres in the RILBs even through some of the other parcels have a lower percentage of prime soils and dedesignating Site 1 isolates the AG-

²³³ AR 000118 – 19.

²³⁴ *Clark Cty.*, 161 Wn. App. at 220, 254 P.3d at 868.

²³⁵ AR 010531 – 35, FDO, at 75 – 79 of 101.

²³⁶ AR 010408 an excerpt from AR 010408 is in Appendix B to this brief.

²³⁷ AR 000169 – 70.

²³⁸ AR 010408 an excerpt from AR 010408 is in Appendix B to this brief.

²³⁹ AR 000156 – 70.

20 (ALLTCS) lands west of SR 503.²⁴⁰ The County’s study first claims that there are no “known interdependence among the agricultural businesses ...” in the area, but then acknowledges that “[a] local farmer in Brush Prairie has observed that there is informal sharing of equipment between the Lagler operation [which is part of the 602.4 acres] and other operations in Brush Prairie such as Silver Star.”²⁴¹ So why just dedesignate the 602.4 acres and not the other agricultural lands east of SR 503? Or why not dedesignate the lands that depend on equipment sharing with the Lagler operation? The study does not answer either question. So while the County did study a larger area, the analysis of and effects on the larger study area played no real role in the decision to dedesignate the 602.4 acres of farmland.²⁴² This is not the county-wide, area-wide, or regional approach WAC 365-190-050(1) and WAC 365-190-040(10)(b) require. The Board was correct to conclude the County did not take a county-wide, area-wide, or regional approach to the dedesignation,

The study also concluded that the “[t]he removal of the Site 1 properties from the areawide acreage would continue the decline in large and mid-size operations, and would remove some of the larger parcels in

²⁴⁰ AR 000143 – 70.

²⁴¹ AR 000169.

²⁴² AR 000156 – 70.

the County's AG-20 inventory."²⁴³ "One of the key obstacles [to agriculture] in Clark County is the limited access to high quality agricultural land at an affordable cost."²⁴⁴ "[W]hile the number of large farms has decreased, **their share of the total commodity output stayed nearly constant at around 85-89%** over the same time period."²⁴⁵ "Large farm[s] and mid-size farms ... remain a viable enterprise ..."²⁴⁶ The GMA natural resources goal calls on Clark County to "[m]aintain and enhance natural resource-based industries, including ... agricultural ... industries."²⁴⁷ "WAC 365-190-050(5) states that the final outcome of a designation process should 'result in designating an amount of agricultural resource lands sufficient to maintain and enhance the **economic viability of the agricultural industry** in the county over the long-term; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.' (Emphasis added [by the Board])."²⁴⁸ The continued dedesignation of the County's large farms will not maintain and enhance the agricultural industries as the GMA requires.

²⁴³ AR 000169.

²⁴⁴ AR 006445.

²⁴⁵ AR 010503, FDO, at 47 of 101 citing AR 010061 emphasis by the Board.

²⁴⁶ AR 006918.

²⁴⁷ AR 010533, FDO, at 77 of 101 citing RCW 36.70A.020(8).

²⁴⁸ AR 010534, FDO, at 78 of 101.

The County Opening Brief, on page 28, cites to AR 006035 for the proposition that the “long-term outlook for larger farms in Clark County is in transition, and that the economics of operating a dairy in Western Washington are causing many dairies to move to the Eastern part of the State.” But AR 006035 does not say any of that let alone provide evidence that it is the case. Milk and dairy products generated the largest share of Clark County farm income, 29 percent, in 2012.²⁴⁹ The market value of milk and dairy products has increased from \$10.9 million in 2002 to \$13.1 million in 2012.²⁵⁰ The Board was correct to conclude that the County did not follow an area-wide or county-wide approach to dedesignating the 602.4 acres in Site 1 and the County did not analyze the loss of this land on the County’s agricultural industry.²⁵¹

3. The Board correctly concluded that the Industrial Land Banks meet the standards for ALLTCS in WAC 365-190-050(3)(c)

As an alternative ground for its findings that the RILBs should be designated as ALLTCS, the Board analyzed the *Lewis County* factors²⁵² and the long-term commercial significance criteria in WAC 365-190-050(3)(c) and concluded the RILBs meet those requirements.²⁵³ The

²⁴⁹ AR 010066.

²⁵⁰ AR 010066.

²⁵¹ AR 010531 – 35, FDO, at 75 – 79 of 101.

²⁵² *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

²⁵³ AR 010535 – 38, FDO, at 79 – 82 of 101.

Board’s conclusion is correct.²⁵⁴ The County Opening Brief, on page 29, only contests whether the RILBs have long-term commercial significance.

The County argues a growing number of farms are small or very small. But the County’s own study of agriculture concluded that “[l]arge farm[s] and mid-size farms ... remain a viable enterprise ...”²⁵⁵ And the mid-sized and large farms generate most of the farm income, 84 percent in 2012 and this share has “stayed nearly constant ...” since 1997.²⁵⁶ Milk and dairy products generated the largest share of farm income, 29 percent, in 2012.²⁵⁷ The market value of milk and dairy products has increased from \$10.9 million in 2002 to \$13.1 million in 2012.²⁵⁸ More important, while predominant parcel size is a long-term commercial significance factor, farm size is not.²⁵⁹ The RILBs have the largest parcels in the study area.²⁶⁰

The County argues that urban public facilities serve the property, but the domestic water that serves the properties is also a rural governmental service.²⁶¹ Sewer does not serve the RILBs, sewer service is located in the UGA south of the RILBs and the RILBs are outside of sewer service

²⁵⁴ AR 000139 – 70.

²⁵⁵ AR 006918.

²⁵⁶ AR 010061.

²⁵⁷ AR 010066.

²⁵⁸ AR 010066.

²⁵⁹ WAC 365-190-050(3)(c)(vi); WAC 365-190-050(3)(c).

²⁶⁰ AR 000161.

²⁶¹ AR 000140; RCW 36.70A.030(18).

areas.²⁶² While SR 503 splits the properties, it is outside the UGA and is a freight route.²⁶³ The privately owned airport in the area is also not an urban governmental service.²⁶⁴

The RILBs are outside the UGA, nearly all of the abutting land is farm or rural land, and the land is not needed for industrial development.²⁶⁵

There is no urban development on the RILBs or on nearby farmland.²⁶⁶

Permit applications have largely been in the Vancouver and Battleground UGAs.²⁶⁷ No permit applications have been made for the RILBs.²⁶⁸

The RILBs are close to agricultural markets in Vancouver.²⁶⁹ Proximity to agricultural markets is a long-term commercial significance factor, proximity to markets and transport for industrial goods is not.²⁷⁰

The County claims that the record includes an analysis of the effect of the dedesignation on the agricultural industry, citing AR 139 – 41. But this part of the record does not even mention that milk and dairy products generate the largest share of farm income, 29 percent in 2012, and the market value of milk and dairy products has increased from \$10.9 million

²⁶² AR 000140; AR 000148; AR 002158; AR 006012 – 13.

²⁶³ AR 000140; AR 000148.

²⁶⁴ AR 000161; RCW 36.70A.030(20).

²⁶⁵ AR 002885; AR 002145; AR 002164; AR 000172. the RILB boundaries are shown in red; AR 000108; AR 000110.

²⁶⁶ AR 000157.

²⁶⁷ AR 000155; AR 000162.

²⁶⁸ AR 000155; AR 000162.

²⁶⁹ AR 000163; AR 010066.

²⁷⁰ RCW 36.70A.030(11); WAC 365-190-050.

in 2002 to \$13.1 million in 2012.²⁷¹ There is no analysis of what losing another dairy will do to this industry.²⁷² The Clark County Food System Council identified all of the RILBs and much of the vicinity as “Clark County’s Best Farm Land.”²⁷³ So this land is important to the industry.

The County’s own analysis shows that the 602.4 acres of agricultural land continues to comply with the factors in WAC 365-190-050 and the County Comprehensive Plan.²⁷⁴ However, the County’s analysis does omit some information related to long-term commercial and these omissions are an error of law. The analysis fails to note that Washington State and the US have purchase of development rights programs for which agricultural land in the County is eligible.²⁷⁵ This is a long-term commercial significance factor.²⁷⁶

The County’s analysis also focuses on the current agricultural use of one of the properties, dairying, and fails to consider the agricultural products enumerated in RCW 36.70A.030(2) as the *Lewis County* decision requires.²⁷⁷ The County’s analysis fails to note the RILBs are outside a sewer service area and that agricultural roads on the properties allow the

²⁷¹ AR 010066.

²⁷² AR 000139 – 41.

²⁷³ AR 000124.

²⁷⁴ AR 000156 – 70.

²⁷⁵ *Id.*, RCW 79A.15.130; The Agricultural Act of 2014 (Public Law 113-79).

²⁷⁶ WAC 365-190-050(3)(c)(iii).

²⁷⁷ *Lewis Cty.*, 157 Wn.2d at 502, 139 P.3d at 1103; 000166 – 67.

movement of farm vehicles off of SR 503 in discussing the availability of public facilities.²⁷⁸ The County’s analysis when discussing WAC 365-190-050(5)’s requirement that the designation of agricultural land “should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term” fails to note that “[o]ne of the key obstacles [to agriculture] in Clark County is the limited access to high quality agricultural land at an affordable cost.”²⁷⁹ The dedesignation of this land with its impacts on nearby farms such as isolating the ALLTCS to the west, the loss of larger farm parcels, and eliminating the informal equipment sharing will make this problem worse.²⁸⁰ So nearly all of the WAC 365-190-050 factors indicate that the RILBs continue to have long-term commercial significance. Substantial evidence supports the Board’s determination that the RILBs have long-term commercial significance and the Board correctly interpreted and applied the GMA.²⁸¹

E. The Board correctly concluded that the Agriculture (AG-10) and Forestry 20 (FR-20) zones violated the GMA²⁸²

²⁷⁸ AR 000160; AR 000172; AR 000654; AR 006012 – 13.

²⁷⁹ AR 006445.

²⁸⁰ AR 000164 – 65; AR 000169.

²⁸¹ AR 010536 – 38, FDO, at 80 – 82 of 101.

²⁸² This argument responds to the Amended Opening Brief of Clark County Citizens United, Inc. (Filed Sept. 5, 2018) pp. 45 – 47, hereinafter CCCU Opening Brief. As the CCCU Opening Brief acknowledged on pp. 45 – 46, FOCC appealed the adoption of the new AG-10 and FR-20 zones and related comprehensive plan amendments and prevailed before the Board. AR 010508, FDO, at 52 of 101.

1. Standard of Review

“[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. ... Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”²⁸³ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”²⁸⁴ “[U]nchallenged findings of fact become verities on appeal.”²⁸⁵

2. The AG-10 and FR-20 zones violated the GMA

The Board correctly identified the legal standard applicable to the adoption of the AG-10 and FR-20 zones: “The question before the Board is whether smaller parcel sizes for agriculture and forest resource lands will assure agricultural and forest land conservation as required by RCW 36.70A.060(1) ...”²⁸⁶ This standard is consistent with the Washington State Supreme Court’s *Soccer Fields* decision which held that “[t]he County was required to assure the conservation of agricultural lands and to

²⁸³ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

²⁸⁴ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

²⁸⁵ *Manke Lumber Co.*, 113 Wn. App. at 628, 53 P.3d at 1017.

²⁸⁶ AR 010502, FDO, at 46 of 101.

*assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.*²⁸⁷

Nowhere on pages 45 through 47 does the CCCU Opening Brief identify any evidence showing the AG-10 and FR-20 zones will assure the conservation of ALLTCS and forest land of long-term commercial significance (FLLTCS). There is a good reason for this. All of the evidence in the record shows that minimum lot sizes of at least 40 acres and larger are necessary to conserve ALLTCS and at least 50 acres is necessary to conserve FLLTCS.²⁸⁸ The Board relied on this evidence.²⁸⁹

The CCCU Opening Brief focuses on the evidence that mid-size and large farms produce “the vast majority of commodity values in the county . . . and that small farms have increased in number, but they have not increased farm incomes.”²⁹⁰ The FDO looked at this data to analyze the findings in Clark County Amended Ordinance 2016-06-12 that attempted to justify reducing AG-20 minimum lots sizes from 20 acres to 10 acres.²⁹¹ Based on this and other evidence, the Board found that this action was

²⁸⁷ *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140 emphasis in original; RCW 36.70A.060(1)(a).

²⁸⁸ AR 006164, the article is from this is a peer-reviewed journal (AR 006184); AR 006139; AR 006493, this article is from a peer-reviewed journal (AR 006495); AR 006502 – 03, this study was peer-reviewed (AR 006497). See Section V.C.2 of this brief for more detail on the findings of these studies.

²⁸⁹ AR 010506 – 07, FDO, at 50 – 51 of 101.

²⁹⁰ AR 010503 – 05, FDO, at 47 – 49 of 101. See for example AR 006921.

²⁹¹ AR 010503, FDO, at 47 of 101.

clearly erroneous.²⁹² But CCCU’s Opening Brief, on pages 1 and 45 to 47, does not assign error to any of these findings, does not show that any of this data is incorrect, does not cite evidence showing the small ten-acre lots will conserve agricultural land, or address the evidence showing that ten-acre lots will not conserve ALLTCS.²⁹³ CCCU on page 46 just asserts, without any citation to the record, that the Board assumed that a 20 acre farm has long-term significance and a ten acre farm does not and that the Board did not defer to the County on this issue. But the Board made no such assumption, instead the Board looked to the County’s findings and the evidence in the record and concluded that ten-acre lots will not conserve agricultural lands as RCW 36.70A.060(1) requires.²⁹⁴

CCCU then asserts that the Board’s conclusion that ten-acre parcels will erode the competitiveness of the agricultural industry in Clark County is not supported by substantial evidence. But the evidence shows that mid-sized and large farms are the economic engines of the County’s farm economy, these farms are viable, and ten-acre lots will result in the conversion of farmland to rural sprawl.²⁹⁵

²⁹² AR 010503 – 08, FDO, at 47 – 52 of 101.

²⁹³ AR 010503 – 08, FDO, at 47 – 52 of 101.

²⁹⁴ AR 010503 – 08, FDO, at 47 – 52 of 101.

²⁹⁵ AR 010503 – 07, FDO, at 47 – 51 of 101; AR 006164; AR 006918 “[l]arge farm[s] and mid-size farms ... remain a viable enterprise” AR 006921 – 22.

CCCU then argues, without any citation to the GMA, that the GMA does not require Clark County to have a high degree of agricultural competitiveness. But RCW 36.70A.020(8) directs Clark County to “[m]aintain and enhance natural resource-based industries, including productive ... agricultural ... industries.” “The cash receipts received by farmers from livestock and crop sales are largely determined by prices set in the world commodity markets.”²⁹⁶ To the extent that farmers can “brand” their products or directly market them, “they may escape some of the world price competition.”²⁹⁷ But for some farmers, “[c]ompetitive economic forces among agricultural producers determine who has the right products at suitable prices to meet customer demand.”²⁹⁸ CCCU’s argument ignores the GMA and is contrary to substantial evidence in the record.

CCCU’s Opening Brief, on page 47, then argues that because the median parcel zoned for agriculture is 5.1 acres, “increasing the potential number of smaller farms[] is unlikely to decrease the overall agricultural industry in Clark County, which the Board admits, is fueled by the mid- to large size farms.” Of the AG-20 land zoned AG-10 in 2016, 16,991 acres,

²⁹⁶ AR 007824.

²⁹⁷ AR 007824.

²⁹⁸ AR 007216.

55.6 percent, are in lots 20 acres or larger.²⁹⁹ Subdividing these lots into ten acre lots and then selling them will convert the medium and large farms to small farms, depriving the agricultural industry of its fuel.³⁰⁰

CCCU's Opening Brief, on page 47, also claims that the Board improperly assumed the County had the burden of proof on the FR-20 zone. But the Board recognized the FOCC had the burden of proof.³⁰¹ The Board did look to the County's report on agriculture and forest land and the Final Environmental Impact Statement (FEIS) and concluded that these documents did not provide evidence supporting the repeal of the FR-40 zone and the adoption of the FR-20 zone.³⁰² CCCU has not cited any evidence in the record showing that the Board's conclusion was wrong. The Board also cited evidence that parcels smaller than 40 acres have much lower timber harvest rates and are more likely to be converted to residential land uses and other evidence that the costs of forestry operations increase when lots are smaller than 50 acres.³⁰³

In sum, the FDO properly interpreted the GMA and is supported by substantial evidence. This Court should uphold the FDO's findings and

²⁹⁹ AR 006626. The size of the AG-10 parcels is mapped at AR 006934.

³⁰⁰ AR 006921.

³⁰¹ AR 010508, FDO, at 52 of 101.

³⁰² AR 010506, FDO at 50 of 101. The part of the FEIS in the record is at AR 006874 – 75. The County's Issue Paper 9 on agriculture and forest land addresses forest land at AR 006943 & AR 006949 – 50.

³⁰³ AR 010501, FDO, at 45 of 101 citing AR 006490, 16 hectares is 39.5 acres, and AR 006493. The cited journals are peer-reviewed. AR 006492; AR 006495.

conclusions that the AG-10 and FR-20 zones and related comprehensive plan amendments violated the GMA.

F. The Board properly made determinations of invalidity for the UGAs and the RILBs

1. Standard of Review

“[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo.³⁰⁴ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”³⁰⁵

2. The Board properly made determinations of invalidity

The La Center Opening Brief, on pages 30 and 31, argues the use of “is” means that since the cities annexed the UGA expansions before the Board issued its FDO, that the Board had to find the County in compliance on the UGA issues since cities must be in UGAs. La Center writes that the Board wrongly imposed invalidity since there was no GMA violation. This brief addresses this argument beginning on page 30 and shows that the GMA requires the Board to make its decision based on circumstances that have a logical or causal connection to adoption of the UGA expansions. The Board properly found GMA violations and properly imposed invalidity.

³⁰⁴ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

³⁰⁵ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

Other than this argument, none of the parties to this case argue that the Board improperly imposed invalidity.³⁰⁶ A party abandons an assignment of error if it is not argued or discussed in an opening brief.³⁰⁷ This Court should uphold the Board’s conclusions that the UGA expansions, RILBs, and ALLTCS dedesignations violated the GMA for the reasons argued in Sections IV.B and IV.D of this brief. This Court should also uphold the Board’s determinations of invalidity.³⁰⁸

V. ARGUMENT ON THE FOCC ISSUES

A. FOCC Issue 1: Did the Order on Compliance erroneously interpret or apply the GMA and fail to decide all issues requiring resolution when the Board concluded it did not have jurisdiction to consider whether the comprehensive plan and zoning provisions adopted to address Issues 11 and 13 did not comply with the GMA or that these issues were moot? (Assignment of Error 1.)

1. Standard of Review

After the Board concludes that comprehensive plans or development regulations violate the GMA, the question in a compliance proceeding is whether the County’s legislative actions procedurally and substantively comply with the GMA.³⁰⁹ “[C]ourts review errors of law alleged under

³⁰⁶ 3B Opening Brief pp. 6 – 20, County Opening Brief pp. 8 – 33, La Center Opening Brief pp. 12 – 37, LCC Opening Brief pp. 14 – 39, Ridgefield Opening Brief pp. 9 – 24, and Amended Opening Brief of Clark County Citizens United, Inc. pp. 6 – 50.

³⁰⁷ *Dickson v. U.S. Fid. & Guar. Co.*, 77 Wn.2d 785, 787, 466 P.2d 515, 517 (1970).

³⁰⁸ AR 010553 – 56, FDO at 97 – 100 of 101; CAR 001587 – 91, Order on Compliance, 24 – 28 of 29.

³⁰⁹ *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 177 – 78, 979 P.2d 374, 382 (1999), as amended on denial of reconsideration (Sept. 22, 1999); RCW 36.70A.330.

RCW 34.05.570(3)(b), (c), and (d) de novo. ... Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”³¹⁰ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”³¹¹

2. RCW 36.70A.330 grants the Board jurisdiction over the amendments adopted in response to the finding of noncompliance for Issues 11 and 13 and the issues are not moot

RCW 36.70A.330 provides in relevant part that after the Board has made a finding of noncompliance and the time set by the Board for complying with the requirements of the GMA has expired, the “board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order.” The Board “‘shall find compliance’ unless it determines that” the compliance actions are “‘clearly erroneous in view of the entire record before the board and in light of the goals and requirements’ of the GMA.”³¹²

The Board found that Clark County’s adoption of the Agriculture 10 (AG-10) and Forest 20 (FR-20) zones violated the GMA because the

³¹⁰ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

³¹¹ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

³¹² *Lewis Cty.*, 157 Wn.2d at 497, 139 P.3d at 1100. citing RCW 36.70A.320(3).

provisions would not assure the conservation of agricultural and forest lands of long-term commercial significance.³¹³ This is Issue 11.³¹⁴ The Board also found that the County's adoption of a new Future Land Use Map (FLUM) as part of the comprehensive plan violated the GMA because it did not provide for a compliant variety of rural densities.³¹⁵ This is Issue 13.³¹⁶ The ordinance adopting these provisions did not include a clause reviving the amended or repealed provisions if the new provisions violated the GMA.³¹⁷

In partial response to the determinations of noncompliance in the FDO, Clark County adopted Ordinance No. 2017-07-04.³¹⁸ This ordinance amended the comprehensive plan and zoning regulations to change all of the AG-10 zones to AG-20 zones.³¹⁹ Ordinance No. 2017-07-04 amended the comprehensive plan and zoning regulations to change all of the FR-20 zones to FR-40 zones.³²⁰ Ordinance No. 2017-07-04 amended the zoning map to replace the AG-10 zones with AG-20 zones and the FR-20 zones

³¹³ Administrative Record for the original appeal to the Court of Appeals in Case No. 50847-8-II (AR) 010499 – 508, FDO, at 43 – 53 of 101.

³¹⁴ AR 010499, FDO, at 43 of 101.

³¹⁵ AR 010510 – 14, FDO, at 54 – 58 of 101.

³¹⁶ AR 010510, FDO, at 54 of 101

³¹⁷ Administrative Record for the Order on Compliance appealed in Court of Appeals Case No. 51745-1-II (CAR) 000272 – 283, Clark County Amended Ordinance No. 2016-06-12 pp. 1 – 12.

³¹⁸ CAR 000408 – 14, Clark County Ordinance No. 2017-07-04 pp. 1 – 7.

³¹⁹ CAR 000409 – 514.

³²⁰ CAR 000409 – 514.

with FR-40 zones.³²¹ Ordinance No. 2017-07-04 also amended the comprehensive plan to adopt new Rural 5, Rural 10, and Rural 20 comprehensive plan designations and amended the FLUM to map these designations based on the zoning of the parcels.³²² The County Compliance Report referred to the County’s action as having “readopted” these provisions, but Ordinance No. 2017-07-04 states these provisions were all “amended.”³²³

RCW 36.70A.330 provides that the “board shall . . . issue a finding of compliance or noncompliance with the requirements of this chapter . . .” for the amendments adopted in response to Issues 11 and 13. The Board did not do so, concluding instead that Issues 11 and 13 were moot.³²⁴

This issue is not moot since both the Board and the Courts can provide FOCC with effective relief.³²⁵ The Board and Court can determine whether the amendments comply with the GMA.

Although the Board erred in concluding that the AG-20 and FR-40 minimum lot sizes and uses were found compliant in the 2007 comprehensive plan appeals, even if they had been found compliant in

³²¹ CAR 000409.

³²² CAR 000409 – 10.

³²³ CAR 000229; CAR 000409 – 514.

³²⁴ CAR 001574 – 75, Order on Compliance pp. 11 – 12 of 29.

³²⁵ *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658, 659 (1983).

2007 that is not determinative.³²⁶ Similarly, the Board erred in concluding that the County had readopted a GMA compliant variety of rural densities in the new FLUM, but even if that was the case that would not be determinative.³²⁷ In June 2016, Clark County adopted Amended Ordinance No. 2016-06-12 repealing the AG-20 and FR-40 zones and adopting the AG-10 and FR-20 zones, repealing the Rural 5, Rural 10, and Rural 20 comprehensive plan designations, adopting a new FLUM and zoning map, and making related adoptions and repeals.³²⁸ In June 2017 after those amendments had been found to violate the GMA, Clark County adopted Ordinance No. 2017-07-04 repealing those amendments and adopting the current AG-20 and FR-40 zones, the current Rural 5, Rural 10, and Rural 20 comprehensive plan designations, and related comprehensive plan and development regulations amendments.³²⁹ In the *Lewis County* decision, which was an appeal of a Board decision on compliance, the Washington State Supreme Court concluded that the Board must review the County's latest designation of agricultural lands for compliance with the GMA using the correct legal standard and upheld Board determinations that the

³²⁶ CAR 001574, Order on Compliance p. 11 of 29. See FOCC Issue 4 for argument on the Board's conclusion on the AG-20 and FR-20 zones where upheld in 2007.

³²⁷ CAR 001574 –75, Order on Compliance pp. 11 –12 of 29. See FOCC Issue 2 for argument on the Board's conclusion on the variety of rural densities and the FLUM.

³²⁸ CAR 000278 – 352.

³²⁹ AR 010499, FDO, at 43 of 101; AR 010510 – 14, FDO, at 54 – 58 of 101; CAR 000409 – 514.

County's development regulations for ALLTCS violated the GMA.³³⁰ The Washington State Supreme Court made it clear that the clearly erroneous standard of review applies to decisions on compliance and that the Board "is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations."³³¹

The Board failed to carry out its duties under *Lewis County* because the Order on Compliance misread two Board decisions.³³² In *ARD v. Mason County*, the county adopted three ordinances and then, after they were appealed to the Board, the county rescinded the ordinances and no other development regulations were adopted in their place.³³³ The Board concluded that because "there no longer are any development regulations in effect for which we could enter a finding of compliance or noncompliance or for which to issue a determination of invalidity" the Board lacked jurisdiction over the appeal.³³⁴ But in this case, Clark County amended its comprehensive plan and development regulations to adopt

³³⁰ *Lewis Cty.*, 157 Wn.2d at 495 – 510, 139 P.3d at 1099 – 106.. The Board's orders on compliance that were appealed were *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c, Order Finding Noncompliance and Imposing Invalidity & *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, Order Finding Noncompliance and Imposing Invalidity (Feb. 13, 2004), 2004 WL 586071.

³³¹ *Lewis Cty.*, 157 Wn.2d at 497, 139 P.3d at 1100.

³³² CAR 001574, Order on Compliance p. 11 of 29.

³³³ *Advocates for Responsible Development (ARD) v. Mason County*, WWGMHB Case No. 01-2-0017, Corrected Order Re: Motions (Oct. 12, 2001), at *1, *4, 2001 WL 1531194, at *1, *3.

³³⁴ *Id.* at *4, 2001 WL 1531194, at *3.

three comprehensive plan designations, a FLUM that included the three comprehensive plan designations, the AG-20 and FR-40 zones, and a zoning map that included the AG-20 and FR-40 zones.³³⁵ Clark County did not simply repeal the 2016 comprehensive plan update.³³⁶ The Board could have made a finding of compliance or noncompliance for these amendments as RCW 36.70A.330 and *Lewis County* requires but did not.³³⁷

Similarly, in *Hazen v. Yakima County* the county adopted development regulations which were appealed.³³⁸ Before the appeal was decided, the county amended the regulations to delete and amend some of the challenged exemptions in the development regulations.³³⁹ One of the parties argued that the amendments mooted parts of the appeal. The Board concluded that the amendments did not moot the appeal and that the only part of the appeal that was mooted was an exemption that was repealed in its entirety.³⁴⁰ But Clark County did not just repeal the provisions found to violate the GMA, the County adopted new comprehensive plan provisions

³³⁵ CAR 000409 – 514.

³³⁶ CAR 000408 – 414.

³³⁷ *Lewis Cty.*, 157 Wn.2d at 497, 139 P.3d at 1100.

³³⁸ *Hazen v. Yakima County*, EWGMHB No. 08-1-0008c, Final Decision and Order (April 5, 2010), at 14 last accessed on Aug. 22, 2018 at:

<http://www.gmhb.wa.gov/Global/RenderPDF?source=casedocument&id=2007>

³³⁹ *Id.* at 14 – 15.

³⁴⁰ *Id.* at 15.

and development regulations.³⁴¹ Futurewise’s arguments on Issues 11 and 13 on the newly adopted comprehensive plan provisions and development regulations are not moot as those provision are now in effect.³⁴² Under *Lewis County*, the Board should have determined the merits of FOCC’s arguments.³⁴³

RCW 36.70A.290(1) requires in relevant part that “[t]he board shall render written decisions articulating the basis for its holdings.” RCW 34.05.570(3)(f) requires that “[t]he court shall grant relief from an agency order in an adjudicative proceeding only if it determines that: ... (f) The agency has not decided all issues requiring resolution by the agency ...”

However, the Board failed to determine if the amendments adopted to address the Board’s findings of noncompliance for Issues 11 and 13 complied with the GMA.³⁴⁴ In the *LIHI* decision, the court of appeals held that in a challenge to a comprehensive plan’s compliance with the GMA’s housing element requirements that the Board violated the GMA and the APA because the Board did make any findings regarding the City’s current needs for affordable housing or how the comprehensive plan “will

³⁴¹ CAR 000408 – 514.

³⁴² CAR 000408 – 514.

³⁴³ *Lewis Cty.*, 157 Wn.2d at 497, 139 P.3d at 1100.

³⁴⁴ CAR 001574 – 75, Order on Compliance pp. 11 – 12 of 29.

affect the future availability of affordable housing.”³⁴⁵ The court of appeals wrote that where “the Board presents no basis for its decision, we cannot review its analysis. It has failed to decide all issues requiring resolution as required by RCW 36.70A.290(1) and the APA (specifically RCW 34.05.570(3)(f)).”³⁴⁶ Here, the Board made no findings as to whether the amendments complied with the GMA, violating RCW 36.70A.290(1) and the RCW 34.05.570(3)(f). This Court should remand this issue back to the Board with instructions to determine whether the amendments adopted to address the findings of noncompliance for Issues 11 and 13 comply with the GMA.

B. FOCC Issue 2: Did the Order on Compliance err in making the finding of fact and conclusion that the challenge to the future land use map was “moot because the County re-adopted a previously GMA compliant variety of rural densities[?]”³⁴⁷ (Assignment of Error 2.)

1. Standard of Review

After the Board concludes that comprehensive plans or development regulations violate the GMA, the question in a compliance proceeding is whether the County’s legislative actions procedurally and substantively

³⁴⁵ *Low Income Hous. Inst. v. City of Lakewood (LIHI)*, 119 Wn. App. 110, 118, 77 P.3d 653, 657 (2003).

³⁴⁶ *Id.* at 119 Wn. App. at 119, 77 P.3d at 657; accord *Suquamish Tribe v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn. App. 743, 778, 235 P.3d 812, 831 (2010).

³⁴⁷ CAR 001575, Order on Compliance, at 12 of 29.

comply with the GMA.³⁴⁸ “[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. . . . Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”³⁴⁹ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”³⁵⁰

2. Substantial evidence does not support the Board’s finding or conclusion that the County re-adopted a previously GMA compliant variety of rural densities and the conclusion is a misinterpretation of the GMA

In addition to the adoption of the AG-10 zone, Amended Ordinance No. 2016-06-12 rezoned the properties adjacent to the new AG-10 zones from R-20 to R-10.³⁵¹ Clark County Ordinance No. 2017-07-04 did not rezone these properties back to R-20.³⁵²

Ordinance No. 2017-07-04 then based the comprehensive plan designations and the Future Land Use Map (FLUM) on the existing zoning, including the properties that Amended Ordinance No. 2016-06-12

³⁴⁸ *King Cty.*, 138 Wn.2d at 177 – 78, 979 P.2d at 382.

³⁴⁹ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

³⁵⁰ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

³⁵¹ CAR 000720, FSEIS p. 6-11; CAR 000278 Clark County Amended Ordinance No. 2016-06-12 p. 7; CAR 000759 County/UGA Zoning Clark County, Washington adopted by Amended Ordinance No. 2016-06-12.

³⁵² CAR 000409 – 14, Clark County Ordinance No. 2017-07-04 pp. 2 – 7.

had rezoned from R-20 to R-10.³⁵³ As to the rural comprehensive plan designations and the FLUM, Ordinance No. 2017-07-04 provides:

All parcels with R-20 zoning now have a comprehensive plan designation of R-20. All parcels with R-10 zoning now have a comprehensive plan designation of R-10. All parcels with R-5 zoning now have a comprehensive plan designation of R-5.³⁵⁴

Ordinance No. 2017-07-04 did not adopt a new map, instead it relied on the text quoted above to amend the FLUM.³⁵⁵ Comparing the FLUM and zoning map from the 2007 comprehensive plan with the 2016 zoning map that was basis for the FLUM adopted by Ordinance No. 2017-07-04 shows that R-20 designations and zones that were adjacent to Agriculture designations were changed to R-10 zones.³⁵⁶

Because the R-20 to R-10 rezones adopted by Amended Ordinance No. 2016-06-12 were carried forward by Ordinance No. 2017-07-04, the variety of rural densities in the current comprehensive plan and the current FLUM are different and have higher rural densities than any variety of

³⁵³ CAR 000409, Clark County Ordinance No. 2017-07-04 p. 2; CAR 000278 Clark County Amended Ordinance No. 2016-06-12 p. 7.

³⁵⁴ CAR 000409.

³⁵⁵ CAR 000409 – 14.

³⁵⁶ AR 010412, 2007 County/UGA Comprehensive Plan Clark County Washington adopted by Ordinance Number 2007-09-13 as amended; AR 010414, 2007 County/UGA Zoning Map Clark County, Washington adopted by Ordinance Number 2007-09-13 as amended; CAR 000759 2016 County/UGA Zoning Clark County, Washington adopted by Amended Ordinance No. 2016-06-12. A larger version of the 2016 County/UGA Zoning map is available at AR 010410. The record on a compliance appeal includes the documents submitted to the Board as part of the original appeal. WAC 242-03-980(1).

rural densities that have been upheld as GMA compliant before Amended Ordinance No. 2016-06-12 was adopted on June 28, 2016.³⁵⁷ Since Amended Ordinance No. 2016-06-12 was found to violate the GMA requirements for a variety of rural densities and the Board did not review the new FLUM for compliance with the GMA's requirement for a variety of rural densities and related requirements,³⁵⁸ the Board's finding of fact or conclusion that the challenge to the FLUM was "moot because the County re-adopted a previously GMA compliant variety of rural densities" is not supported by substantial evidence and a misinterpretation or misapplication of the GMA.³⁵⁹ This Court should reverse this finding or conclusion and remand the FLUM and rural designations to the Board.

C. FOCC Issue 3: Did the Order on Compliance erroneously interpret or apply the GMA, is not supported by substantial evidence, and failed to decide all issues requiring resolution when the order concluded that Clark County was now in compliance with the GMA for Issues 11 and 13, the County did not have to address the developments that vested to the illegal AG-10 and FR-20 zones and the illegal FLUM, and that Issue 11 did not warrant a finding of invalidity? (Assignment of Error 3.)

1. Standard of Review

After the Board concludes that comprehensive plans or development regulations violate the GMA, the question in a compliance proceeding is

³⁵⁷ CAR 000283, Clark County Amended Ordinance No. 2016-06-12 p. 12.

³⁵⁸ AR 010512 – 14, FDO, at 56 – 58 of 101.

³⁵⁹ AR 010512 – 14, FDO, at 56 – 58 of 101; CAR 001574 – 75, Order on Compliance, at 11 – 12 of 29.

whether the County’s legislative actions procedurally and substantively comply with the GMA.³⁶⁰ “[C]ourts review errors of law alleged under RCW 34.05.570(3)(b), (c), and (d) de novo. ... Courts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.’”³⁶¹ “[T]he ‘burden of demonstrating the invalidity of [the Board’s decision] is on the party asserting the invalidity.’”³⁶²

2. The adoption of the AG-20 and FR-20 zones while retaining the R-20 to R-10 rezones does not comply with the GMA because the minimum lot sizes and densities will not conserve natural resource lands and industries

As the Board correctly found, it is the large farms in Clark County that produce the greatest economic benefit to the County, its residents, and the agricultural industry.³⁶³ The mid-sized and large farms generate most of the farm income, 84 percent in 2012 and this share has “stayed nearly constant ...” since 1997.³⁶⁴ As of 2012, 1.5 percent of Clark County’s farms are large and generate 72 percent of the agricultural outputs.³⁶⁵ “The loss of large farms corresponds to a loss in commodity totals. In 2007 dollars, the

³⁶⁰ *King Cty.*, 138 Wn.2d at 177 – 78, 979 P.2d at 382.

³⁶¹ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

³⁶² *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

³⁶³ AR 010503, FDO, at 47 of 101.

³⁶⁴ CAR 000728.

³⁶⁵ CAR 000728.

value of agriculture dropped from \$62.3 million in 1997 to \$52.7 million in 2007, and again to \$45.9 million in 2012.”³⁶⁶ “[T]here are fewer large farms than in 2007 and the overall commodity values are lower in 2012 than in prior years (values all adjusted to 2007\$).”³⁶⁷ So conserving larger farms is important to “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries” as RCW 36.70A.020(8) directs.

In the *Soccer Fields* decision, the Washington State Supreme Court held that “[t]he County was required *to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products.*”³⁶⁸ A 20-acre minimum lot size and density will not comply this requirement. Professor Nelson concluded that “[m]inimum lot sizing at up to forty-acre densities merely causes rural sprawl – a more insidious form of urban sprawl.”³⁶⁹ The American Farmland Trust concluded that to “make substantial progress protecting farmland in the Puget Sound region, minimum parcel size would be at least 40 acres and

³⁶⁶ CAR 000728.

³⁶⁷ CAR 000728 – 29.

³⁶⁸ *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140 emphasis in original; RCW 36.70A.060(1)(a).

³⁶⁹ CAR 000784. This journal is peer-reviewed. CAR 001000.

preferably larger.”³⁷⁰ Clark County still has parcels 40 acres and larger in its Agriculture zone.³⁷¹ Clark County already has 40- and 80-acre agricultural minimum lot size zoning.³⁷²

Like agricultural lands, Clark County must also assure the conservation of forest lands and assure that the use of adjacent lands does not interfere with their continued use for the production forest products.³⁷³ A forty-acre forest zone will not meet these requirements. Parcels smaller than 50 acres have higher than average costs for preparing timber sales, harvesting trees, and reforesting the site.³⁷⁴ Subdividing forest land “can have profound impacts on the economics of forestry and lead to reduced forest management, even when land is not physically altered. ... In addition, per unit costs of forest management practices will increase if economies of scale are lost.”³⁷⁵ Subdivisions and the changes in economics they bring leads to the conversion of forest land to other land uses.³⁷⁶ A minimum lot size and density of 40 acres will not conserve forest land as the GMA requires.

³⁷⁰ CAR 000593.

³⁷¹ CAR 000765 – 76.

³⁷² CAR 001001, Clark County Code Section (CCC) 40.240.470A.

³⁷³ RCW 36.70A.060(1)(a).

³⁷⁴ CAR 000683. The Journal of Forestry is a peer-reviewed journal. CAR 000682.

³⁷⁵ CAR 000626 – 27. This study was peer-reviewed. CAR 000620.

³⁷⁶ CAR 000621 – 22.

In addition, peer-reviewed research shows that the smaller the parcel of land, the higher the per acre cost.³⁷⁷ The FEIS agreed writing that the AG-10 zone “could increase property valuation and diminish the ability of the County to attract larger scale agricultural operations.”³⁷⁸ So by adopting the AG-20 and FR-40 zones and allowing the subdivision of agricultural and forest land into smaller lots, Ordinance 2017-07-04 will increase the per acre cost of forest and farm land above what farmers and foresters can pay, resulting in the conversion of farm and forest land to other uses. “One of the key obstacles [to agriculture] in Clark County is the limited access to high quality agricultural land at an affordable cost.”³⁷⁹ This is one of the reasons why the *Washington Agriculture Strategic Plan 2020 and Beyond* documents the need to conserve existing agricultural lands to maintain the agricultural industry and the jobs and incomes the industry provides.³⁸⁰ As the strategic plan concludes “[t]he future of farming in Washington is heavily dependent on agriculture’s ability to maintain the land resource that is currently available to it.”³⁸¹

One of the methods Clark County’s 2007 comprehensive plan used to “*assure that the use of adjacent lands does not interfere with ...*” ALLTCS

³⁷⁷ CAR 000606. This article was peer-reviewed. CAR 000600.

³⁷⁸ CAR 000721.

³⁷⁹ CAR 000680.

³⁸⁰ CAR 000686 – 88.

³⁸¹ CAR 000686.

“continued use for the production of food or agricultural products” was to designate and zone large parcels adjacent to ALLTCs R-20.³⁸² Amended Ordinance No. 2016-06-12 rezoned the properties adjacent to the ALLTCS from R-20 to R-10.³⁸³ Clark County Ordinance No. 2017-07-04 did not rezone these properties back to R-20.³⁸⁴ This rezone doubled the number of housing units allowed densities adjacent to ALLTCs. “[C]onflicts between farmers and non-farm neighbors are well-known. ... In short, farming and forestry are industrial uses. They should be kept as separate as possible from rural residential development.”³⁸⁵ By increasing rural residential densities adjacent to ALLTCS through the R-20 to R-10 rezones and then by locking these rezones into the comprehensive plan’s new FLUM, Clark County violated its duty to protect ALLTCS from adjacent development.³⁸⁶

The AG-20 and FR-40 zones and R-20 to R-10 rezones will lead to the conversion of agricultural and forest land. This violates the GMA requirement to conserve these lands. This Court should reverse the

³⁸² *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140 emphasis in original; AR 010412, 2007 County/UGA Comprehensive Plan Clark County Washington adopted by Ordinance Number 2007-09-13 as amended; AR 010414, 2007 County/UGA Zoning Map Clark County, Washington adopted by Ordinance Number 2007-09-13 as amended.

³⁸³ CAR 000720, FSEIS p. 6-11; CAR 000278 Clark County Amended Ordinance No. 2016-06-12 p. 7; AR 010414 County/UGA Zoning Clark County, Washington adopted by Amended Ordinance No. 2007-09-13; CAR 000759 County/UGA Zoning Clark County, Washington adopted by Amended Ordinance No. 2016-06-12. A larger version of the 2016 zoning map is in the record at AR 010410.

³⁸⁴ CAR 000409 – 14, Clark County Ordinance No. 2017-07-04 pp. 2 – 7.

³⁸⁵ CAR 000675.

³⁸⁶ *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140

Board’s decisions on the FLUM, related comprehensive plan provisions, and these zones because they are not supported by substantial evidence and rest on erroneous interpretations of the GMA.

3. The new AG-20 and FR-40 zones allow uses that do not conserve natural resource lands violating the GMA

In the *Soccer Fields* decision the Washington Supreme Court held that “[i]n order to constitute an innovative zoning technique [authorized by RCW 36.70A.177] consistent with the overall meaning of the Act, a development regulation must satisfy the Act’s mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.”³⁸⁷ Outdoor recreational facilities failed this test and cannot be allowed on agricultural lands because they will remove “designated agricultural land from its availability for agricultural production.”³⁸⁸

In the *Lewis County* decision, the State Supreme Court built on the *Soccer Fields* decision and again upheld a Board decision that the “County’s ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement.”³⁸⁹ In addition to residential subdivisions, the

³⁸⁷ *Soccer Fields*, 142 Wn.2d at 560, 14 P.3d at 142.

³⁸⁸ *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143.

³⁸⁹ *Lewis Cty.*, 157 Wn.2d at 509, 139 P.3d at 1106.

illegal uses were public facilities; public and semipublic buildings, structures, and uses; and schools, shops, and airports.³⁹⁰

In the *Kittitas County* decision, the state Supreme Court again upheld a Board decision finding that a variety of conditional uses allowed on ALLTCS violated the GMA. The conditional uses violated the GMA because “the County has no protections in place to protect agricultural land from harmful conditional uses.”³⁹¹ The conditional uses that violated the GMA included “kennels, day care centers, community clubhouses, governmental uses essential to residential neighborhoods, and schools with no limiting criteria or standards.”³⁹²

RCW 36.70A.060(1)(a) requires that:

(1)(a) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. . . . Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

³⁹⁰ *Lewis Cty.*, 157 Wn.2d at 507, 526 – 27; 139 P.3d at 1105, 1114 – 15.

³⁹¹ *Kittitas Cty.*, 172 Wn.2d at 172, 256 P.3d at 1206.

³⁹² *Kittitas County Conservation v. Kittitas County*, EWGMHB Case No. 07-1-0015, Final Decision Order (March 21, 2008), at 21, 2008 WL 1766717, at *13.

The new AG-20 and FR-40 zones allow non-agricultural and non-forestry uses such as residential subdivisions, guest houses, commercial kennels, public recreation and public parks, regional recreational facilities, private recreation facilities, country clubs and golf courses (in the AG-20 zone), event facilities, public and private elementary and middle schools serving a student population primarily outside of urban growth boundaries, government facilities, sawmills, oil and gas processing facilities, solid waste disposal sites, and new cemeteries and mausoleums, crematoria, columbaria, and mortuaries.³⁹³ Governmental facilities and schools have been built on agricultural land.³⁹⁴ These uses all violate RCW 36.70A.060(1)(a) and the state Supreme Court holdings in the *Soccer Fields*, *Lewis County*, and *Kittitas County* decisions.³⁹⁵ As the Supreme Court held in *Lewis County*, allowing “non-farm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands.”³⁹⁶

This holding is also supported by the farm land protection literature. Limiting uses reduces incompatible uses in agricultural areas and prevents land speculation from increasing land costs above what agricultural

³⁹³ CAR 000422 – 26, County Ordinance 2017-07-04 pp. 15 – 19.

³⁹⁴ CAR 000711 – 17.

³⁹⁵ *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143; *Lewis Cty.*, 157 Wn.2d at 509, 139 P.3d at 1106; *Kittitas Cty.*, 172 Wn.2d at 172, 256 P.3d at 1206.

³⁹⁶ *Lewis Cty.*, 157 Wn.2d at 509, 139 P.3d at 1106.

products can support.³⁹⁷ Schools are particularly a problem in agricultural areas due to children’s sensitivity to pesticide overspray from nearby fields.³⁹⁸

Clark County Issue Paper 9 documents that the AG-20 zone was not conserving agricultural land because it allowed “non-productive rural uses”³⁹⁹ The newly adopted AG-20 and FR-40 zones violate the GMA because they are not supported by substantial evidence and rest on erroneous interpretations of the GMA.

4. The repeal of the AG-10 and FR-20 zones did not cure the GMA violations because development vested at densities that violate the GMA and adversely impact natural resource lands

Local governments must fix their comprehensive plan and zoning amendments that violate the GMA.⁴⁰⁰ In *Miotke v. Spokane County*, Spokane County expanded its UGA to include additional land and the Board found this UGA expansion violated the GMA. The Board put an exclamation on that decision by entering an order of invalidity.⁴⁰¹

During the Board’s consideration of the appeal, urban development rights vested within the newly-expanded UGA⁴⁰² and urban development

³⁹⁷ CAR 000649.

³⁹⁸ CAR 000672 – 73.

³⁹⁹ CAR 000740; CAR 000278; CAR 000283.

⁴⁰⁰ *Miotke*, 181 Wn. App. at 373, 325 P.3d at 436 – 37.

⁴⁰¹ *Id.*

⁴⁰² *Miotke*, 181 Wn. App. at 373, 325 P.3d at 437.

occurred within the expanded UGA.⁴⁰³ While Spokane County repealed the UGA expansion in an attempt to cure the GMA violations,⁴⁰⁴ the repeal did not resolve the issue of allowing the vested urban development outside the UGA. The *Miotke* court concluded that just repealing the UGA expansion did not comply with the GMA because it failed to address the development that had occurred in violation of the GMA.⁴⁰⁵ Thus, the *Miotke* court ordered Spokane County to produce evidence that the county had fixed its GMA violation.⁴⁰⁶ The *Miotke* court rejected Spokane County’s assertion that since the development had vested they had no obligation to remedy that GMA violation, stating that: “[w]e reject the County’s argument that the vested rights doctrine relieved the County of its burden to show compliance with the GMA.”⁴⁰⁷

Like *Miotke*, after Clark County adopted the illegal AG-10 and FR-20 zones and rural zoning amendments developments vested to those zones. Based on the County Pre-Application Conference Final Reports included in the record, 92 residential lots vested on 888.58 acres zoned AG-10 and an additional 47 acres zoned R-5 and R-10.⁴⁰⁸ Eight lots vested on 157

⁴⁰³ *Id.*

⁴⁰⁴ *Miotke*, 181 Wn. App. at 374, 325 P.3d at 437.

⁴⁰⁵ *Miotke*, 181 Wn. App. at 384 – 85, 325 P.3d at 442 – 43.

⁴⁰⁶ *Miotke*, 181 Wn. App. at 385, 325 P.3d at 442–43.

⁴⁰⁷ *Miotke*, 181 Wn. App. at 380, 325 P.3d at 440.

⁴⁰⁸ CAR 000812 – 930; CAR 000763 – 64. The cited totals do not include the Sarkinen Short Plat which sought to subdivide an additional 40 acres zoned AG-10 into four lots. CAR 000763.

acres of land zoned FR-20.⁴⁰⁹ In Clark County a developer only needs to apply for a preapplication conference to contingently vest.⁴¹⁰ If a complete application is submitted in 180 days, the project vests to the preapplication conference date.⁴¹¹ Like *Miotke*, simply repealing the AG-10 and FR-20 zones are not enough, the County must fix the GMA violations caused by the vested developments. The adverse impacts of the vested developments include the conversion of agricultural and forest land and the adverse impacts from locating residential uses within and adjacent to natural resource lands.⁴¹² The Board’s decision to not require the County to address the adverse impacts of the vested developments is not supported by substantial evidence and is an erroneous interpretation of the GMA

D. FOCC Issue 4: Did the Order on Compliance err in finding or concluding that the “agricultural and forestry parcel sizes and uses were previously found GMA compliant in the 2007”⁴¹³ comprehensive plan appeal because it erroneously interpreted or applied the law or is not supported by substantial evidence? (Assignment of Error 4.)

1. Standard of Review

“[C]ourts review challenges under RCW 34.05.570(3)(e) that an order is not supported by substantial evidence by determining whether there is ‘a

⁴⁰⁹ CAR 000813 – 930; CAR 000763 – 64.

⁴¹⁰ CAR 000814.

⁴¹¹ CAR 000814.

⁴¹² CAR 000781 – 82; CAR 000675.

⁴¹³ CAR 001574 Order on Compliance, at 11 of 29.

sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.”⁴¹⁴ “[T]he ‘burden of demonstrating the invalidity of [the order] is on the party asserting the invalidity.’”⁴¹⁵

2. The agricultural and forestry parcel sizes and uses were not found GMA compliant during the appeals of the 2007 comprehensive plan update

The Board did not find those provisions GMA compliant in 2007.⁴¹⁶ Neither did the court of appeals or the supreme court.⁴¹⁷ The Board erred in making this conclusion because there is no authority or evidence in the record supporting the conclusion.

VI. CONCLUSION

For the reasons set out above, FOCC respectfully requests that this Court uphold the Board’s conclusions that the UGA expansions and ALLTCS dedesignations violated the GMA. The Court should also reverse the Board on the FOCC issues and remand these issues to the Board.

Dated: September 14, 2018, and respectfully submitted.



Tim Trohimovich, WSBA No. 22367
Attorney for Cross-Petitioners Friends of Clark
County & Futurewise

⁴¹⁴ *Kittitas Cty.*, 172 Wn.2d at 155, 256 P.3d at 1198.

⁴¹⁵ *Thurston County*, 148 Wn.2d at 7 – 8, 57 P.3d at 1159 – 60.

⁴¹⁶ *Karpinski v. Clark Cty.*, WWGMHB Case No. 07-2-0027, Final Decision and Order Amended for Clerical and Grammatical Errors June 3, 2008 (June 3, 2008), at 2 – 86 of 86, 2008 WL 2783671, at *1 – 49.

⁴¹⁷ *Clark Cty.*, 161 Wn. App. at 221 – 49, 254 P.3d at 869 – 83; *Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 143 – 49, 298 P.3d 704, 707 – 10 (2013).

CERTIFICATE OF SERVICE

The undersigned declares on penalty of perjury under the laws of the State of Washington that on this 14th day of September 2018, the undersigned caused the electronic original and true and correct electronic copies of the following document to be served on the persons listed below in the manner shown: **Brief of Respondents/Cross Appellants Friends of Clark County & Futurewise with Appendix** attached to this certificate in Case No. 50847-8-II Consolidated with Case No. 51745-1-II.

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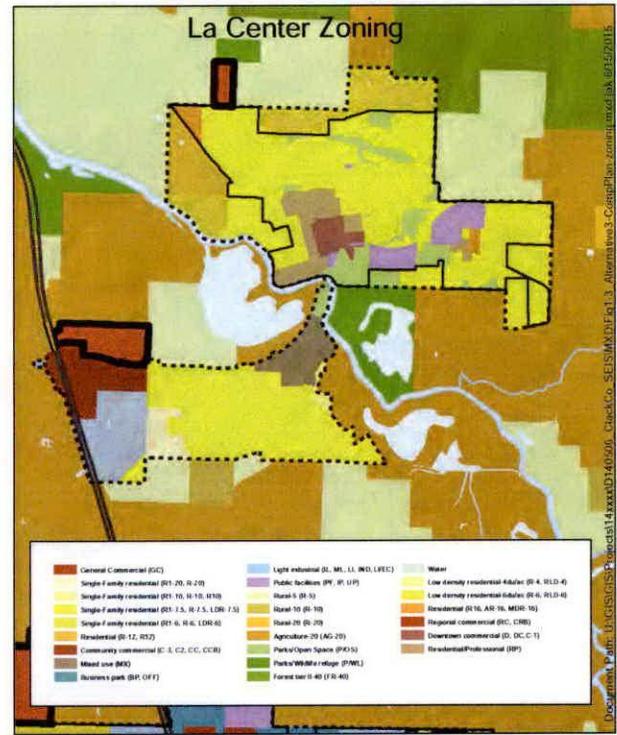
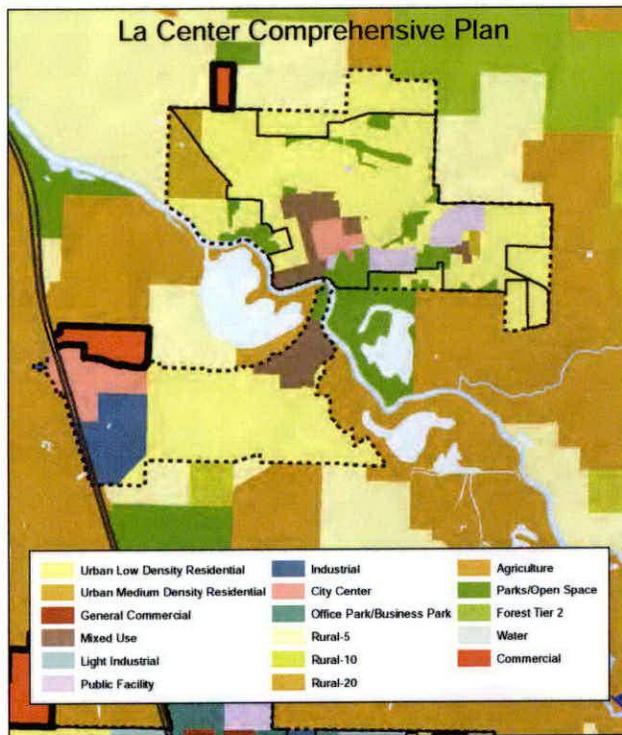
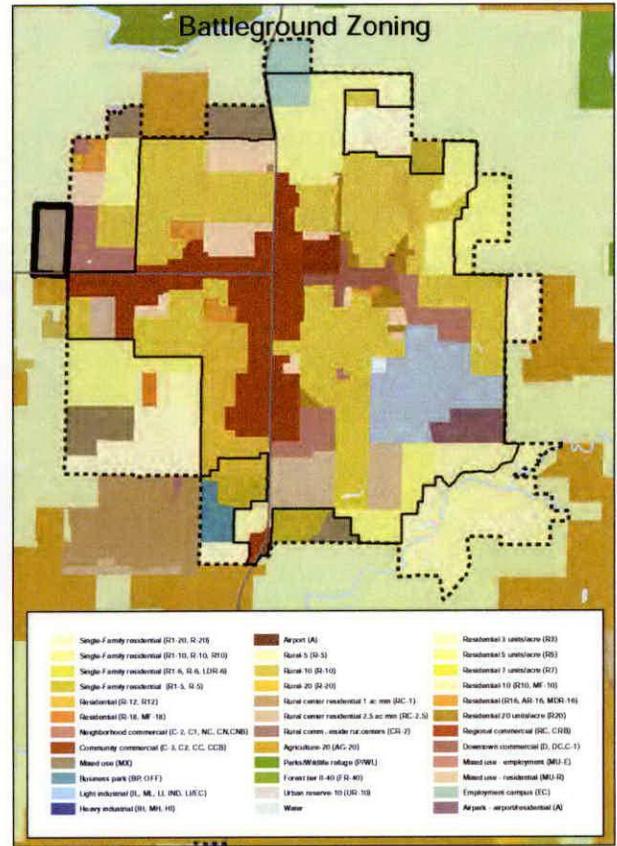
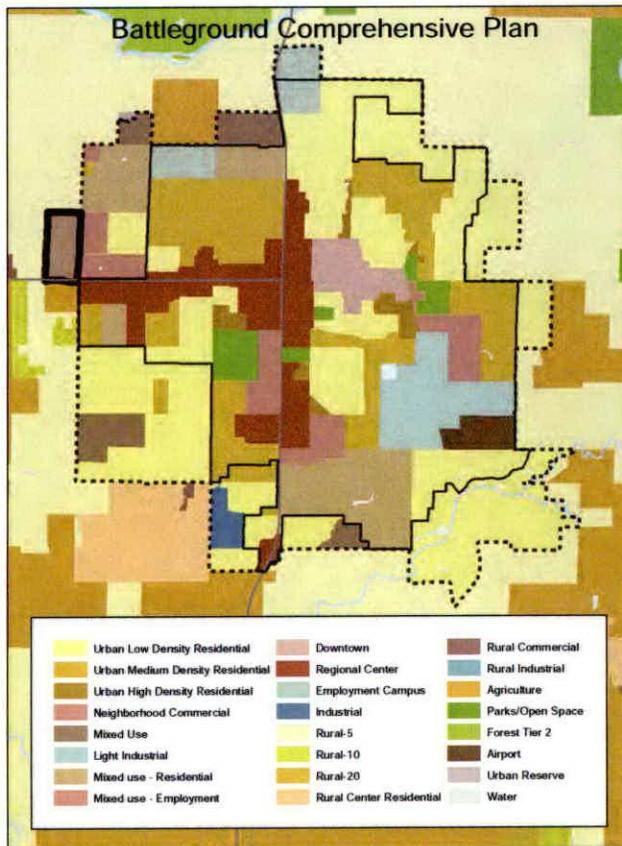
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Signed and certified on this 14th day of September 2018,



Tim Trohimovich, WSBA No. 22367
Attorney for the Friends of Clark County and Futurewise



 UGA expansion with Urban Holdings
 City Limits
 Current UGA

N ↑ Source: Clark County 2014; OSM 2014; ESA 2014



Figure 1-5: UGA - Comprehensive Plan and Zoning - Battleground and La Center

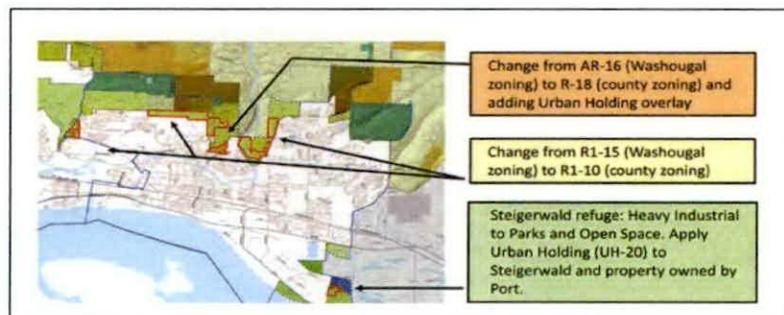
035307

- 3) Implement Salmon Creek subarea comprehensive plan map and zoning changes: This subarea is generally bounded by NE 190th Street alignment on the north, approximately NE 58th Avenue on the east, Salmon Creek and Interstate 205 on the south, and Interstate 5 on the west. The draft plan is consistent with Washington State University (WSU) and the City of Vancouver's vision for future campus development and promotion of jobs and housing, with substantial acres designated as Mixed Use.
- 4) Change some parcels that have a Mixed Use comprehensive plan designation on approximately 335 acres in the Vancouver UGA to either rezone the property to Mixed use (MX) or change the comprehensive plan designation to be consistent with the current zone.
- 5) Remove UR adjacent to the UGA and replace it with R-5 and AG-20 zoning: Remove the Urban Reserve (UR-10) zoning designation along NE 50th between 199th and NE 179th (in the north Salmon Creek Vancouver UGA) and replace it with Rural (R-5).
- 6) Remove the UH in the Fisher Swale area between Vancouver and Camas: The Urban Holding (UH) designation (225 acres) within two areas of the Vancouver UGA, known as Fisher Swale, are proposed to be removed. The underlying Single Family zoning of R1-20, R1-10, and R1-7.5 would remain.

f. Washougal UGA

The Preferred Alternative would correct an inconsistency between County and City zoning classifications within the southern portion of the Washougal UGA. The proposal would replace the City zoning of AR-16 (13 acres) SE Woodburn Road and apply County zoning of

R-18 and add an Urban Holding overlay; replace R1-15 zoning (132 acres) in several areas on the north side of the city with R1-10 zoning; replace 37 acres of Heavy Industrial zoning on Steigerwald Refuge property to Parks and Open Space; and remove Urban Holding 40 on property owned by the Port of Camas/Washougal and replace it with Urban Holding 20.



g. La Center UGA

The Preferred Alternative also proposes to add 17 acres to La Center's UGA on the northern city boundary (Figure 1-5). The area is proposed to be added for a new elementary school site. The Comprehensive Plan designation is currently R-5.

The Preferred Alternative includes the addition of 56 acres¹ to the UGA north of the existing southern portion of the La Center urban growth boundary (Figure 1-3a). The purpose is to accommodate the opportunity for additional businesses near Interstate 5. The Comprehensive Plan designation would be Commercial with a UH overlay.

h. Ridgefield UGA²

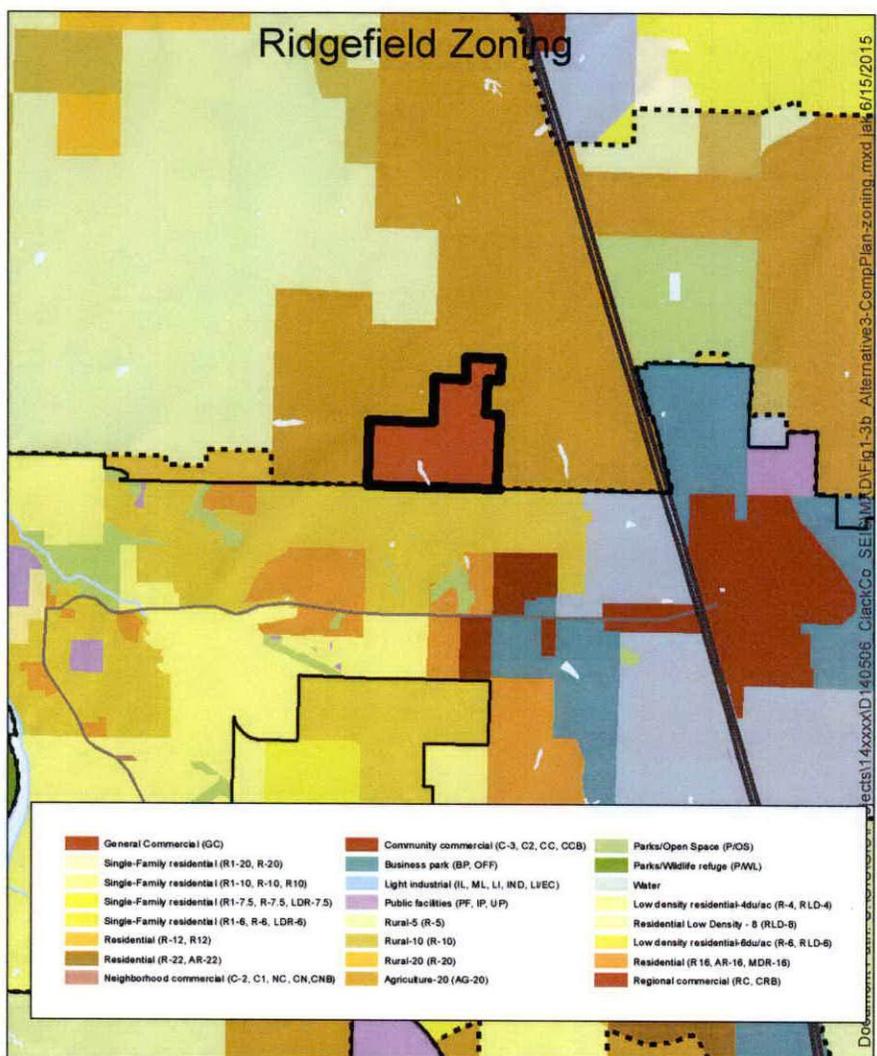
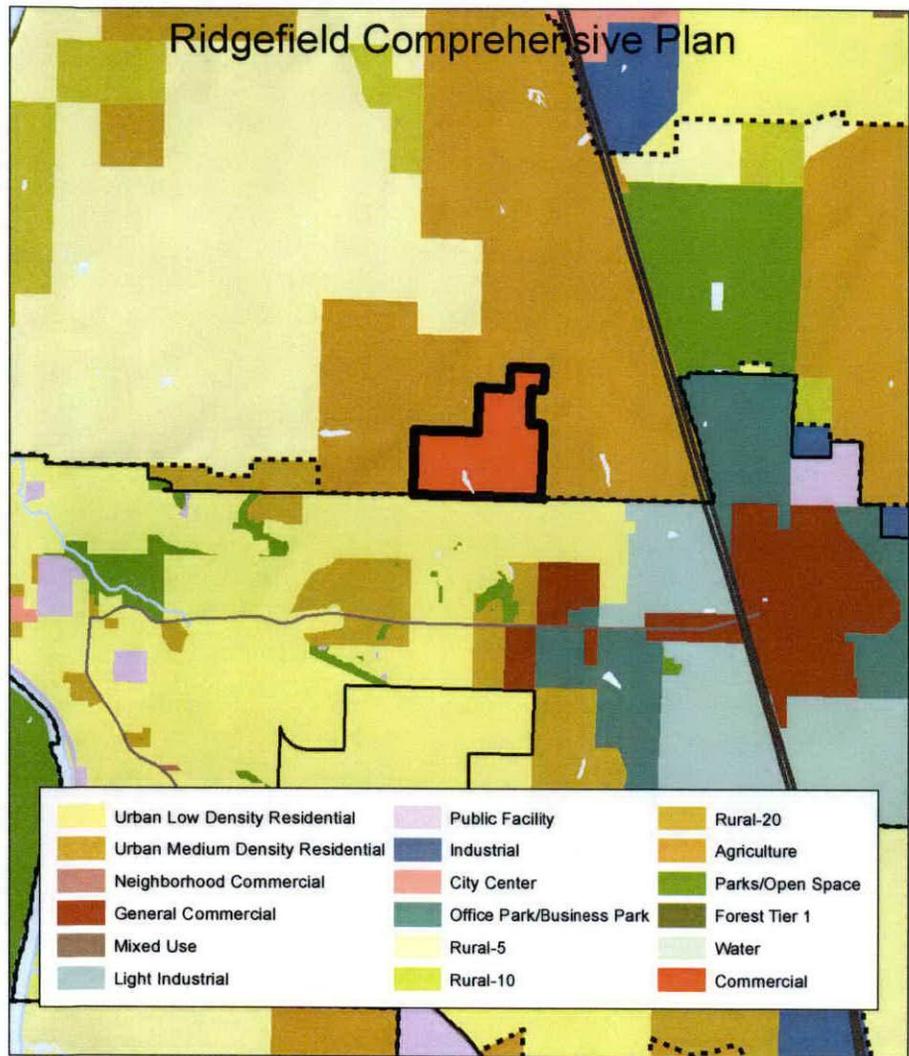
The Preferred Alternative would add 111 acres on the north side of the City of Ridgefield, near I-5 (Figure 1-6). This additional area would be converted to residential uses. The current designation of Agriculture would be changed to a mix of low-, medium-, and mixed-use residential Comprehensive Plan designations all with an Urban Holding overlay.



¹ This UGA expansion would only occur if La Center agrees to provide legal defense for the expansion, if required.

² This UGA expansion would only occur if Ridgefield agrees to provide legal defense for the expansion, if required.

006871



UGA expansion with Urban Holdings
 City Limits
 Current UGA



Source: Clark County 2014; OSM 2014; ESA 2014



Figure 1-6: UGA Expansion – Comprehensive Plan and Zoning - Ridgefield

035310

Agricultural Resource Land Analysis of the Fudge Property at the La Center Junction

A DETERMINATION OF DE-DESIGNATION UNDER THE WASHINGTON GROWTH MANAGEMENT ACT

Introduction

The Fudge property consists of two tax parcels that are located immediately east of the Paradise Truck Stop at Exit 16/La Center Junction off Interstate 5. The two parcels have been in the ownership of one family since 1969. This property is proposed for de-designation from agricultural resource land with the request that this property be brought into the La Center Urban Growth Boundary for use as Employment lands. The two tax parcels total 44.1 acres, and include numerous former dairy farm buildings and two residences with separate access to La Center Road. In this report these two tax parcels are referred to as the "Fudge property" or "subject property." See Figure 1 and Table 1 for identification and location of the subject property.

The Fudge property is evaluated to determine if it meets the criteria of agricultural resource lands under the Washington Growth Management Act (GMA). The author of this analysis is Bruce Pregelbauer, an agricultural economist who was raised on a wheat and cattle farm in Washington. I have a Bachelor's of Science degree and a Master's of Science degree in Agricultural Economics and I have completed 18 undergraduate and graduate level courses in economics during my education at Washington State University and the University of Wisconsin.

My practical experience is gained from 39 years as a practicing economist with emphasis in agricultural economics and business. I have worked most of my professional career as a consulting economist in the subjects of production agriculture, food marketing and food processing. For 36 years I have also been an owner in businesses where I have gained practical experience with business management. I have also previously analyzed property in Clark, and Cowlitz counties for their long term commercial significance for agriculture under the Washington Growth Management Act. I have also analyzed local markets for food crops and livestock and I have investigated the economic feasibility of specific land for the production of food crops. During this time I also worked for an export trade association. The function of this association is to assist firms in the western U.S. with the export marketing of their products. I am regularly retained to conduct projects and analyses for a regional food processors trade association. I have also been retained many times by food processing and marketing companies in the Pacific Northwest to address specific business issues pertaining to their operations. I am qualified to render my opinions based upon my experience and educational attainment in the field of economics. See Attachment 1 for a more complete description of my background, experience and education.

Property History and Background

The subject property was purchased in 1969 by the Griffith family. Linda Fudge, widow of Fred Griffith, lives on the property. Mrs. Fudge stated that for about 15 years prior to when she and her husband bought the property, it was an idle dairy farm with a small milking parlor and loafing shed. The original property purchased by the Griffiths was approximately 60 acres. The two parcels currently total 44.1 acres (Table 1). Over the period from 1969 to 1993 the Griffiths made several land purchases and sales. Mrs. Fudge also

indicated that the fields were rarely used for pasture. The dairy herd was fed hay grown on this property but production was insufficient for the total feed requirements of their cow herd. The main forage came from several hundred acres that the Griffiths rented from other land owners. Occasionally the Griffiths raised corn for dairy feed. The Griffiths also needed additional pasture for replacement heifers. Therefore the subject property was always a confinement dairy operation, meaning they did not turn the cows out to pasture. The dairy gradually expanded to 250 head of milk cows in an effort to make it more profitable. Mr. Griffith died in 1990 and Mrs. Fudge and her two sons kept the dairy operating until 1993. At that time the dairy cattle were sold because the business was not profitable.

Table 1
Legal Tax Lots Comprising the Subject Property

Count of Parcels	County-Assessor. Parcel Number	LLC Ownership	Acreage in Parcel
1	209705000	Fudge Estate, c/o Griffith Trust	24.1
2	209748000	Fudge Estate, c/o Griffith Trust	20.0
		Total Acres	44.1

Source Clark County Assessor's property records.

The desirability of the Fudge property for commercial usage has long been recognized. An early Clark County zoning map dated in 1980 shows that five acres of the total acreage in the Fudge property (which abuts the Paradise Truck Stop) was designated as commercial (CH) zoned land. In 1994 when Clark County adopted the Growth Management Comprehensive Plan and its Implementing Zoning Ordinance, the zoning was changed to Ag-20 with an Industrial Overlay. Other parts of the Fudge property were zoned Rural Estates.

Starting in the mid-1990's the property transitioned to become the base for the non-agricultural trucking business of Gus Griffith, Mrs. Fudge's son. This took advantage of the property's prime location at Interstate 5 and the vacant buildings were suited to this non-farm business use. Since 1993 the primary use of the out-buildings where the dairy once operated is storage for trucking equipment and garages for repair of trucks and equipment.

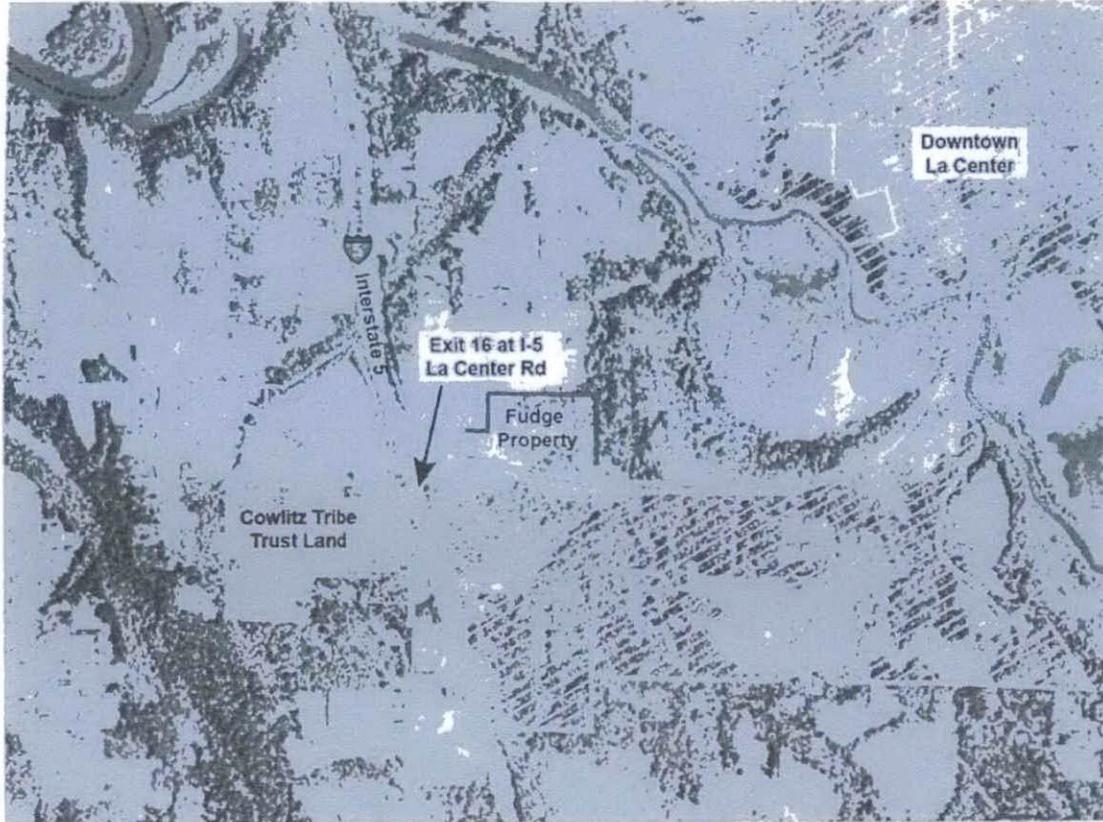
Another company in the excavation business also rents building space and land for their operations. In 2006 a single family residence was built by Mrs. Fudge on the smaller (20 acre) parcel within the property. Her adult daughter lives in the original house, a very old home whose date of construction is unknown.

Gus Griffith and a neighbor feed cattle over the fall and winter months in two loafing sheds. They also store grass hay that they cut and bale from the field. This hay is fed to their cattle and an excess is sold.

Mrs. Fudge leased 2,025 square feet of land for a cellular communications tower with an equipment shelter building that is located alongside one of the former farm buildings and near La Center Road. The height of the monopole is 140 feet. The lease extends to 2019 and is renewable.

The water well on the property is only for domestic use. Mrs. Fudge reports that since she and her husband have owned the property the land has not been irrigated and it is her opinion that the well is insufficient for irrigation purposes. The well was drilled at least 65 years ago and the well logs of the Washington Department of Ecology do not have a record of this well so no public information exists to determine its depth or its capacity.

Figure 1
Vicinity Map of Fudge Property



WGS 1984 Web Mercator Auxiliary Sphere
Clark County WA GIS <http://gis.clark.wa.gov>

This map was generated by Clark County's "MapsOnline" website. Clark County does not warrant reliability or timeliness of any information on this map, and shall not be held liable for losses caused by using this information.

Figure 2
Property Features



- Legend**
-  Slopes of 20% or more
 -  Footprint of old dairy farm buildings



The center building in this photo shows the original barn, along with a feed silo and portions of two loafing sheds. Other buildings not shown are used mainly for non-agricultural purposes by two businesses that park and maintain trucks and equipment on site. Photo taken April, 2015.

Over time the open ground on the Fudge property that has been used for grass hay has diminished. This is due mainly to the expanding needs for the transportation-related businesses that use the property. It is also due to the minor importance of the field operations. Gradually the land near the steep slopes on the property that is least productive for hay production is being idled.

Any livestock grazing of the land since the Griffiths purchased the land in 1969 has been short-term and incidental. There is evidence of abandoned perimeter and cross fencing.

The former agricultural buildings are not in well-maintained condition. In addition to the extensive footprint of these old buildings there is truck parking on bare, compacted ground, areas with abandoned vehicles, outdoor storage of business equipment, driveways and an internal, unimproved access road. Approximately six acres of the property are used for these purposes.

About 1.25 acres of land east of the barn were used for in-ground silos to store silage to feed dairy cows. The silos were dug into the ground and finished with concrete floors. When the dairy operation closed in the 1990's old tires used to cover the open pit silos remained. Other debris is also on or below the ground. This area was not put into grass production after the dairy closed and is overgrown with blackberries. Without extensive, costly rehabilitation, this land is not suited for farming purposes.

The Fudge property is bordered by many developed land uses. This is generally described here with further explanation later in the report.

The southern boundary of the Fudge property adjoins the La Center city limits for about 2,000 feet (nearly four tenths of a mile). The southwest corner of the subject property is approximately 525 feet from the I-5 northbound off-ramp at the La Center Junction. The southeast corner of the Fudge property is about 1.4 miles from the bridge at the East Fork of the Lewis River along La Center Road as it approaches the downtown area of La Center. The Fudge property is 1,250 feet from the eastern boundary of the Cowlitz Tribal Reservation.

A major driver of urban growth near the Fudge property is the formal designation of 152 acres immediately east of the La Center/I-5 interchange now held in trust by the United States of America for the Cowlitz Tribe's reservation. This trust deed was recorded in March of 2015. Recently the Bureau of Indian Affairs has also given notice that it is conferring federal reservation status to the Cowlitz Tribe. In anticipation of the full build-out of the tribe's reservation, the business partners of the Cowlitz Tribe, the Salishan-Mohegan LLC, are paying for all major road and sewer improvements. These improvements will allow for the construction of a 134,000 square foot casino, a major resort hotel and retail complex, tribal government offices, elder housing and other improvements.

At the eastern boundary of the Fudge property lays the Eagle Crest residential subdivision. This subdivision is in the county jurisdiction and features 26 single family lots of five acres or more. Four residential lots from this subdivision adjoin the eastern boundary of the subject property.

Three recent public facility projects have been approved by Clark County for siting on land north of the Fudge property.

1. First, in 2011, on a five acre parcel (tax parcel 986027200), the County approved a new electric substation to be built and operated by Clark Public Utilities (CPU) to serve the urbanizing area. This property is in the Ag-20 zone with Urban Reserve 20 (UR-20) designation. It is located on the east side of NW 26th Avenue at NW 324th Street. It adjoins a portion of the northern boundary of the two Fudge property parcels for about 660 feet.
2. The second development is the KWRL Transportation Cooperative located at 32519 NW 31st Street just off of NW Paradise Park Road (tax parcel 209699000). This is a shared transportation service operation that provides bus transportation to the Kalama, Woodland, Ridgefield and La Center school districts. This \$1.4 million facility opened in 2014 and as currently designed has approval for 67 bus parking stalls and 73 staff parking stalls. The co-op purchased 19 acres on land that is in the Ag-20 zone. The facility has an approved phased development plan that may allow for fueling and bus wash, and completion of a driver building with bathrooms, a kitchenette, lockers and other amenities.
3. The third development is the Clark Public Utility's Paradise Point Water Supply System. This is a major effort to meet the next 40 years of growth in water supply needs in La Center, Ridgefield, Battle Ground and other parts of north Clark County. A building to house the water treatment and reservoir storage needs will be constructed in the next two to three years on a 1.98 acre property the utility owns (tax parcel 986028840).

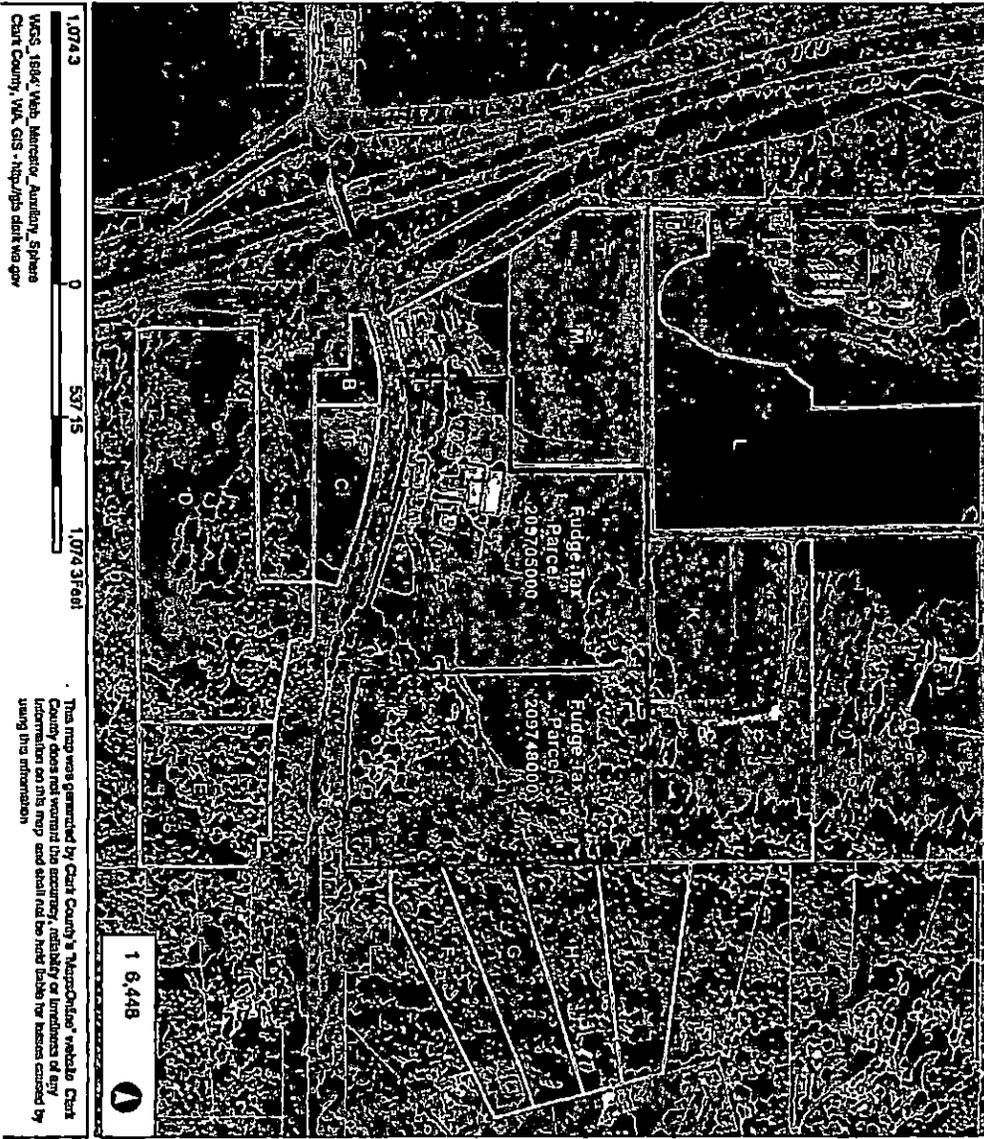
The four parcels located directly south of the Fudge property and along La Center Road are all designated in the C-2 zone (community commercial district) by the City of La Center (see Figure 3 and Table 2). A wide range of retail uses are allowed in the C-2 zone. Two of the four parcels are part of a group of properties that are commonly referred to as the "Circle C" properties. The City entered a Pre-Annexation Development Agreement with these property owners in 2011. This agreement encompasses approximately 120 acres of property that La Center has annexed with the key factor being the City's agreement to rezone this property from industrial or multi-family residential to commercial use and light industrial.

Three parcels totaling 4.4 acres that are to the south and west of the Fudge property have been purchased by the Salishan-Mohegan LLC for right-of-way of the planned relocation of NW Paradise Park Road to accommodate the increased traffic at the La Center Junction. This is another indication of the significant, widespread changes that are expected in the vicinity of the Cowlitz reservation on both the west and east sides of Interstate 5 at this interchange. Figure 4 shows the location of the new infrastructure and major developments near the Fudge property and Figure 5 shows the planned location of the interchange improvements at I-5 Exit 16.

The subject property also abuts the Paradise Truck Stop, a commercial business that is within the La Center city limits and has been in business for over 20 years at this location. This business includes traditional vehicle fueling stations, large truck fueling stations, a convenience store and truck parking.

Analysis of resource land for its long term commercial significance for agriculture needs to evaluate the property characteristics that determine if continued use for farming and livestock use is feasible. The subject property is nearly completely surrounded by property that is in one of these categories: active commercial use and in the La Center city limits, zoned for commercial use and in the La Center city limits, in 5 acre residential housing development within the county, or approved for a government facilities (Clark Public Utilities electrical substation) and in the county. A small portion of the subject property is bordered by 12.5 acre parcel with prime frontage on NW Paradise Park Road that is for sale at far above a price any farmer would pay for agricultural use. All other nearby properties that are in the Ag-20 zone to the north of the Fudge property are either primarily idle or in pasture with a small number of livestock. Incidental grazing by cattle or other livestock and grass hay production does not constitute commercial agricultural use of land and are not agricultural resource lands under the definitions of the GMA.

Figure 3
Surrounding Properties



- Legend
- Site Fudge Property
 - Surrounding Parcel Boundaries
- *A to *M are keyed to Table 2

This map was generated by Clark County's MapOnline™ website. Clark County does not warrant the accuracy, reliability or timeliness of any information on this map and shall not be held liable for losses caused by using this information.

1:6,448

Table 2
Surrounding Property Information

Lot ID (See Figure 3)	County Assessor Parcel ID Number	Ownership	Zoning	Lot Size (Acres)
A	209738000	Minit Management LLC (known as Paradise Truck Stop)	La Center C-2	4.22
B	209703000	Landon, Gloria (transfer in process to Salishan-Mohegan LLC)	La Center C-2	1.19
C	209708000	Vanvessem, John & Shanna	La Center C-2	2.48
D	211215000	Carlson Investments LLC	La Center C-2	16.29
E	211264000	Circle C Corp	La Center C-2	6.29
F	209711000	Kada, Chester & Tina	R-5	5.07
G	209728000	Sang, Cheng & Soboth, Trustees	R-5	5.07
H	209712000	Gillespie Frank LLC	R-5	5.08
I	209735000	Gillespie Frank LLC	R-5	5.08
J	209694000	Holmes, Barbara C., Trustee	Ag-20 with (Urban Reserve, UR-20), Industrial Overlay	15.0
K	986027200	Clark Public Utilities (Electric Substation to be built)	Ag-20 with (Urban Reserve, UR-20), Industrial Overlay	5.0
L	209749000	Paradise-LaCenter LLC	Ag-20 with (Urban Reserve, UR-20), Industrial Overlay	18.43
M	209746000	3B NW LLC	Ag-20 with (Urban Reserve, UR-20), Industrial Overlay	12.45
			Total Acreage	101.65
			Average Parcel Size	7.82

Source Clark County Assessor's property records.

Agricultural Resource Land Analysis of the Eighteen Parcels Adjoining the City of Ridgefield, Washington

December 2014

A Determination of De-Designation Under the
Washington Growth Management Act

Prepared by Bruce Prenguber
Globalwise Inc., Vancouver, WA



Agricultural Resource Land Analysis of Eighteen Properties Adjoining the City of Ridgefield, Washington

A DETERMINATION OF DE-DESIGNATION UNDER THE WASHINGTON GROWTH MANAGEMENT ACT

Introduction

Properties in five limited liability companies (LLCs) are proposed for de-designation from agricultural resource land with the request that these properties be brought into the Ridgefield Urban Growth Boundary. The five LLCs contain a total of 18 separate tax lots with easements for ingress and egress. Each legal tax lot has the right to construct one house. In this report the 18 tax lots comprise what are referred to as the "18 parcels" or "subject properties." These parcels total approximately 110 acres. See Figure 1 for identification of the 18 legal lots of record and Figure 2 for the general location of this property.

The southerly land in the subject property abuts the city of Ridgefield, in line with the possible future extension of North 10th Street. The City of Ridgefield is constructing a sewer main line going west on North 10th Street along the city of Ridgefield boundary to the point where North 45th Avenue and NW 31st Avenue meet. City water is being extended north along North 45th Avenue as subdivision construction occurs. With existing and planned residential growth the water main will soon extend to the southeast corner of the subject properties.

The properties in the five LLCs are evaluated to determine if they meet the criteria of agricultural resource lands under the Washington Growth Management Act (GMA). The author of this analysis is Bruce Prenguber, an agricultural economist who was raised on a farm in Washington and has a Bachelor's of Science degree and a Master's of Science degree in Agricultural Economics. My experience comes from 39 years as a practicing economist with emphasis in agricultural economics and business. I have worked most of my professional career as a consulting economist analyzing production agriculture, food processing and food marketing. See Attachment 1 for further description of my background and professional experience.

Property History and Background

The subject property was purchased in 1972 by Milton Brown and a business partner. The sellers were John and Joyce King who previously operated a dairy. The buyers report that the dairy was failing and the property was purchased as a long term real estate investment. On or about 1979 the entire property of approximately 110 acres was divided into 18 parcels and placed so that the parcels in each LLC were non-contiguous. Milton Brown is now the sole member of the five Washington limited liability companies holding these 18 parcels (see Table 1). Seventeen of the 18 parcels range in size from 5.0 acres to 6.87 acres. The remaining parcel is 13.83 acres.

During the period 1976 to 1981 all of the parcels were placed in the current use program for farming and agriculture. In order to have some cash flow to offset expenses, the LLCs have leased the land to a farmer,

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Agricultural Resource Land Analysis of Eighteen Properties Adjoining the City of Ridgefield, Washington

A DETERMINATION OF DE-DESIGNATION UNDER THE WASHINGTON GROWTH MANAGEMENT ACT

Introduction

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During the period 1976 to 1981 all of the parcels were placed in the current use program for farming and agriculture. In order to have some cash flow to offset expenses, the LLCs have leased the land to a farmer,

Mr. Lee Wells. Unrelated to the land lease, the original house has always been used as a residence only. The tenants of the house have never used the land for agricultural purposes.

The LLCs are notifying the county that all of the land will be removed from the current use tax program within two years or less. This has initiated the LLCs' long term plan to develop the property. Figure 1 shows the road easements that have been recorded to allow access to all 18 parcels. The property owner has the right to build a single family home on each of the 18 parcels at the present time.

Figure 2 shows the intensity of development and housing on and near the subject property. The southern boundary of the LLC properties adjoins the Ridgefield Urban Growth Boundary for a distance of one-half mile. The subject properties are less than 1.5 miles from the Ridgefield Junction at I-5. At NW 31st Street and North 10th Street, the properties are about one-half mile from the roundabout at Pioneer Street and North 45th Avenue. Near this roundabout the zoning accommodates new commercial construction.

Mr. Wells tilled land for crops on a portion of the subject properties. This has been feasible when the land was largely open fields. This is ending as the LLCs begin the development plan to build roads and prepare for developing the 18 home sites. Small tracts consisting mainly of tracts of generally less than 5 acres with home sites, roads and other residential improvements will not be suited to planting grain crops or baling hay. These two types of crops have been the crops Mr. Wells grew on the land. Additionally Mr. Wells grazed cattle on a portion of the land.

The old house on the property is currently vacant and in need of repairs. The onsite well is only capable of meeting the domestic needs of the present house. There is insufficient water supply for irrigation. The old dairy barn is in poor structural condition but is used for hay and equipment storage. The old milking parlor is unusable. Two other outbuildings near the house are only suitable for non-farm storage. Surface water from a small unnamed tributary of Allen Creek is used for livestock watering. About two-thirds of the entire property is fenced for livestock. The only other farm-related improvement is a small corral for loading cattle.

Analysis of resource land for its long term commercial significance for agriculture needs to evaluate the property characteristics that determine if continued use for farming and livestock use is feasible. The subject properties are each currently approved for five acre home sites and are mainly surrounded by suburban residential development.

Table 1
Legal Tax Lots Comprising the Subject Property

Lot No.	County Assessor Parcel Id. Number	LLC Ownership	Lot Size
1	213065000	RDGB Royal Farms LLC	5.09
2	213066000	RDGK Rest View Estates LLC	5.24
3	213067000	RDGM Rawhide Estates LLC	5.35
4	213068000	RDGB Royal Farms LLC	5.15
5	213069000	RDGK Rest View Estates LLC	5.05
6	213070000	RDGF River View Estates LLC	5.02
7	213071000	RDGM Rawhide Estates LLC	6.07
8	213072000	RDGB Royal Farms LLC	6.00
9	213073000	RDGM Rawhide Estates LLC	6.54
10	213074000	RDGF River View Estates LLC	6.02
11	213075000	RDGM Rawhide Estates LLC	5.00
12	213076000	RDGK Rest View Estates LLC	5.00
13	213077000	RDGM Rawhide Estates LLC	13.83
14	213078000	RDGS Real View LLC	5.87
15	213079000	RDGK Rest View Estates LLC	6.87
16	213080000	RDGF River View Estates LLC	5.04
17	213081000	RDGS Real View LLC	5.16
18	213082000	RDGM Rawhide Estates LLC	5.17
		Total Acres	107.47

Note: Lot 13 has a house.

Source: Clark County Assessor's property records.

Within the quarter section of the subject properties, there are a total of 31 separate tax lots, of which the LLCs own 18. Just south of the Ridgefield UGB where it adjoins the subject property are a cluster of many large subdivisions (see Figure2).

The character of the area to the west, north and east of the subject property is a mix of rural residences on small lots, some open space undeveloped properties and others in pasture with livestock raised for personal use. Table 2 lists the 25 properties that surround the subject properties. Incidental grazing by cattle or horses and grass hay production does not constitute commercial agricultural uses of land and are not agricultural resource lands under the definitions of the GMA. Figure 3 locates the surrounding properties that are cross references in Table 2.

Figure 1
Subject Properties Showing All 18 Parcels



Figure 2
Vicinity Map of Subject Properties

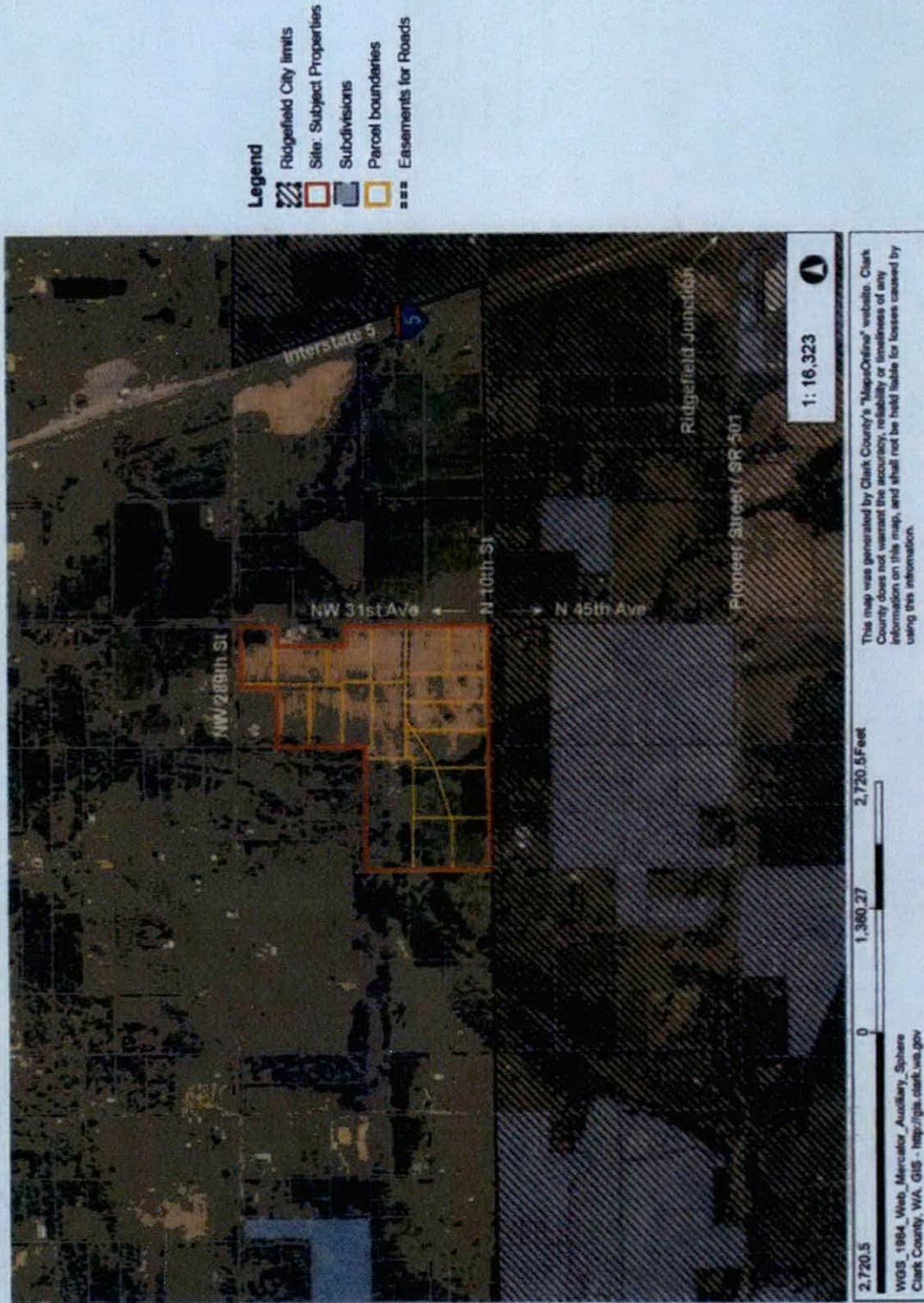
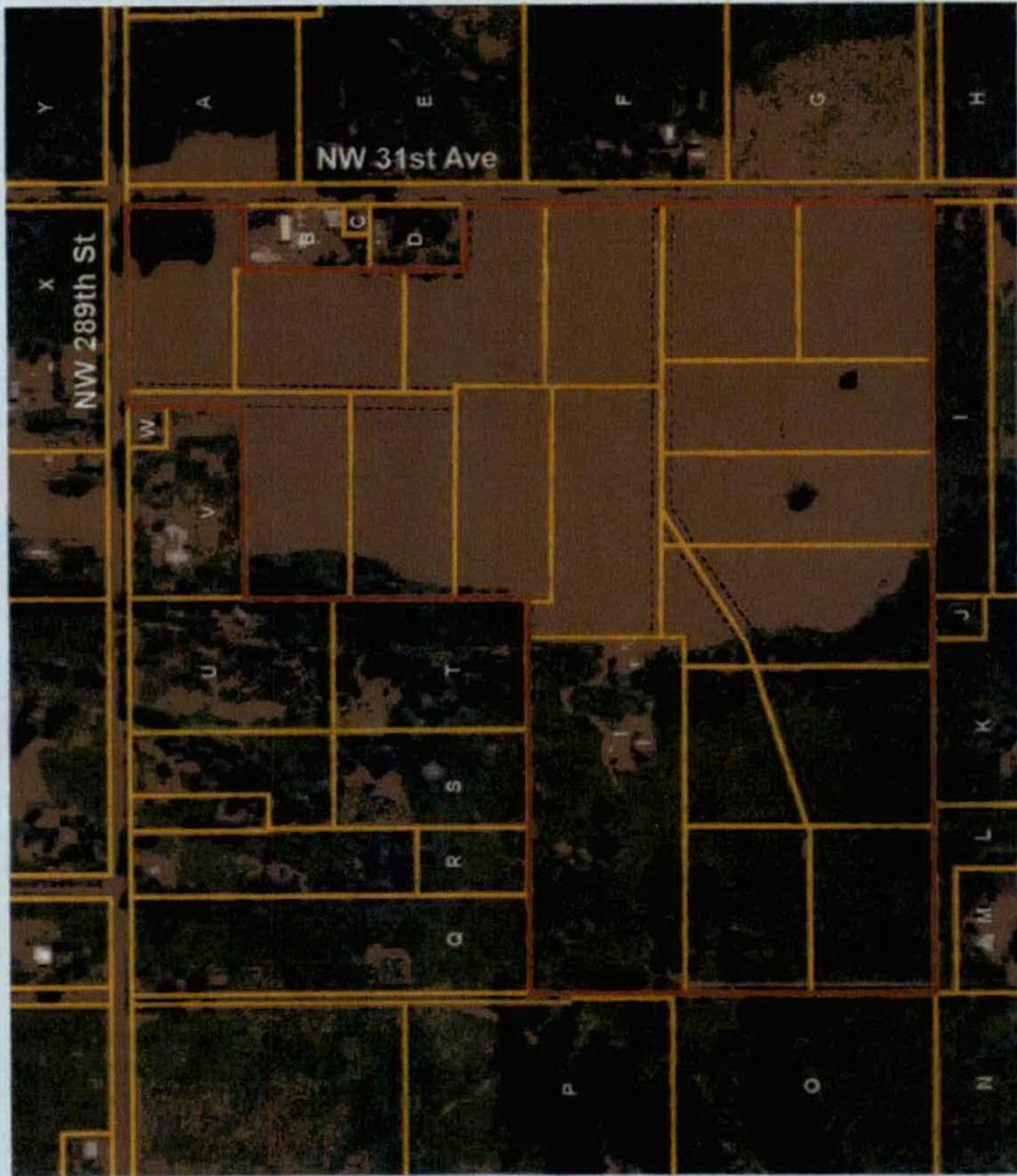


Table 2
Surrounding Property Information

Lot Id. (See Figure 3)	County Assessor Parcel Id. Number	Ownership	House on Property	Lot Size (Acres)
A	212777000	Hendrickson, Kay J.		8.00
B	213059000	Hegge Farms LLC		2.03
C	213050000	Gervais, Alan F	Yes	0.24
D	213032000	Guthrie, Joseph & Marguerite	Yes	1.73
E	212778000	Lehto, Gary N.D. & Melinca	Yes	22.00
F	212812000	Smith, Robert W et al Trustee	Yes	20.00
G	212813000	Smith, Robert W et al Trustee	Yes	20.00
H	213958000	Paper Rock LLC et al		17.67
I	213780000	Masanam, Durga P. & Radha	Yes	5.88
J	213749000	Masanam, Durga P. & Radha		0.49
K	213799000	Hancock, Scott & Essie	Yes	10.02
L	213798000	Gilbert, Brett & Lisa K. et al		6.49
M	213800000	Gilbert, Brett & Lisa K. et al	Yes	3.00
N	213713000	Stief, Daniel E. & Kathleen A.	Yes	10.13
O	213018000	Jackson, Steve & Carlson C.		20.00
P	213028000	Jackson, Steve & Carlson C.	Yes	20.00
Q	213026000	Myev, Janice E	Yes	10.05
R	213086000	Rumble, Joseph N. & Kusik, Barbara Trustees		1.82
S	213089000	Rumble, Joseph N. & Kusik, Barbara Trustees	Yes	5.00
T	213062000	Niece, Edward & Rebecca	Yes	6.59
U	213085000	Thornton, Bill & Pamela		6.59
V	213091000	Pacific Wood Treating Corp.		5.48
W	213037000	Garrett, David L.	Yes	0.49
X	213033000	Kunetz, James M & Greene, Gretchen	Yes	25.81
Y	212799000	Hendrickson, Kay J.	Yes	39.01

Source: Clark County Assessor's property records.

Figure 3
Surrounding Properties



Legend
Site: Subject Properties
Parcel boundaries
::: Easements for Roads
A to *Y* are keyed to Table 2

Analysis to determine if Lands are Agricultural Lands under GMA

This report was prepared with consideration of fourteen elements that are primary factors for de-designation of resource land under the GMA. The first three are taken from the definition of agricultural resource lands in the Act:

- 1) Are the resource lands already characterized by urban growth?
- 2) Are the resource lands primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030 (2)?
- 3) Is there long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and is the land near population areas or vulnerable to more intense uses?

The next eleven factors are enumerated in [former] WAC 365-190-050. There are:

- 4) Land-capability classification from the U.S. Department of Agriculture;
- 5) The availability of public facilities;
- 6) Tax status;
- 7) The availability of public services;
- 8) Relationship or proximity to urban growth areas;
- 9) Predominant parcel size;
- 10) Land use settlement patterns and their compatibility with agricultural practices;
- 11) Intensity of nearby land uses;
- 12) History of land development permits issued nearby;
- 13) Land values under alternative uses; and
- 14) Proximity of markets.

These fourteen elements are covered in this report. For the reasons stated herein, it is my opinion that the subject properties do not meet the GMA criteria for agricultural resource lands.

Conclusion of this analysis: The subject properties fail to meet the Growth Management Act's definition of Agricultural Resource Lands.

Agricultural land is defined by the Washington Growth Management Act as "land primarily devoted to the commercial production of horticulture, viticulture, floriculture, dairy, apary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees or livestock, and that has long-term commercial significance for agricultural production" (WAC 365-190-050A). This definition states two conditions that must be met: the land is in an area used for or primarily devoted to agricultural production and the land has on-going commercial significance for agricultural production. **In my opinion, the subject parcels fail to meet both the first and second elements of this definition: the parcels themselves and the surrounding properties are not devoted to agriculture as of the time of this report and they do not have significant commercial agricultural potential for the future.**

Evaluation for De-Designation of the 18 Parcels

1. Are the agricultural resource lands already characterized by urban growth?

The subject properties adjoin the UGA of Ridgefield. Over 500 new house sites within 1.5 miles of the subject properties are either built, vacant lots approved for construction, in the stage of final platting or in the land use process to be approved for residential home lots. Information about these subdivisions is presented later in this report.



This photo is looking to the southwest with the southern portion of the subject properties in the foreground. Part of the Pioneer Canyon subdivision is prominently seen. Photo taken December, 2014.

In addition, there are also 31 tax lots within the quarter section where the LLC properties are located. The average size of parcels in other ownerships in this quarter section, not counting those within the subject properties, is 3.2 acres. The 13 parcels outside the boundary of the subject properties in the quarter section range in size from 10,450 square feet to 6.59 acres. There are a total of seven homes already in the quarter section of the LLC properties.

Along NW 31st Avenue, between the subject properties and the street, there are three homes constructed on small lots. The subject properties are split in to 18 legal tax lots, each tax lot allowed to have one residential structure.

2. Are the resource lands primarily devoted to the commercial production of agricultural products?

As of now (December 31, 2014) the subject properties are no longer devoted to agriculture use. The reasons are a) in the future the land is not expected to meet the farm income requirements of the current use - agriculture program and b) the taxes due for conversion are so significant that the LLCs need to initiate their development plan. As a result there is not long term commercial capability for keeping this land in agricultural production.

The parcels in the subject properties are predominantly 5.0 to 6.9 acres. After deducting for the area needed for home sites and roads, the net remaining acreage will be 3 to 4 acres per parcel for all but one lot. This eliminates the opportunity for typical farming operations to grow grain or hay.

The LLCs would have a net loss if they continue to operate the properties with a lease to Mr. Wells. The lease income was \$4,000 for agricultural use of the properties in 2014. There is also a house on the property but it is currently vacant and in need of major repairs. The cost for improving and renting the house is immaterial to this analysis and is not considered.

The ownership costs incurred by the LLCs to hold these properties will increase dramatically to about \$26,300 per parcel for back taxes and interest due to withdrawing from the current use farm and agriculture tax program. There are no agricultural uses that will generate positive net income from the possible agricultural activities the LLCs can conduct on the properties.

Other lands in the vicinity of the subject properties are generally not used for commercial agricultural production. There is a small Christmas tree farm east of these properties, and approximately a two acre field north of the Christmas tree farm that may have grown grain this past year. One farmer to the northwest of the subject property is growing grass seed. Otherwise land use activities are not devoted to commercial agriculture.

3. Is there long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and is the land near population areas or vulnerable to more intense uses?

The LLC properties are destined for more intensive, residential use because of their proximity to Ridgefield, which is experiencing rapid population growth. The properties are located within 2.5 miles of Ridgefield's city center. Most significantly the properties are located within 1.5 miles or less of five subdivisions: Green Gables, Pioneer Canyon, Laurel Heights, Discovery Ridge and Ridgefield Woods. The LLC properties are also within one mile of the Ridgefield Junction and within one-half mile of land along Pioneer Street that is considered prime commercial real estate. The subject properties are at the apex of housing development in Ridgefield, which is at the forefront of growth among the smaller cities in Clark County. The Ridgefield area is poised for sustained population growth largely because it is centrally located in relation to other population and employment centers from Woodland to Portland.

With regard to land productivity for agriculture, soils are a focus. As indicated below in element 4, a portion of the soils on the subject properties are Gee series and are classified by the U.S. Department of Agriculture (USDA) as capability class IIIe (e stands for erosive). Some soils may be considered prime if they are aided by artificial drainage. This is further discussed below.

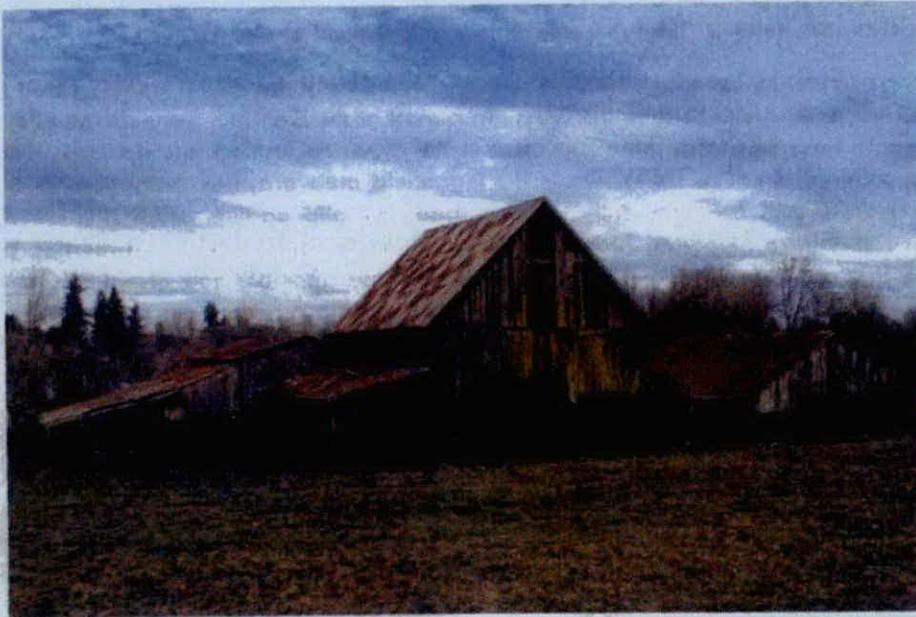
There is one well for potable water on the LLC properties and it does not have the capability to supply irrigation water. Therefore high value crops like berry and vegetable crops are not capable of being grown.

Productivity for Livestock Operation

The productivity of the soils as measured by yields for crops that are suitable for production is not high. In discussions with Mr. Wells it is indicated that grass for pasture grazing can support about one cow-calf pair (a cow and her nursing calf) on about 2.2 acres for approximately five months per year. This is average grazing capability. At the net usable land area of three to four acres per lot on the LLC properties, each parcel could have one to two animal pairs for five to six months of the year. Note that a barn and some equipment would be needed for cattle or other livestock, a cost factor that is also unfavorable to agricultural use. Also purchased hay and or grain would be needed for winter feed which also leads to negative net income.

The lack of income from livestock production is revealed by USDA budgets for cow-calf operations in the western U.S. from 2012 to 2013 which show net losses for these operations for all years (see the following web site for details: <http://www.ers.usda.gov/data-products/commodity-costs-and-returns.aspx>). The operations analyzed in the USDA budgets have 138 cows and an annual calf crop of 104 animals which is a much larger operation than what is possible on the small subject parcels. The overhead costs of a four-head herd are very high compared to 138-head cow herd. Even when ignoring opportunity cost for labor and not allowing for any death loss the resulting net return is a loss of \$472 per calf sold.

The economic feasibility of such a small scale beef cattle operation cannot be justified on the subject properties. Cattle production also raises concern for odor, mud and other issues and increases the potential for nuisance conflicts with nearby homeowners.



*The old barn on site has not been maintained for commercial agricultural use.
Photo taken December 2014.*

Productivity for Hay and Grain Production

Grass hay production is a crop alternative that has historically been produced on the subject properties. Mr. Wells reports that the average grass hay yield is about 2.0 tons per acre. A grass hay budget from the University of Nevada has been adopted to estimate the returns from raising and selling native grass hay. At a sales price of \$90 per ton, the hay crop would have gross returns of \$180 per acre. All costs, excluding labor

would result in per acre costs of about \$207 per acre—a per acre net return of about negative \$27 per acre. At four acres of hay production per parcel this means there is a net loss of about \$108 without considering the operator's labor. It is not economically viable for a farmer to raise hay on the subject properties.

Wheat is also an alternative but grain production is not easy to grow on small acreages due to the specialized farm implements needed. Harvesting is a particular problem. Hiring third parties for custom field work is impractical and cost prohibitive for such small parcels. Common diseases like stripe and leaf rusts and powdery mildew are also leading reasons Clark County is a very minor grain production area. Other areas with lower rainfall and lower land prices are much more suited to grains crops.

The subject property is capable of producing wheat with a yield of 60 bushels per acre. Budget analysis shows that wheat production would generate an estimated net return of \$66 per acre or about \$264 per year for four acres of production. The level of revenue cannot be covered because of the equipment costs to prepare the soil plant and harvest the grain crop. Similarly growing other grains such as oats or barley is also impractical and very unlikely.

4. Land-capability Classification from the U.S. Department of Agriculture

The USDA places the predominant soils on the subject properties in the Gee series and in capability class III. Class I soils are considered the best soils and Class VIII are the worst. Class III soils are border-line prime. In the case of the subject properties, these are quality soils but not especially unique or prime. The USDA short description for Gee soils series is: "This soil is moderately well drained and easily tilled."

USDA soil surveys further indicate that the Gee soils of Clark County are almost entirely found in the area from Salmon Creek to Sara and north to the Lewis River. Most of the Gee soils were cultivated in the 1940's to 1960's when farming was much more prevalent in the area. As farming has declined while suburban expansion has occurred, the Gee series soils in the Ridgefield area are now rarely tilled and planted to crops. Currently these soils are principally used to raise hay and pasture, which are low-value crops. Historically Gee soils have supported production of high value crops, including strawberries, pole beans, potatoes, cane fruit and corn. However few little if any of these crops are now grown on Gee soils in the vicinity of the subject properties. None of these crops are known to have been grown on the subject properties for at least 50 years, if ever.

About 90 percent of the soils on the LLC properties are Gee series. Furthermore about 68 acres are classified as Gee silt loam with 0 to 8 percent slopes.

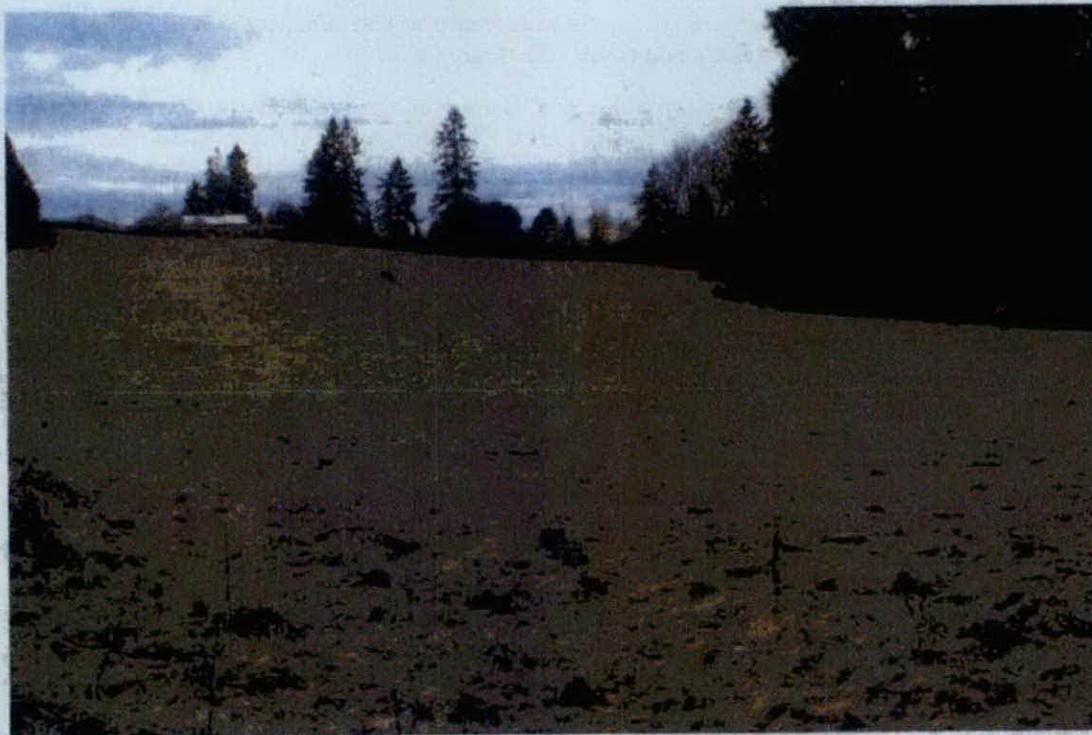
The best soils for cultivation on the subject properties are the generally flat to gentle sloped land located to the east of the tributary to Allen Creek that generally runs in a north-south direction. This encompasses the 68 acres with 0 to 8 percent slopes. Most of these soils have been improved with subsurface tile drainage installed to prevent excessive water in the plant root zone. Without this drainage system, the soils are subject to standing water in any depressions. The drainage system was installed in 2007 and has again failed in places. This condition was confirmed by Mr. Wells and observed on the property in the winter of 2014.



*Subject property in upland area with standing water in swale along NW 31st Avenue.
Photo taken November 2014.*

The need for the drainage system and its periodic replacement are indicators that the soils are only moderately productive and have crop limitations. Moreover, as the property is leased for home sites within the small parcels that have been created, there is no longer an inducement to maintain or improve the subsurface drainage system. It will be replaced with storm water control appropriate for residential development.

Soils to the west of the creek are generally wetter and poorer quality. These soils are best suited for growing grass for hay or pasture. This was documented by the review of aerial photos available from Clark County GIS that show the land in the subject properties west of the creek have not been cultivated since the 1950's except perhaps to reseed the pasture for grazing. This included the period when the property was utilized for a small dairy prior to the ownership change in 1972. Since 1988 when Mr. Wells started leasing the property this area has only been used to raise cattle.



*A portion of the subject properties west of the creek. This area has been used for grazing in the past.
Photo taken December 2014.*

5. Availability of Public Facilities

Roads

North 45th Avenue road improvements are in the latest Ridgefield Six-Year Transportation Improvement Plan. Funding is earmarked for North 45th Avenue southward at North 10th Street to South 15th Street. This starts at the southeast corner of the subject properties. The improvements will widen the road width to 46 feet, with a center turn lane of 14 feet, two travel lanes of 12 feet each and two shoulders of four feet each.

Wastewater Facilities

The Clark Regional Wastewater District is building the Discovery Corridor Wastewater Transmission System to handle the wastewater capacity requirements far into the future and accommodate the influx of anticipated new residential, commercial and industrial growth. The Pioneer Canyon Pump Station and trunk line is under construction. The pipeline construction will be completed by 2016 and is designed for the major residential and commercial expansion that is occurring in the Ridgefield area. The pump station is located approximately 650 feet from the southeast corner of the subject property that is located at the corner of NW 31st Avenue and North 10th Street.

Municipal Water

The Ridgefield Water System Plan Update of 2013 shows a project to extend municipal water service from Pioneer Avenue to North 10th St. Completion is expected by 2016. The extension of this service will bring water to a point less than one mile from the southeast corner of the subject property. As residential

development occurs closer to the subject properties, the water mains will be brought to the subject properties, at the intersection of Northwest 31st Avenue and North 10th Street.

The City is redeveloping the municipal well at Ridgefield Junction and constructing a treatment system. This investment is intended to meet the long term growth that is projected for Ridgefield in the next 15 to 20 years.

Schools

Residents in the area of the subject properties are served by the Ridgefield School District.

Parks and Trails

The City of Ridgefield has plans for two trail corridor extensions to serve new neighborhoods that are in or near the subject properties. One of these trails, Pioneer Canyon, would follow the Allen Creek tributary that extends through the subject properties. The other trail, Pioneer Ridge, would come within one-half mile of the subject properties.

New sports fields are under evaluation near Ridgefield High School. Also, Abrams Park which is Ridgefield's largest park is 2.5 miles from the subject properties.

6. Tax Status

The LLC properties are going out of current use taxation for farm and agriculture. Some of the parcels in the LLCs were placed in this program in 1976 with the remainder added to the program in 1981. The LLCs are withdrawing the properties from the current use tax program because it is doubtful the subject properties can meet the farm income requirement in the future and the plan is to develop the 18 parcels in residential development.

The best available estimate is that the withdrawal of the property from current use will require the LLCs to pay about \$474,000 in back taxes and interest. With this large tax payment, it is necessary for the LLCs to go forward with their plan for residential development of the subject properties.

7. Availability of Public Service

The LLC properties are within two miles to the Clark County Fire and Rescue Station on North 65th Avenue. The subject property is approximately 2.5 miles from downtown Ridgefield and the city police station.

There is a Public Safety Complex at 505 NW 179th Street (the Fairgrounds Station) which is the newest station for Fire District 6. It features a fire station, the West Precinct of the Clark County Sheriff's Office, the offices of the Clark County Fire Marshal and the Clark County Training Division, a joint fire and emergency medical training consortium of Clark County Fire & Rescue, Fire District 6 and the Vancouver Fire Department.

Legacy Salmon Creek Medical Center is Clark County's newest full service medical facility and is less than nine miles from the subject properties. Peace Health has recently purchased property in the Ridgefield area which is less than 2 miles from the subject properties.

Property purchased by Clark College for a future campus is also very near the subject properties – less than two miles.

8. Relationship or Proximity to Urban Growth Areas

The entire south boundary of the LLC properties adjoins the City of Ridgefield Urban Growth Boundary for a distance of one-half mile. See Figure 2.

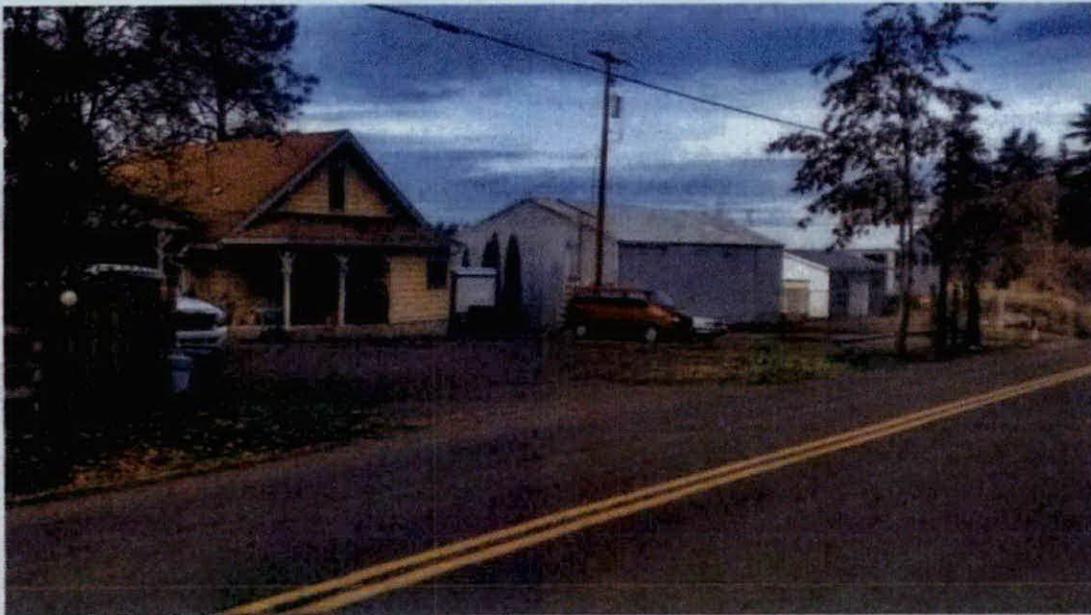
9. Predominant Parcel Size

The subject properties total 18 tax parcels ranging in size from 5.0 acres to 13.8 acres. Most of the parcels are close to five acres in size. Each of these tax parcels can have one residence.

10. Land Use Settlement Patterns and their Compatibility with Agricultural Practices

The nearby land settlement pattern is diverse and suburban. Along NW 31st Avenue and abutting the subject properties are three lots of record, two with homes and one with general purpose buildings but no residence. The property addresses are 28502 NW 31st Avenue, 28520 NW 31st Avenue and 28522 NW 31st Avenue with lot sizes, respectively, of 1.73 acres, 10,450 square feet and 2.03 acres. See Figure 3.

In addition to the three adjoining properties mentioned above, within the Southeast Quarter of Section 17, Township 4North, Range 1East there are ten other parcels. Four of these properties have single family residences. These parcels range in size from 0.49 acres to 6.59 acres. The average lot size is 3.78 acres. None of these properties appear to have commercial farming activity occurring.



This photo shows two of three lots with frontage on NW31st Avenue. The subject properties are behind these frontage lots. Picture taken December, 2014.

11. Intensity of Nearby Land Uses

To the south of the LLC properties, which is inside the Ridgefield UGA, residential development is rapidly occurring. It is expected that new residential subdivisions will continue to move toward the current UGA boundary and adjoin the subject properties. The area to the north, east and west of the subject properties is suburban and rural residential. There is one Christmas tree farm, low-intensive livestock grazing and both treed and open land.

12. History of Land Development Permits Issued Nearby

Within one mile or less of the subject properties three major subdivisions with 429 single family residential lots are fully approved and within the City of Ridgefield. These subdivisions are Pioneer Canyon, Green Gables and Laurel Heights (see Table 3).

Table 3
Approved Subdivisions Near the Subject Properties

Subdivision Name	Recording Date	Recording Number	Number of Residential Lots
Pioneer Canyon Phase 1	10/21/09	461730	55
Pioneer Canyon Phase 2	10/30/12	4906656	77
			132
Green Gables PUD Phase 1	3/11/11	4749682	63
Green Gables PUD Phase 2 North	1/4/11	4732173	35
Green Gables PUD Phase 2 South	11/30/12	4916936	31
Green Gables PUD Phase 3	3/18/10	4649949	120
			249
Laurel Heights	6/24/14	5082130	48
			429 Total

In addition there are two more subdivisions nearing final approval that are very close to the subject properties. Discovery Ridge is an 11.75 acre subdivision with 52 single family lots that is east of N. 45th Avenue. This subdivision is in the RLD-6 zoning district and received final plat approval from the Ridgefield City Council on December 18, 2014. It is to the southeast and within one-quarter mile of the subject properties.

The other subdivision is Ridgefield Woods. This planned unit development is located south of the subject properties. This subdivision is nearing final approval and is within approximately 875 feet of the southeast corner of NW 31st Avenue and North 10th Street. Ridgefield Woods is in the LDR-7.5 zoning district and is within the City of Ridgefield. The plan is for 39 detached single family residential lots on 12.5 acres.

In total there are 520 residential lots in the above described subdivisions. All of the subdivisions are in close proximity to the subject properties. This area is already highly developed, with more single family homes sites being established.

Some of the subject properties can be considered better suited to residential development than nearby subdivisions. Several of the lots have views of Mount St. Helens. There is also a lake on the site that could be enhanced for recreational enjoyment. Some options are water activities such as canoeing and development of hiking trails.

13. Land Values under Alternative Uses

Open land of 2 to 5 acres without improvements in the vicinity of the subject properties are valued by the Clark County assessor at over \$20,000 per acre. The subject properties at fair market value are valued at approximately \$20,000 to \$28,000 per acre according to assessor's records. Development value is reflected

in these prices. It is not possible to estimate the full price a farmer would pay for this ground to farm it as there are no comparable sales. It is clear however that the nearby development has increased the value of the land well beyond the price that farmers would pay to purchase it and operate the land only for its value to produce crops.

14. Proximity of Markets

Distance to markets for agricultural products is highly variable. Mr. Wells reports that he ships cattle to Toppenish Washington for slaughter, a distance of 180 miles. At times he has shipped feeder cattle further to be fed to finished weight. Small slaughter facilities are fewer in number as food safety regulations have become increasingly strict.

Hay can be sold in rural parts of the county to rural land owners who feed a small number of cattle, sheep and other farm animals. Grain and other commodities can be sold in less-than-truckload quantities in the county or in larger quantities to grain handlers and shippers who are mainly located in Portland or further south in the Willamette Valley.

Conclusions

For many reasons the subject properties do not meet the criteria of agricultural land as defined by the GMA. The main factors are:

- The properties in the LLCs are already divided into 18 legal tax lots, with each lot allowed one housing unit. This property is clearly residential by way of the housing density already in place as well as the suburban nature of the area.
- This highest and best use for the subject properties is residential. Several of the home sites have views of Mount St. Helens. The picturesque small lake on the site can be used by residents for kayaking and canoeing. The lake would also enhance nearby hiking trails.
- The subject properties have lost their long term significance for agriculture because the parcels are too small for profitable crop farming or livestock production. As intensive residential development continues there is also incompatibility with farming. The LLCs cannot realize a positive return from leasing this land for farming to meet the requirements of current use for farming and agriculture. The LLCs are obligated to withdraw the land from current use taxation and pay back taxes and interest estimated to be \$474,000.
- Infrastructure on the properties, such as the well, barn and milking parlor is no longer useable or functional for agricultural purposes.
- Farmers cannot afford to purchase these properties and expect to receive farm income that will allow for repayment of the mortgage loan. Economic conditions have reduced the option on these properties to development.
- The subject properties are subject to intense pressure for conversion to non-agricultural use because they are adjacent to the current UGB and are very near the current residential subdivision expansion in the residential/commercial corridor between Ridgefield Junction and the downtown core area of the city.

Revision of the UGB to include the subject properties and the subsequent rezoning should not be denied on the basis that these properties are productive agricultural land resource land going forward.

This report submitted by Bruce Prenguber, President of Globalwise Inc.

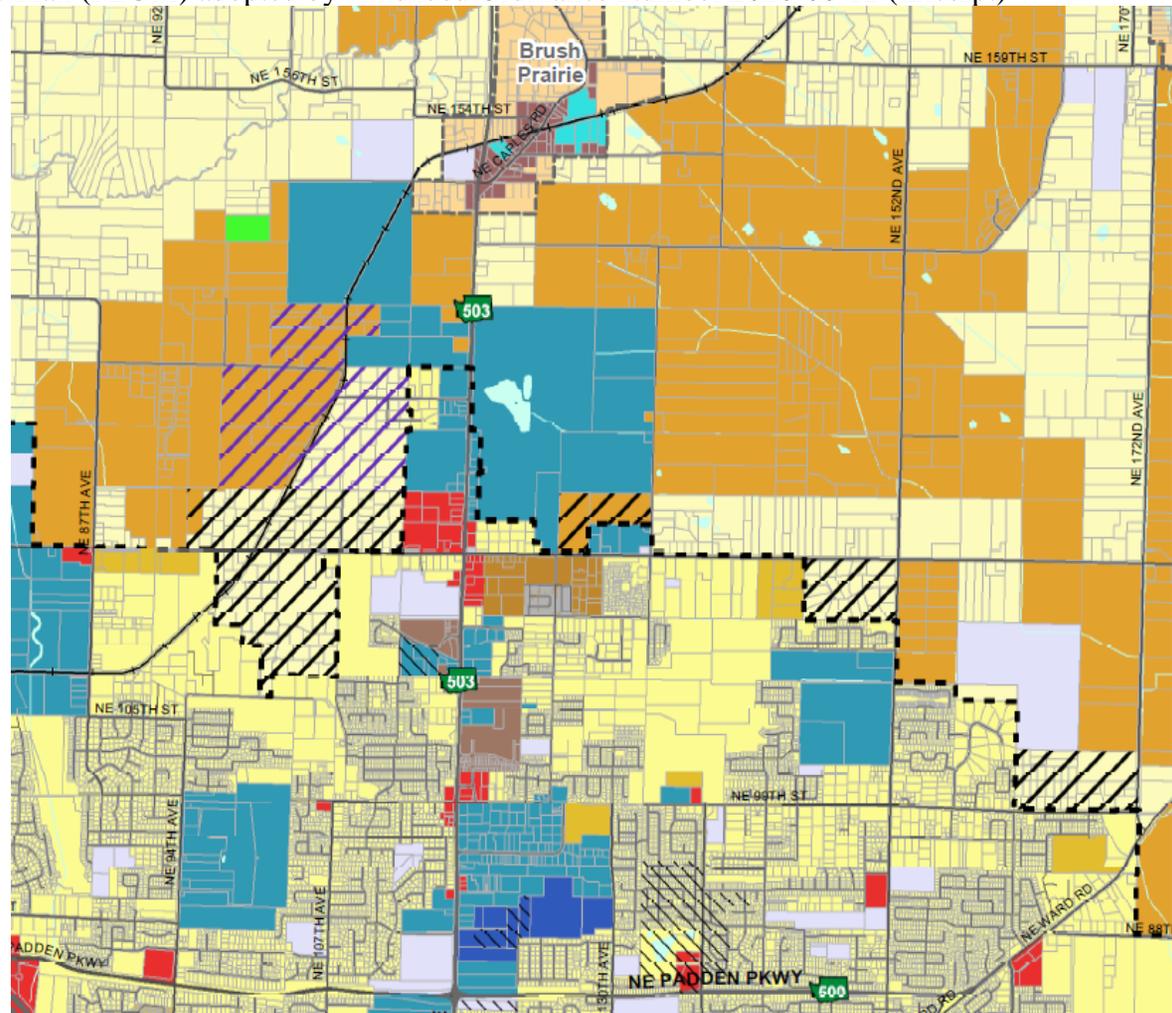
Bruce Prenguber

December 31, 2014

AR 010408 County/UGA Comprehensive Plan (FLUM) adopted by Amended Ordinance Number 2016-06-12 (Excerpt) (Cont.)

CRGNSA	
	Gorge Residential 5
	Gorge Residential 10
	Gorge Small-scale Agriculture
	Gorge Large-scale Ag 40
	Gorge Large-scale Ag 80
	Gorge SMA Agriculture
	Gorge SMA Open Space
	Gorge SMA Federal Forest
	Gorge SMA Non-federal Forest
	Gorge Small Woodland 20
	Gorge Small Woodland 40
	Gorge Public Recreation
OVERLAY	
	Urban Reserve
	Urban Holding
	Railroad Industrial Urban Reserve
	Surface Mining
	Columbia River Gorge Scenic Area
	Rural Center Mixed Use
	Urban Growth Area (UGA) Boundary
	City Limits
	Rural Center

AR 010408 County/UGA Comprehensive Plan (FLUM) adopted by Amended Ordinance Number 2016-06-12 (Excerpt)



North ↑

AR 010408 County/UGA Comprehensive Plan (FLUM) adopted by Amended Ordinance Number 2016-06-12 (Excerpt) (Cont.)

CRGNSA

-  Gorge Residential 5
-  Gorge Residential 10
-  Gorge Small-scale Agriculture
-  Gorge Large-scale Ag 40
-  Gorge Large-scale Ag 80
-  Gorge SMA Agriculture
-  Gorge SMA Open Space
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OVERLAY

-  Urban Reserve
-  Urban Holding
-  Railroad Industrial Urban Reserve
-  Surface Mining
-  Columbia River Gorge Scenic Area
-  Rural Center Mixed Use
-  Urban Growth Area (UGA) Boundary
-  City Limits
-  Rural Center

FUTUREWISE

September 14, 2018 - 3:32 PM

Transmittal Information

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Superior Court Case Number: 17-2-00929-0

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