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Division II
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Nos. 50847-8-II and 51745-1-II
(Appeal of Clark County Superior Court Case No. 17-2-00929-0)

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

CLARK COUNTY,
Petitioner, Respondent Below,

And

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

FRIENDS OF CLARK COUNTY and FUTUREWISE,
Respondents, Petitioners and Intervenors,

And

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

OPENING BRIEF OF PETITIONER CLARK COUNTY

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I. INTRODUCTION

Clark County has sought this Court's review of a Final Decision and Order dated March 23, 2017 ("FDO"), and an Order on Compliance, dated January 10, 2018, both issued by the Growth Management Hearings Board Western Region ("Board"). Because the Board's actions erroneously interpret and apply the law, are not supported by substantial evidence in the whole record, and are outside the Board's authority and jurisdiction, Clark County respectfully requests that the Court reverse the FDO and the Order on Compliance.¹

II. ASSIGNMENTS OF ERROR

A. First Assignment of Error:

Clark County's Dedesignation of Agricultural Lands and Expansion of the Ridgefield and La Center UGA's Became Moot After Both Cities Annexed the Land; The Board Erred

¹ This is a consolidated appeal from two decisions of the Growth Management Hearings Board ("Growth Board"): the Final Decision and Order entered March 23, 2017 ("FDO") and the Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidation, Stay Order, and Supplement the Record ("Compliance Order") entered January 10, 2018. The Growth Management Hearings Board has submitted two separately-indexed administrative records, one for each phase of the proceedings below. In this brief, references to the administrative record compiled in the first phase, culminating in the FDO, will be to "AR" followed by the page number in the Growth Board's Index to the Certified Record submitted to the Court of Appeals November 20, 2017. References to the administrative record compiled in the compliance phase, leading up to the Compliance Order, will be to "CAR" followed by the page number in the Growth Board's Index to the Certified Record submitted to the Clark County Superior Court June 6, 2018.

**by Failing to Dismiss Issues Complaining of the Dedications
and UGA Expansions.**

Issues Pertaining to First Assignment of Error

Was Clark County's adoption of its comprehensive plan review and update pursuant to RCW 36.70A.130, including the expansion of the urban growth areas of the Cities of La Center and Ridgefield, presumptively valid upon its adoption on June 28, 2016?

Were the County's 2016 comprehensive plan revisions presumptively valid when lands brought within the Cities' urban growth areas by the plan revisions were annexed according to governing law by the Cities?

Was the Board's Final Decision and Order prospective in effect when it was issued on March 23, 2017?

Is Clark County unable to take any action to undo the annexation of lands that were included within the Cities' urban growth areas by the 2016 comprehensive plan update?

Is Clark County unable to revise the land use designations of lands within the Cities' corporate limits?

Should the Growth Management Hearings Board have determined, consistent with years of precedent, that issues before it relating to County

actions taken on the lands that had already been annexed were moot, and should it have dismissed those issues?

B. Second Assignment of Error:

The Board Misinterpreted and Misapplied the Law and Made Decisions Unsupported by Substantial Evidence in the Record as a Whole by Determining that Clark County Violated GMA by Dedicating Agricultural Land to Establish a Rural Industrial Land Bank.

Issues Pertaining to Second Assignment of Error

Did the Board misinterpret and misapply WAC 365-190-050(1) and (5), and make a decision that was not supported by substantial evidence in the record as a whole, when it determined that Clark County had failed to conduct an area-wide analysis in the process of establishing a Rural Industrial Land Bank pursuant to RCW 36.70A.367?

Did the Board misinterpret and misapply WAC 365-190-050(3), and make a decision that was not supported by substantial evidence in the record as a whole, when it determined that Clark County had improperly dedesignated agricultural lands of long-term significance in the process of establishing a Rural Industrial Land Bank pursuant to RCW 36.70A.367?

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III. STATEMENT OF THE CASE

The Clark County Board of County Commissioners (“Council”)² in 2013 directed the County’s Department of Community Planning to initiate the periodic review and update of the County’s comprehensive plan that is required by RCW 36.70A.130.³ Clark County completed its comprehensive plan update on June 28, 2016, approving Amended Ordinance 2016-06-12,⁴ which adopted the Clark County 20-Year Comprehensive Growth Management Plan 2015-2035.⁵ Friends of Clark County and Futurewise (together, “Futurewise”) jointly petitioned the Growth Management Hearings Board, Western Region (Board) for review on July 22, 2016.⁶ On August 25, 2016, Clark County Citizens United (“CCCU”) filed its petition for review with the Board.⁷

Clark County had adopted provisions in its comprehensive plan pursuant to RCW 36.70A.367 to establish two Rural Industrial Land Banks (“RILB”) in April 2016,⁸ and then amended the plan portions related to the RILB as part of

² The Board of County Commissioners is now known as the “Clark County Council” and is referred to throughout this brief as “Council.”

³ The Planning Department appeared before the BOCC on July 17, 2013, in a public meeting, to confirm that the Council, the County’s legislative body and budget authority, was aware that work on the plan was beginning, and to present a broad overview of the project. AR 8611-44. Planning then began the complex task of updating the comprehensive plan.

⁴ AR 992.

⁵ The process of the statutory comprehensive plan review and update, together with the amended comprehensive plan that Clark County adopted in this process, are referred to in this document as the “2016 Plan Update.”

⁶ AR 1-45, 227-773.

⁷ AR 976-1194.

⁸ AR 7-43.

the 2016 Plan Update.⁹ Futurewise sought Board review of the RILB establishment, and included the same issues about the RILB in its appeal of the 2016 Plan Update.¹⁰

The Board ultimately consolidated all of these reviews as Case No. 16-2-0005c.¹¹

The 2016 Plan Update dedesignated approximately 111 acres of agricultural land adjacent to the City of Ridgefield, and expanded the city's UGA to include that land.¹² The 2016 Plan Update also dedesignated 57 acres of agricultural lands adjacent to the City of La Center, and expanded that city's UGA to include the 57 acres.¹³

The City of La Center annexed the 57 acres by which its UGA was expanded on August 29, 2016.¹⁴ The City of Ridgefield annexed into its incorporated limits the 111 acres that were included within its UGA by the 2016 Plan Update, on September 8, 2016.¹⁵

⁹ AR 44-45.

¹⁰ AR 1-45, 227-773.

¹¹ AR 966-75, 1221-30. The following parties intervened in the Board's review: The City of La Center and the City Ridgefield (together, "Cities"), each of which had expanded its urban growth area ("UGA") in the 2016 Plan Update; 3B Northwest, LLC ("3B NW"), the owner of property that had been included within the La Center UGA; RDGB Royal Farms, LLC; RDGK Rest View Estates, LLC; RDGM Rawhide Estates, LLC; RDGF River View Estates, LLC; and RDGS Real View, LLC (together, the "Brown Properties") the owners of properties that had been included within the Ridgefield UGA; Ackerland, LLC, and Lagler Real Property, LLC, the owners of the properties included within the RILB; and the City of Battle Ground which has since withdrawn and is not participating in this appeal.

¹² AR 358-59.

¹³ *Id.*

¹⁴ AR 2677-78.

¹⁵ AR 2396-402.

Approximately 7 months following the annexations, on March 23, 2017, the Board issued its Final Decision and Order (“FDO”).¹⁶ The Board upheld the County’s 2016 Plan Update with respect to approximately 18 of the 25 issues asserted against the County by the Petitioners.¹⁷ The FDO held that the expansions of the Cities’ UGA’s and the dedesignations of agricultural lands to allow the expansions had violated GMA and were invalid pursuant to RCW 36.70A.302(1).¹⁸ The Board also found that the RILB was noncompliant because the County had failed to specify a maximum size for a land bank, and it held that Clark County had violated GMA in dedesignating the agricultural land on which the RILB was located.¹⁹ The Board ordered Clark County to come into compliance within six months, and to report on its actions taken to come into compliance by October 3, 2017.²⁰

Clark County, each of the Cities, the Brown Properties, and CCCU have appealed the FDO, and the appeals were consolidated.²¹ The Board certified the appeals for direct review, this Court accepted direct review, and those appeals are now before the Court.

¹⁶ AR 10457-557.

¹⁷ *Id.*

¹⁸ AR 10551-552.

¹⁹ AR 10552-553.

²⁰ AR 10556.

²¹ CP 390-400. References to Clerk’s Papers (“CP”) are to the Clerk’s Papers filed in Court of Appeals, Division II, No. 50847-8-II.

In accordance with the FDO, Clark County took a number of compliance actions, which it reported to the Board.²² Following a hearing on compliance, the Board issued its Order on Compliance and Order on Motions to Modify Compliance Order, Rescind Invalidity, Stay Order and Supplement the Record, dated January 10, 2018 (“Compliance Order”).²³

The Compliance Order found that the County had come into compliance with the FDO’s requirements by stating a maximum RILB size,²⁴ by eliminating its use list for Urban Reserve Lands,²⁵ by readopting previously compliant development densities for agricultural and forest resource lands,²⁶ and by readopting a variety of previously compliant development densities for Rural (nonresource) lands.²⁷

The Compliance Order found that the County’s plan remained out of compliance and invalid regarding the UGA expansions and the dedesignated lands that were included within the expansion areas and had been annexed.²⁸ It held that the plan remained out of compliance regarding the agricultural lands that were dedesignated in connection with the RILB, and also determined that the plan is invalid regarding that

²² CAR 222-46.

²³ CAR 1564-94.

²⁴ CAR 1575-76.

²⁵ CAR 1571-72.

²⁶ CAR 1572-74.

²⁷ CAR 1574-76.

²⁸ CAR 1576-80.

dedesignation.²⁹ The County was again ordered to come into compliance.³⁰

Clark County, each of the Cities, and the Brown Properties sought judicial review of the Compliance Order.³¹ Futurewise has cross-appealed. These appeals have been consolidated, and certified and accepted for direct review, and are now also before this Court, consolidated with the review of the FDO.³²

IV. ARGUMENT

A. First Assignment of Error:

Clark County's Dedesignation of Agricultural Lands and Expansion of the Ridgefield and La Center UGA's Became Moot After Both Cities Annexed the Land; The Board Erred by Failing to Dismiss Issues Complaining of the Dedesignations and UGA Expansions.

1. Standard of Review.

Washington's Administrative Procedure Act (APA), RCW 34.05, provides the exclusive means for judicial review of agency action.³³

Under the APA, the "burden of demonstrating the invalidity of agency

²⁹ CAR 1580-84.

³⁰ CAR 1590-92.

³¹ CP 124-236, 403-516, 553-662.

³² Designation of Clerk's Papers, Item 20.

³³ *Diehl v. Western Washington Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 213 (2004).

action is on the party asserting invalidity.”³⁴ The APA establishes the nine bases upon which a party may challenge an agency's actions.³⁵ The decision is invalid if it suffers from at least one of the enumerated infirmities.³⁶ As demonstrated below, the Board's decisions are erroneous interpretations and applications of the law, and are outside of the Board’s authority.³⁷

The Court of Appeals reviews *de novo* errors of law alleged under RCW 34.05.570(3)(d).³⁸ Although the Court accords the Board interpretations of the GMA “substantial weight,”³⁹ the Court of Appeals has clarified that deference to county GMA actions overrides deference that would otherwise be granted to administrative agencies.⁴⁰

Thus, the Board's decisions should be reversed by this Court.

³⁴ *Quadrant Corp. v. State Growth Management Hearings Bd.*, 154 Wn.2d 224, 233 (2005); *see also*, RCW 34.05.570(1)(a).

³⁵ RCW 34.05.570(3).

³⁶ *Id.*

³⁷ RCW 34.05.570(3)(b) and (d).

³⁸ *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008).

³⁹ *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000).

⁴⁰ *See Quadrant*, 154 Wn.2d at 238 (“In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the requirements of the GMA, supersedes deference granted to the APA and courts to administrative bodies in general.”).

2. The Annexations of Land by the Cities of Ridgefield and La Center Were Lawful and Cannot be Undone by the Board or Clark County.

On June 28, 2016, Clark County adopted its 2016 Plan Update.⁴¹

The 2016 Plan Update dedesignated approximately 111 acres of agricultural land adjacent to the City of Ridgefield, and expanded the city's urban growth area (UGA) to include that land.⁴² The 2016 Plan Update also dedesignated 57 acres of agricultural lands adjacent to the City of La Center, and expanded that city's UGA to include the 57 acres.⁴³

Futurewise) petitioned the Board for review, asserting that the dedesignations and UGA expansions had violated GMA.⁴⁴ The City of La Center annexed the 57 acres by which its UGA had been expanded on August 29, 2016.⁴⁵ The City of Ridgefield annexed into its incorporated limits the 111 acres that had been included within its UGA by the 2016 Plan Update on September 8, 2016.⁴⁶ Approximately 7 months later, on March 23, 2017, the Board issued its FDO holding that expansion of the UGAs and dedesignation of the agricultural lands had violated the GMA and were invalid pursuant to RCW 36.70A.302(1).⁴⁷ The Board continued

⁴¹ AR 992.

⁴² AR 358-59.

⁴³ *Id.*

⁴⁴ AR 1-45, 227-773.

⁴⁵ AR 2677-78.

⁴⁶ AR 2396-402.

⁴⁷ AR 10457-557.

its findings of noncompliance and invalidity in the Compliance Order issued January 10, 2018.⁴⁸ Both the FDO and the Compliance Order require the County to come into compliance with GMA regarding these lands, but neither the FDO nor the Compliance Order specifies the action that the Board requires Clark County to take in order to do so.⁴⁹

The timeline outlined above is significant because it establishes that the annexations of land by both Ridgefield and La Center occurred well before the Board issued its FDO. It is well established that a county's plan is presumed valid upon adoption.⁵⁰ Likewise, the Board's decision to invalidate plan adoption or amendment is not retroactive. RCW 36.70A.302(2) states, in relevant part:

*A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county.*⁵¹ (Emphasis added.)

Both the Cities of Ridgefield and La Center could, as a matter of law, properly annex land within their respective UGA's into their incorporated limits. Again, the annexations became effective prior to the

⁴⁸ CAR 1564-94.

⁴⁹ Note, however, that the Compliance Order does suggest that the County might "readopt" the Cities' urban growth boundaries. CAR 1578. It is difficult to understand why the Board considers that redundant action would be any more compliant with GMA than was adopting the boundaries as they now exist.

⁵⁰ RCW 36.70A.320(1).

⁵¹ Clark County does not argue that rights to develop the Ridgefield and La Center expansion lands vested under the 2016 Plan Update. Nor could the cities vest to the UGA expansions. Regardless, a finding from the Board is prospective, not retroactive. RCW 36.70A.320.

Board's finding of noncompliance and invalidity. Moreover, the County had no right to interfere with these annexations.

a) Neither Clark County Nor the Board Has Jurisdiction or Authority Over the Cities' Decisions to Annex Land.

Lands annexed by a city are no longer within Clark County's jurisdiction for planning and growth management. The Washington Constitution⁵² and statutes regarding municipalities⁵³ and code cities⁵⁴ prohibit Clark County from planning for those lands; all land use jurisdiction over annexed lands is exercised by the cities within whose incorporated limits they are located.⁵⁵ Clark County, therefore, cannot adopt or readopt comprehensive plan designations for lands within a city's limits.

In contrast, the Board's decisions presuppose that Clark County retains jurisdiction to make comprehensive plan designations for those lands after the lands had been annexed by cities. This assumption fails however, because in order for the County to have that authority, the

⁵² Wash. Const. Art. XI, Sect. 11, which states, "Any county, city, town or township may make and enforce *within its limits* all such local police, sanitary and other regulations as are not in conflict with general laws." (*Emphasis added.*)

⁵³ RCW 35.63.080. This general law authorizes a city council or board or commissioners to provide for preparation, adoption and enforcement of coordinates plans for the physical development of the municipality.

⁵⁴ RCW 35A.11.020. This general law authorizes code cities to regulate real property.

⁵⁵ Citations at notes 52, 53, and 54, above.

annexed lands would need to be deannexed⁵⁶ and returned to the unincorporated County. But no provision in Chapter 36.70A RCW, Chapter 35.13 RCW, or Chapter 35A.14 RCW – and no other law cited by the Board – authorizes or permits the County to undo the annexations, or the Board to require that an annexation be undone so that a county may exercise planning authority over lands that have been annexed.

In compliance with prior orders from the Board, Clark County has removed land from *unincorporated* UGA's and redesignated it as agricultural land of long term commercial significance.⁵⁷ In this case, Clark County removed land from the Battle Ground UGA and redesignated it as Rural-5.⁵⁸ Unlike the lands annexed by Ridgefield and La Center, the land which was removed from Battle Ground's UGA had not been annexed. It was still within the County's jurisdiction. In contrast, that is not an option with respect to the lands annexed in 2016 by Ridgefield and La Center. Clark County cannot shrink those Cities' UGA's so as to place outside them land that is now within city limits, because only cities have planning jurisdiction over lands within their limits.

⁵⁶ Land within a city such as La Center or Ridgefield may be deannexed pursuant to Ch. 35A.16 RCW. According to that statute, the County has no role in that process.

⁵⁷ See, e.g., *Karpinski, v. Clark Cnty.*, Compliance Report and Motion to Modify Compliance Order and Determination of Invalidity, Case No. 07-2-0027, at 2.

⁵⁸ CAR 409.

An order by the Board requiring the County to plan for land within the Cities would contravene the law which establishes the authority of cities to regulate the development of land within their own municipal boundaries.⁵⁹ If the Board could direct Clark County to redesignate the annexed lands, it follows that the County could take actions to designate and zone city lands, actions of great significance to cities.

Further, if the County could plan for lands within a city, it would interfere with the Cities' lawful exercise their own jurisdiction, either to deannex their lands or to plan for the areas that they had annexed. The Board's FDO and Compliance Order would create uncertainty about which local government may exercise the police power within city limits. Neither the Washington Constitution nor the general laws contemplate this kind of ambiguity or uncertainty. Rather, they establish a bright line rule, and the line is the corporate limits of a city. The County cannot plan for lands within those limits. The practical effect of the Board directing Clark County to take action regarding annexed lands is an order with which the County cannot comply, because it lacks the authority under Washington law to do so.

⁵⁹ Wash. Const. Art. XI, Sect. 1; RCW 35.63.080; RCW 35A.11.020.

Indeed, the Board has acknowledged that it lacks jurisdiction over annexations,⁶⁰ and that it cannot undo or otherwise correct them.⁶¹ Clark County likewise lacked authority to prevent the annexations as they were proposed and implemented, and could not undo or correct them later, when the FDO and Compliance Order issued.⁶² The Board cannot effectively order Clark County to take legislative actions under GMA to alter the land use designations of those lands, even if the annexed lands were wrongly designated.

Nor can the Board order Clark County to take legislative actions with regard to the land use designations of some other lands in mitigation for the loss of agricultural lands to the Cities;⁶³ whether they were lawful or not, the UGA expansions have not caused the designations of other lands to violate GMA. A ruling that would restrict other lands in Clark County as a sanction for the UGA expansions would arbitrarily punish property owners who did not cause the annexations by Ridgefield and La

⁶⁰ AR 10475 (“The Board agrees with Clark County and Intervenor Cities that the Board has no subject matter jurisdiction over city annexation ordinances.”).

⁶¹ See *Futurewise v. Benton County*, EWGMHB Case No. 14-1-0003, Order Issuing Determination of Invalidity, January 15, 2015 note 2 (“The Board has no jurisdiction with respect to annexations.”).

⁶² RCW 35A.14.120-35A.14.150. Note that Clark County does not have an annexation review board.

⁶³ See CAR 553, wherein *Futurewise* suggests that the lands within Ridgefield and La Center become sending areas under a transfer of development rights (“TDR”) program. This fails to recognize that a TDR program also requires receiving areas for the sent development rights. *Futurewise* does not explain legal authority that would allow the Board to order the County to establish a TDR program for Ridgefield and La Center, or where the receiving lands should be.

Center, and such a ruling would not be founded on any legal principle.

There is no action that Clark County can lawfully take that would return the annexed lands to their former designations outside urban growth boundaries.

In light of this reality, these issues are effectively moot. As explained above, Clark County cannot cure its dedesignation of former agricultural lands that are not within its jurisdiction. Neither the FDO nor the Compliance Order cited one effective decision of the Board or the appellate courts that recognizes a county's planning authority over land within a city's jurisdiction. *Spokane County v. Miotke*,⁶⁴ much cited before the Board by Futurewise did not concern annexed land; rather, it concerned an island of vested urban development surrounded by lands outside the UGA. This distinction is critically important because the court in *Miotke* was not dealing with land that was completely outside of the jurisdiction and control of the County.

In *Clark County v. Western Washington Growth Management Hearings Board*,⁶⁵ the Washington Supreme Court vacated the decision of the Court of Appeals⁶⁶ holding that Clark County could take action regarding annexed land. Concurring with the majority decision in *Clark*

⁶⁴ 181 Wn. App. 369, 325 P.2d 434 (2014).

⁶⁵ 177 Wn.2d 136, 298 P.3d 704 (2013).

⁶⁶ *Clark County v. Western Washington Growth Management Hearings Board*, 161 Wn. App. 204, 254 P.3d 862 (2011), *vacated in part*, 177 Wn.2d 136, 298 P.3d 704 (2013).

County, Justices Stephens and Wiggins stated that with respect to land that had been annexed by the City of Camas, the dispute regarding its designation as agricultural land of long term commercial significance was moot.⁶⁷ The concurrence concluded, on facts that are substantially similar to those at issue here,⁶⁸ as follows:

The cities of Camas and Ridgefield have annexed the lands in question, and those annexations cannot be challenged in these proceedings. As a result, ***the question of whether the Board properly reviewed Clark County's prior designation of the annexed lands is moot. Dismissal should follow.*** See *Seguin v. Barei*, 163 Wash. 702, 703, 299 P.655 (1931) (dismissing appeal where underlying interest in disputed property was dissolved in separate proceeding).⁶⁹ (Emphasis added.)

The law governing the lands annexed by Ridgefield and La Center is no different from that which governed the lands annexed by Camas and Ridgefield in 2008. Moreover, Justice Stephens's concurrence is consistent with conclusions reached by the Western⁷⁰, Eastern⁷¹, and

⁶⁷ 177 Wn. 2d 136, at 148-49.

⁶⁸ Clark County had dedesignated agricultural lands and included them within the UGA's of Camas and Ridgefield. The Cities proceeded to annex those lands while the Board's review was pending, and before it issued its final decision and order invalidating the county's actions. See *Clark County*, 161 Wn. App. 204.

⁶⁹ *Clark County*, 177 Wn. 2d at 149.

⁷⁰ *Panesko v. Lewis County*, WWGMHB No. 08-2-0007c, Compliance Order (July 27, 2009); *Karpinski v. Clark County*, WWGMHB No. 07-2-0027, Compliance Order (October 29, 2009).

⁷¹ *Futurewise v. Benton County*, EWGMHB No. 14-1-0003, Order Issuing Determination of Invalidity (January 15, 2015) at 3. The Board apparently adopted the argument presented by Futurewise that "[e]ither the annexation or the vesting would effectively moot the Board's Final Decision and Order."

Central Puget Sound⁷² Growth Management Hearings Boards through 2015 in which the Boards recognized that they could not order action to remedy GMA noncompliance with respect to lands that had been annexed by cities. When the ruling of a court can provide no effective relief, the case is moot,⁷³ and cases involving only moot questions should be dismissed.⁷⁴

Here, as in the factual scenario faced by the Washington Supreme Court in *Clark County v. Western Washington*, the County's inability to deannex land from the Cities of Ridgefield and La Center makes the issues moot and it should be dismissed. In light of that, the Board's decisions erroneously interpret and apply GMA, the Washington Constitution, and the state statutes regarding annexation by ordering the County to come into GMA compliance regarding the annexed lands. The FDO and Compliance Order are also outside the Board's authority because they

⁷² *Sky Valley v. Snohomish County*, CPSGMHB No. 95-3-0068c, Final Decision and Order (March 12, 1996) at 45. "Conclusion No. 1 (part), 3, 4, 5, 6, 7 and 47. Because the Dailey property is now incorporated in the City of Gold Bar, and the Act requires all lands within incorporated cities to be included with UGAs, the Board is without authority to grant the relief requested by CCSV II. Consequently, these issues are moot and the Board will dismiss them with prejudice."

⁷³ See, e.g., *Orwick v. Seattle*, 103 Wn.2d, 249, 254, 692 P.2d 793 (1984); *Harbor Lands, LP, v. City of Blaine*, 146 Wn. App. 589, 191 P.3d 1282 (2008).

⁷⁴ *Arnold v. Dep't of Retirement Sys.*, 74 Wn. App. 654, 659, 875 P.2d 665 (1994) (citing, *Harvest House Restaurant, Inc. v. City of Lynden*, 102 Wn.2d 369, 373, 685 P.2d 600 (1984)).

purport to order the County to take action that it cannot take. The Boards' decisions should be reversed by this Court.⁷⁵

B. Second Assignment of Error:

The Board Misinterpreted and Misapplied the Law and Made Decisions Unsupported by Substantial Evidence in the Record by Determining that Clark County Violated GMA by Dedicating Agricultural Land to Establish a Rural Industrial Land Bank.

1. Standard of Review.

The Court of Appeals reviews the decisions of the Board pursuant to the Administrative Procedure Act, chapter 34.05 RCW.⁷⁶ In holding that the county had violated GMA by establishing a Rural Industrial Land Bank (RILB), the Board misinterpreted and misapplied GMA in the both the FDO and the Compliance Order, and the Board's decisions were not supported by substantial evidence in the whole record.⁷⁷

The "burden of demonstrating the invalidity of agency action is on the party asserting invalidity."⁷⁸ The portion of this assignment of error asserting misinterpretation and misapplication of the law is reviewed de novo under RCW 34.05.570(3)(d).⁷⁹ In reviewing the Board's decisions

⁷⁵ RCW 34.05.570(3)(b) and (d).

⁷⁶ RCW 34.05.570(3).

⁷⁷ RCW 34.05.570(d), (e).

⁷⁸ *Quadrant Corp. v. State Growth Management Hearings Bd.*, 154 Wn.2d 224, 233 (2005); *see also*, RCW 34.05.570(1)(a).

⁷⁹ *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008).

de novo, the Court is required, as was the Board, to grant deference to the County in how it plans for growth, consistent with GMA.⁸⁰

Although the Court accords the Board's interpretations of GMA "substantial weight," the Court is not bound by the Board's interpretations.⁸¹ Further, the Court of Appeals has held that the deference with which the Court should review the County's decision, pursuant to RCW 36.70A.3201, supersedes the deference granted by the APA and the courts to administrative agencies, such as the Board.⁸² The Court should, therefore, review Clark County's discretionary actions in adopting the 2016 Plan Update with the deference that the Board erroneously failed to provide.

The assignment charging failure to support the FDO and Compliance Order with substantial evidence in the record is reviewed to determine whether the evidence is of a sufficient quantity to persuade a fair minded person of the truth or correctness of the order.⁸³ An error alleged under 34.05.570(3)(e) is a mixed question of law and fact, where

⁸⁰ RCW 36.70A.3201 (recognizing the "broad range of discretion" that may be exercised by counties" consistent with GMA).

⁸¹ See *Futurwise v. Benton County*, CPSGMHB Case No. 14-1-0003, Order Issuing Determination of Invalidity January 15, 2015.

⁸² See *Quadrant*, 154 Wn.2d at 238 ("In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the requirements of the GMA, supersedes deference granted to the APA and courts to administrative bodies in general.").

⁸³ *Thurston County, supra*, 164 Wn.2d at 341, quoted in *Suquamish Tribe v. CPSGMHB*, 156 Wn. App. 743, 770, 235 P.3d 812 (2010).

this Court should determine the law independently, and then apply it to the facts found by the Board.⁸⁴

2. Argument.

Pursuant to RCW 36.70A.367, in 2016, Clark County established two rural industrial land banks (RILB) on 602 acres of land that had been previously designated as agricultural lands of long term commercial significance.⁸⁵ That statute authorizes certain counties, including Clark, to designate locations for major industrial development outside urban growth areas. It provides, in part, as follows:

RCW 36.70A.367

Major industrial developments—Master planned locations.

- (1) In addition to the major industrial development allowed under RCW 36.70A.365, a county planning under RCW 36.70A.040 that meets the criteria in subsection (5)⁸⁶ of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

⁸⁴ *Suquamish Tribe, supra*, 156 Wn. App. at 770, quoting *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn..2d 768, 779–80, 193 P.3d 1077 (2008), affirming and adopting 138 Wn.App. 1, 154 P.3d 936 (2007).

⁸⁵ AR 7-45. The County originally created the RILB in April, 2016, and then amended the plan portions related to the RILB when it adopted the 2016 Plan Update. FOCC separately appealed the initial establishment of the RILB; that appeal was consolidated with the appeals of the 2016 Plan Update. The remaining issue concerning the RILB is before the Court of Appeals in this review.

⁸⁶ There is no dispute that Clark County meets the criteria of subsection (5).

(4) For the purposes of this section:

- (b) "Industrial land bank" means up to two master planned locations, each consisting of a parcel or parcels of contiguous land, sufficiently large so as not to be readily available within the urban growth area of a city, or otherwise meeting the criteria contained in (a) of this subsection, suitable for manufacturing, industrial, or commercial businesses and designated by the county through the comprehensive planning process specifically for major industrial use.

The FDO found that the RILB violated GMA, first, because the County had failed to specify a maximum size for a land bank as required by RCW 36.70A.367(2)(a), but otherwise determined that the County had complied with the procedural requirements of RCW 36.70A.367 in establishing the RILB.⁸⁷ The FDO, however, ruled that the RILB had also violated RCW 36.70A.060⁸⁸ and WAC 365-190-050⁸⁹ based upon the County's designation of the RILB lands for industrial use.⁹⁰ The Compliance Order held that the County had properly designated a maximum size for a RILB,⁹¹ but continued the holding of noncompliance

⁸⁷ AR 10552-555.

⁸⁸ RCW 36.70A.060(1) and (3) require counties to adopted development regulations that assure the conservation of designated agricultural lands and authorizes counties to review designations of resource lands and to alter the designations.

⁸⁹ WAC 365-190-050 is attached hereto as the Appendix.

⁹⁰ AR 10552-555.

⁹¹ CAR 1575-76.

regarding the RILB dedesignation, and additionally determined that the dedesignation had been invalid.⁹²

The Board ruled that the County had failed to conduct an area-wide analysis for this RILB site in violation of WAC 365-190-050.⁹³

WAC 365-190-050 states, in relevant part:

- (1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process.

- (5) When applying the criteria in subsection(3)(c)⁹⁴ of this section, 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 agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

Few appellate decisions construe the requirement in WAC 365-190-050 that in designating (and dedesignating) agricultural resource lands, a county undertake “a county-wide or area-wide process,” which was added to the regulation in 2010.⁹⁵ One decision that clearly construes

⁹² CAR 1576-80.

⁹³ AR 1587.

⁹⁴ Subsection (3)(c) sets forth the factors to be considered in analysis of whether lands have long-term commercial significance for agriculture. *See Appendix.*

⁹⁵ Washington State Register, 10-03-085, Effective February 19, 2010, Amending WSR 91-07-041 and WAC 365-190-050.

this WAC is *Futurewise v. Benton County*, in which the Board ruled that the dedesignation of 1,263 acres of agricultural land, and its addition to the Kennewick UGA for industrial use, had violated GMA.⁹⁶ The Board ruled that Benton County's "de-designation of agricultural lands for this small section of land, in isolation from a much larger County or area-wide study"⁹⁷ had been inappropriate. In *Benton County*, the Respondent apparently conducted no study or analysis of agricultural lands except for its analysis of the subject parcel.⁹⁸

This case presents stark contrasts to *Benton County* because Clark County's efforts in establishing the RILB were quite different. As the FDO stated:

*[Clark] County requested BERK Consulting [to] prepare a county-wide or area-wide analysis as required in WAC 365-190-050. The record shows BERK conducted an "Agricultural Lands Analysis" (Analysis) for four RILB sites in which they reviewed hundreds of acres of land for each site. Site 1 contains the [selected RILB] properties and the County reviewed 3,196 acres [in Site 1 alone] and then selected 602.4 acres to de-designate from ALLTCS to RILB.*⁹⁹

The analysis by BERK Consulting ("BERK") began by constructing and mapping an inventory of potential RILB sites throughout

⁹⁶ *Futurewise v. Benton County*, EWGMHB Case No. 14-1-0003, Order Issuing Determination of Invalidity (January 15, 2015).

⁹⁷ *Id.*, Final Decision and Order at 23. (October 15, 2014).

⁹⁸ If Benton County had conducted any such analysis, the Board's Order did not mention it. *Id.*

⁹⁹ AR 10532.

the entire County, including sites within UGA's as required by RCW 36.70A.367(2)(b)(ii).¹⁰⁰ BERK then reviewed the potential sites to determine which would meet preliminary criteria for further evaluation, including appropriate size, ownership, Comprehensive Plan designation, proximity to transportation corridors, and minimal slope onsite.¹⁰¹ This filtering process resulted in a group of 4 potential sites outside the County UGA's, a group stretching from close to the County's northwestern corner along I-5, and then east and south, outside the Vancouver UGA.¹⁰²

To be clear, the 3,196 acres in the area of the RILB that BERK studied comprised the entire area of designated Agricultural Lands contiguous to the RILB site.¹⁰³ BERK's study areas for all of the sites totaled 8,157 acres of Agricultural Lands located contiguous to each of the sites. The county actions at issue in *Benton County* were therefore distinguishable from those undertaken by Clark County, and the result of the Board's review should also have been different.

Yet, the Board found and concluded that Futurewise had "carried their burden of proof demonstrating the County failed to conduct an area-

¹⁰⁰ BERK screened a number of sites using objective filtering criteria to arrive ultimately at four sites that would be subject to further evaluation. AR 6022-15, 10531-32, and notes at those pages.

¹⁰¹ *Id.*

¹⁰² *Id.* Most land in the northeastern parts of the County is national or industrial forest.

¹⁰³ AR 10531, 10532, 10536 and 10537.

wide analysis for this RILB site.”¹⁰⁴ If the Board meant to require Clark County to analyze a larger area of agricultural lands than it did, then the Board surely misconstrued WAC 365-190-050.

In finding noncompliance with WAC 365-190-050, and although it is not clear in this regard, the Board should not have determined that Clark County should have evaluated all of its designated Agricultural lands. The rule does not require that. Neither should the Board have concluded that Clark County had reviewed its resource lands “solely on a parcel-by-parcel process” when it considered a RILB. The FDO actually discussed the evidence in the BERK study that demonstrates otherwise.¹⁰⁵

The BERK analysis evaluated in detail four “areas” located throughout the western part of the County¹⁰⁶ as an integral part of the County’s efforts to identify a large property¹⁰⁷ in the County’s jurisdiction suited for major industrial development.¹⁰⁸ Nothing more is required by WAC 365-190-050(1). The Board’s conclusion to require more misinterprets and misapplies WAC 365-190-050 and violates RCW 36.70A.3201 in that it replaces the County’s discretion in planning for its community with the Board’s view of better policy for Clark County.

¹⁰⁴ AR 10535.

¹⁰⁵ AR 10531-35.

¹⁰⁶ AR 10532-33.

¹⁰⁷ The County adopted a minimum size of 100 acres for a RILB. AR 10526.

¹⁰⁸ RCW 36.70A.367(2)(a); *Id.*

The Board's determinations – both in the FDO and in the Order on Compliance - that Clark County had not complied with WAC 365-190-050 for failure to conduct an area-wide analysis is inconsistent both with the rule and with the evidence in the record that the Board itself discussed in the FDO. The Board erroneously interpreted WAC 365-190-050(1). Its decisions that the County had not made an area-wide effort in the process of dedesignating the RILB property both misapplied the law and were not supported by evidence in the whole record. The Board's FDO and its Order on Compliance should be reversed for those reasons.¹⁰⁹

The Board also looked to WAC 365-190-050(5)¹¹⁰ in striking down the RILB. The FDO states that “[t]here is no evidence reflected in the record analyzing the effect of de-designation on the economic viability of the agricultural industry in the county.”¹¹¹

Again, the evidence in the record belies the Board's conclusion. The FDO cites without context, a portion of the County's Issue Paper 9, which was adopted by the County on June 28, 2016, setting forth the analysis of agricultural lands, and which specifically discussed the economic viability of commercial farms in the County.¹¹² The County was entitled to conclude as did Issue Paper 9, contrary to the Board, that the

¹⁰⁹ RCW 34.05.570(3)(d), (e).

¹¹⁰ See **Appendix**.

¹¹¹ AR 10534.

¹¹² AR 10537.

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.¹¹³

Dedesignating the RILB property will not significantly impact the curve of agricultural viability in Clark County; the farm on the RILB property is already behind that curve. The Board's choices to believe otherwise are not supported by substantial evidence in the whole record, because no fair-minded person would view the evidence cited by the Board and conclude, as the Board did that the RILB property will "continue contributing to the long-term viability of agricultural commerce in Clark County."¹¹⁴ The FDO and Compliance Order should be overturned pursuant to RCW 34.05.570(e).

The County was also entitled, because of the Council's local knowledge and its "broad range of discretion" under GMA to decide on planning matters for the County's future growth¹¹⁵ and to give credence to the overwhelming evidence before it that the RILB lands lack "long-term commercial significance," one of the criteria for designation of agricultural resource lands.¹¹⁶

¹¹³ AR 6035.

¹¹⁴ AR 10538.

¹¹⁵ RCW 36.70A.3201.

¹¹⁶ See RCW 36.70A.030(2), (10) (definitions of "agricultural land" and "long-term commercial significance," respectively; WAC 365-190-050(3)(c) (non-exclusive criteria

The FDO cites to the following evidence relevant to support the conclusion under the factors of WAC 365-190-050(3)(c) enumerated here that the RILB land has a significant, long-term future for commercial agriculture:

- i. The RILB property is composed primarily of prime farmland soils;
- ii. Roads are available to transport agricultural products;
- iii. The land is in current use tax status;
- iv. Public services such as sewer are not currently available on the property; and
- xi. The land abuts the Vancouver UGA and is, therefore, proximate to markets.¹¹⁷

The Board then concludes that pursuant to WAC 365-190-50(3)(c), the RILB property has long-term commercial significance.¹¹⁸ The Board

for consideration of whether land has long-term commercial significance for agriculture); *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 502, 139 P.3d 1096 (2006) (construing the definition of “agricultural lands” under former WAC 365-190-050(1)). WAC 365-190-050(3)(a) requires that designated agricultural land not be characterized by urban growth. That requirement is not at issue here. WAC 365-190-050(3)(b) requires that agricultural land be used or capable of being used for agricultural production. That requirement is not at issue. The requirement at WAC 365-190-050(3)(c) is at issue. That rule requires that to be designated agricultural resource land, the land must have long-term commercial significance for agriculture.

¹¹⁷ AR 10536-37.

¹¹⁸ *Id.*

also cites the BERK analysis,¹¹⁹ but gives little significance to the following contrary evidence contained within it:

- i. A growing number of farms within the County are small or very small, and the prime soils on the RILB property would support small-scale agricultural operations called for in RILB buffer zones by the RILB development regulations;¹²⁰
- ii. The public facilities near the RILB are urban in nature, including a school, a sewer line on adjacent lands, a nearby water line, and State Route 503, an urban highway that bisects the property;¹²¹
- v. The RILB land abuts the Vancouver UGA, within which intense urban development is occurring in close proximity to the RILB;¹²²
- vii. Rapidly growing, intense, urban development¹²³ encroaches on the RILB lands from several directions, and presents

¹¹⁹ AR 10532.

¹²⁰ AR 33.

¹²¹ AR 139-41.

¹²² *Id.*

¹²³ The Vancouver UGA bounds the RILB. AR 139-41. Properties across that boundary are being, or have been developed as a retail shopping center, and for a number of commercial and residential uses, including multi-family housing relatively nearby the dairy farm's manure lagoon. *Id.* The RILB is traversed by the County's short-line railroad, and is bisected by the increasingly busy, 5-lane, limited access State Route 503, which has been improved to urban standards and creates difficulties for moving animals and equipment across the property. AR 9-10. Sewer and water are available at the boundary of the property. AR 139-40. These facts render the RILB property suitable for

- significant incompatibilities with commercial agricultural use;
- viii. Nearby land uses are becoming increasingly intense, as set forth in discussion of factor vii, above, and the note thereto;
 - ix. Numerous permits have recently been issued nearby the RILB, as set forth in discussion of factor vii, above, and the note thereto;
 - x. Land values if uses as an industrial land back would be far higher than the value as farmland;¹²⁴
 - xi. The RILB land is proximate to markets and transportation for industrial goods, as indicated in discussion of factor vii, above, and note thereto.

The evidence cited by the FDO, and the bulk of the evidence in the whole record support the County's decision.

The County was, therefore, entitled to exercise its discretion to determine that land in the circumstances that define and encircle the RILB property does not have long-term commercial significance as agricultural land.¹²⁵ The Board erred when it made the unsupported conclusion that the "predominant information" is that the RILB property is surrounded "by

industrial development, but present serious and increasing incompatibilities with agricultural practices.

¹²⁴ AR 139-41.

¹²⁵ RCW 36.70A.3201.

rural residential uses.”¹²⁶ The Board erred when it made the unsupported conclusion that “there has been no documentation of substantial changes in the land.”¹²⁷ Substantial changes in the land are well-documented in the record.¹²⁸

The Board erred in concluding that “[t]here [is] no evidence reflected in the record analyzing the effect of dedesignation on the economic viability of the agricultural industry in Clark County.”¹²⁹ Given that the RILB property itself lacks long-term viability for commercial agriculture, the dedesignation of the RILB property is insignificant to the long-term viability of the County’s agricultural economy.¹³⁰ In any event, that analysis is present in the record,¹³¹ and the Board erred by finding otherwise.

Properly viewing and applying WAC 365-190-050 to the facts, the Board did not reach the conclusion a fair-minded person would have based on those facts. Instead, the Board ignored the evidence in the record as a whole by reaching the unsupported conclusion in its decisions that the

¹²⁶ AR 10537.

¹²⁷ AR 10534. A substantial change in the land cannot mean that the land no longer has its physical characteristics, such as soil classification, but must mean that the land is affected by proximate development that is incompatible with commercial agriculture.

¹²⁸ AR 139-41.

¹²⁹ *Id.*

¹³⁰ The BERK study concluded that the inclusion or not of the RILB property as agricultural land would likely make little difference for the economics of the agricultural industry in the County. AR 169-170.

¹³¹ AR 164-170.

RILB land has long-term commercial significance for agriculture. Its decision should be reversed pursuant to RCW 34.05.570(3)(e).

Because the FDO and the Order on Compliance erroneously interpret WAC 365-190-050(1), (3), and (5) to hold that the RILB land should not have been dedesignated, the Court should reverse those decisions pursuant to RCW 34.05.570(3)(d).

Finally, because the FDO and the Order on Compliance fail to accord the proper deference to the County as the local decision maker as required by 36.70A.3201, the Court should not defer to the Board, but pursuant to RCW 34.05.570(3)(d), should reverse the Board's decisions holding that the RILB is noncompliant and invalid.

C. Adoption of Cities' Briefs:

Clark County hereby adopts in their entirety and incorporates as its own the Statements of the Case and the Arguments as made by the Cities of Ridgefield and La Center in their respective Opening Briefs to this Court.

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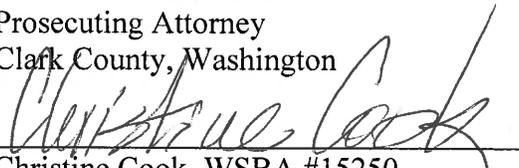
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CONCLUSION

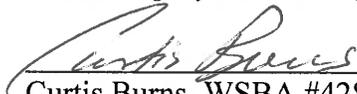
For the reasons set forth herein, Clark County respectfully requests that the Court of Appeals reverse the FDO and the Compliance Order.

DATED this 31st day of July, 2018.

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CERTIFICATE OF SERVICE

I, Thelma Kremer, hereby certify that on this 31st day of July, 2018, I electronically filed the foregoing *Opening Brief of Petitioner Clark County* using the Washington State JIS Appellate Courts' Portal, which will send notification of such filing to the following:

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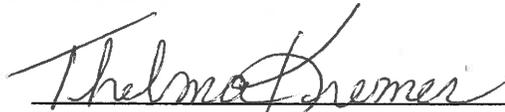
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DATED this 31st day of July, 2018.


Thelma Kremer, Legal Secretary

APPENDIX

WAC 365-190-050

Agricultural resource lands.

(1) In classifying and designating agricultural resource lands, counties must approach the effort as a county-wide or area-wide process. Counties and cities should not review resource lands designations solely on a parcel-by-parcel process. Counties and cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas. Cities are encouraged to coordinate their agricultural resource lands designations with their county and any adjacent jurisdictions.

(2) Once lands are designated, counties and cities planning under the act must adopt development regulations that assure the conservation of agricultural resource lands. Recommendations for those regulations are found in WAC 365-196-815.

(3) Lands should be considered for designation as agricultural resource lands based on three factors:

(a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities should use the criteria contained in WAC 365-196-310.

(b) The land is used or capable of being used for agricultural production. This factor evaluates whether lands are well suited to agricultural use based primarily on their physical and geographic characteristics. Some agricultural operations are less dependent on soil quality than others, including some livestock production operations.

(i) Lands that are currently used for agricultural production and lands that are capable of such use must be evaluated for designation. The intent of a landowner to use land for agriculture or to cease such use is not the controlling factor in determining if land is used or capable of being used for agricultural production. Land enrolled in federal conservation reserve programs is recommended for designation based on previous agricultural use, management requirements, and potential for reuse as agricultural land.

(ii) In determining whether lands are used or capable of being used for agricultural production, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Natural Resources Conservation Service as defined in relevant Field Office Technical Guides. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys, and are based on the growing capacity, productivity and soil composition of the land.

(c) The land has long-term commercial significance for agriculture. In determining this factor, counties and cities should consider the following nonexclusive criteria, as applicable:

(i) The classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service;

(ii) The availability of public facilities, including roads used in transporting agricultural products;

(iii) Tax status, including whether lands are enrolled under the current use tax assessment under chapter 84.34 RCW and whether the optional public benefit rating system is used locally, and whether there is the ability to purchase or transfer land development rights;

(iv) The availability of public services;

(v) Relationship or proximity to urban growth areas;

(vi) Predominant parcel size;

(vii) Land use settlement patterns and their compatibility with agricultural practices;

- (viii) Intensity of nearby land uses;
- (ix) History of land development permits issued nearby;
- (x) Land values under alternative uses; and
- (xi) Proximity to markets.

(4) When designating agricultural resource lands, counties and cities may consider food security issues, which may include providing local food supplies for food banks, schools and institutions, vocational training opportunities in agricultural operations, and preserving heritage or artisanal foods.

(5) When applying the criteria in subsection (3)(c) of this section, 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 agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

(6) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include, in addition to general public involvement, consultation with the board of the local conservation district and the local committee of the farm service agency. It may also be useful to consult with any existing local organizations marketing or using local produce, including the boards of local farmers markets, school districts, other large institutions, such as hospitals, correctional facilities, or existing food cooperatives.

These additional lands may include designated critical areas, such as bogs used to grow cranberries or farmed wetlands. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-190-050, filed 11/2/10, effective 12/3/10; WSR 10-03-085, § 365-190-050, filed 1/19/10, effective 2/19/10. Statutory Authority: RCW 36.70A.050. WSR 91-07-041, § 365-190-050, filed 3/15/91, effective 4/15/91.]

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