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Court of Appeals No. 50847-8-II and 51745-1-II CONSOLIDATED
(GMHB Case No. 16-2-0005c)

**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, AND
RDGS REAL VIEW LLC, and 3B NORTHWEST LLC,
Petitioners, Intervenors Below,

vs.

GROWTH MANAGEMENT HEARINGS BOARD,
Respondent,

And

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

And

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

**PETITIONERS RDGB ROYAL FARMS LLC, RDGK REST VIEW
ESTATES LLC, RDGM RAWHIDE ESTATES LLC, RDGF RIVER**

**VIEW ESTATES LLC, AND RDGS REAL VIEW LLCS' REPLY
BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES5

I. SUMMARY5

II. ARGUMENT IN REPLY7

 A. The UGA Issue is Moot.....7

 1. Invalidity is Prospective Only7

 2. Effective Relieve Cannot Be Granted.....9

 3. Annexation Granted The LLCs Substantial
 Property Rights13

 4. County Cannot Comply16

 5. Conclusion18

 B. No Area-Wide Analysis Was Required18

 1. Futurewise Fails To Properly Address The
 Interaction Of WAC 365-190-040 and 05018

 2. Conclusion23

 C. Even if Area Wide Was Applicable, Area Wide
 Considerations Were Addressed.....23

 1. Futurewise Fails To Address The Discretion
 Granted By The Use Of The Word “Area”23

 2. Futurewise’s Argument That A Broad Swath
 of Land Must Be Analyzed As To Whether
 Or Not It Is Agricultural Makes No Sense
 For A Limited Designation Amendment24

 3. Futurewise Does Not Address The Identified

Area-Wide Considerations Addressed In The
Reports25

4. Conclusion26

III. CONCLUSION.....27

TABLE OF AUTHORITIES

Cases

<i>Carrick v. Locke</i> , 125 Wash.2d 129, 135, 882 P.2d 173 (1994).....	13
<i>City of Arlington v. CPSGMHB</i> , 164 Wn.2d 768 (2008)	23
<i>Diehl v. Mason Cnty.</i> , 94 Wn. App. 645, 651 (1999).....	26
<i>Estate of Brown v. West Seattle</i> , 43 Wash. 26, 85 Pac. 854	16
<i>Futurewise v. Benton Cnty.</i> , EWGMHB Case No. 14-1-0003, Final Decision and Order, 2014 WL 7505300 (October 15, 2014)	24
<i>King County v. CPSGMHB</i> , 138 Wn.2d 161 (1999)	10, 19
<i>Miotke v. Spokane Cnty.</i> , 181 Wn. App. 369 (2014).....	18
<i>Snider v. Bd. of Cnty. Comm'rs of Walla Walla Cnty., Wash.</i> , 85 Wn. App. 371, 378–79 (1997).....	14
<i>State Bar Ass'n v. State</i> , 125 Wash.2d 901, 907-09, 890 P.2d 1047 (1995)	13
<i>State ex rel. West Seattle v. Superior Court</i> , 36 Wash. 566, 79 Pac. 29....	16
<i>State v. Nicoll</i> , 40 Wash. 517, 82 Pac. 895	16
<i>Town of Woodway v. Snohomish Cty.</i> , 180 Wn.2d 165 (2014)	10, 11
<i>Washington State Motorcycle Dealers Ass'n v. State</i> , 111 Wash.2d 667, 674-75, 763 P.2d 442 (1988)	13
<i>Wilton v. Pierce Cnty.</i> , 61 Wash. 386 (1910)	16
<i>Yakima Cnty v. EWGMHB</i> , 146 Wn. App. 679 (2008)	23

Statutes

RCW 36.70A.170	21
RCW 36.70A.302	10
RCW 36.70A.302(2).....	9, 15, 16, 17
RCW 36.70A.302(b).....	10
RCW 36.70A.320	10
RCW 43.21C.060.....	14
<u>WAC 365-190-040</u>	20
WAC 365-190-040(10).....	passim
WAC 365-190-040(10)(b)	21
WAC 365-190-040(10)(b)(i)-(ii), (iv)	23
WAC 365-190-040(4)–(5)	21
<u>WAC 365-190-050</u>	20, 22

WAC 365-190-050(1).....29
WAC 365-190-050(3).....8, 22, 25, 29

Other Authorities

Countywide Planning Policy12
Yakima County Code 16B.10.040(1)(e).....23

I. SUMMARY

Regarding mootness, the Achilles' Heel of the arguments advanced by Friends of Clark County and Futurewise (collectively (“Futurewise”) is that they fail to acknowledge the legal consequences of the prior annexation of 111 acres of land into the City of Ridgefield and the application of urban zoning to that land. Annexation happened on September 8, 2016. It cannot be de-annexed by Clark County because the County has no jurisdiction. The GMHB likewise had no jurisdiction over the annexation and can only issue prospective relief. The annexation granted the owners of the annexed land important property rights and granted the City of Ridgefield exclusive zoning authority. Those rights granted by local law are protected from the GMHB decision. While Futurewise attempts to identify how the County can act, those fanciful positions require the property owners to voluntarily give up rights and for voters to vote in a manner dictated by the Court. These positions require the Court to violate separation of powers principles and are otherwise speculative or illegal. Since there is no effective relief available, the issues surrounding the annexed 111 acres of property are moot.

Regarding an area-wide analysis, Futurewise fails to address the separate and distinct procedures set forth for the initial identification and classification of agricultural lands and a subsequent amendment of a designation. Designation amendments are governed by WAC 365-190-

040(10) which sets forth the process and requirements for a designation amendment, and that section only incorporates WAC 365-190-050(3). The other sections of “-050” do not apply to designation amendments. The only "spatial" limitation is that the review of a current designation should not be on a single parcel. As regards the LLCs, the County reviewed 18 parcels comparing the 111 annexed acres at one time. It was a valid exercise of the authority granted to the County under WAC 365-190-040(10). Even if an area-wide analysis was required, Futurewise ignores the numerous agricultural factors considered by the County beyond the boundaries of the LLCs’ property, ranging from a neighboring tree farm to cow-calf operations in the Western United States. Ignoring the "area" considerations analyzed by the County does not make them go away. LLCs respectfully request that the Court rule that all issues regarding their 111 annexed acres are moot, and that the County correctly followed the procedure and requirement of WAC 365-190-040(10) in amending the designation of their properties, and order the GMHB to enter an order in conformance with those rulings.

II. ARGUMENT IN REPLY

A. The UGA Issue is Moot.

1. Invalidity Is Prospective Only.

Futurewise argues (on pages 11-12, 15-17)¹ that the subsequent

¹ Futurewise has addressed the arguments raised by multiple parties and in some instances makes similar arguments in multiple sections. For the Court's convenience,

declaration of invalidity found by the GMHB somehow "voids ab initio" the UGA expansions, "the same as if Clark County had never adopted them." Futurewise Opening Brief at p.12.² That is incorrect under the plain language of the GMA, which provides prospective relief only: "[a] determination of invalidity is prospective in effect...." See RCW 36.70A.302(2). A GMA decision "does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county." See RCW 36.70A.302(2). GMA relief is not retroactive and cannot extinguish a completed annexation ordinance. Therefore, annexations completed during a GMHB appeal prior to decision cannot violate any future Board determination which would only be prospective in effect. Futurewise fails to address these limits on Board authority found in the clear text of the GMA.

Futurewise attempts to argue in a roundabout way that a finding of invalidity makes a UGA expansion void ab initio. That position is incorrect under the plain language of the relevant statute and is not supported by the cases cited. First, "[a] determination of invalidity is prospective in effect...." See RCW 36.70A.302(2). Thus, any "voiding" is only prospective, not retroactive. Second, *King County v. CPSGMHB*,

LLCs shall endeavor to identify the applicable pages of Futurewise's Brief to which it is responding.

² Futurewise makes this argument even though on page 17 of its Brief it admits "invalidity is prospective only."

138 Wn.2d 161 (1999), cited by Futurewise in support, actually supports the LLCs' position that authorized GMA relief is only prospective. That case distinguished between remand, which allows the offending matter to continue to be valid, and invalidity, which makes the offending matter void as of the date of the GMHB decision:

If the Board finds "noncompliance" it may remand the matter to the county and specify action to be taken and a time within which compliance must occur. County plans and regulations, which are presumed valid upon adoption pursuant to RCW 36.70A.320, remain valid during the remand period following a finding of noncompliance. RCW 36.70A.300(4) ("Unless the board makes a determination of invalidity as provided in RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.") Unlike a finding of noncompliance, a finding of invalidity requires the Board to make a determination, supported by findings of fact and conclusions of law, that the continued validity of the provision would substantially interfere with the fulfillment of the goals of the GMA. RCW 36.70A.302(b). Upon a finding of invalidity, the underlying provision would be rendered void.

King Cnty., at 181. Thus, the authorized options under the GMA are remand and continued validity, or invalidity, which makes the offending matter void as of the date of the decision. There is nothing that indicates the Ridgefield UGA expansion and annexation of 111 acres became void ab initio. Such would be contrary to the clear mandate of only prospective application expressed in the GMA.

Likewise, Futurewise's citation to *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165 (2014) is unhelpful for its argument and actually

supports the LLCs' argument. That case clearly states that "like a finding of noncompliance, a finding of invalidity does not apply retroactively to rights that have already vested." *Town of Woodway*, at 175. "Thus, whether or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested before the growth board's final order remain vested after the order is issued." *Id.* *Woodway* actually supports the LLCs' argument. The GMHB's "remedies are limited to finding noncompliance or invalidity, and neither finding affects development rights that have already vested." *Id.* at 176.

The GMA simply does not provide for retroactive relief.

2. Effective Relief Cannot Be Granted.

Futurewise wrongly argues that effective relief can be granted. *Futurewise Opening Br.*, at 12 – 15. The relief identified by Futurewise simply cannot be granted by the Board or this Court.

Futurewise begins its argument with an admission against its own interest. Futurewise "recognizes that the Board does not have the authority to review the validity of [...] Ridgefield's annexation ordinances...." *Id.* This acknowledges that the very Board whose decision is being reviewed in this matter has no jurisdiction over annexation ordinances.

Futurewise first argues that Ridgefield can voluntarily help the County by de-annexing the LLCs' land or by designating the LLCs' land

as Agricultural Land of Long Term Commercial Significance (“ALLTCS”). Futurewise Opening Br., at 13. First, Futurewise argues that Ridgefield should cooperate with the County under the Countywide Planning Policy (“CPP”) at 3.0.2 and CPP 4.1.2; or the County, if the current CPPs are not adequate, can simply adopt a new CPP to force compliance. Futurewise Opening Br., at 14. As an initial matter, the CPPs require the LLCs' land to be in the urban growth area. CPP 1.1.1 states that “[e]ach municipality within Clark County shall be included within an urban growth area.” CPP 1.1.1. The very CPPs cited by Futurewise require that the LLCs' land, since it has been annexed into the City, to be within the UGA. CPP 12.0.1 requires the City to provide “urban services and facilities within the annexation area.” CPP 1.1.13 requires that the UGA have a full range of urban levels of services. Ridgefield's UGA is required to have “a full range of residential, commercial and industrial uses, schools, neighborhood, community, and regional parks, and are within walking distance to HTC corridors or public transit.” CPP 1.1.13. Under the plain language of the CPPs, it is required that the LLCs' land be included in the UGA and that the City provide urban services and facilities. The CPPs actually require the opposite of what is requested by Futurewise.

Both CPP 3.0.2 and 4.1.2 deal with preserving and protecting resources. This is clearly referring to the City's exercise of legislative

power to preserve and protect existing resources. However, the LLCs' land is currently designated urban, as it is required to be designated after annexation. There is no resource land existing to preserve and protect.

Regarding CPP 3.0.2 and 4.1.2, both of those CPPs deal with the City enacting policy and regulation. Futurewise asks the Board and this Court to somehow order Ridgefield (or the County for that matter) to enact certain legislation, but the request violates fundamental separation of power principles. Futurewise Opening Br., at 14. As stated by the Court:

he separation of powers between the branches of government may be the most important principle of government. *Washington State Motorcycle Dealers Ass'n v. State*, 111 Wash.2d 667, 674-75, 763 P.2d 442 (1988). The doctrine is not found in the Washington Constitution but is drawn from federal principles and is necessary for our democratic system of checks and balances. The essence of the doctrine is that the functions of each branch of government should be inviolate to prevent the accumulation of power into one branch of government and unbalancing the powers of government. *Carrick v. Locke*, 125 Wash.2d 129, 135, 882 P.2d 173 (1994). The question here, as in Carrick, is whether the activity of one branch of government, the judicial, threatens the independence, integrity, or prerogatives of another branch of government, the legislative.

The power of eminent domain is a core function of the legislative branch of government not the judiciary. There may be overlapping responsibilities in the functions of government. This does not, however, permit one branch of government to usurp, encroach upon, or impair the power of another branch. *State Bar Ass'n v. State*, 125 Wash.2d 901, 907-09, 890 P.2d 1047 (1995). The legislative power of eminent domain, in the context of this case, should remain inviolate securely within the core functions of the Board. The superior court should not have required the Board to exercise its power of eminent domain.

Snider v. Bd. of Cnty. Comm'rs of Walla Walla Cnty., Wash., 85 Wn. App. 371, 378–79 (1997). Neither the Board nor this Court should direct any legislative body to enact a specific law. That would invade the providence of the legislative body and violate separation of powers principles.

Futurewise argues that the County could utilize its SEPA authority to condition the designation of new UGAs to require the conservation of the land. Futurewise Opening Br., at 14. That would be a mistake as it would violate the scope of permitted conditions for SEPA actions. Under RCW 43.21C.060, a SEPA action "may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter." Conditioning future SEPA actions on unrelated property for unrelated impacts is simply not permitted under the statute. In addition, ordering the County to enact specific legislation would run afoul of the separation of powers principles addressed above.

Futurewise argues that the LLCs could voluntarily file a petition to de-annex their lands. Futurewise Opening Br., at 15. The LLCs decline to do that. The LLCs desire to provide housing for families within the City, filed a petition to make it so when their property was included in the UGA, successfully lobbied in favor of the annexation, and will not voluntarily relinquish the substantial property rights they have received.³

³ That annexation grants substantial property rights is addressed below.

Futurewise also argues that the City could refer the de-annexation matter for a vote. Futurewise Opening Br., at 15. The City of Ridgefield and the voters within the annexation are free actors and decline to do so.

Democracy is capricious. Requiring the City to propose legislation would also run afoul of the separation of powers issues addressed above. These speculative outcomes are not a lawful remedy that can be ordered by the judicial branch.

Futurewise argues that the City could adopt a purchase or transfer of development rights program, but the City has no interest in doing so. In addition, the enacting of such a program cannot be ordered under the separation of powers principles addressed above. In addition, it would presumably impose a substantial cost to the City.

Futurewise fails to identify any effective relief that can be granted by this court.

3. Annexation Granted The LLCs Substantial Property Rights.

Futurewise argues that the LLCs are not vested in any rights. Futurewise Opening Br., at 17. That is incorrect. As admitted by Futurewise in its Brief, "invalidity is prospective only...." Id. The GMA provides prospective relief only: "[a] determination of invalidity is prospective in effect...." See RCW 36.70A.302(2). A GMA decision "does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county." See RCW

36.70A.302(2). Futurewise argues that annexation does not vest any rights, which is incorrect under Washington law.

In *Wilton v. Pierce Cnty.*, 61 Wash. 386 (1910), the Supreme Court of Washington analyzed whether being included in a rural or urban area granted rights. The Court stated:

Appellants contend that the court below had no jurisdiction; that the question is purely a political one. We concede that a court of equity has no jurisdiction over a purely political question, such as is involved in many questions growing out of some matters pertaining to or involving elections. But the question here submitted involves more than a political right; it reaches farther and touches the property right of the citizen. Such, we think, is established by previous holdings of this court upon a like question. *State ex rel. West Seattle v. Superior Court*, 36 Wash. 566, 79 Pac. 29; *State v. Nicoll*, 40 Wash. 517, 82 Pac. 895; *Estate of Brown v. West Seattle*, 43 Wash. 26, 85 Pac. 854. The freeholder in the rural, and the freeholder in the urban, district hold their property subject to different rights of taxation, special assessments and different regulations as to sanitary and other regulations affecting the public health, safety, and general welfare. It is too clear for argument that property in a city is subject to many restrictions which create a burden not borne by property outside of the municipal boundaries. When, therefore, the property of a citizen is brought within the municipal boundaries of a city, his property rights have been affected. He must now hold that property subject to many regulations, restrictions, and burdens not previously attaching to it. And in seeking to prevent such a transfer, he presents more than a political question; it is one which affects him in his property as well as his political right.

Wilton, at 389 (emphasis added). The principles expressed apply equally to property owners inside and outside cities. One person's burden is another person's cherished right. As shown above, the movement of the

LLCs' property into the City by the annexation ordinance granted the LLCs a completely different set of property rights, as well as obligations to comply with City zoning, pay City taxes, and follow other regulations.

A GMA decision “does not extinguish rights that vested under [...] local law before receipt of the board's order by the city or county.” See RCW 36.70A.302(2). The annexation ordinance is unquestionably a local law; an ordinance is the central vehicle of local legislation. The annexation vested many property rights, including rights regarding applicable law, zoning, taxation, access to public utilities, facilities and services affecting public health and general welfare. These are recognized property rights under Washington law. Futurewise has not provided any authority holding that annexation does not provide rights to property owners.⁴ This is not about a mere development permit application. It is about the substantial property rights and obligations granted to the LLCs by the annexation ordinance. It is unquestionable that the LLCs were vested with rights by City of Ridgefield law prior the GMHB issuing its decision. That decision was prospective only and cannot be retroactively applied to strip the LLCs of their vested property rights under that City of Ridgefield law. See RCW 36.70A.302(2).

⁴ Futurewise cites to *Clark Cnty. v. WWGMHB*, 161 Wn. App. 204 (2011). The portion of that case cited was vacated by *Clark Cnty. v. WWGMHB*, 177 Wn.2d 136 (2013). Since it is vacated, it is not authority.

4. County Cannot Comply.

Futurewise argues that the County must be required to adopt a new UGA even though it is impossible. Futurewise Opening Br., at 18-20. With all due respect, we have the concept of mootness for the very reason that sometimes effective relief cannot be granted.

Futurewise argues that several cases show the County must be required to take action even when it no longer has jurisdiction over the property. Each of those cases is easily distinguished because the County still retained jurisdiction over the property at issue, whereas in this case Clark County no longer has jurisdiction. Futurewise argues that *Miotke v. Spokane Cnty*, 181 Wn. App. 369 (2014) shows that the County must be required to show it has brought an invalid provision into compliance. The property at issue in *Miotke* was not annexed into a city prior to the County's decision and remained under County jurisdiction. See *Miotke*, at 373 (County expanded its UGA, County approved development permits, no mention of annexation). Therefore, *Miotke* is obviously distinguishable from the current case as regards mootness because the County retained land use jurisdiction over the property which had not been annexed into a city. Here, the land is already annexed and the County lacks jurisdiction. This same difference can be seen in all of the authorities relied upon by Futurewise.

Futurewise likewise relies upon *King Cnty. v. CPSGMHB*, 138 Wn.2d 161 (1999) for the proposition that the County can be forced to take action. However, the property at issue in *King Cnty.* was not annexed into a city prior to the decision and remained under County jurisdiction. *King Cnty.*, at 168 (land was "unincorporated"). Therefore, *King Cnty.* is also distinguishable from the current case with respect to mootness, as the County retained jurisdiction over the property that had not been annexed into a city. In *King Cnty.* the County retained the ability to act as it still had jurisdiction over the land.

Futurewise argues that the many GMHB decisions cited by the County, Cities and the LLCs that find that annexations moot appeals are faulty, as they assume a county cannot act to correct a GMA violation. Futurewise Opening Br., at 20. Futurewise completely fails to provide any argument or authority to show that the County can take any act to correct the alleged GMA violation as it relates to the LLCs' property after annexation. The simple reason is that the County cannot act after annexation and the issue is moot.

5. Conclusion.

Futurewise fails to acknowledge the legal consequences of the prior annexation of LLCs' 111 acres of land into the City of Ridgefield and application of urban zoning. It happened more than two years ago. It cannot be undone by Clark County because it has no jurisdiction. The

GMHB had no jurisdiction over the annexation and can only issue prospective relief. The annexation granted the LLCs important property rights and granted the City of Ridgefield exclusive jurisdiction over zoning. Those rights granted by local law are protected from the GMHB decision. While Futurewise attempts to identify ways that the County can act, those fanciful positions require the LLCs to voluntarily give up rights, the City of Ridgefield to forego needed housing, voters to vote in a manner dictated by the Court, and the Court to violate separation of powers principles or (act in ways that) are otherwise speculative or illegal. Since effective relief cannot be compelled, the issues surrounding the LLCs' 111 acres of property are moot. LLCs respectfully request that the Court rule that all issues regarding their 111 acres are moot and order the GMHB to enter an order in conformance with that ruling.

B. No Area-Wide Analysis Was Required.

1. Futurewise Fails To Properly Address The Interaction Of WAC 365-190-040 and 050.

Futurewise argues that both WAC 365-190-040 and -050 in toto apply to a designation amendment. Futurewise Opening Br., at 24-26, 29. This statement ignores the clear language of those rules, which clearly state that only part of -050 applies to designation amendments.

WAC 365-190-040 provides a general process to be followed for the initial designation of resource lands. That rule establishes a process

for the initial implementation of RCW 36.70A.170 and provides a separate and distinct process for amendments of prior designations. WAC 365-190-040(10) clearly addresses amendments to designation (“Designation amendment process”). WAC 365-190-040(10)(b) of the amendment process addresses the “[r]eviewing [of] natural resource land designation[s].” (emphasis added). The first sentence states that “[i]n classifying and designating natural resource lands, counties must approach the effort as a county-wide or regional process.” WAC 365-190-040(10)(6). As established earlier in the Rule, the “classifying and designating” referred to is the initial classification and designation to implement RCW 36.70A.170. *See* Id at 365-190-040(4)–(5). Clark County did that in 1994.⁵

The second sentence is directed to a review of already established designations. The sentence states that “[c]ounties [...] should not review natural resource designations solely on a parcel-by-parcel process.” Id. at 365-190-040(10)(6). (emphasis added). There is no reference to any particular county-wide or region-wide requirement for review of prior designations. A county-wide or region-wide analysis is only needed for the initial implementation of RCW 36.70A.170, and that was completed

⁵ Clark County adopted its first GMA in September 1994, and Chapter Four dealt with the establishment of the resource areas. We ask the Court take judicial notice of the prior comprehensive plan.

decades ago. The only limitation is that it not “solely” be on a parcel-by-parcel process and that one of the five criteria is present.

For a designation amendment, the rule only makes part of -050 applicable, and provides that an amendment be based on five listed criteria, three of which criteria expressly reference WAC 365-190-050(3). Note that the only portion of WAC 365-190-050 that is referenced in the Rule regarding designation amendments is subsection -050(3).

Futurewise's argument (that all of -040 and -050 are applicable to designation amendments) impermissibly ignores the distinction in the rules between the initial classification and designation of resource lands and a subsequent amendment of a designation. The rules classify them differently and attach different procedures to the different classifications. Ignoring this express distinction does not make it go away. WAC 365-190-050 is silent on amendments of a prior designation. The specific section dealing with amendments of designation (WAC 365-190-040(10)) only incorporates WAC 365-190-050(3), not any other portion of WAC 365-190-050. As a matter of clear expression, WAC 365-190-040(10) applies to designation amendments.

Futurewise cites two sources as supporting its contention that all of -050 applies to designation amendments, but those sources actually confirm that only WAC 365-190-050(3) applies to designation amendments. The case of *City of Arlington v. CPSGMHB*, 164 Wn.2d 768

(2008), dealing with a designation amendment, only quotes factors listed in -050(3). *City of Arlington*, at 781. Thus, the most this case demonstrates is that -050(3) applies to designation amendments. The Case of *Yakima Cnty v. EWGMHB*, 146 Wn. App. 679 (2008), dealing with a designation amendment, upon review, only addresses the factors listed under -050(3). *Yakima Cnty*, at 692. Thus, the most this case demonstrates is that -050(3) applies to designation amendments. Interestingly, the case also addresses the local Yakima County Code that applied to amending a designation. *Id.* at 696. The case quoted YCC 16B.10.040(1)(e):

YCC 16B.10.040(1)(e) provides:

To change a resource designation, the plan map amendment must do one of the following[:]

- (i) Respond to a substantial change in conditions beyond the property owner's control applicable to the area within which the subject property lies; or
- (ii) Better implement applicable comprehensive plan policies than the current map designation; or
- (iii) Correct an obvious mapping error; or
- (iv) Address an identified deficiency in the plan.

Id. That county code is very similar to the criteria listed in WAC 365-190-040(10) that apply to designation amendments, like the one at issue here. Thus, far from supporting an application of all subparts of -050 to designation amendments, the cited cases actually support that only -050(3) applies to designation amendments. That makes sense because only 050(3) is listed in the provisions that expressly apply to designation amendments. WAC 365-190-040(10)(b)(i)-(ii), (iv).

Futurewise also cites *Futurewise v. Benton Cnty.*, EWGMHB Case No. 14-1-0003, Final Decision and Order, 2014 WL 7505300 (October 15, 2014) as support for the proposition that an area wide analysis under -050 is required for a designation amendment. That case is very flimsy support for that proposition. First, the opinion does not address or deal with -040 and its express procedure for designation amendments, nor does it address that only a portion of -050 is mentioned in that Rule. *See, e.g., Benton Cnty.*, at *19. The opinion acknowledges that -050(1) was "developed to implement GMA sections [...] regarding the identification and designation of these [agricultural resource] lands...." *Id.* at *19. This was a clear acknowledgement that -050(1) regards initial identification and designation. The opinion then, without analysis, jumps to the conclusion that the -050(1)'s requirement for an area-wide analysis for an initial identification and designation also applies to a designation amendment. *Id.* at *22. This unsupported jump is simply not consistent with the clear disparate treatment by the language of -040 and -050 to the distinct and separate procedures set forth for the initial identification and designation as compared with a later designation amendment. The Rules simply set forth different procedures for these distinctly different processes. This complete lack of any reasonable analysis makes *Benton Cnty.* dubious authority.

2. Conclusion.

Futurewise fails to address the separate and distinct procedures set forth for the initial identification and classification of agricultural lands and a subsequent amendment of a designation. Designation amendments are governed WAC 365-190-040(10), which sets forth the process and requirements for a designation amendment and that section only incorporates WAC 365-190-050(3). The other sections of -050 do not apply to designation amendments. The only "spatial" limitation is that the review of a current designation is that it should not be on a single parcel. As regards the LLCs, the County reviewed 18 parcels at one time. It was a valid exercise of the authority granted to the County under WAC 365-190-040(10). LLCs respectfully request that the Court rule that the County correctly followed the procedure and requirements of WAC 365-190-040(10) in amending the designation of their property and order the GMHB to enter an order in conformance with that ruling.

C. Even if Area Wide Was Applicable, Area Wide Considerations Were Addressed.

1. Futurewise Fails To Address The Discretion Granted By The Use Of The Word "Area."

Futurewise argues for a definition of "area" to be "a bounded piece of ground set aside for a specific use or purpose." Futurewise Opening Br., at 25-26. It then argues that the bounds in this case should be

"contiguous ALLTCS." Id. This proposed alternative expression of "area" by Futurewise simply reinforces that the use of "area" in the Rule grants the reviewing body substantial discretion in selecting the "area" to be used. The only limit on that discretion is that it cannot be a single parcel. Futurewise lacks discretion to define the area to be considered. That discretion is given to the County. *Diehl v. Mason Cnty.*, 94 Wn. App. 645, 651 (1999) ("Local governments have broad discretion in developing CPs and DRs tailored to local circumstances").

Unintentionally, Futurewise demonstrates that the County was granted and exercised its discretion when it accepted a report covering what it deemed to be an acceptable "area."

2. Futurewise's Argument That A Broad Swath Of Land Must Be Analyzed As To Whether Or Not It Is Agricultural Makes No Sense For A Limited Designation Amendment.

Futurewise argues that areas ranging from all contiguous ALLTCS (running from Ridgefield to north of La Center) must be analyzed for compliance with GMA or County criteria for agricultural lands.

Futurewise Opening Br., at 26-28. Those lands are already designated agricultural. Presumably, if those lands are currently designated agricultural, they have been the subject of prior analysis for their original identification and designation as agricultural. It makes sense that if you are doing the initial identification and designation, that you would (as

required by the Rules) look at it from a county-wide, region-wide, or larger area-wide perspective to show viability and analyze all of those properties. As an example, if there are 32,500 acres of agricultural resource lands in Clark County,⁶ and the County is thinking of amending the designation of five acres comprising three parcels, the position advanced by Futurewise would be that there must be a new report done that analyzes those 31,495 acres whose designation is not being amended. If they are already designated agricultural, why would there be a current need to put those properties through another such analysis? They are already zoned agricultural. That makes no sense in a designation amendment process. And that is why the prohibition on designation amendments (a review) is only limited by the single parcel limitation and looks at the current characteristics only of the parcels at issue. To find otherwise is basically to require the same analysis to be done over-and-over ad infinitum. That is not logical and is not supported by the clear language of -040(10).

3. Futurewise Does Not Address The Identified Area-Wide Considerations Addressed In The Reports.

⁶ Clark County Agricultural Preservation Strategies Report, p.12. Available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=9&cad=rja&uact=8&ved=2ahUKEwjcgNTqvf_dAhWIMX0KHR3XCeoQFjAIegQIABAC&url=http%3A%2F%2Ftoolkit.valleyblueprint.org%2Fsites%2Fdefault%2Ffiles%2F01_ag-pres-strategies_clark-county_xxxx_0.pdf&usg=AOvVaw0HGoAa9aphF9ZMal5_Qus4

Futurewise argues that the County did not consider anything outside of the parcels at issue (18 in the case of the LLCs). Futurewise Opening Br., at 27-28. That is incorrect. The County accepted the reports about the LLCs' property into the official record, and thereby considered other land in the vicinity of the subject properties — including a Christmas tree farm and field, subdivisions within 2.5 miles, cow-calf operations in the Western United States, grain production in Clark County, Gee soils from Salmon Creek to Sara and north to the Lewis River, Gee series soils in the Ridgefield area, the areas to the north, east and west of the subject properties, the 180 miles distance to a slaughterhouse, hay and grain sales to other rural parts of the county and out of state — and that de-designation could improve sales at the Christmas tree farm in the area.⁷ Futurewise ignores these "area-wide" considerations in the record that were pondered by the County during its deliberative process. Instead, it wrongly argues that the steps necessary for initial identification and designation must be repeated over and over for all time in any instance when any property, no matter how small, is going to be moved from agricultural to another designation.

⁷ The record location of these references can be found on pages 24 and 25 of the LLC's Opening Brief.

4. Conclusion.

Even if an area-wide analysis was required, Futurewise ignores the numerous facts in the record regarding other agricultural properties considered by the County beyond the boundaries of the LLCs' properties, from a neighboring tree farm to cow-calf operations in the Western United States. Ignoring the "area" actually considered by the County does not make the facts in the record go away. LLCs respectfully request that the Court rule that the County correctly followed the procedure and requirement of WAC 365-190-040(10) in amending the designation of their property and order the GMHB to enter an order in conformance with that ruling.

III. CONCLUSION

As the Opening Brief and this Reply brief have documented, the GMHB erred in the FDO by failing to apply the correct process for amendments to prior designations found in WAC 365-190-040(10) and its incorporation of WAC 365-190-050(3). The Board erred by applying WAC 365-190-050(1) and (5) to a designation amendment. It erred in requiring a county-wide analysis. It erred in misinterpreting the word "area" as synonymous with "county." The Board erred by failing to acknowledge the evidence in the record of an analysis of commercial

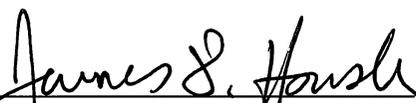
agricultural effects throughout and beyond Clark County, and failing to defer to the County's acceptance and use of a reasonable standard for "area."

As the briefing has documented, the GMHB erred in the FDO and CO by failing to acknowledge that the issues involving LLCs' 111 acres are moot. The land has been annexed. The Board has no jurisdiction over annexations. It cannot unwind a completed annexation. The Legislature only granted the Board authority for prospective relief and expressly protected rights granted by local law prior to the Board's decision. The County cannot regulate zoning of annexed land. The Board erred by refusing to acknowledge its limits and the actual circumstances. Instead it has ordered the County to do the impossible and then arranged for sanctions all in order to impermissibly expand its powers and jurisdiction. This attempt to take away the City of Ridgefield's jurisdiction is a blatant power grab that cannot and should not be sanctioned.

Petitioners respectfully request the Court reverse the GMHB as set forth above and remand the matter back to the GMHB to enter an FDO and CO that conforms to the correct legal standards and that declares moot all issues involving Petitioners' 111 acres of land.

RESPECTFULLY SUBMITTED this 5 day of November, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown I served a true and correct copy of the **RESPONDENTS' REPLY BRIEF** by first class mail, postage prepaid, on:

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