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Supreme Court Case No. 102266-2  
(Court of Appeals Case No. 38907-3-III)

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SUPREME COURT OF THE STATE OF WASHINGTON

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FRANKLIN COUNTY,

Appellant,

v.

FUTUREWISE,

Respondent,

and

CITY OF PASCO, and PORT OF PASCO,

Appellants.

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**FUTUREWISE'S PETITION FOR REVIEW**

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## I. IDENTITY OF THE PETITIONER

The Petitioner is Futurewise, a Washington State nonprofit corporation. Futurewise was a petitioner before the Growth Management Hearings Board (Board) and a respondent before the Court of Appeals (COA).

## II. CITATION TO THE COURT OF APPEALS DECISION

The Petitioner seeks review of the following unpublished Court of Appeals decision: *Franklin County, City of Pasco, and Port of Pasco v. Futurewise*, Case No. 38907-3-III filed July 13, 2023, hereinafter Opinion. A copy of the Opinion is enclosed as Appendix A.

The Opinion reversed *Futurewise v. Franklin County, City of Pasco, and Port of Pasco*, Growth Management Hearings Board Eastern Washington Region Case No. 21-1-0005, Final Decision and Order (Jan. 28, 2022), hereinafter FDO. A copy of the FDO is enclosed as Appendix B.

### **III. ISSUES PRESENTED FOR REVIEW**

1. May a County rely on an after-the-fact interpretation of a comprehensive plan to de-designate agricultural lands of long-term commercial significance (ALLTCS)?
2. Did the Opinion follow the correct legal principles for interpreting comprehensive plans?
3. Does the Opinion opinion’s reliance on an after-the-fact County interpretation of the comprehensive plan rather than the plain language comply with the legal principles for interpreting comprehensive plans?

### **IV. STATEMENT OF THE CASE**

Franklin County’s 2008 comprehensive plan designated the “Franklin Crops” as one of four categories of agricultural lands of long-term commercial significance (ALLTCS) on Map 8 – Agriculture Lands.<sup>1</sup> The 2008 comprehensive plan provided:

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<sup>1</sup> Supplement to the Certified Administrative Record (SCR) 001437-38, SCR 001441, Franklin County Growth Management Comprehensive Plan pp. 92-93, p. 96 (Adopted Feb. 27, 2008) hereinafter 2008 comprehensive plan.

In Franklin County agricultural lands of long-term commercial significance are soil classification 1 – 3 according to the Land Capability Classification of the USDA Soil Conservation service. Further, the County’s Prime, Unique and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map 8, are also described as agricultural lands of long-term commercial significance in Franklin County.<sup>2</sup>

The four categories of ALLTCS shown on Map 8 were the “Franklin Crops,” “Prime Irrigate Lands,” “Prime Dryland,” and “Fields with Quincy Soils.”<sup>3</sup> All four of the ALLTCS categories along with other areas were designated as “Agricultural” on Map 2 – Comprehensive Land Use Plan.<sup>4</sup> And the four ALLTCS categories were not included in the Rural land use designations.<sup>5</sup> Franklin County’s 2018-2038 comprehensive plan failed to include ‘Franklin Crops’ “as ALLTCS and failed to apply de-designation criteria identified

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<sup>2</sup> SCR 001438, 2008 Comprehensive Plan p. 93.

<sup>3</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>4</sup> SCR 001384, 2008 comprehensive plan p. 39; SCR 001343, 2008 comprehensive plan p. \*iii.

<sup>5</sup> SCR 001420-33, 2008 comprehensive plan pp. 75-88.



by the Board and Washington courts.”<sup>6</sup> Franklin County failed to disclose and analyze the environmental impact of designating the Franklin Crops in the State Environmental Policy Act (SEPA) Checklist.<sup>7</sup> Neither did the Pasco Draft or Final Environmental Impact Statements (EISs).<sup>8</sup>

The 2018-2038 comprehensive plan expanded the Pasco urban growth area (UGA) by approximately 3,407 acres.<sup>9</sup> The northwestern part of the UGA expansion was mostly designated as ALLTCS with small areas of Rural land in the 2008

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<sup>6</sup> Certified Administrative Record (CR) 001137, *Futurewise v. Franklin County, City of Pasco, and Port of Pasco*, Growth Management Hearings Board Eastern Washington Region (GMHBEWR) Case No. 21-1-0005, Final Decision and Order (Jan. 28, 2022), at 19 of 23 hereinafter FDO enclosed in Appendix A.

<sup>7</sup> CR 000656.

<sup>8</sup> SCR 001597, SCR 001600, SCR 001634, SCR 001672-74, SCR 001685-86. The differences between the Draft and Final EIS are shown in revision marks on the Final EIS. SCR 001558.

<sup>9</sup> CR 000460, Comprehensive Plan 2018-2038 Franklin County, Washington p. 27 (adopted June 2021 Ord. 07-2021) hereinafter 2018-2038 comprehensive plan; CR 000625; SCR 001384, 2008 comprehensive plan p. 39.

comprehensive plan.<sup>10</sup> Most of the land included in the UGA expansion was designated by Franklin County as Franklin Crops, shown on the map in Appendix C.<sup>11</sup> Rural comprehensive plan designations adjacent to the 2008 comprehensive plan UGA and the 2018-2038 comprehensive plan UGA expansion were excluded from the expansion even though ALLTCS was included.<sup>12</sup>

In the northwest UGA expansion area, 2,491.9 acres, 94.4 percent, are land capability classification 1 through 3 soils.<sup>13</sup> Prime farmland in the northwest UGA expansion areas totaled 575 acres or 21.8 percent.<sup>14</sup> Another 1,712.4 acres, 64.9 percent, are farmland of statewide importance soils.<sup>15</sup> So prime

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<sup>10</sup> SCR 001441, 2008 comprehensive plan p. 96; SCR 001384, 2008 comprehensive plan p. 39; SCR 002522; CR 001074.

<sup>11</sup> SCR 001441, 2008 comprehensive plan p. 96; CR 001074 (included as Appendix C.)

<sup>12</sup> SCR 001384, 2008 comprehensive plan p. 39; SCR 002522; CR 001074.

<sup>13</sup> CR 000421; CR 000901-22.

<sup>14</sup> CR 000421; CR 000901-22.

<sup>15</sup> CR 000421; CR 000901-22.

farmland and farmland of statewide importance soils total 2,287.4 acres, 86.7 percent of the northwest UGA expansion.<sup>16</sup> Many soils have both Land Capability Classifications 1 through 3 and Prime Farmland or Farmland of Statewide Importance.<sup>17</sup>

Franklin County expanded its UGA without de-designating the “Franklin Crops” or analyzing the environmental impacts of converting the ALLTCS to urban uses.<sup>18</sup> Futurewise timely appealed the UGA expansion and the County’s SEPA compliance.<sup>19</sup> Futurewise prevailed on these issues before the Board.<sup>20</sup> Franklin County and the City of Pasco appealed the Board’s FDO.

The Court of Appeals decided to follow the County’s interpretation of the comprehensive plan that the Franklin Crops shown on Map 8 are not agricultural lands of long-term

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<sup>16</sup> CR 000421; CR 000901-22.

<sup>17</sup> CR 000421; CR 000901-22.

<sup>18</sup> CR 001137, FDO, at 19 of 23.

<sup>19</sup> CR 001120, FDO, at 2 of 23.

<sup>20</sup> CR 001122-28, 001134-38, FDO, at 4-10, 16-20 of 23.

commercial significance.<sup>21</sup> So, the Court of Appeals reversed the Board.<sup>22</sup>

## V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### A. Issue 1: May a County rely on an after-the-fact interpretation of a comprehensive plan to de-designate agricultural lands of long-term commercial significance (ALLTCS)?

#### 1. The Growth Management Act (GMA) requires the designation and conservation of agricultural lands and ALLTCS must be de-designated by showing they fail to comply with the GMA requirements for designating ALLTCS.

The GMA’s “[n]atural resource industries” goal provides “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and discourage incompatible uses.”<sup>23</sup> The GMA goals were “adopted to guide

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<sup>21</sup> *Franklin Cnty. v. Futurewise*, Case No. 38907-3-III Slip Op. at 37 (Wash. Ct. App. Div. III July 13, 2023) including in Appendix A and hereinafter Opinion.

<sup>22</sup> *Id.* at 38-39.

<sup>23</sup> RCW 36.70A.020(8).

the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 16 36.70A.040 ....”<sup>24</sup>

“The purpose is to ‘assure the conservation’ of these lands. RCW 36.70A.060(1).”<sup>25</sup>

This Court held that counties

must designate “[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.” RCW 36.70A.170(1)(a). In addition, the county must adopt development regulations “to assure the conservation of” those agricultural lands designated under RCW 36.70A.170. RCW 36.70A.060(1).<sup>26</sup>

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<sup>24</sup> RCW 36.70A.020; *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000).

<sup>25</sup> *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091, 1094 (1998).

<sup>26</sup> *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 498–99, 139 P.3d 1096, 1101 (2006).

This Court also held that counties are “required to designate agricultural lands of long-term commercial significance.”<sup>27</sup>

This Court explained that the:

GMA required municipalities to designate agricultural lands for preservation even before those municipalities were obliged to declare their UGAs and adopt comprehensive plans in compliance with GMA. The “designation and interim protection of such areas [are] the first formal step in growth management implementation ... to preclude urban growth area status for areas unsuited to urban development.” [Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. PUGET SOUND L. REV. 867, 907 (1993).] Also, requiring designation of natural resource lands at the outset of the GMA planning process prevents the irreversible loss of those lands to development, and preserves land management options until completion of the comprehensive planning process.<sup>28</sup>

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<sup>27</sup> *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140.

<sup>28</sup> *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 48, 959 P.2d 1091, 1095 (1998).

This Court’s *Soccer Fields* decision held that “[w]hen read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.”<sup>29</sup>

The Court of Appeals has concluded that the courts “evaluate whether a dedesignation of agricultural land was clearly erroneous by determining whether the property in question continues to meet the GMA definition of ‘agricultural land’ as defined in *Lewis County*.”<sup>30</sup> The State of Washington Department of Commerce has adopted minimum guidelines for the de-designation agricultural lands of long-term commercial significance.<sup>31</sup>

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<sup>29</sup> *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143.

<sup>30</sup> *Clark Cnty. Washington v. W. Washington Growth Mgmt. Hearings Rev. Bd.*, 161 Wn. App. 204, 234, 254 P.3d 862, 875-76 (2011), *vacated in part Clark Cnty. v. W. Washington Growth Mgmt. Hearings Rev. Bd.*, 177 Wn. 2d 136, 298 P.3d 704 (2013), this part of the opinion was not vacated. *Accord Yakima Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 688, 192 P.3d 12, 16 (2008). The reference to *Lewis County* is to *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

<sup>31</sup> WAC 365-190-040(10); WAC 365-190-050(1).

**2. The plain language of the 2008 comprehensive plan shows the Franklin Crops are ALLTCS.**

The GMA requires comprehensive plans for fully planning counties to include three categories of land use designations: Urban growth areas, natural resource lands, and rural lands.<sup>32</sup> Agricultural lands of long-term commercial significance (ALLTCS) are one of the three types of natural resource lands.<sup>33</sup> County and city comprehensive plans that have ALLTCS are required to designate them, typically on a map or maps.<sup>34</sup>

The 2008 comprehensive plan designated the ALLTCS on Map 8 – Agriculture Lands.<sup>35</sup> Map 8 – Agriculture Lands is in the Resource Lands chapter, not the Rural Lands chapter.<sup>36</sup>

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<sup>32</sup> RCW 36.70A.110; RCW 36.70A.170(1)(a)-(c); RCW 36.70A.070(5).

<sup>33</sup> RCW 36.70A.170(1)(a).

<sup>34</sup> RCW 36.70A.170(1)(a); *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 503, 139 P.3d 1096, 1103 (2006).

<sup>35</sup> SCR 001343, SCR 001438, SCR 001441, 2008 comprehensive plan p. iii, p. 93, p. 96.

<sup>36</sup> SCR 001441, 2008 comprehensive plan p. 96.



The Resource Lands chapter of the 2008 comprehensive plan provides that the “County’s Prime, Unique and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map 8, are also described as agricultural lands of long-term commercial significance in Franklin County.”<sup>37</sup> Map 8 includes four categories of ALLTCS: “Franklin Crops,” “Prime Irrigate Lands,” “Prime Dryland,” and “Fields with Quincy Soils.”<sup>38</sup> They are ALLTCS because they are included on Map 8 – Agriculture Lands and the Resource Lands Chapter says they are ALLTCS.<sup>39</sup> Further evidence they are ALLTCS is that they are not designated as “Urban Growth Boundaries” or “Rural Lands” either on Map 8 – Agriculture Lands or Map 2 – Comprehensive Land Use Plan.<sup>40</sup> They are designated as “Agricultural” on Map 2 –

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<sup>37</sup> SCR 001438, 2008 comprehensive plan p. 93.

<sup>38</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>39</sup> SCR 001441, *Id.*; SCR 001438, 2008 comprehensive plan p. 93.

<sup>40</sup> SCR 001441, *Id.*; SCR 001384, 2008 comprehensive plan p. 39.

Comprehensive Land Use Plan, also referred to as the Land Use Map.<sup>41</sup>

The 2008 comprehensive plan provides that “Urban Growth Boundaries” do not include ALLTCS, agriculture is a transitional use in urban growth boundaries, not a long-term use.<sup>42</sup> Similarly, Rural areas also do not have ALLTCS.<sup>43</sup>

The “Franklin Crops,” “Prime Irrigate Lands,” “Prime Dryland,” and “Fields with Quincy Soils” are included on Map 8 – Agriculture Lands and are designated as “Agricultural” on Map 2 – “Comprehensive Land Use Plan.”<sup>44</sup> But they are not included in the urban or rural land use designations.<sup>45</sup>

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<sup>41</sup> SCR 001384, 2008 comprehensive plan p. 39; SCR 001343, 2008 comprehensive plan p. \*iii.

<sup>42</sup> SCR 001395, 2008 comprehensive plan p. 39; SCR 001343, 2008 comprehensive plan p. \*50.

<sup>43</sup> SCR 001418, 2008 comprehensive plan p. 73.

<sup>44</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>45</sup> SCR 001420-33, 2008 comprehensive plan pp. 75-88.

**3. Having designated the Franklin Crops as ALLTCS in the 2008 comprehensive plan, can Franklin County de-designate them through a staff interpretation rather than the de-designation process?**

In the *Soccer Fields* decision, this Court held that “[a]fter properly designating agricultural lands in the [Agricultural Projection District] APD, the County may not then undermine the Act’s agricultural conservation mandate by adopting ‘innovative’ amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use.”<sup>46</sup> This case raises a similar issue of substantial public interest. After having designated the Franklin Crops or any category of farmland as ALLTCS in 2008 comprehensive plan,<sup>47</sup> can a County de-designate the ALLTCS not by going through the de-designation process but through an after-the-fact staff interpretation and allow nonagricultural uses on those lands?

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<sup>46</sup> *Soccer Fields*, 142 Wn.2d at 561, 14 P.3d at 143.

<sup>47</sup> SCR 001343, SCR 001438, SCR 001441, 2008 comprehensive plan p. iii, p. 93, p. 96.

The Opinion relies on the County's after-the-fact interpretation of the comprehensive plan to hold that the Franklin Crops were not designated as agricultural lands of long-term commercial significance despite the fact that they were mapped as ALLTCS.<sup>48</sup> In the northwest UGA expansion area, 2,491.9 acres (94.4 percent) are land capability classification 1 through 3 soils which the 2008 comprehensive plan identified as ALLTCS.<sup>49</sup>

If ALLTCS can be de-designated in this way, the GMA's legislative mandate for the conservation of agricultural land" enunciated by this Court will fail throughout the state.<sup>50</sup> A county could just come up with a staff interpretation for any land the county or city wants to de-designate. This is an issue of substantial public interest that should be determined by the

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<sup>48</sup> SCR 001343, SCR 001438, SCR 001441, 2008 comprehensive plan p. iii, p. 93, p. 96; Opinion at 28-30, 37-28.

<sup>49</sup> CR 000421; CR 000901-22; SCR 001438, 2008 comprehensive plan p. 93.

<sup>50</sup> *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143.

State Supreme Court. This Court should grant review under Rule of Appellate Procedure (RAP) 13.4(b)(4).

**B. Issue 2: Did the Opinion follow the correct legal principles for interpreting comprehensive plans?**

Comprehensive plans and development regulations “must comply with the GMA.”<sup>51</sup> This Court has described comprehensive plans as “guides” or “blueprints” “to be used in making land use decisions.”<sup>52</sup>

The state legislature and governor has made clear that these blueprints, comprehensive plans, are important to guide the future of Washington State and to achieve important state goals. This is shown by recent amendments to the GMA. In 2021, the legislature and governor strengthened the GMA housing goal and the requirements for planning for housing including identifying sufficient land for housing for all income groups

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<sup>51</sup> *Woods v. Kittitas Cnty.*, 162 Wn.2d 597, 613, 174 P.3d 25, 33 (2007).

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

and affordable housing.<sup>53</sup> In 2023, the legislature and governor adopted a new climate change and resiliency goal and requirements to reduce greenhouse gas pollution and to increase resiliency in the face of ongoing climate change.<sup>54</sup> Also in 2023, the legislature and governor adopted the “middle housing” bill requiring cities with a population of at least 25,000 that fully plan under the GMA to allow the development of at least two housing units per lot on most lots zoned predominantly for residential use.<sup>55</sup> More housing units are required in certain locations and for cities with larger populations.<sup>56</sup>

In addition to adopting new and amended goals and requirements, the state legislature and governor providing

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<sup>53</sup> Laws of 2021, ch. 254 § 1(4) amending RCW 36.70A.020(4); Laws of 2021, ch. 254 § 2 amending RCW 36.70A.070(2).

<sup>54</sup> Laws of 2023, ch. 228 § 1(14) adopting RCW 36.70A.020(14); Laws of 2023, ch. 228 § 3(3) amending RCW 36.70A.070; Laws of 2023, ch. 228 §§ 4-18.

<sup>55</sup> Laws of 2023, ch. 332 § 3.

<sup>56</sup> *Id.*

funding to state and counties and cities to update comprehensive plans and development regulations to comply with the GMA and to incorporate these new laws. This includes \$20 million in grants to update and implement comprehensive plans and development regulations in fiscal years 2024 and 2025.<sup>57</sup> Over \$43.8 million has been appropriated to implement the new climate change planning requirements adopted by Laws of 2023, ch. 228, referred to as Second Substitute House Bill No. 1181 in the operating budget.<sup>58</sup>

These goals, requirements, and funding will only produce on the ground improvements in land use decisions if the legal rules for interpreting comprehensive plans are clear. As the recent GMA amendments have shown, how comprehensive plans are interpreted is important. This Court has enunciated clear and

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<sup>57</sup> Laws of 2023, ch. 475 § 130(9) last accessed on Aug. 9, 2023, at: <https://lawfilesexternal.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/5187-S.SL.pdf?q=20230809111038>.

<sup>58</sup> Laws of 2023, ch. 475 § 126(24), § 130(21), § 222(87), § 302(29), § 308(39), § 310(26).

helpful principles for interpreting county and city ordinances, holding the same principles for interpreting statutes apply these ordinances.<sup>59</sup> But there is only limited guidance on how comprehensive plans are to be interpreted.

In the *Lakeside Industries* decision the court of appeals applied a rule of statutory construction to interpret a subarea plan and development regulations.<sup>60</sup> The GMA provides that subarea plans are to be included in the comprehensive plan.<sup>61</sup> Comprehensive plans are approved by the governing body of a county or city.<sup>62</sup> The *Lakeside Industries* decision shows that the rules of statutory construction can be successfully used to interpret comprehensive plans.

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<sup>59</sup> *Whatcom Cnty. Fire Dist. No. 21 v. Whatcom Cnty.*, 171 Wn.2d 421, 433, 256 P.3d 295, 300 (2011) citing *City of Spokane v. Fischer*, 110 Wn.2d 541, 542, 754 P.2d 1241 (1988) and *City of Puyallup v. Pac. Nw. Bell Tel. Co.*, 98 Wn.2d 443, 448, 656 P.2d 1035 (1982).

<sup>60</sup> *Lakeside Indus. v. Thurston Cnty.*, 119 Wn. App. 886, 896–97, 83 P.3d 433, 438 (2004), as amended (Feb. 24, 2004) review denied 152 Wn.2d 1015, 101 P.3d 107 (2004).

<sup>61</sup> RCW 36.70A.080(2).

<sup>62</sup> RCW 36.70A.030(6) (2023).



This case provides this Court with an opportunity to decide an issue of substantial public interest that should be determined by the Supreme Court under RAP 13.4(b)(4): The principles for interpreting comprehensive plans. The recent amendments to the GMA and the substantial funding for updating comprehensive plans show that comprehensive plans are important. Their proper interpretation is an issue of substantial public interest to ensure that the GMA is properly implemented and the state funding is well spent.

The Opinion in this case agreed that the comprehensive plans should be interpreted using the rules of statutory construction.<sup>63</sup> But the Opinion misapplied these rules and mixed in inapplicable contract principles as will be explained in Issue 3 below.

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<sup>63</sup> Opinion at 27-29.

**C. Issue 3: Does the Opinion’s reliance on an after-the-fact County interpretation of the comprehensive plan rather than the plain language comply with the legal principles for interpreting comprehensive plans?**

**1. The plain language of the 2008 comprehensive plan shows the Franklin Crops are ALLTCS.**

While the Opinion agreed the 2008 comprehensive plan should be interpreted based on the rules of statutory construction, the Opinion relies on the County’s after-the-fact interpretation of the comprehensive plan.<sup>64</sup> The Opinion recognized that there were no disputed issues of fact, only a dispute over the legal meaning of the comprehensive plan.<sup>65</sup>

The Court described the County’s interpretation:

On the con side [that the Franklin Crops are not ALLTCS], the Franklin County planning director declared, on November 17, 2020 at a county planning workshop, that the proposed Pasco UGA did not include any ALLTCS. In a report prepared for the Franklin County Board of County Commissioners, county planning staff wrote that the UGA expansion included no acres earlier designated as ALLTCS. The County stated this position before any dispute arose with Futurewise.

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<sup>64</sup> Opinion at 27-30, 37.

<sup>65</sup> Opinion at 37.

The report assumed that the 2008 plan did not designate Franklin Crops as ALLTCS. On the pro side, neither the planning director nor the planning staff revealed any analysis behind the conclusion nor specifically declared that Franklin Crops had not been designated as ALLTCS. The planning staff's position came a decade after the adoption of the 2008 comprehensive plan. The County presented no evidence that the 2020 planning director or planning staff played any role in the preparation of the 2008 plan.<sup>66</sup>

The Opinion apparently based the consideration of the after-the-fact interpretation on two contract cases: *Scott Galvanizing, Inc.* and *Hansen v. Transworld Wireless TV-Spokane, Inc.*<sup>67</sup> But comprehensive plans are not contracts. And later the Opinion rejected the application of contract principles in part of its analysis was to why the Opinion should not grant deference to the Board's findings of fact.<sup>68</sup>

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<sup>66</sup> Opinion at 30.

<sup>67</sup> Opinion at 28-29; *Scott Galvanizing, Inc. v. Nw. EnviroServices, Inc.*, 120 Wn.2d 573, 580-81, 844 P.2d 428, 432 (1993); *Hansen v. Transworld Wireless TV-Spokane, Inc.*, 111 Wn. App. 361, 375, 44 P.3d 929, 937 (2002).

<sup>68</sup> Opinion at 36-37.

The Opinion stated that “the Franklin County planning director declared, on November 17, 2020 ... that the proposed Pasco UGA did not include any ALLTCS.”<sup>69</sup> The Opinion stated the “County stated this position before any dispute arose with Futurewise.”<sup>70</sup> But that was not the case. Futurewise had argued before November 2020, that the UGA expansion included ALLTCS.<sup>71</sup> Indeed, even under the County’s limited interpretation of what is ALLTCS, the County later found some of the land in the UGA expansion was ALLTCS and later excluded those lands.<sup>72</sup>

Perhaps more importantly, the Opinion’s interpretation is contrary to the plain language of the comprehensive plan. The rules of statutory construction would derive the plain meaning of Franklin County’s 2008 and 2018-2038 comprehensive plans

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<sup>69</sup> Opinion at 30.

<sup>70</sup> Opinion at 30.

<sup>71</sup> SCR 002304, Summary of Futurewise 5/19/2020 letter; SCR 002322, Summary of Futurewise 6/17/2020 letter.

<sup>72</sup> CR 000009.

from what the County legislative body said in the comprehensive plan and related legislation “which disclose legislative intent about the provision in question.”<sup>73</sup> It would not derive the plain meaning from staff statements made ten years after the 2008 comprehensive plan was adopted.<sup>74</sup>

As was documented in Part V.A.1. above, the 2008 comprehensive plan designated the ALLTCS on Map 8 – Agriculture Lands.<sup>75</sup> Map 8 includes four categories of ALLTCS: “Franklin Crops,” “Prime Irrigate Lands,” “Prime Dryland,” and “Fields with Quincy Soils.”<sup>76</sup> They are ALLTCS because they are included on Map 8 – Agriculture Lands and the Resource Lands Chapter says they are ALLTCS.<sup>77</sup> Further evidence they are ALLTCS is that they are not designated as

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<sup>73</sup> Modified from *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4, 10 (2002).

<sup>74</sup> Opinion at 30.

<sup>75</sup> SCR 001343, SCR 001438, SCR 001441, 2008 comprehensive plan p. iii, p. 93, p. 96.

<sup>76</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>77</sup> SCR 001441, *Id.*; SCR 001438, 2008 comprehensive plan p. 93.

“Urban Growth Boundaries” or “Rural Lands” either on Map 8 – Agriculture Lands or Map 2 – Comprehensive Land Use Plan.<sup>78</sup> They are designated as “Agricultural” on Map 2 – Comprehensive Land Use Plan, also referred to as the Land Use Map.<sup>79</sup>

The “Franklin Crops,” “Prime Irrigate Lands,” “Prime Dryland,” and “Fields with Quincy Soils” are included on Map 8 – Agriculture Lands and are designated as “Agricultural” on Map 2 – “Comprehensive Land Use Plan.”<sup>80</sup> But they are not included in the Rural land use designations.<sup>81</sup> The plain language of the comprehensive plan shows that the Franklin Crops mapped on Map 8 are agricultural lands of long-term commercial significance.

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<sup>78</sup> SCR 001441, *Id.*; SCR 001384, 2008 comprehensive plan p. 39.

<sup>79</sup> SCR 001384, 2008 comprehensive plan p. 39; SCR 001343, 2008 comprehensive plan p. \*iii.

<sup>80</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>81</sup> SCR 001420-33, 2008 comprehensive plan pp. 75-88.

The Opinion at 32 wrote that Map 8 is a “poor indicator of the land designated as ALLTCS in Franklin County because the map does not expressly identify land embraced inside this important classification.” But the 2008 comprehensive plan’s Resource Lands chapter specifically states that “the County’s Prime, Unique and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map 8, are also described as agricultural lands of long-term commercial significance in Franklin County.”<sup>82</sup> The title of Map 8 is “Agricultural Lands.”<sup>83</sup> Courts refrain from “adding to, or subtracting from, the language of a statute unless imperatively required to make it rational.”<sup>84</sup> Applying this rule to the comprehensive plan shows that the Opinion attempted to subtract these comprehensive plan provisions. This Court

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<sup>82</sup> SCR 001438, 2008 comprehensive plan p. 93.

<sup>83</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>84</sup> *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791, 796 (1998).

should decide if this is the correct application of the rules for interpreting comprehensive plans.

The 2008 comprehensive plan states that “[t]he Act defines resource lands as having, ‘the growing capacity, productivity, and soil composition for long term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.’ [RCW 36.70A.030 (10)].”<sup>85</sup> Based on this provision, the Opinion excluded a portion of Franklin Crops adjacent to Pasco from the ALLTCS designation.<sup>86</sup> Of course, this assumes that Franklin County did not already apply this provision in 2008. This Court should decide if this sort of second-guessing Counties and excluding mapped “Agricultural Lands” is an appropriate method of interpreting comprehensive plans.<sup>87</sup>

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<sup>85</sup> SCR 001437, 2008 comprehensive plan p. 92.

<sup>86</sup> Opinion at 32-33.

<sup>87</sup> SCR 001441, 2008 comprehensive plan p. 96; *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791, 796 (1998).



The Opinion at 33 wrote that the “prose inside the body of the plan nowhere identifies *Franklin Crops* as ALLTCS.” But no part of the comprehensive plan other than Map 8 states that “Prime Irrigate Lands,” “Prime Dryland,” or “Fields with Quincy Soils” are ALTCS either.<sup>88</sup> But all four designations are included on Map 8.<sup>89</sup> The 2008 comprehensive plan provides that the “County’s Prime, Unique and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map 8, are also described as agricultural lands of long-term commercial significance in Franklin County.”<sup>90</sup> Again, this Court should decide if second-guessing counties and excluding mapped “Agricultural Lands” is an appropriate method of interpreting comprehensive plans.

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<sup>88</sup> SCR 001338-40, Resolution 2008-089 pp. 1-3; SCR 001341-1507, 2008 comprehensive plan pp. \*i-162.

<sup>89</sup> SCR 001441, 2008 comprehensive plan p. 96.

<sup>90</sup> SCR 001438, 2008 Comprehensive Plan p. 93.

**2. This Court should determine if Opinion erred in relying on the staff interpretation and not the plain language of the comprehensive plan.**

The Opinion did not conclude that the 2008 comprehensive plan was ambiguous.<sup>91</sup> The Opinion did conclude it was “not a model of clarity ....”<sup>92</sup> The Opinion then cited the court of appeals’ *King County* decision for the proposition that “[u]nder Washington State Supreme Court precedent, when interpreting a comprehensive plan that is not a ‘model of clarity’ the local government’s ‘interpretation is entitled to great weight.’”<sup>93</sup> The court of appeals’ *King County* decision took this principle from this Court’s *Federated American Insurance v. Marquardt* decision.<sup>94</sup>

This decision presents this Court with the opportunity to address whether this principle applies to comprehensive plans

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<sup>91</sup> Opinion at 21-39.

<sup>92</sup> Opinion at 2, 28.

<sup>93</sup> Opinion at 28.

<sup>94</sup> *Federated Am. Ins. Co. v. Marquardt*, 108 Wn.2d 651, 656, 741 P.2d 18, 22 (1987).

especially when the plain language of the comprehensive plan, as argued above, would lead to a different result. It also presents this Court with the opportunity to determine if an after-the-fact interpretation can override the plain language of the comprehensive plan. These questions are issues of substantial public interest that should be determined by the Supreme Court under RAP 13.4(b)(4).

## VI. CONCLUSION

Futurewise respectfully requests that the State Supreme Court accept review and make the following legal holdings:

1. Comprehensive plans are to be interpreted like statutes following the rules for statutory interpretation.
2. A County or a court cannot rely on an after-the-fact interpretation of a comprehensive plan to de-designate agricultural lands of long-term commercial significance (ALLTCS) when the interpretation inconsistent with the plan language of the comprehensive plan.

3. This court should then affirm the FDO which followed the rules of statutory interpretation in interpreting the Franklin County Comprehensive Plan.

This document contains 4,697 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated: August 14, 2023, and respectfully submitted.

s/ Tim Trohimovich

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Tim Trohimovich, WSBA No. 22367  
Attorney for Futurewise

**ATTACHED APPENDIXES**

| <b>Document</b>   | <b>Appendix</b> | <b>Certified Record (CR) Page</b> |
|---|-----------------|-----------------------------------|
| <i>Franklin County, City of Pasco, and Port of Pasco v. Futurewise</i> , Case No. 38907-3-III filed July 13, 2023.  | A               | NA                                |
| <i>Futurewise v. Franklin County, City of Pasco, and Port of Pasco</i> , Growth Management Hearings Board Eastern Washington Region Case No. 21-1-0005, Final Decision and Order (Jan. 28, 2022). | B               | CR 001119-42                      |
| Map showing the Pasco UGA Expansion drawn on part of Map 8 – Agricultural Lands.  | C               | CR 001074                         |

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 14<sup>th</sup> day of August 2023, he, she, or they caused the following document to be served on the persons listed below in the manner shown: Futurewise’s Petition For Review in Court of Appeals Case No. 38907-3-III with Appendixes.

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DATED and certified this 14<sup>th</sup> day of August 2023,

Signed: Tim Trohimovich

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Tim Trohimovich, WSBA 22367  
Attorney for Futurewise



Tristen L. Worthen  
Clerk/Administrator

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*The Court of Appeals  
of the  
State of Washington  
Division III*



July 13, 2023

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CASE # 389073  
Franklin County v. Futurewise  
FRANKLIN COUNTY SUPERIOR COURT No. 2225012211

Counsel:

Enclosed please find a copy of the opinion filed by the court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a).

If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, in paper

No. 38907-3-III  
*Franklin County v. Futurewise*  
Page 2

format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

A handwritten signature in blue ink, appearing to read "Tristen Worthen".

Tristen Worthen  
Clerk/Administrator

TLW/sh  
Enc.

c: **E-mail** Honorable Diana N. Ruff.

**FILED**  
**JULY 13, 2023**  
**In the Office of the Clerk of Court**  
**WA State Court of Appeals Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

|                                  |   |                     |
|----------------------------------|---|---------------------|
| FRANKLIN COUNTY,                 | ) |                     |
|                                  | ) | No. 38907-3-III     |
| Appellant,                       | ) |                     |
|                                  | ) |                     |
| v.                               | ) |                     |
|                                  | ) |                     |
| FUTUREWISE,                      | ) | UNPUBLISHED OPINION |
|                                  | ) |                     |
| Respondent.                      | ) |                     |
|                                  | ) |                     |
| and                              | ) |                     |
|                                  | ) |                     |
| CITY OF PASCO, and PORT OF PASCO | ) |                     |
|                                  | ) |                     |
| Appellants.                      | ) |                     |

FEARING, C.J. — A cartophile loves to read maps. This appeal concerns the reading of a map, but all cartophiles would find only frustration and no joy in perusing this map. This appeal asks us to determine whether a map labeled as “Agricultural Lands” and identified as Map 8 in Franklin County’s 2008 comprehensive plan designated land labeled as “Franklin Crops” for protection as agricultural land of long-term commercial significance (ALLTCS). This determination has significance under Washington’s Growth Management Act (GMA), ch. 36.70A RCW, and the State Environmental Policy Act (SEPA), ch. 43.21C RCW. Because of its significance to this appeal, we italicize the term “Franklin Crops” throughout this opinion. If we held that

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the 2008 plan identified *Franklin Crops* for ALLTCS protection, as so held by the Eastern Washington Growth Management Hearings Board (GMHB or Board), the County violated the two enactments when it placed a portion of the land in Pasco's urban growth area (UGA) while updating its comprehensive plan in 2018 absent the application of the requisite ALLTCS de-designation criteria and environmental review process.

This appeal involves the rare instance when abstruseness in a document benefits the drafter of the document, here Franklin County. Because the law directs us to defer to the meaning of a comprehensive plan accorded by the County when the plan is not a model of clarity and the County's interpretation of the plan is reasonable, we rule that the 2008 comprehensive plan did not designate *Franklin Crops* as ALLTCS. We reverse the GMHB's decision.

## FACTS

Franklin County lies in the mid-Columbia region of Washington State. To the south and west of the County, the Columbia River flows and creates the border with Benton County. Grant and Adams Counties lie to the north. The Snake River and its tributary, the Palouse River, create separation from Walla Walla and Whitman counties on the south and east. The post-World War II Columbia Basin Irrigation Project turned the County into a fertile crescent for a cornucopia of crops. In 2018, 700,000 of the County's 809,485 acres of land lay in farmland. The County is rightly proud of its helping to feed Washington State, the United States, and the world.

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The city of Pasco is Franklin County’s largest city and county seat. The city has undergone phenomenal growth in recent decades. The Washington State Office of Financial Management (OFM) recorded Pasco as having a population of 73,590 residents in 2018. The OFM predicts that, by 2038, the city’s population will increase by 48,238 residents, to over 121,000 residents. AR at 1818.

The GMA requires counties to adopt and periodically update a comprehensive plan. RCW 36.70A.020, .130. Comprehensive plans function as the centerpiece of local planning efforts, particularly land use. A comprehensive plan articulates a series of goals, objectives, policies, actions, and standards intended to guide the decisions of elected officials and local government staff. Relevant to this appeal, a comprehensive plan sets the direction for future growth in a county and identifies areas for protection from such growth.

As part of a comprehensive plan, the GMA obliges counties to adopt guidelines for classifying agricultural lands. RCW 36.70A.050(1). Another section of the GMA directs counties to adopt development regulations to assure the conservation of designated agricultural land. RCW 36.70A.060. The GMA requires counties to preserve agricultural land not already designated for urban growth and that poses long-term significance for the commercial production of food or other agricultural products. The GMA categorizes such land as “Agricultural Lands of Long-Term Commercial Significance” (ALLTCS). RCW 36.70A.170(1)(a). Our principal task on this appeal is

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to determine whether Franklin County designated some specific acreage of farmland as ALLTCS in the County's 2008 comprehensive plan.

Pursuant to the GMA, Franklin County updated its comprehensive plan in 2008. One map and some language in the plan's "Resource Lands" section control this appeal. Administrative Record (AR) at 1437. According to its duties under the GMA, the County disclosed, in the "Resource Lands" section, its methods for designating land as ALLTCS. AR at 1437. Unfortunately, the prose and the map use vague and undefined terms.

Relevant language from the 2008 comprehensive plan read:

#### **RESOURCE LANDS**

The GMA requires counties to identify resource lands of long-term commercial significance, which in Franklin County include agricultural and mineral lands that can be economically and practically managed for commercial production. The Act encourages the conservation of productive resource lands and discourages incompatible uses. Generally, resource lands have special attributes that make them productive which, [sic] cannot be re-created if they are lost to development or mismanaged. The Act defines resource lands as having, [sic] "the growing capacity, productivity, and soil composition for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." [RCW 36.70A.030 (10)]. . . .

*Franklin County identifies resource lands of long-term significance using distinctive characteristics such as soil types, geological structure, location, and other unique identifiers characteristic of the resource and set forth in the Act. . . .*

#### **AGRICULTURAL LANDS**

The GMA provides that cities and counties should "assure conservation of *agricultural lands of long-term significance*." The Act also

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requires local government to assure that land uses adjacent to designated resource lands do not interfere with the continued resource use.

AR at 1437 (emphasis added) (alterations in original). Note that the first sentence of the last paragraph dropped the word “commercial” from the legal term “agricultural lands of long-term commercial significance.” We proceed as if the two variants hold the same legal significance.

The 2008 comprehensive plan further read:

**Prime, Unique, & Farmlands of State and Local Significance**

Prime agricultural land are lands with soils best suited for producing food, feed, forage, fiber, and oilseed crops, and are also available for these uses. They have the soil qualities, growing season, and moisture supply required to produce economically sustained high yields of crops when managed according to modern farming methods.

*Farmland soils other than prime farmland used for the production of specific high value food and fiber crops are classified as unique agricultural lands. These lands have the special combination of soil quality, location, growing season, and moisture supply needed to economically sustain high quality and yields when managed according to modern farming methods.*

*Areas show in agricultural uses will be in, or already are in productive crop agricultural (these areas also include grazing land.) With water availability, the soils are sufficiently deep for irrigated cropping. Soils are also sufficiently deep for non-irrigated cropping.*

Areas within this designation should be conserved, insofar as is practicable and desirable, for the continued economic welfare of the farm industry and residents of the County. . . .

*In Franklin County agricultural lands of long-term commercial significance are soil classification 1-3 according to the Land Capability Classification of the USDA Soil Conservation Service. Further, the County’s Prime, Unique, and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map*

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*8, are also described as agricultural lands of long-term commercial significance in Franklin County.*

AR at 1438 (emphasis added). The last paragraph holds particular importance in this appeal.

The 2008 plan’s definition section contained the following definition for “long-term commercial significance:”

**Long-term Commercial Significance:** The growing capacity, productivity, and soil composition of the land for long-term commercial production, *in consideration with the land’s proximity to population areas*, and the possibility of more intense uses of the land. (RCW 36.70A.030).

AR at 1501 (emphasis added).

The 2008 comprehensive plan continued:

Agricultural and its related commercial and industrial businesses provide the economic base in Franklin County. The diversity of this agricultural base provides a relatively stable economic base and contributes to the areas’ cultural heritage and quality of life.

Franklin County has approximately 809,485 acres of lands, including approximately 700,000 acres of farmland with a mixture of irrigated land, dryland, and rangeland agriculture. *Map No. 8 illustrates the Irrigated/Dryland fields within Franklin County as provided and updated by the Franklin Conservation District.*

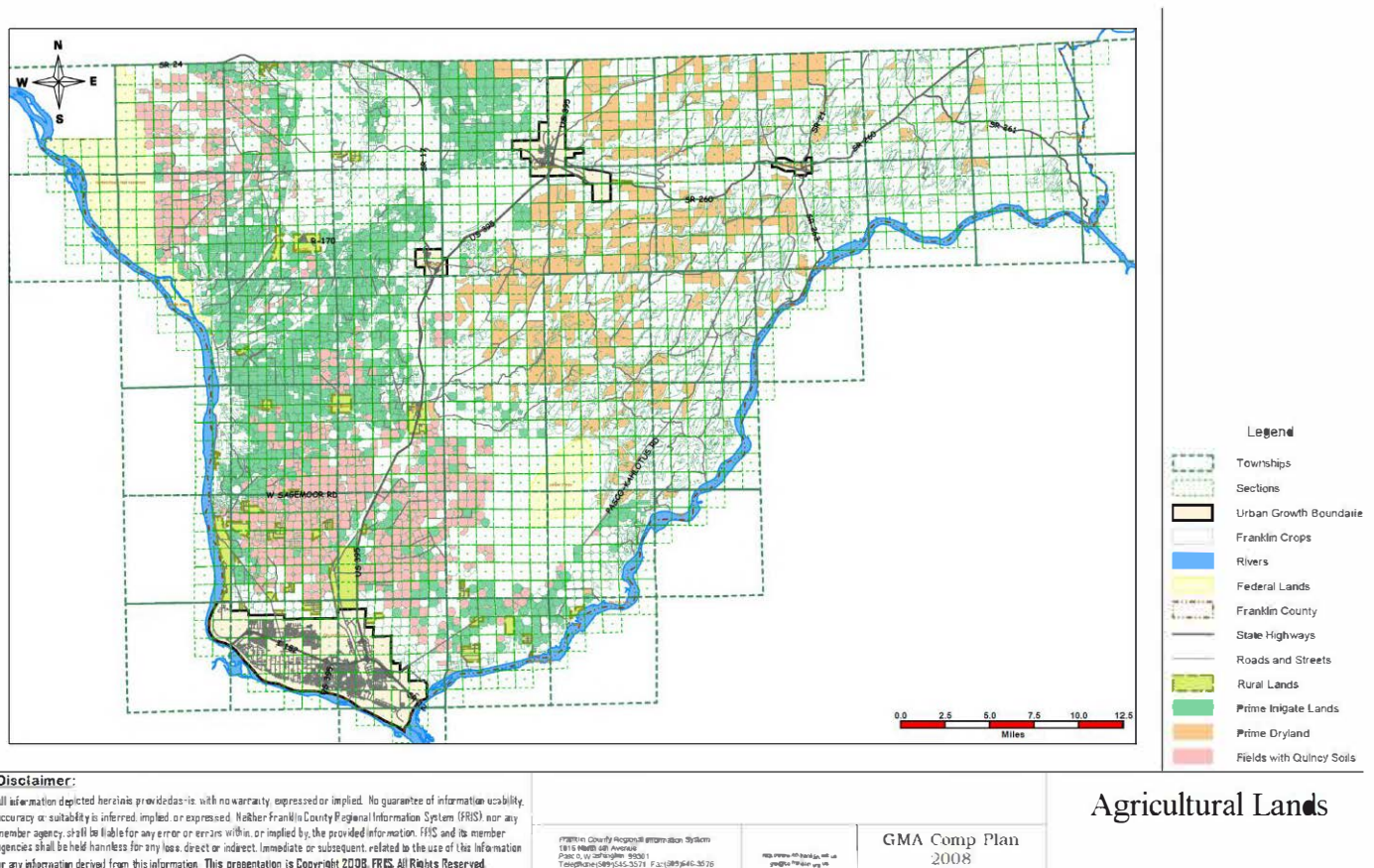
Soils in these agriculture areas were classified using the U.S. Soil Conservation Service national classification of agricultural lands. *There three classifications, Prime, Unique, and those of State and Local Significance.*

AR at 1437 (emphasis added). The language in the comprehensive plan neither explained nor defined the term “State and Local Significance.”



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Map 8 in the 2008 comprehensive plan followed four pages later. Franklin County labeled Map 8 as “Agricultural Lands.” AR at 1441.



AR at 1441. The city of Pasco lies within the southwest edge of Franklin County on Map 8. The 2008 plan did not provide that the County designated land within the area labeled “Fields with Quincy Soils” as ALLTCS, but the parties to this appeal agree that land encompassed by that label is ALLTCS.

Unfortunately, Map 8 did not expressly delineate the ALLTCS region or regions in Franklin County. The legend lacked such a category. As already written, the body of

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the comprehensive plan claimed that Map 8 identified “the County’s Prime, Unique, and of State and Local Significance soils.” AR at 1438. Nevertheless, when viewed on its own, Map 8 lacked any reference to types of soil. Map 8’s legend embraced the terms “Prime Irrigate[d] Lands” and “Prime Dryland,” which we assume correlated to the comprehensive plan’s reference to “prime farmland,” a category of agricultural land discussed further later. AR at 1438, 1441. The legend included no land labeled as “Unique” or “State and Local Significance.” Although the legend mentioned “Fields with Quincy Soils,” Map 8 did not reveal the soil classifications within this territory, and the body of the 2008 plan did not further reference “Fields with Quincy Soils.”

The body of the 2008 comprehensive plan disclosed that Franklin County “identifies resource lands of long-term significance using distinctive characteristics such as soil types, geological structure, location, and other unique identifiers.” AR at 1437. Neither Map 8 nor any other language later in the plan assisted the reader in understanding what the County looks for regarding the geological structure of a piece of farmland when determining whether to afford it ALLTCS-protection. The plan did not reveal the “other unique identifiers” for the categories of land listed on the legend of Map 8, but it did reveal them as they relate to prime agricultural lands and unique agricultural lands. AR at 1437. Specifically, the plan’s language indicated that growing season and moisture supply are unique identifiers of prime farmland and unique farmland.

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Map 8's legend listed *Franklin Crops* as one of the categories of land outlined on the map. Map 8 placed some of those areas labeled as *Franklin Crops* immediately adjacent to Pasco's "Urban Growth Boundar[y]" in thin, solid-green lines. AR at 1441. The map depicted land labeled as *Franklin Crops* using irrigation circles and other polygon shapes. Portions of land labeled *Franklin Crops* overlapped with areas of land labeled "Prime Irrigate[d] Lands," "Prime Drylands," and "Fields with Quincy Soils" on Map 8. AR at 1441.

The 2008 comprehensive plan did not employ the term *Franklin Crops* anywhere other than on Map 8. In these proceedings, no party has offered a definition or explanation for the term. We do not know the extent of the acreage within *Franklin Crops*.

Neither party presented evidence to the GMHB as to the subjective intent, in 2008, of Franklin County regarding whether it designated *Franklin Crops* as ALLTCS. No county planner or county commissioner from 2008 came forward to assist. The County asserts that it has consistently interpreted ALLTCS designations within the County to include only those areas labeled on Map 8 as "Prime Irrigate[d] Lands," "Prime Dryland," and "Fields with Quincy Soils" as ALLTCS. AR at 1441. Futurewise contends Map 8 plus prose addressing ALLTCS within the 2008 plan showed an intent on the County's behalf to include *Franklin Crops* within the ALLTCS protection.

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The body of the comprehensive plan suggested that the United States Soil Conservation Service classifies soils as prime, unique, and those of state and local significance. Our review of United States Department of Agriculture literature does not unearth any such classifications of soil. It does, however, reveal that the USDA classifies agricultural land as “prime farmland, farmland of statewide importance, farmland of local importance, or farmland of unique importance,” and assigns these classifications to areas of farmland based on the composition of soil found within the land. See Title 430 – National Soil Survey Handbook (430-622-NSSH, June 2020). Given this information and the language used by Franklin County in the 2008 plan when explaining that “[p]rime agricultural lands are lands with soils best suited for producing food, feed, forage, fiber, and oilseed crops,” and “[f]armland soils other than prime farmland used for the production of specific high value food and fiber crops are classified as unique agricultural lands,” this court assumes that, instead of suggesting that the USDA classifies soil as prime, unique, and of state and local significance, the County meant to suggest that the USDA classifies farmland as prime, unique, or of state and local significance according to the soil composition of the land. AR at 1438 (emphasis added).

To repeat, the body of the 2008 comprehensive plan explained that Franklin County categorized ALLTCS as lands with a soil classification of 1-3 according to the Land Capability Classification of the USDA Soil Conservation Service. The USDA

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recognizes eight classes of soil, 1-8, with the best soil being 1 and then descending in desirability as the number increases.

A later section of Franklin County's 2008 comprehensive plan declared:

Soils are an important factor in determining appropriate land use and the costs associated with development. The soils of Franklin County were studied and mapped by the Soil Conservation Service and a soil survey was published in 1914. The Soil Conservation Service updated the soil map for Franklin County during 2005. Area soils have been divided into 13 types, which are presented in Map 1 and generally described in Table 3. In Franklin County, agricultural lands of long-term commercial significance are Soil Types 1-3 according to the Land Capability Classification System of the Soil Conservation Service. The predominate Land Capability Classification of each generalized soil association is additionally identified in Table 3.

AR at 1372-1373. The parties dispute whether any of the land inside areas labeled as *Franklin Crops* hold soil of the classification of 1, 2, or 3.

Table 3 of Franklin County's 2008 comprehensive plan lists the thirteen varieties of soils found in the County. The names of the soils often include the names of agricultural communities in eastern Washington. The table listed the USDA classification of soils found in each variety of soil. None of the varieties carries Class 1 or Class 2 soils. Three of the thirteen varieties contain Class 3 soil: Ritzville-Renslow-Ritzcal, Kahlotus-Farrell-Quincy, and Ritzville-Wacota-Ritzcal.

A map entitled "Generalized Soils" follows Table 3 in the 2008 comprehensive plan. The colored map depicts the location of the varieties of soil within Franklin County. The map does not contain the term *Franklin Crops*. The areas labeled as

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*Franklin Crops* on Map 8 contain a variety of different soils, including Quincy-Hezel-Burbank soil, a loamy fine sand to gravelly soil. This type of soil variety bears a Class 7 USDA classification, one of the worst classifications for growing crops.

The 2008 comprehensive plan also inserted a map identified as “Map 2 — Land Use Map” and entitled “Comprehensive Land Use Plan.” AR at 632, 634. This map did not delineate any area designated by Franklin County as ALLTCS. The legend of Map 2, however, identified an area as “Agriculture.” AR at 634. The map does not employ the term *Franklin Crops*. Portions of land labeled as *Franklin Crops* on Map 8, including areas north and south of W. Sagemoor Road, fell within the area identified as “Agriculture” in Map 2. AR at 634.

As required by the GMA, Franklin County updated its comprehensive plan in 2018. At that time, the City of Pasco asked the County to extend the city’s UGA by 4,855 acres of land and to designate the acreage as low density residential, mixed residential, industrial, and commercial. The County responded that the request was excessive. Pasco reduced its request to 3,573 acres of land.

The 2018 comprehensive plan initially proposed to remove and place in the UGA nine acres of indisputably ALLTCS-designated farmland. Pasco eventually eliminated the nine acres from its proposed UGA expansion.

After Pasco reduced its proposed UGA expansion, the city wrote that the “proposed Urban Growth Area avoids agricultural lands of long-term significance.”

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AR at 2442. The Franklin County director of planning and building confirmed this conclusion in a November 17, 2020 Franklin County Planning Workshop.

Franklin County's planning staff prepared a report for the Franklin County Board of County Commissioners when the commissioners considered adoption of the 2018 comprehensive plan. The report claimed that Pasco's UGA expansion included no acres earlier designated as ALLTCS. The report assumed that the 2008 plan did not designate *Franklin Crops* as ALLTCS, but did not analyze the question. The staff report read:

No agricultural resource lands are proposed for inclusion in the UGA as the City worked diligently to specifically exclude lands that have been previously identified as agricultural resources lands (also known as Agricultural Lands of Long-Term Commercial Significance) in the 2008 Franklin County Comprehensive Plans.

AR at 2520 (footnote omitted).

Before adopting its 2018 comprehensive plan modifications, Franklin County completed a SEPA checklist. As part of the checklist, the County issued a declaration of nonsignificance that stated its proposal "does not have a probable significant adverse impact on the environment." AR at 1791. The County further declared that an environmental impact statement was not required under RCW 43.21C.030(2)(c).

On June 1, 2021, Franklin County passed Ordinance 07-2021, which adopted the 2018 comprehensive plan modifications. The plan increased the city of Pasco's UGA by 3,407 acres and placed, into the UGA, portions of land labeled as *Franklin Crops* on Map 8 found immediately north of Pasco in the 2008 comprehensive plan.

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In its 2018 comprehensive plan, Franklin County wrote about its ALLTCS designation criteria:

Consistent with WAC 365-190-050 the following criteria will be used when determining whether an area will be designated as Agricultural Resource Lands or whether it should be considered for an alternative use (dedesignated) and may only be used during a county-or area-wide process (and not on a parcel-by-parcel basis). The County should consider requests for de-designation only in connection with Urban Growth Area expansion requests, and during Periodic Updates of the Comprehensive Plan.

**1. The land is not currently characterized by urban growth.**

Designated Agricultural Resource Lands make up the majority of Franklin County. Agriculture and its diverse, but related, commercial and industrial businesses provide a relatively stable economic base in Franklin County that contributes to the cultural heritage and quality of life in the area. These lands do not include urban growth and of the approximately 809,485 acres of land, approximately 700,000 acres are farmland with a mixture of irrigated land, dryland, and rangeland agriculture. Map 17 illustrates the Irrigated/Dryland fields within Franklin County as provided by the Franklin Conservation District with other features, such as UGA outlines, for reference. 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 in accordance with WAC 365-190-150(1).

**2. The current use of the land is agriculture, or the land is capable of being used for agriculture.**

The second criteria for determining whether an area is or should be designated as Agricultural Resource Land considers the current use of the land and the physical and geographic characteristics of the land. Areas shown on the Land Use Map in agricultural uses will be in, or already are in productive crop agriculture (these areas also include grazing lands). With water availability, the soils are sufficiently deep for irrigated cropping. Soils are also sufficiently deep for non-irrigated cropping. Specific information about the type and quality of soil also leads to determining whether the land is ideal for agriculture. Soils in Franklin County were classified using the Natural Resources Conservation Service national classification of agricultural lands. A map of the classifications and more



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information about the soils in Agricultural Resource Lands can be found in the Natural Element of this Plan.

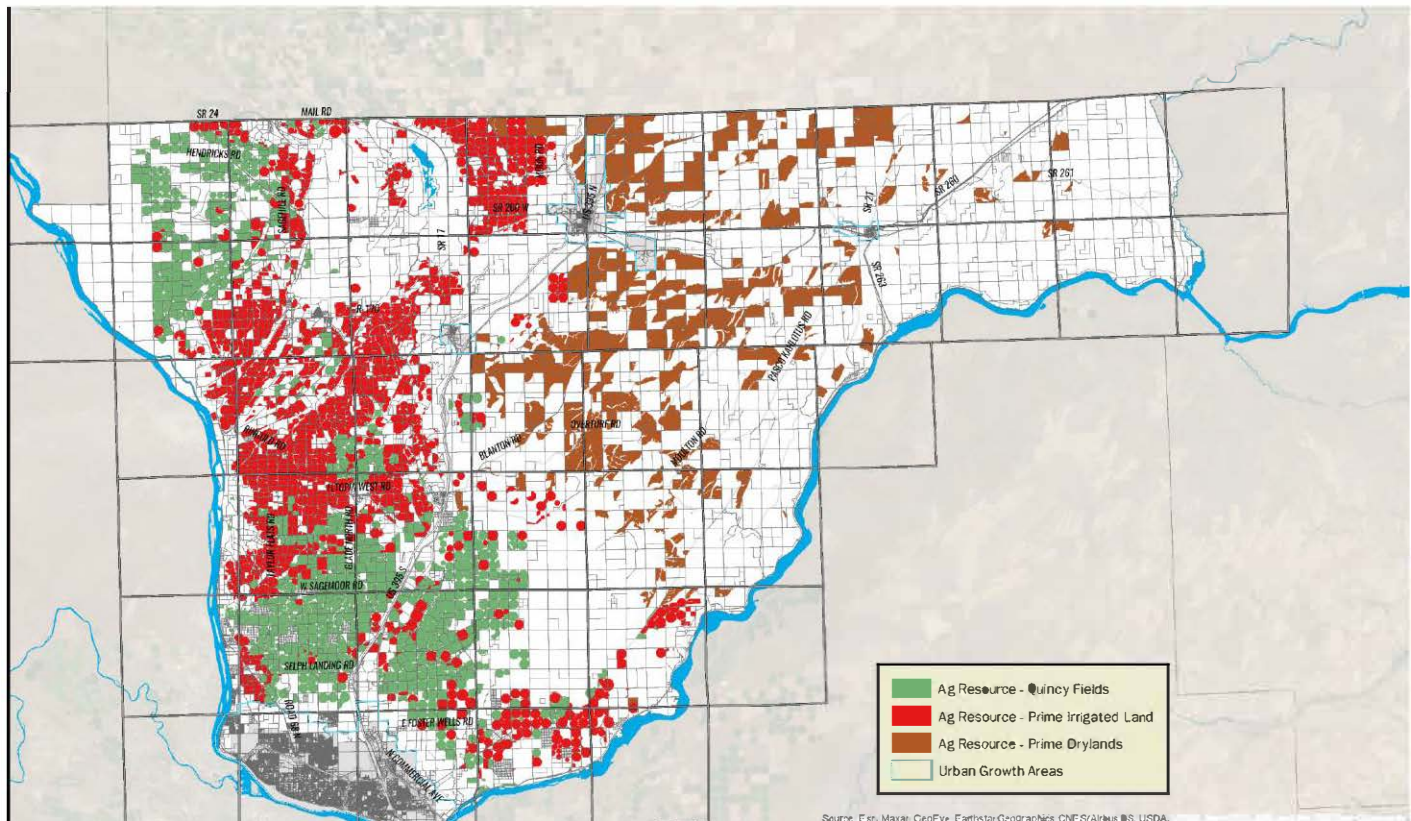
**3. The land has long-term commercial significance for agriculture.**

The third consideration when designating Agricultural Resource Lands is whether or not the land has long-term commercial significance for agriculture. The criteria for this decision are listed in WAC 365-190-050(3)(c) and are used to designate agricultural lands of long-term commercial significance in the County. One of those criteria is the classification of prime and unique farmland soils as mapped by the Natural Resources Conservation Service. In Franklin County, agricultural lands of long-term commercial significance have soils classified as 1-3 according to the Land Capability Classification of the United States Department of Agriculture (USDA) Soil Conservation service. The County's Prime, Unique Farmland, and Farmlands of State and Local Significance are shown and mapped by the Franklin Conservation District on Map 17 and are also designated as agricultural lands of long-term commercial significance in Franklin County. Appendix 5 shows this information in greater detail in a series of six maps.

AR at 1208-09.

Map 17, referenced in the above-quoted paragraphs, parallels Map 8 found in the 2008 plan, but does not include in its legend the term *Franklin Crops*. The County labeled Map 17 as "Designated Agricultural Resource Lands." AR at 1210. We include Map 17 below:

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AR at 1210.

As with Map 8 to the 2008 comprehensive plan, Map 17 to the 2018 comprehensive plan did not expressly label the area or areas of land designated by Franklin County as ALLTCS. So, we assume that the County intended for all three categories of “Ag Resource” land to hold the ALLTCS designation. AR at 1210. Also, as with Map 8 of the 2008 plan, Map 17 did not identify the type and government classification of soils found in the many farmlands in the County.

In September 2019, Futurewise compiled an appendix titled “Soils Pasco Urban Grown Area (UGA) Expansion.” AR at 421-22. Futurewise garnered the information for

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the appendix from the Natural Resources Conservation Service. The appendix read that 94.8 percent of the area in the northwest section of Pasco's UGA expansion contained "Land Capability Classification 1 through 3 soils." AR at 421. The appendix further read that 80.6 percent of the area in the northeast section of the UGA expansion contained "Land Capability Classification 1 through 3 soils." AR at 422. The appendix did not list what percentage of acreage fell within the respective three soil classifications.

The GMA and SEPA require counties to follow a process for de-designating land previously designated as ALLTCS. This process demands the application of specific ALLTCS de-designation criteria and an analysis of the environmental impacts that may result from de-designation. Franklin County did not apply ALLTCS de-designation criteria or complete an environmental analysis when revising the agricultural land map to eliminate the term *Franklin Crops* and to place a portion of *Franklin Crops* land into Pasco's 2018 UGA. The County either impliedly or expressly concedes that, if the 2008 comprehensive plan designated *Franklin Crops* as ALLTCS, the GMHB's decision should be affirmed and the County directed to engage in this environmental review.

#### PROCEDURE

Futurewise is a Washington organization created to assist communities with environmentally sound growth strategies. On August 5, 2021, Futurewise challenged, before the GMHB, Franklin County's adoption of Ordinance 07-2021 and the 2018 comprehensive plan. The GMHB allowed the City of Pasco and Port of Pasco to

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intervene, and both entities joined the County in seeking dismissal of the challenge. Before the GMHB and this court on appeal, all three municipal corporations generally advance the same positions. Thus, we reference only the County as the defending party to Futurewise's challenge.

In its challenge, Futurewise contended that the 2018 comprehensive plan violated the GMA because Franklin County did not use the proper criteria to de-designate, as ALLTCS, the areas of land labeled as *Franklin Crops* on Map 8 in the 2008 plan.

Futurewise highlighted the following language in the 2008 plan:

In Franklin County agricultural lands of long-term commercial significance are soil classification 1-3 according to the Land Capability Classification of the USDA Soil Conservation service. Further, the County's Prime, Unique and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map 8, are also described as agricultural lands of long-term commercial significance in Franklin County.

AR at 1093 (footnote omitted). Futurewise asserted that the County designated *Franklin Crops* as ALLTCS in the 2008 plan, because *Franklin Crops* is mentioned on the plan's Map 8, contains land with soil classifications of 1-3, includes prime farmland and farmland of statewide importance, and was not labeled any differently than the "Prime Irrigate[d] Lands," "Prime Dryland," or "Fields with Quincy Soils" classifications. AR at 1441.

Franklin County responded that it did not designate *Franklin Crops* as ALLTCS in the 2008 plan. The County maintained that, although it uses soil classifications as one

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factor in determining whether to designate land as ALLTCS, soil type alone does not control the designation. The County explained that it removed the *Franklin Crops* label from Map 17 of the 2018 plan because the 2008 plan lacked any definition for the term.

The GMHB ruled in favor of Futurewise. The Board wrote:

Based upon the Board’s review of the record, it is clear that the County’s 2008 comprehensive plan designated the “Franklin Crops” as ALLTCS. The 2008 comprehensive plan states:

In Franklin County agricultural lands of long-term commercial significance are classification 1-3 according to the Land Capability Classification of the USDA Soil Conservation service. Further, the County’s Prime, Unique and of State and Local Significance soils as **generally shown and mapped by the Franklin Conservation District on Map 8, are also described as agricultural lands of long-term commercial significance in Franklin County.**

There is no dispute that “Franklin Crops” are included on Map 8. As illustrated below, a review of Map 8 includes the “Franklin Crops,” outlined in a solid green line, the “Prime Irrigate Lands,” shaded green, and the “Fields with Quincy Soils,” shaded pink. The “Franklin Crops” also include prime farmland and farmland of statewide importance.

Because “Franklin Crops” are included on the County’s Map 8 of ALLTCS and have land capability soil classifications of 1-3 and qualify as agricultural lands of long-term commercial significance under the 2008 comprehensive plans, the Board finds that the 2008 comprehensive plan, including Map 8, was not ambiguous in its inclusion of the “Franklin Crops” as ALLTCS. The plain language of the 2008 comprehensive plan supports this finding, and the Board cannot look beyond the language of the comprehensive plan itself to decide otherwise.

... ..  
**The Board** finds that the record indicates that the 2018-2038 comprehensive plan de-designated the “Franklin Crops” ALLTCS identified on Map 8 of the 2008 comprehensive plan without applying de-designation criteria.

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AR at 1126-28.

The GMHB entered combined findings of fact and conclusions of law for four discrete issues it reviewed. Each combined finding and conclusion reads more like a conclusion of law or a mixed finding and conclusion, rather than an unadorned finding of fact. On the issues before this reviewing court, the Board wrote:

**Issue 1:**

A. The Board finds that the area designated as “Franklin Soils” included land capability soil classifications of 1-3, were included on the map designating ALLTCS in the 2008 Comprehensive Plan, and otherwise were included as ALLTCS under the County’s 2008 Comprehensive Plan.

B. The Board finds that the 2018-2038 comprehensive plan failed to include “Franklin Soils” as ALLTCS and failed to apply de-designation criteria identified by the Board and Washington courts.

C. The Board finds and concludes that the Petitioner [Futurewise] has met its burden in demonstrating that the County [is] in noncompliance with the requirements of the GMA in de-designating the “Franklin Soils” ALLTCS.

**Issue 3**

A. The Board finds that the Pasco FEIS [final environmental impact statement] and other SEPA documents included in the record failed to disclose the environmental impacts of the de-designation of the “Franklin Crops” ALLTCS and any environmental impacts.

B. The Board finds and concludes that the Petitioner has met its burden in demonstrating that the County is in noncompliance with the requirements of the SEPA in failing to disclose and analyze de-designating the “Franklin Soils” ALLTCS.

AR at 1136-37. We assume the GMHB meant *Franklin Crops* when referencing “Franklin Soils” in its findings for Issue 1.

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Franklin County appealed the GMHB's ruling to the superior court. The superior court certified the appeal for review by this court without any superior court ruling.

#### LAW AND ANALYSIS

On appeal, Franklin County maintains that the GMHB committed legal error and that the evidence did not support the Board's findings when the Board ruled that the 2008 comprehensive plan designated *Franklin Crops* as ALLTCS. The County either impliedly or expressly agrees that, if *Franklin Crops* were designated as ALLTCS in the 2008 plan, it failed to adequately de-designate *Franklin Crops* as ALLTCS in the 2018 plan and prepare the environmental review required under SEPA when placing land previously designated as ALLTCS in Pasco's UGA. If the 2008 plan omitted *Franklin Crops* from ALLTCS designation, Futurewise does not otherwise contend that the County violated the law.

Before directly reviewing this appeal's primary question, we must resolve a procedural assertion of Futurewise. We also first discuss our standard of review and the method or methods by which we resolve the key question of whether *Franklin Crops* were designated as ALLTCS in the 2008 plan.

#### Findings of Fact

We previously quoted the findings of fact for Issues 1 and 3 encompassed within the GMHB's final decision and order. Futurewise maintains that Franklin County, in its assignments of error, reworded some of the GMHB's findings and conclusions and that

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the County did not refer to the challenged findings by number. Futurewise also asserts that the County's colleague, the City of Pasco, failed to make a separate assignment of error for these findings of fact and did not refer to them by number.

RAP 10.3(g) declares in part:

A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number.

RAP 10.3(h) reads:

Assignments of Error on Review of Certain Administrative Orders. In addition to the assignments of error required by rules 10.3(a)(4) and 10.3(g), the brief of an appellant or respondent who is challenging an administrative adjudicative order under chapter 34.05 RCW shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error.

(Boldface omitted.) Futurewise asserts that the relevant findings of fact are verities because the County and City of Pasco failed to comply with RAP 10.3(g). Although Futurewise does not expressly so argue, adoption of this assertion would effectively end this appeal.

The GMHB lettered, rather than numbered, its findings of fact. Contrary to the implication of Futurewise, Franklin County assigned by letter its challenged findings of fact and conclusions of law. Also, the City of Pasco incorporated separate assignments of error for each of the challenged findings. For these reasons alone, we reject Futurewise's request that we accept all of the GMHB's findings of fact as verities.



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We also reject Futurewise’s technical argument because the challenged findings are more in the nature of conclusions of law. The challenged findings entail an interpretation of a county document when the underlying facts are not challenged. The line between a finding of fact and a conclusion of law can be challenging to identify. *Leschi Improvement Council v. Washington State Highway Commission*, 84 Wn.2d 271, 282-84, 525 P.2d 774, 804 P.2d 1 (1974) (plurality opinion). A finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect. *State v. Williams*, 96 Wn.2d 215, 220-21, 634 P.2d 868 (1981). If a statement carries legal implications, the validity of the statement is a conclusion of law. *Para-Medical Leasing, Inc. v. Hangen*, 48 Wn. App 389, 397, 739 P.2d 717 (1987). RAP 10.3 does not require a separate assignment of error or any numbering for challenges to conclusions of law.

Finally, Futurewise does not assert, as a result of any purported failure by Franklin County and its allies to satisfy RAP 10.3(g), any confusion regarding the arguments that the government entities asseverate on appeal. This court readily understands the nature of the County’s challenge to the GMHB’s ruling. Futurewise ably and zealously responds to the County’s arguments.

We construe the rules of appellate procedure liberally to promote justice and facilitate the decision of cases on the merits. RAP 1.2(a); *State v. Olson*, 126 Wn.2d 315, 318-19, 893 P.2d 629 (1995). When the nature of the appeal is clear and the relevant

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issues are argued in the body of the brief, we will consider the merits of the case regardless of the failure to properly assign error. *Ferry County v. Growth Management Hearings Board*, 184 Wn. App. 685, 725, 339 P.3d 478 (2014).

#### Standard of Review

The GMA charges the GMHB with adjudicating GMA compliance and invalidating noncompliant plans and development regulations. RCW 36.70A.280, .302; *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006). RCW 36.70A.320(3) declares:

[T]he board shall determine whether there is compliance with the requirements [of the GMA]. . . . The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].

For an action to be clearly erroneous, the GMHB must have a “firm and definite conviction” that the county committed a mistake. *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 497 (2006) (quoting *Department of Ecology v. Public Utility Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)).

RCW 36.70A.3201 declares:

[T]he legislature intends for the board to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of [the GMA]. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds

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that while [the GMA] requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county's or city's future rests with that community.

Whereas the GMHB reviewed Franklin County's decisions, we review the Board's decision. The Administrative Procedure Act (APA), ch. 34.05 RCW, governs judicial review of GMHB actions, including those concerning a county's compliance with the GMA or SEPA. *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008). The appellant carries the burden of demonstrating the invalidity of the Board's decision. RCW 34.05.570(1)(a); *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 341 (2008). This court is not bound by the GMHB's interpretation of the GMA, but must afford substantial weight to the Board's interpretation. *Thurston County v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 329, 341-42 (2008).

The appellant is entitled to relief from an agency's adjudicative order if it meets any of nine standards delineated in RCW 34.05.570(3). *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 498 (2006).

Franklin County seeks relief from GMHB's decision under RCW 34.05.570(3)(d) and (e). Those subsections read:

- (d) The agency has erroneously interpreted or applied the law;
- (e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the

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agency record for judicial review, supplemented by any additional evidence received by the court under this chapter.

This court reviews challenges raised under RCW 34.05.570(3)(d) de novo and reviews those raised under RCW 34.05.570(3)(e) for substantial evidence, meaning “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998) (quoting *Callecod v. Washington State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997)).

We defer to the statutory interpretation of an administrative agency charged with administering and enforcing a statute. *Hama Hama Co. v. Shorelines Hearings Board*, 85 Wn.2d 441, 448-49, 536 P.2d 157 (1975). We could take this principle to require us to defer to Franklin County, charged with administering the GMA when updating its comprehensive plan. We could also read this principle to demand that we defer to the GMHB, charged with enforcing the GMA. In the end, we conclude we should defer to the County’s interpretation of the comprehensive plan because the parties do not dispute the meaning of any of the provisions of the GMA.

We note the ostensibly conflicting legislative policies that the GMHB defer to Franklin County and this court defer to the Board. Does this reviewing court defer to the GMHB if the Board fails to defer to the County? The Washington Supreme Court has answered this question. Deference to county planning actions consistent with the goals

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and requirements of the GMA supersedes deference granted by the APA and courts to administrative bodies in general. *Quadrant Corp. v. State Growth Management Hearings Board*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005). If we determine that the GMHB failed to defer to the County, we will not defer to the Board.

### Comprehensive Plan Interpretation

In addition to addressing our standard of review, we must ascertain how to read the controlling language in Franklin County's 2008 comprehensive plan, including the details of Map 8. Futurewise asks us to apply rules of statutory construction when reading the 2008 comprehensive plan. It cites *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 896-97, 83 P.3d 433 (2004) to support this request. Yet, *Lakeside Industries* concerned a zoning ordinance, not a comprehensive plan.

Regardless, we do not consider rules of statutory construction contrary to our ruling. Courts must ascertain and carry out the intent and purpose of the local legislative body promulgating a local ordinance or code. *Neighbors of Black Nugget Road v. King County*, 88 Wn. App. 773, 778, 946 P.2d 1188 (1997). To determine legislative intent, we look first to the plain language of the ordinance. *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002).

We seek to resolve this appeal by discerning the intent of Franklin County by examining the plain language of the 2008 comprehensive plan, but we wonder what to do

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if the language confuses us. The County drafted the 2008 comprehensive plan. We generally construe a document against the drafter. *Cronin v. Central Valley School District*, 23 Wn. App. 2d 714, 756, 520 P.3d 999 (2022). But we reject this principle in this setting because the County acted in its legislative capacity when adopting the 2008 plan, and this principle conflicts with Supreme Court precedent in *King County v. Central Puget Sound Growth Management Hearings Board*, 91 Wn. App. 1, 12, 915 P.2d 1151 (1998) *rev'd in part on other grounds*, 138 Wn.2d 161, 979 P.2d 374 (1999). Under Washington State Supreme Court precedent, when interpreting a comprehensive plan that is not a ““model of clarity’” the local government’s “interpretation is entitled to great weight.” *King County v. Central Puget Sound Growth Management Hearings Board*, 91 Wn. App. 1, 12 (1998). As analyzed later, the ALLTCS designation criteria identified in the County’s 2008 plan, particularly as it applies to *Franklin Crops*, lack clarity.

We do not give unlimited deference to Franklin County’s intent. The County’s interpretation must be reasonable. *State v. Yon*, 159 Wn. App. 195, 199, 246 P.3d 818 (2010); *Hansen v. Transworld Wireless TV-Spokane, Inc.*, 111 Wn. App. 361, 375, 44 P.3d 929 (2002).

The GMHB wrote that it cannot look beyond the language of the 2008 comprehensive plan when discerning whether the plan designated *Franklin Crops* as ALLTCS. Both parties rely on evidence extrinsic to the comprehensive plan when urging their respective positions. We consider conduct and writings of Franklin County

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subsequent to the 2008 comprehensive plan helpful in discerning intent. *Scott Galvanizing, Inc. v. N.W. EnviroServices, Inc.*, 120 Wn.2d 573, 580-81, 844 P.2d 428 (1993); *Hansen v. Transworld Wireless TV-Spokane, Inc.*, 111 Wn. App. 361, 375 (2002).

### *Franklin Crops*

We now arrive at the controlling question: did the 2008 comprehensive plan designate *Franklin Crops* as ALLTCS? We ruminate out loud over the arguments for declaring *Franklin Crops* to be ALLTCS and, conversely, for ruling *Franklin Crops* to be outside the confines of ALLTCS protection. Counterarguments oppose each argument. We refer to arguments supporting the designation of *Franklin Crops* as ALLTCS in the 2008 plan as the “pro arguments” and to arguments against such designation as the “con arguments.”

We first review arguments untethered to the language of the 2008 comprehensive plan. On the con side, the GMA distinguishes between agricultural land in general and agricultural lands of long-term commercial significance. The GMA refers to “agricultural lands” without referring to the lands as ALLTCS. Thus, the GMA assumes that some agricultural land will not be designated as ALLTCS. Just because *Franklin Crops* constituted farmland does not necessarily mean that it was designated as ALLTCS. Farmland closest to a major city and adjacent to an UGA, such as small portions of

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*Franklin Crops*, would be less likely to be considered ALLTCS. On the pro side, much of *Franklin Crops* lies miles from Pasco and the city's UGA.

Both parties mention RCW 36.70A.060(4), a statute that precludes a county from designating agricultural land as ALLTCS unless the county "has enacted a program authorizing transfer or purchase of development rights." Franklin County lacks any such program. We consider the absence of such a program unenlightening in discerning the County's intent behind including *Franklin Crops* on Map 8. No evidence suggests that county officials knew of this statute and purposely ignored the statute or attempted to comply with it in 2008.

On the con side, the Franklin County planning director declared, on November 17, 2020 at a county planning workshop, that the proposed Pasco UGA did not include any ALLTCS. In a report prepared for the Franklin County Board of County Commissioners, county planning staff wrote that the UGA expansion included no acres earlier designated as ALLTCS. The County stated this position before any dispute arose with Futurewise. The report assumed that the 2008 plan did not designate *Franklin Crops* as ALLTCS. On the pro side, neither the planning director nor the planning staff revealed any analysis behind the conclusion nor specifically declared that *Franklin Crops* had not been designated as ALLTCS. The planning staff's position came a decade after the adoption of the 2008 comprehensive plan. The County presented no evidence that the 2020 planning director or planning staff played any role in the preparation of the 2008 plan.



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On the con side, Franklin County did not draft the 2008 comprehensive plan with the aim toward defending it in court. The plan may have been drafted by a planner who lacked a detailed understanding of agriculture and soils. On the pro side, the county staff should have competently prepared the comprehensive plan and the Board of County Commissioners should have demanded that the plan be a model of clarity before approving its adoption. In an agricultural county, planning officials should readily possess knowledge of soils and other agriculture subjects.

We move to arguments connected to the language of Franklin County's 2008 plan. One paragraph of the 2008 comprehensive plan began by defining "agricultural lands of long-term commercial significance" as "soil classification 1-3 according to the Land Capability Classification of the USDA Soil Conservation service." AR at 1438. That same paragraph further added to the definition the "County's Prime, Unique and of State and Local Significance soils as generally shown and mapped by the Franklin Conservation District on Map 8." AR at 1438. Map 8, titled "Agricultural Lands," listed *Franklin Crops* in its legend. As the pro argument goes, crops are agricultural in nature. Since the 2008 comprehensive plan employed Map 8 to assist in identifying ALLTCS, Map 8 must have designated *Franklin Crops* as ALLTCS. Map 8 did not differentiate between agricultural lands included in ALLTCS-designation and excluded from ALLTCS-designation, so the map must have intended that ALLTCS encompass all cropland.

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On the con side, Map 8 is a poor indicator of the land designated as ALLTCS in Franklin County because the map does not expressly identify land embraced inside this important classification. Although the 2008 comprehensive plan referenced Map 8 in its definition of “agricultural lands of long-term commercial significance,” the plan language limited the designation to those lands shown with “Prime, Unique and of State and Local Significance soils.” AR at 1438. Map 8 did not identify “Prime Irrigate[d] Lands,” “Prime Dryland,” “Fields with Quincy Soils,” and *Franklin Crops* as possessing any of these types of soil. Map 8’s legend entries concerning irrigated land and dryland incorporated the word “prime” to create the categories of “Prime Irrigate[d] Lands” and “Prime Dryland.” AR at 1441. Thus, these two categories must have included land with the requisite soil composition to classify it as prime farmland. On the pro side, Franklin County agrees that land designated as ALLTCS included the land in the legend category “Fields with Quincy Soils,” but this designation lacks the word “prime.” Although the 2018 plan establishes that the County classifies land within the “Fields with Quincy Soils” label as unique farmland, one having access only to the 2008 plan would not have been privy to this important piece of information as that plan was silent in that regard.

On the con side, the 2008 comprehensive plan’s definition of “long-term commercial significance,” not only mentioned soil composition, but also the land’s proximity to population areas. AR at 1437. Thus, the proximity of an area of land in relation to the city of Pasco is a factor to be considered in determining whether that land

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may properly be designated as ALLTCS. Futurewise challenges land adjacent to Pasco from entering the UGA. This portion of *Franklin Crops* should not be deemed ALLTCS-designated.

On the pro side, Franklin County lacked any purpose for creating the category of *Franklin Crops* and assigning that label to land on Map 8 unless it desired to designate the land within that label as ALLTCS. No other literature employs this term for land within the County. On the con side, Map 8 also lists the categories of “Urban Growth Boundaries,” “Federal Lands,” and “Rural Lands,” but Futurewise does not suggest that the County designated these other three categories as ALLTCS because they were included on Map 8. AR at 1441. Furthermore, some portions of *Franklin Crops* land on Map 8 are shown to fall within areas of land labeled “Prime Irrigate[d] Land,” “Prime Dryland,” and “Fields with Quincy Soils,” whereas other portions of *Franklin Crops* land on the map are shown to fall outside of those labeled areas. AR at 1441.

On the con side, the origin and meaning of *Franklin Crops* is a mystery wrapped in an enigma. The phrase *Franklin Crops* is found nowhere in the 2008 comprehensive plan other than Map 8. The prose inside the body of the plan nowhere identifies *Franklin Crops* as ALLTCS. No evidence helped to explain why Franklin County distinguished land within *Franklin Crops* from other land in the county. The County would not have placed, in the important ALLTCS category, land attached to a map label that was an anomaly and not created as part of deliberate planning.

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On the con side, the 2008 plan defined ALLTCS as “soil classification 1-3 according to the Land Capability Classification of the USDA Soil Conservation service.” AR at 1438. The plan’s “Generalized Soils” map (Map 1) and Table 3 assigned a portion of land within *Franklin Crops* a soil classification of 7. This portion of land cannot reasonably be considered to be ALLTCS-designated.

On the con side, intervenors argue that it employed Map 1 and Table 3 in the 2008 comprehensive plan be indicative of soil types for ALLTCS-designation purposes. On the pro side, Franklin County’s argument ignores the plain language of the 2008 comprehensive plan. Table 3 did not reference “soils,” but rather “soil associations” or groups of related soils. AR at 1344. The land capability classifications are not indicative of any particular soil type. Instead, they are “[c]lassification[s] of each *generalized* soil association.” AR at 1373 (emphasis added). Map 1 includes “Generalized Soils,” not the actual soils. AR at 1376.

On the pro side, Futurewise submitted an appendix that analyzed soils as described in Natural Resources Conservation Service mapping data from September 2019. The data shows a high percentage of the soils falling within the USDA classifications of 1, 2, and 3. We are unable to reconcile Futurewise’s appendix with the “Generalized Soils” map and Table 3 of the 2008 comprehensive plan. AR at 1376. Consistent with Futurewise’s appendix, the GMHB found that soils with *Franklin Crops* bore a USDA classification of 1 through 3.

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On the con side, we seek to discern the intent of Franklin County in 2008. A table contemporaneous to 2008 holds more importance than an appendix compiled in 2019 in deriving this intent. The 2008 comprehensive plan also did not solely define ALLTCS as land with soil classifications of 1-3. The plan read that the County adjudged land to be ALLTCS based on “soil types, geological structure, location, and other unique identifiers.” AR at 1437. Thus, according to the County, even if *Franklin Crops* included land with a soil classification of 1-3, the land did not necessarily require ALLTCS designation. From this argument, it follows that, in 2008, the County possessed the liberty to exclude farmland from ALLTCS designation regardless of the class of soil in the land. We may rule in favor of the County without rejecting the GMHB’s finding.

On the con side, the 2008 plan did not clearly outline Franklin County’s ALLTCS designation criteria. Instead, as illustrated by the following language taken from the 2008 plan, the County provided conflicting information regarding the amount of weight it places on soil classification in determining whether to designate land as ALLTCS:

Franklin County identifies resource lands of long-term significance using distinctive characteristics *such as soil types, geologic structure, location, and other unique identifiers characteristic of the resource and set forth in the Act.*

In Franklin County agricultural lands of long-term commercial significance are soil classification 1-3 according to the Land Capability Classification of the USDA Soil Conservation service.

AR at 1437-38 (emphasis added).

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On the con side, the record failed to show that Franklin County took any steps in 2008 to determine the geology, location, or other unique identifiers of *Franklin Crops* and assess whether those characteristics rendered *Franklin Crops* amenable to ALLTCS status. The record even failed to show any recognition by the Board of County Commissioners in 2008 as to the soil qualities inside *Franklin Crops*. The presumption should be that agricultural land is not considered to be ALLTCS-designated unless the record establishes that the County considered the identifiers and characteristics of an area of land labeled on Map 8. On the pro side, the record also fails to show that the County took any steps to determine the characteristics of the land in “Prime Irrigate[d] Lands” and “Prime Dryland.” AR at 1441. Yet, the County concedes that ALLTCS-designation embraced these two areas on Map 8.

After dissecting and reconstructing Map 8 and other language within Franklin County’s 2008 comprehensive plan, we remind ourselves of the principle that we should defer to the GMHB when substantial evidence supports the Board’s factual determinations. One might argue that the interpretation of a comprehensive plan resolves a dispute of facts. As the argument goes, we are discerning the meaning of a document, rather than a statute or regulation. We are discerning the intent of the drafter of the document, not the intent of a legislative body. Under contract principles, when two or more readings of contract language are reasonable, a question of fact exists when discerning the parties’ intent. *Western Farm Services, Inc. v. Olsen*, 114 Wn. App. 508,

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519, 59 P.3d 93 (2002), *rev'd in part on other grounds*, 151 Wn.2d 645, 90 P.3d 1053 (2004).

We decline to apply deference to the GMHB with regard to its ruling as to the intent behind language in the 2008 comprehensive plan for several reasons. First, the Franklin County Board of County Commissioners adopted the 2008 comprehensive plan as part of the legislative process. Second, the parties do not dispute any underlying facts, only the meaning of language scattered throughout a document. Assuming one deems the interpretation of the 2008 plan to constitute a factual determination, we would still conclude that the GMHB committed legal error by failing to defer to Franklin County's interpretation of Map 8.

After anatomizing and rebuilding Franklin County's 2008 comprehensive plan, we conclude that land designated as ALLTCS in the plan did not encompass the land labeled as *Franklin Crops* on Map 8. Map 8's reference to *Franklin Crops* lacks clarity. Many of the provisions of the plan support exclusion of *Franklin Crops* from ALLTCS-protection. The County's interpretation of the plan, although not the only reasonable interpretation, is reasonable. No evidence suggests that the County employs fraud or deceit when now advocating a construction of the 2008 plan as excluding *Franklin Crops* from ALLTCS-designation. RCW 36.70A.320(3) declares that the GMHB should find compliance of the County's comprehensive plan unless the County acts "clearly erroneous in view of the entire record before the board." The County's actions were not

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clearly erroneous. Deference to the County's planning actions supersedes our deference to the GMHB.

We value Futurewise's devotion to environmental goals. We also recognize, however, the need for housing in a burgeoning community in an era of pandemic homelessness. New housing will support agriculture by accommodating Franklin County farmworkers and workers in Pasco's thriving food processing industry. We expect that Futurewise wishes for any expansion to occur upward rather than outward and such wish is a legitimate, if not important, goal. We also encourage upward expansion but, because of the nature of the Tri-Cities, expect most expansion to occur outward in the coming decade.

Finally, we recognize that, although unlikely, some of the UGA can return to agricultural designation in future comprehensive plans. A comprehensive plan is a guide and not a document designed for making specific land use decisions. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997); *Lakeside Industries v. Thurston County*, 119 Wn. App. 886, 894-95 (2004).

#### CONCLUSION


Franklin County's 2008 comprehensive plan did not designate *Franklin Crops* as ALLTCS. Therefore, when adding acreage to the city of Pasco's UGA in the 2018 plan, the County did not need to follow the steps required by the GMA and SEPA to include land previously labeled by Map 8 as *Franklin Crops* inside the UGA. We reverse the



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GMHB's ruling in favor of Futurewise and remand for further proceedings consistent with our decision.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

  
\_\_\_\_\_  
Fearing, C.J.

WE CONCUR:

  
\_\_\_\_\_  
Siddoway, J.

  
\_\_\_\_\_  
Pennell, J.

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN WASHINGTON REGION  
STATE OF WASHINGTON

FUTUREWISE,

Petitioner,

**CASE No. 21-1-0005**

v.

**FINAL DECISION AND ORDER**

FRANKLIN COUNTY,

Respondent,

and

CITY OF PASCO,

and

PORT OF PASCO

Intervenor-  
Respondents.

**SYNOPSIS**

*Futurewise (Petitioner) challenged Franklin County's (County) adoption of Ordinance 07-2021, which it asserts de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area (UGA). The Growth Management Hearings Board (Board) concluded: (1) that the County de-designated agricultural lands of long-term commercial significance (ALLTCS), particularly areas identified as Franklin Soils, (2) that Futurewise's challenge to the County's failure to designate certain lands is outside the scope of its Petition for Review, (3) that the County*

1 was not required to consider potential and unapproved changes to the City of Pasco's (City)  
 2 zoning capacity when undertaking its land capacity analysis; and (4) that the County's State  
 3 Environmental Policy Act (SEPA) documents failed to consider the impacts of de-  
 4 designation of the Franklin Soils ALLTCS.

## 5 I. INTRODUCTION

6 On August 5, 2021, Petitioner Futurewise challenged Franklin County's adoption of  
 7 Ordinance 07-2021.<sup>1</sup> The Ordinance, adopted on June 1, 2021, adopted the 2018-2038  
 8 Franklin County Comprehensive Plan and included an increase to the City of Pasco's Urban  
 9 Growth Area (UGA) of approximately 3,407 acres.<sup>2</sup>

10 On September 14, 2021, the Board issued an Order Granting Intervention by the City  
 11 of Pasco.<sup>3</sup> This was followed by an order on October 25, 2021 granting intervention by the  
 12 Port of Pasco.<sup>4</sup>

13 The Hearing on the Merits was conducted via Zoom on December 12, 2021.

14 Procedural matters relevant to the case are detailed in Appendix A. Legal issues  
 15 relevant to the case are restated in Appendix B.

## 16 II. BOARD JURISDICTION

17 No party raised any objection to jurisdiction, except as provided below. The Board  
 18 finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board  
 19 finds the Petitioner has standing to appear before the Board pursuant to RCW  
 20 36.70A.280(2) (b)).

21 Prior to addressing the substance of the issues, the Board shall address Franklin  
 22 County's argument regarding the Petitioner's contention that the County failed to designate  
 23 Agricultural Lands of Long-Term Commercial Significance (ALLTCS) in the 2018 plan based  
 24

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 31 <sup>1</sup> Petition for Review, IR 2.

32 <sup>2</sup> *Id.* at 4.

<sup>3</sup> Order on Intervention (City of Pasco) (Sept. 14, 2021).

<sup>4</sup> Order on Intervention (Port of Pasco) (Oct. 25, 2021).

1 on the criteria for designating such lands in violation of the Growth Management Act (GMA).<sup>5</sup>  
 2 As argued by the County, Issue 1 in the Futurewise Petition for Review is limited to the  
 3 contention that the County violated the GMA because Ordinance No. 07-2021 “de-  
 4 designated” certain ALLTCS in the 2018 plan and these lands “still meet[.]” the criteria for  
 5 ALLTCS designation.<sup>6</sup>

6 This argument cannot be considered by the Board because it is beyond the scope of  
 7 the issues presented in the Petition for Review and Prehearing Order. Petitions for review to  
 8 the Board must include a detailed statement of issues presented for resolution by the Board.  
 9 This Board is limited in its jurisdiction and does not issue advisory opinions “on issues not  
 10 presented to the board in the petition for review’s statement of the issues, as modified by any  
 11 prehearing order.”<sup>7</sup>

12 Issue 1 is based on the contention that Franklin County’s adoption of Ordinance No.  
 13 07-2021 “de-designated agricultural lands of long-term commercial significance and added  
 14 the land to the Pasco Urban Growth Area” and that these lands “still meet[.]” the criteria for  
 15 ALLTCS designation. Futurewise’s argument in Issue 1B of its brief regarding the failure to  
 16 designate goes beyond the scope of issues presented in this appeal and will not be  
 17 addressed by this Board.

### 20 III. STANDARD OF REVIEW

21 Comprehensive plans and development regulations, and amendments thereto, are  
 22 presumed valid upon adoption.<sup>8</sup> This presumption creates a high threshold for challengers  
 23 as the burden is on the Petitioner to demonstrate that any action taken by the County is not  
 24

25 <sup>5</sup> Futurewise Prehearing Brief at 2-17.

26 <sup>6</sup> Petition for Review at 2 (“Did Franklin County’s adoption of Ordinance No. 07-2021 which de-designated  
 27 agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area  
 28 violate [GMA provisions], or Franklin County County-Wide Planning Policies I.1.H or II.12 because the  
 29 farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-  
 term significance?”); Prehearing Order at 1-2 (same).

30 <sup>7</sup> RCW 36.70A.290(1). See also WAC 242-02-210 (stating a petition for review “shall substantially contain . . .  
 31 (2)(c) A detailed and concise statement of the issues presented for resolution by the board.”); WAC 242-03-  
 810(2); see also *Hazen, et al. v Yakima County*, EWGMHB No. 08-1-0008c, Partial Compliance Order (May  
 20, 2011), at 6.

32 <sup>8</sup> RCW 36.70A.320(1).

1 in compliance with the GMA.<sup>9</sup> The Board is charged with adjudicating GMA compliance  
2 and, when necessary, invalidating noncompliant plans and development regulations.<sup>10</sup>

3 Here, the scope of the Board's review is limited to determining whether the County  
4 has achieved compliance with the GMA only with respect to those issues presented in a  
5 timely petition for review.<sup>11</sup> The Board is directed to find compliance unless it determines  
6 that the challenged action is clearly erroneous in view of the entire record before the Board  
7 and considering the goals and requirements of the GMA.<sup>12</sup>

#### 9 IV. ANALYSIS AND DISCUSSION

##### 11 Issue No. 1.

13 Did Franklin County's adoption of Ordinance 07-2021 which de-designated  
14 agricultural lands of long-term commercial significance and added the land to  
15 the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW  
16 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060,  
17 RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW  
18 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC  
19 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning  
20 Policies I.1.H or II.12 because the farmland still meets the Growth Management  
21 Act and Franklin County criteria for agricultural lands of long-term significance?

##### 21 A. De-designation of Franklin Soils

##### 22 Parties' Arguments

23 Petitioner argues that the County de-designated ALLTCS designated in the County's  
24 2008 comprehensive plan, specifically areas referred to as "Franklin Crops." Petitioner  
25 argues that the County's 2008 comprehensive plan included "Franklin Crops" as ALLTCS  
26

27  
28  
29 <sup>9</sup> RCW 36.70A.320(2).

<sup>10</sup> RCW 36.70A.280, RCW 36.70A.302.

<sup>11</sup> RCW 36.70A.290(1).

<sup>12</sup> RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

1 and that the updated plan, as illustrated on Map 17, removed that designation.<sup>13</sup> Petitioner  
 2 further argues that “the record does not disclose why these lands are not designated  
 3 especially given that areas designated as “Franklin Crops” have land capability soil  
 4 classifications ... [to] ... qualify as agricultural lands of long-term commercial significance  
 5 under both the 2008 and 2018-2038 comprehensive plans.”<sup>14</sup>

6 The County<sup>15</sup> responds that “Franklin Crops” were not de-designated because these  
 7 lands were never designated ALLTCS:  
 8

9 The County removed the words “Franklin Crops” from the Agricultural  
 10 Resource Lands Map (Map 17) in the 2018 plan update, as the term lacked  
 11 definition under the 2008 Plan; other than on Map 8, there is no mention of  
 12 “Franklin Crops” in the entire 2008 plan. But not including the term “Franklin  
 13 Crops” in the 2018 Plan (e.g. Map 17) did not de-designate ALLTCS  
 because these lands were never designated ALLTCS.<sup>16</sup>

14 The County further argues, “The 2008 plan does not state that Franklin Crops are  
 15 ALLTCS, and Futurewise’s only argument in support of the contention that Franklin Crops  
 16 were designated as ALLTCS is that areas that contain Franklin Crops have land capability  
 17 soil classifications of 1, 2, and 3.”<sup>17</sup>

18 Petitioner replies that “Franklin Crops” were both included on Map 8 designating  
 19 ALLTCS in the 2008 plan and met soil classification for ALLTCS.<sup>18</sup> Petitioner also argues,  
 20 “The 2008 comprehensive plan is not ambiguous. It provides that ALLTCS consist of certain  
 21 soils and areas of these soils are shown and mapped on Map 8.”<sup>19</sup>  
 22  
 23  
 24  
 25

26 <sup>13</sup> Futurewise Prehearing Brief at 4-5.

27 <sup>14</sup> *Id.* at 5.

28 <sup>15</sup> The County’s brief was jointly submitted by the County and the Intervenor-Respondents City of Pasco and  
 Port of Pasco. For simplicity’s sake, this brief and the argument presented therein will be referred to solely as  
 29 “the County’s.” These arguments were presented by attorneys for all three parties at the hearing on the  
 merits.

30 <sup>16</sup> County Prehearing Brief at 12.

31 <sup>17</sup> *Id.*

32 <sup>18</sup> Futurewise Reply Brief at 2.

<sup>19</sup> *Id.* at 4.

1 **Board Discussion**

2 As discussed above, the Parties do not disagree that “Franklin Crops” were identified  
 3 on Map 8 in the 2008 comprehensive plan, that these areas have land capability soil  
 4 classifications of 1, 2, and 3, and that the 2018-2038 comprehensive plan omitted these  
 5 areas from Map 17, which identifies areas designated as ALLTCS. There is also no dispute  
 6 that there was no de-designation process followed for these areas, as the County’s  
 7 contention is that they were never designated ALLTCS. The only question for the Board to  
 8 consider is whether “Franklin Crops” were designated ALLTCS in the 2008 plan.  
 9

10 One of the primary goals of the GMA is the maintenance of agricultural lands and the  
 11 agricultural industry. RCW 36.70A.020(8) is the natural resource industrial goal:

12 Maintain and enhance natural resource-based industries, including ...  
 13 agricultural... industries. Encourage the conservation of productive ... agricultural  
 14 lands, and discourage incompatible uses.

15 The Supreme Court stated in *City of Redmond v. Central Puget Sound Growth Mgmt.*  
 16 *Hearings Bd.*

17 Natural resource lands are protected not for the sake of their ecological role but  
 18 to ensure the viability of the resource-based industries that depend on them.  
 19 Allowing conversion of resource lands to other uses by allowing incompatible  
 20 uses nearby impairs the viability of the resource industry.<sup>20</sup>

21 The definition of agricultural land is found at RCW 36.70A.030(2):

22 “Agricultural land” means land primarily devoted to the commercial production of  
 23 horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products  
 24 or of berries, grain, hay, straw, turf, seed, Christmas trees ... finfish in upland  
 25 hatcheries, or livestock, and that has long-term commercial significance for  
 26 agricultural production.

27 “Long-term commercial significance” is then defined by RCW 36.70A.030(10):  
 28  
 29  
 30

31 <sup>20</sup> *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091  
 32 (1998), quoting Richard L. Settle and Charles G. Gavigan, *The Growth Management Revolution in  
 Washington: Past, Present, and Future*, 16 U. Puget Sound L. Review 1141, 1145 (1993).

1 “Long-term commercial significance” includes the growing capacity, productivity,  
2 and soil composition of the land for long-term commercial production, in  
3 consideration with the land's proximity to population areas, and the possibility of  
4 more intense uses of the land.

5 Once agricultural lands have been designated under RCW 36.70A.170, RCW  
6 36.70A.060(1) directed counties to adopt development regulations to “assure the  
7 conservation of agricultural lands.” The GMA fails to delineate how a county should  
8 determine that designated agriculture lands should be de-designated. The Board in *Kittitas*  
9 *County Conservation v. Kittitas County* recognized this and indicated that the criteria for  
10 designation of ALLTCS should be utilized for de-designation:

11 While nothing in the GMA requires agricultural lands, once designated, to remain  
12 designated as such forever, and nothing in the GMA specifies precisely how a  
13 county may determine that designated agricultural lands no longer should be  
14 designated; logically, the only way to make such a determination consistent with  
15 the GMA is to apply the same statutory criteria to a proposed de-designation of  
16 agricultural lands as for a proposal to designate such lands. Any other approach  
17 defeats the GMA’s requirements to designate and conserve agricultural lands of  
18 long-term commercial significance and is contrary to the GMA’s goal of  
19 conserving agricultural land in Washington.<sup>21</sup>

20 The Court of Appeals agreed identifying the “three prongs that must be satisfied for land  
21 to be de-designated as ALLTCS,”<sup>22</sup> citing the Supreme Court in *Lewis County v. Western*  
22 *Wash. Growth Mgmt. Hearings Board*.<sup>23</sup> Those “prongs,” as restated by the Court of  
23 Appeals, are:

- 24 1. A determination of whether the land is characterized by “urban growth;”

25  
26  
27  
28 <sup>21</sup> *Kittitas County Conservation v Kittitas County*, EWGMHB No. 07-1-0004c, Final Decision and Order (Aug.  
29 20, 2007), at 71.

30 <sup>22</sup> A decision to de-designate ALLTCS requires consideration of the same criteria applicable to designation:  
31 “We evaluate whether a de-designation of agricultural land was clearly erroneous by determining whether the  
32 property in question continues to meet the GMA definition of 'agricultural land' as defined in *Lewis County*.”  
*Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 234, 254 P.3d 862 (2011), *vacated*  
*in part on other grounds*, 177 Wash.2d 136, 298 P.3d 704 (2013).

<sup>23</sup> 157 Wn.2d 488, 139 P.3d 1096 (2006).



- 1 2. A determination of the commercial productivity of the land or the land's capability of
- 2 being commercially productive; and
- 3 3. A determination of the "long-term commercial significance" for agricultural production
- 4 of the parcels.

5 Based upon the Board's review of the record, it is clear that the County's 2008  
6 comprehensive plan designated the "Franklin Crops" as ALLTCS. The 2008 comprehensive  
7 plan states:  
8

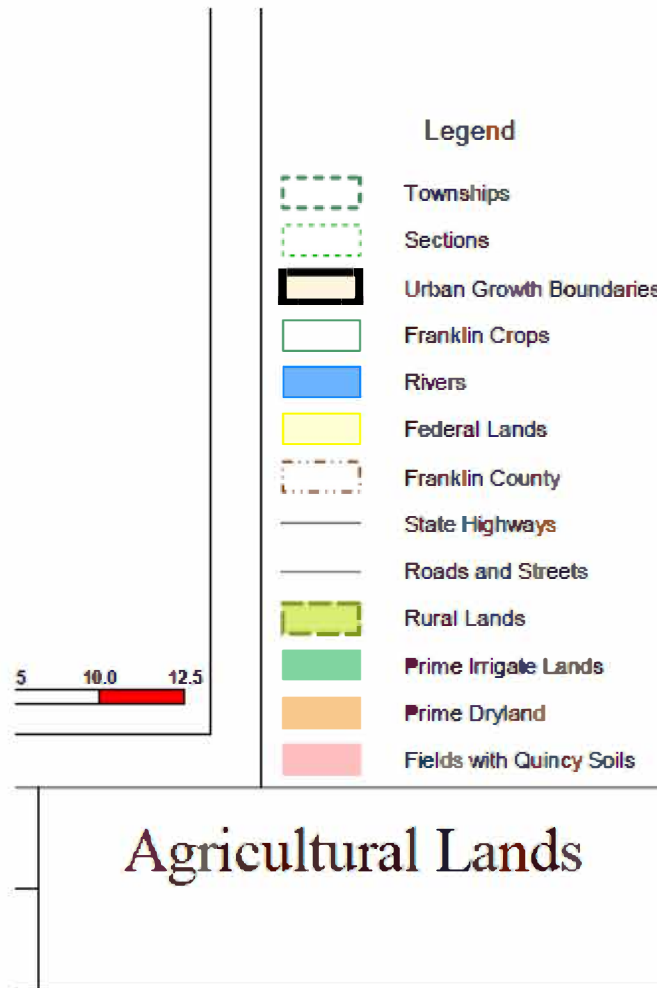
9 In Franklin County agricultural lands of long-term commercial significance are  
10 soil classification 1 – 3 according to the Land Capability Classification of the  
11 USDA Soil Conservation service. Further, the County's Prime, Unique and of  
12 State and Local Significance soils as **generally shown and mapped by the**  
13 **Franklin Conservation District on Map 8, are also described as agricultural**  
14 **lands of long-term commercial significance in Franklin County.**<sup>24</sup>

15 There is no dispute that "Franklin Crops" are included on Map 8. As illustrated below,  
16 a review of Map 8 includes the "Franklin Crops," outlined in a solid green line, the "Prime  
17 Irrigate Lands," shaded green, and the "Fields with Quincy Soils," shaded pink.<sup>25</sup>

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32 <sup>24</sup> IR 5 at 93.

<sup>25</sup> IR 5 at. 96.

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The “Franklin Crops” also include prime farmland and farmland of statewide importance.<sup>26</sup>

Because “Franklin Crops” are included on the County’s Map 8 of ALLTCS and have land capability soil classifications of 1-3 and qualify as agricultural lands of long-term commercial significance under the 2008 comprehensive plans,<sup>27</sup> the Board finds that the 2008 comprehensive plan, including Map 8, was not ambiguous in its inclusion of the “Franklin Crops” as ALLTCS. The plain language of the 2008 comprehensive plan supports

<sup>26</sup> IR 63.14 at 1-22.

<sup>27</sup> IR 63.14.

1 this finding, and the Board cannot look beyond the language of the comprehensive plan  
2 itself to decide otherwise.<sup>28</sup>

3 The 2018-2038 comprehensive plan deleted the mapped “Franklin Crops” from the  
4 ALLTCS map, essentially de-designating these ALLTCS.<sup>29</sup> The Map 17: Designated  
5 Agricultural Resource Lands from the 2018-2038 comprehensive plan removes the “Franklin  
6 Crops” within the expanded UGA as ALLTCS.<sup>30</sup>

7  
8 The record does not disclose why this occurred and does not apply the de-  
9 designation criteria to effectuate de-designation of these areas. The Board concludes that  
10 the 2018-2038 comprehensive plan de-designated the “Franklin Crops” ALLTCS *de facto*.  
11 The County’s action is clearly erroneous.

12 **The Board finds** that the record indicates that the 2018-2038 comprehensive plan  
13 de-designated the “Franklin Crops” ALLTCS identified on Map 8 of the 2008 comprehensive  
14 plan without applying de-designation criteria.

15  
16 **B. Failure to Designate**

17 As set forth above, this argument must be rejected because it is beyond the scope of  
18 issues presented in the Petition for Review and Prehearing Order.

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<sup>28</sup> *Washington Shell Fish, Inc. v. Pierce Cty.*, 132 Wn. App. 239, 253-54, 131 P.3d 326 (2006).

32 <sup>29</sup> IR 1 at 62.

<sup>30</sup> *Id.* at 60-62.

1 **Issue No. 2.**

2 Did Franklin County's adoption of Ordinance 07-2021, including expanding the  
3 Pasco Urban Growth Area by approximately 3,407 acres, violate RCW  
4 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW  
5 36.70A.100, RCW 36.70A.110, RCW 36.70A.15, RCW 36.70A.130(1), RCW  
6 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning  
7 Policies I. I.A, I.1.B, II.2, or II.3 because the expansion is not need to  
8 accommodate the planned growth and not properly located?

9 **Parties' Arguments**

10 Petitioner argues that Franklin County's adoption of Ordinance No. 07-2021, which  
11 expanded the City of Pasco's UGA violated the GMA because the expansion is not needed  
12 to accommodate planned urban growth.<sup>31</sup> Specifically, Petitioner argues:

13 During the adoption of the UGA expansion, the City of Pasco was considering  
14 development regulation amendments that have the potential to substantially  
15 increase the city's zoning capacity. These changes could substantially increase  
16 the residential capacity of the City because much of the City of Pasco is zoned  
17 for low-density single-family dwellings. The proposals included allowing  
18 duplexes, triplexes, and courtyard apartments in 84 percent of the residentially  
19 zoned land in the city. The proposals also include permitting lot size averaging  
20 which allow a homebuilder to subdivide lots using an average rather than a  
21 minimum. This proposal has the potential to increase lot yields in existing  
22 residential zones.<sup>32</sup>

23 Petitioner further argues that the "City of Pasco Land Capacity Analysis did not  
24 include any of this increased capacity."<sup>33</sup> Petitioner supports this claim solely by reference  
25 to an October 15, 2020 City staff report.<sup>34</sup> This staff report indicated that the City—along  
26 with 51 other communities—received funding from the Washington State Department of  
27 Commerce to address housing affordability and supply.<sup>35</sup>

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30 <sup>31</sup> Petition for Review at 2.

<sup>32</sup> Futurewise Prehearing Brief at 18.

<sup>33</sup> *Id.* at 19.

<sup>34</sup> *Id.* at 18-19.

<sup>35</sup> *Id.* at 18, citing IR 63.1 at 1.

1 The County asserts, “there is no GMA violation simply because the City considered  
2 but did not adopt new development regulations that would increase residential density.  
3 These regulations were never adopted and the City otherwise properly developed its UGA  
4 based on a valid land capacity analysis.”<sup>36</sup>

5 Petitioner replies that the proposed development regulations “could be [adopted] and  
6 ... would substantially reduce the need to expand the UGA.”<sup>37</sup>

### 8 **Board Discussion**

9 The determination of whether there is sufficient land to accommodate development in  
10 an UGA is done through a land capacity analysis. The GMA, RCW 36.70A.115(1), requires  
11 this, stating:

12 Counties ... shall ensure that, taken collectively, adoption of and amendments  
13 to their comprehensive plans and/or development regulations provide sufficient  
14 capacity of land suitable for development within their jurisdictions to  
15 accommodate their allocated housing and employment growth ... as adopted in  
16 the applicable countywide planning policies and consistent with the twenty-year  
17 population forecast from the office of financial management.

18 Guidance for accomplishing this land capacity analysis is provided within state  
19 Department of Commerce regulations.<sup>38</sup>

20 The Supreme Court in Thurston County emphasized the goal of reducing sprawl by  
21 limiting the size of UGAs: “If the size of a UGA is not limited, rural sprawl could abound.” To  
22 that end, RCW 36.70A.215 establishes a buildable lands review and evaluation program for  
23 designated counties. Where cities and counties find inconsistencies between their targets  
24 for urban growth and what is happening on the ground, as disclosed in the BLR, they are  
25 required to adopt “reasonable measures, **other than adjusting urban growth areas**, that  
26 will be taken to comply with the requirements of [the GMA].”<sup>39</sup> Each county, in consultation  
27 with its cities, must adopt County-wide Planning Policies (CPPs) setting up a five-year  
28

30 <sup>36</sup> County Prehearing Brief at 20.

31 <sup>37</sup> Futurewise Reply Brief at 7.

32 <sup>38</sup> WAC 365-196-310, WAC 365-196-325.

<sup>39</sup> RCW 36.70A.215(1)(b) (emphasis supplied).

1 review cycle to monitor urban development – the Buildable Lands Review (BLR).<sup>40</sup> The BLR  
 2 compares county/city growth assumptions and targets with actual growth and development  
 3 trends.<sup>41</sup>

4 Critically, Franklin County is not among the counties to which RCW 36.70A.215  
 5 applies.<sup>42</sup> While Petitioner’s argument that a land capacity analysis must consider potential  
 6 and unadopted development regulations designed to increase density that may further the  
 7 goals of the GMA to limit sprawl might be well-taken elsewhere in the state,<sup>43</sup> the Board  
 8 must agree with the County. There is no GMA requirement to do so.  
 9

10 Petitioner has not pointed to any GMA provision or Department of Commerce  
 11 regulation to support its argument. We cannot find a GMA violation simply because the City  
 12 considered but did not adopt new development regulations that would increase residential  
 13 density. Again, the Board cannot find any GMA provision or past precedent that would  
 14 require such consideration.  
 15

16 The record here demonstrates that development regulations were never adopted.  
 17 The City need not develop a land capacity analysis considering hypothetical development  
 18 regulations.  
 19

20 **The Board finds** that Petitioner failed to carry its burden to show that the reliance on  
 21 the City of Pasco Land Capacity Analysis to support County’s adoption of the Pasco UGA  
 22 violates any provision of the GMA.  
 23  
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29 <sup>40</sup> RCW 36.70A.215(1).

30 <sup>41</sup> *Thurston County v. WWGMHB*, 164 Wn.2d 329, 351, 190 P.3d 38 (2008).

31 <sup>42</sup> RCW 36.70A.215(5) limits the application of this program to King, Pierce, Snohomish, Kitsap, Thurston and  
 Clark counties.

32 <sup>43</sup> See, e.g., *Suquamish Tribe v. Kitsap County*, CPSGMHB No 07-3-0019c, Final Decision and Order on  
 Remand (August 31, 2011) at 11-14.

1 **Issue No. 3.**

2 Did Franklin County's State Environmental Policy Act (SEPA) Determination of  
3 Nonsignificance (DNS) and SEP A Environmental Checklist for the adoption of  
4 Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020,  
5 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC  
6 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11- 310, WAC  
7 197-11-315, WAC197-II-330, WAC 197-11-335, or WAC 197-11-340 because  
8 the documents did not adequately analyze, disclose, or consider the  
9 environmental impacts of the ordinance?

9 **Parties' Arguments**

10  
11 Petitioner argues that the SEPA checklist for Ordinance 07-2021 lacked information  
12 reasonably sufficient to evaluate Ordinance 07-2021's environmental impacts.<sup>44</sup>

13 Specifically, Petitioner argues that the "answer to 69 of the SEPA checklist questions was  
14 some variation of '[n]ot applicable, this is not a site specific proposal,' none, or no."<sup>45</sup>

15 Petitioner asserts that "no answer was given for whether surface water withdrawals are  
16 required."<sup>46</sup>

17  
18 Petitioner further argues that the County ignored the environmental impacts of the  
19 urban uses allowed by UGA expansions and that the checklist relied upon the County's  
20 Critical Areas Ordinance (CAO) without evaluating whether the CAO is adequate to address  
21 the potential impacts.<sup>47</sup>

22  
23 Petitioner argues that the SEPA documents failed to acknowledge that much of the  
24 land newly added to the Pasco UGA is presently used for irrigated and dryland cropland  
25 and grazing land and then failed to discuss the impacts of the conversion of those areas into  
26 urban development, including probable impacts of that development.<sup>48</sup> Petitioner also  
27

28  
29 \_\_\_\_\_  
30 <sup>44</sup> Futurewise Prehearing Brief at 20-21.

31 <sup>45</sup> *Id.* at 21.

32 <sup>46</sup> *Id.* at 22.

<sup>47</sup> *Id.* at 23.

<sup>48</sup> *Id.* at 24-28.

1 argues that the County failed to disclose adverse impacts to the Tri-Cities Airport associated  
2 with conversion of agricultural lands to urban development.<sup>49</sup>

3 Lastly, Petitioner argues that the County did not adopt the City of Pasco  
4 Comprehensive Plan: Non-project Final Environmental Impact Statement (Pasco FEIS) or  
5 incorporate it by reference for Ordinance 07-202.<sup>50</sup>

6 The County responds that it complied information regarding environmental impacts in  
7 a number of SEPA documents, including the Pasco FEIS.<sup>51</sup> The County asserts that  
8 “specific issues such as water surface withdrawals, endangered species, environmental  
9 health, discharge of emissions, and hazardous substances, or address probable impacts of  
10 any future projects, ....were addressed in the review of the extensive Pasco FEIS and in  
11 Part D of the SEPA Checklist” and that the County addressed probable impacts of future  
12 project action the proposal would allow.<sup>52</sup>

13 The County also argues that the Pasco FEIS was properly incorporated by  
14 reference.<sup>53</sup>

15 Petitioner replies that the Pasco FEIS does “not disclose that ALLTCS were being  
16 de-designated or that existing farms will be converted to urban uses including over a square  
17 mile of prime farmland,” does “not disclose the impacts of urban residential development on  
18 the Tri-Cities Airport,” and does “not disclose the land use impacts, the increased surface  
19 water withdrawals, or other impacts.”<sup>54</sup> Petitioner also argues that the Pasco FEIS did not  
20 disclose that land added to the UGA was ALLTCS and included prime farmland.<sup>55</sup>

21 Lastly, Petitioner argues that the County did not properly incorporate the Pasco FEIS  
22 by reference because it was not mentioned in the Determination of Nonsignificance (DNS),  
23 the SEPA Checklist did not mention that it was incorporated by reference or include the  
24

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28 <sup>49</sup> *Id.* at 25.

29 <sup>50</sup> *Id.* at 29.

30 <sup>51</sup> County Prehearing Brief at 35.

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

32 <sup>53</sup> *Id.* at 36-37.

<sup>54</sup> Futurewise Reply Brief at 8.

<sup>55</sup> *Id.* at 8-9.



1 location of Pasco FEIS or its description, and the public notice for the DNS did not mention  
2 the Pasco FEIS.<sup>56</sup>

### 3 **Board Discussion**

4 SEPA requires the disclosure and full consideration of environmental impacts in  
5 governmental decision making.<sup>57</sup> Agency decisions must consider more than the narrow,  
6 limited environmental impact of the immediate, pending action and cannot close their eyes  
7 to the ultimate probably environmental consequences.<sup>58</sup> SEPA specifically required that  
8 counties conduct a detailed and comprehensive review, rather than take a “lackadaisical  
9 approach.”<sup>59</sup>

10  
11 SEPA regulations specifically require that a jurisdiction “carefully consider the range  
12 of probable impacts, including short-term and long-term effects” of a proposal.<sup>60</sup> Moreover,  
13 the regulations specifically state:

14 A proposal's effects include direct and indirect impacts caused by a proposal.  
15 Impacts include those effects resulting from growth caused by a proposal, as well  
16 as the likelihood that the present proposal will serve as a precedent for future  
17 actions. For example, adoption of a zoning ordinance will encourage or tend to  
18 cause particular types of projects or extension of sewer lines would tend to  
19 encourage development in previously unsewered areas.<sup>61</sup>

20 This requirement is well articulated by the Court of Appeals in *Spokane County v.*  
21 *Eastern Wash. Growth Management Hearings Bd.*, which stated:

22 [F]or a non-project action, such as a comprehensive plan amendment or  
23 rezone, the agency must address the probable impacts of any future project  
24 action the proposal would allow. Wash. State Dep't of Ecology, *supra*, § 4.1, at

25 \_\_\_\_\_  
26 <sup>56</sup> *Id.* at 10.

27 <sup>57</sup> *Polygon Corporation v. Seattle*, 90 Wn.2d 59, 61, 578 P.2d 1309 (1978), *citing Norway Hill Preservation &*  
28 *Protection Ass'n v. King County Council*, 87 Wn.2d 267, 552 P.2d 674 (1976). The Court of Appeals in *Moss v.*  
29 *Bellingham* restated the long-standing rule that the purpose of SEPA is to function “as an environmental full  
30 disclosure law.” 109 Wn. App. 6, 16, 31 P.3d 703 (2001).

31 <sup>58</sup> *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1976).

32 <sup>59</sup> *Eastlake Cmty. Council v. Roanoke Assocs., Inc.* 82 Wn.2d 475, 494, 513 P.2d 36 (1973); *see also Norway*  
*Hill*, 87 Wn.2d at 273 (SEPA requires a “detailed statement”).

<sup>60</sup> WAC 197-11-060(4)(c).

<sup>61</sup> WAC 197-11-060(4)(d).

1 66; see WAC 197-11-060(4)(c)-(d). The purpose of these rules is to ensure an  
 2 agency fully discloses and carefully considers a proposal's environmental  
 3 impacts before adopting it and "at the earliest possible stage." *King County v.*  
 4 *Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663-64, 666, 860 P.2d  
 1024 (1993); see WAC 197-11-060(4)(c)-(d).<sup>62</sup>

5 Hearings Board cases are consistent with the Court of Appeals. For example, in  
 6 *Better Brinnon Coalition v. Jefferson County*, the Board stated:  
 7

8 The County directs our attention to WAC 197-11-442 which provides that the  
 9 County shall have "more flexibility in preparing EISs on nonproject proposals".  
 10 However, the flexibility afforded the County is not unlimited. All environmental  
 11 documents prepared under SEPA require consideration of environmental  
 12 impacts, with attention to impacts that are likely, not merely speculative. WAC  
 197-11-060 (4).

13 ...

14 We note with the County's hearing examiner that the County essentially chose  
 15 to defer all environmental review until the permitting stage. ... This is a pattern  
 16 that the hearing examiner notes leads to a "dangerous incrementalism" whereby  
 17 the environmental issues are never really addressed. *Ibid.* This is neither proper  
 18 phasing nor a proper use of flexibility in setting the detail of analysis. The County  
 19 must evaluate the environmental impacts that are probable as a result of the  
 20 change proposed. Those impacts should be measured in terms of the maximum  
 21 potential development of the property under the changed land use designation.  
 22 See *Ullock v. Bremerton*, 17 Wn. App. 573, 575, 565 P.2d 1179 (1977). By  
 23 waiting until each permit application is presented, the County would be unable to  
 24 assess the cumulative impacts of the increased development in any meaningful  
 25 way and would thwart the aim of providing future permit applicants with certainty  
 26 about what is allowed in the Brinnon Rural Village Center and WaWa Point SRT  
 27 overlay.<sup>63</sup>

28 <sup>62</sup> *Spokane County v. Eastern Wash. Growth Management Hearings Bd.*, 176 Wash. App. 555, 579, 309 P.3d  
 29 673 (2013); see also, *Conservation Northwest v. Okanogan County*, 194 Wash. App. 1034 (Div. 3 2016)  
 30 (unpublished) (holding the County failed to prepare an adequate checklist because the checklist contains  
 31 repetitive, superficial, conclusory statements regarding the potential environmental impact of opening nearly  
 600 miles of county roads to ATV use, and the checklist is almost devoid of specific information).

32 <sup>63</sup> *Better Brinnon Coalition v. Jefferson County*, WWGMHB No. 03-2-0007, Amended Final Decision and Order  
 (Nov. 3, 2003), at 18-20.

1 As discussed above, the Board found that the County failed to properly de-designate  
 2 the "Franklin Crops" ALLTCS. A review of the Pasco FEIS and other SEPA documents  
 3 indicates that there is no disclosure of the de-designation or potential environmental  
 4 impacts. To the contrary, the Pasco FEIS indicates that no de-designation will occur. For  
 5 example, the Pasco FEIS states that "none of the alternatives would affect Franklin County-  
 6 designated agricultural lands of long-term commercial significance."<sup>64</sup> Other SEPA  
 7 documents in the record are silent on the de-designation of the "Franklin Crops."<sup>65</sup>  
 8

9 Failure to disclose the de-designation of the "Franklin Crops" ALLTCS amounts to a  
 10 violation of the requirements of SEPA. The County has a duty, even as a non-project  
 11 action, to disclose and analyze the probable impacts of the de-designation.<sup>66</sup> SEPA  
 12 required the County to disclose the de-designation and any environmental impacts caused  
 13 by the action. The County's failure to do so was clearly erroneous.  
 14

15 **The Board finds** that the record indicates that the Pasco FEIS and other SEPA  
 16 documents failed to disclose the de-designated the "Franklin Crops" ALLTCS and any  
 17 associated environmental impacts.

18 Because this matter will be remanded, the Board declines to rule on whether the Pasco  
 19 FEIS was properly incorporated by reference and on the remaining issues raised by  
 20 Petitioners.  
 21

## 22 V. FINDING OF FACT AND CONCLUSIONS OF LAW

### 23 Issue 1

- 24 A. The Board finds that the area designated as "Franklin Soils" included land capability  
 25 soil classifications of 1-3, were included on the map designating ALLTCS in the 2008  
 26  
 27  
 28  
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 30

31 <sup>64</sup> IR 13.5 at 35, *see also id.* at 38, 72, 110-112, 123-124.

<sup>65</sup> *See, e.g.*, IR 13, IR 15.

32 <sup>66</sup> *Spokane County*, 176 Wash. App. at 579.

1 Comprehensive Plan, and otherwise were included as ALLTCS under the County’s  
2 2008 Comprehensive Plan.

3 B. The Board finds that the 2018-2038 comprehensive plan failed to include “Franklin  
4 Soils” as ALLTCS and failed to apply de-designation criteria identified by the Board  
5 and Washington courts.

6 C. The Board finds and concludes that the Petitioner has met its burden in  
7 demonstrating that the County in noncompliance with the requirements of the GMA in  
8 de-designating the “Franklin Soils” ALLTCS.

9 D. The Board finds and concludes that any remaining issues under Issue 1 were beyond  
10 the scope of the issue statements in the Petitioner’s Petition for Review and will not  
11 be considered by the Board.  
12

13 **Issue 2**

14 A. The Board finds that there is no GMA provision or regulation requiring Franklin  
15 County’s consideration of unadopted development regulations when developing a  
16 land capacity analysis.

17 B. The Board finds that Petitioner failed to carry its burden to show that the reliance on  
18 the City of Pasco Land Capacity Analysis to support County’s adoption of the Pasco  
19 UGA violates any provision of the GMA.  
20

21 **Issue 3**

22 A. The Board finds that the Pasco FEIS and other SEPA documents included in the  
23 record failed to disclose the environmental impacts of the de-designation of the  
24 “Franklin Crops” ALLTCS and any environmental impacts.

25 B. The Board finds and concludes that the Petitioner has met its burden in  
26 demonstrating that the County is in noncompliance with the requirements of the  
27 SEPA in failing to disclose and analyze de-designating the “Franklin Soils” ALLTCS.  
28

29 **C. ORDER**

30  
31 Based upon review of the Petition for Review, the briefs and exhibits submitted by the  
32 parties, the GMA, prior Board orders and case law, having considered the arguments of the


1 parties, and having deliberated on the matter, the Board finds:

- 2 • Ordinance 07-2021 is remanded to the County to take action to come into  
3 compliance with the requirements of the GMA and SEPA.  
4 • All other allegations not addressed in this Order are dismissed.  
5

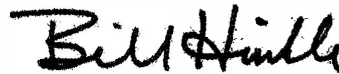
| 6 Item   | 7 Date Due  |
|--|---|
| 8 Compliance Due   | 9 August 1, 2022                                    |
| 10 Compliance Report/Statement of Actions Taken to<br>11 Comply and Index to Compliance Record | 12 August 15, 2022                                  |
| 13 Objections to a Finding of Compliance   | 14 August 29, 2022                                  |
| 15 Response to Objections  | 16 September 8, 2022                                |
| 17 <b>Compliance Hearing</b><br>18 Zoom link will be provided at a later date                  | 19 <b>September 15, 2022</b><br>20 <b>10:00 A.M</b> |

21 Length of Compliance Documents – **Compliance Report/Statement of Actions Taken to**  
22 **Comply shall be limited to 35 pages, 45 pages for Objections to Finding of**  
23 **Compliance, and 10 pages for the Response to Objections.** A document of 15 pages or  
24 longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states:  
25 “Clarity and brevity are expected to assist a board in meeting its statutorily imposed time  
26 limits. A presiding officer may limit the length of a brief and impose format restrictions.”  
27

28 SO ORDERED this 28th day of January 2022.

29 

30 Rick Eichstaedt, Presiding Board Member

31 

32 Bill Hinkle, Board Member



Cheryl Pflug, Board Member

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**Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.<sup>67</sup>**

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<sup>67</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

**Appendix A: Procedural matters**

1  
2  
3 On August 6, 2021, Futurewise (Petitioner) filed a Petition for Review. The petition  
4 was assigned Case No. 21-1-0005.

5 A Prehearing Conference was held on September 13, 2021.

6 A Motion to Disqualify Board Member Rick Eichstaedt was filed on September 7,  
7 2021. This was denied on September 10, 2021.

8 On September 14, 2021, the Board issued an Order Granting Intervention by the City  
9 of Pasco. This was followed by an order on October 25, 2021 granting intervention by the  
10 Port of Pasco.

**Briefs**

11  
12  
13 The Briefs and exhibits of the parties were timely filed and are referenced in this  
14 order as follows:

- 15 • Petitioners Prehearing Brief (November 3, 2021)
- 16 • Respondent and Intervenor-Respondents Prehearing Brief (November 24,  
17 2021)
- 18 • Petitioners Reply Brief (December 8, 2021)

**Hearing on the Merits**

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20  
21 The Hearing on the Merits was conducted via Zoom on December 12, 2021. Board  
22 Members Rick Eichstaedt (serving as Presiding Board Member), Bill Hinkle, and Deb Eddy  
23 were present. Attorney Tim Trohimovich presented argument on behalf of Petitioner  
24 Futurewise. Attorney Taud Hume presented argument on behalf of Respondent Franklin  
25 County. Attorney Kenneth Harper presented argument on behalf of Intervenor-Respondent  
26 City of Pasco. Attorney Jesse DeNike presented on behalf of Intervenor-Respondent Port  
27 of Pasco.  
28  
29  
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**Appendix B: Legal Issues**

Per the Prehearing Order, legal issues in this case were as follows:

1. Did Franklin County's adoption of Ordinance 07-2021 which de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning Policies I.1.H or II.12 because the farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-term significance?
2. Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I. I .A, I.1.B, II.2, or II.3 because the expansion is not need to accommodate the planned growth and not properly located?
3. Did Franklin County's State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and SEPA Environmental Checklist for the adoption of Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11- 310, WAC 197-11-315, WAC197-II-330, WAC 197-11-335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or consider the environmental impacts of the ordinance?



**BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
EASTERN WASHINGTON REGION**

Case No. 21-1-0005

Futurewise v. Franklin County and City of Pasco and Port of Pasco

**DECLARATION OF SERVICE**

I, NICOLE NEILSON, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the Legal Assistant for the Growth Management Hearings Board. On the date indicated below a copy of the FINAL DECISION AND ORDER in the above-entitled case was sent to the following via US mail:

Tim Trohimovich  
Futurewise  
816 2nd Ave Ste 200  
Seattle WA 98104-1535

Derrick Braaten  
Planning and Building Director-Benton County  
502 W. Boeing St.  
Pasco, WA 99301

Jesse G. DeNike  
Samuel W. Plauche  
Plauche & Carr, LLP  
1218 Third Ave Suite 2000  
Seattle, WA 98101

Taudd A.Hume  
Witherspoon Brajcich McPhee, PLLC  
601 W. Main Ave, Ste 714  
Spokane, WA 99201

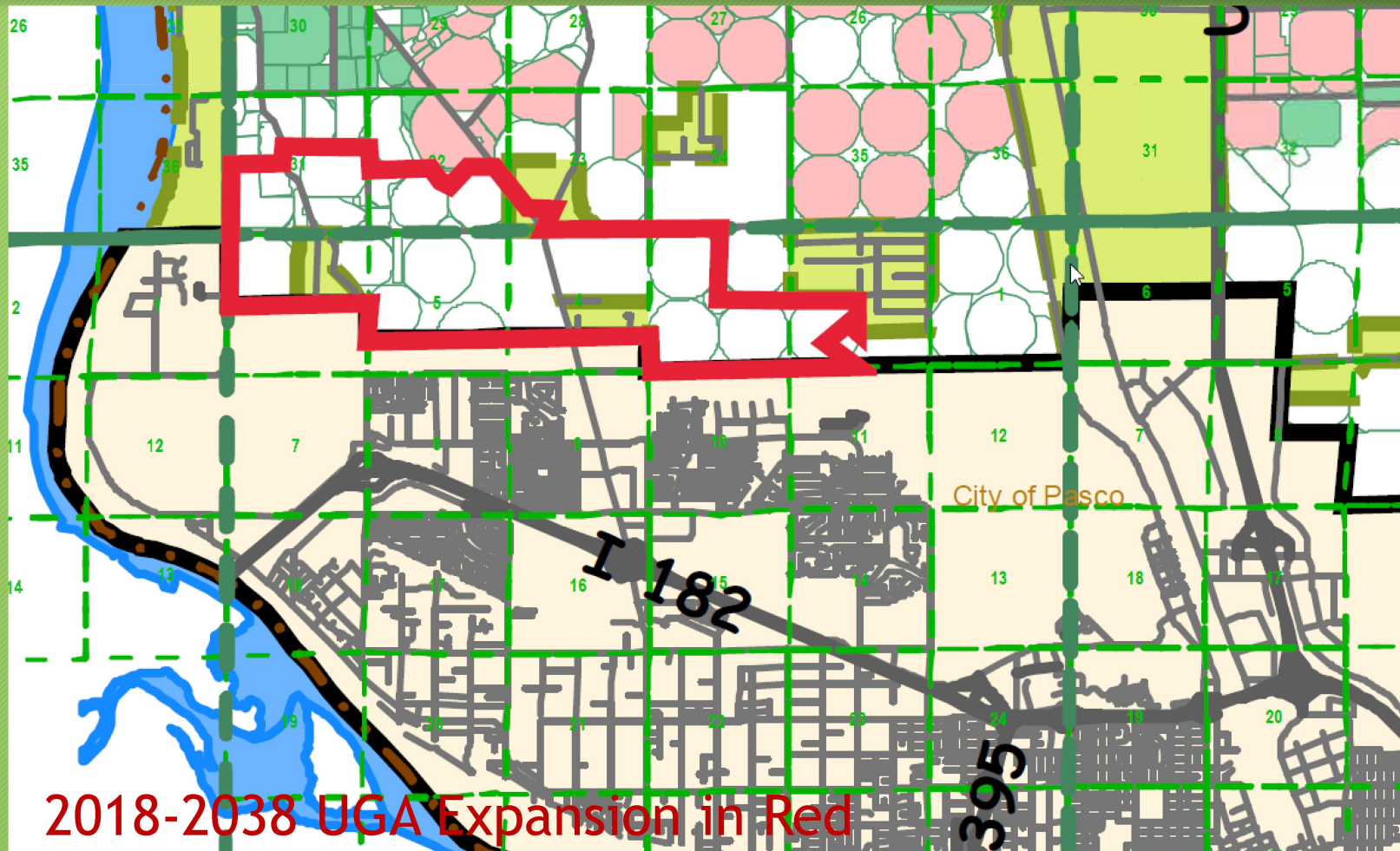
Kenneth W. Harper  
Menke Jackson Beyer  
807 North 39th Avenue  
Yakima, WA 98902

DATED this 28<sup>th</sup> day of January 2022.

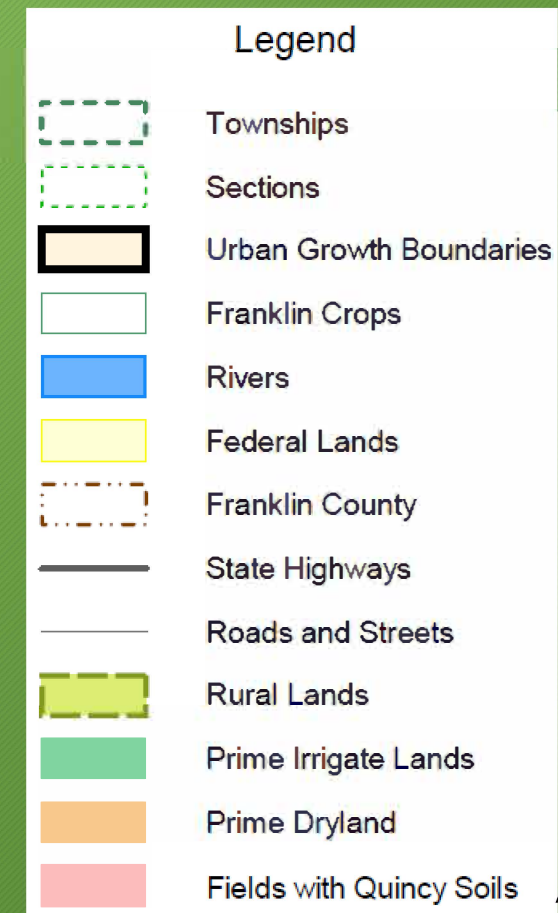
*Nicole Neilson*

Nicole Neilson, Legal Assistant

# The 2008 Comprehensive Plan designated much of the land in UGA expansion as ALLTCS



2018-2038 UGA Expansion in Red



IR# 5

p. 96

# FUTUREWISE

August 14, 2023 - 3:21 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 38907-3  
**Appellate Court Case Title:** Franklin County v. Futurewise  
**Superior Court Case Number:** 22-2-50122-0

### The following documents have been uploaded:

- 389073\_Petition\_for\_Review\_20230814151828D3463570\_9940.pdf  
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- rclayton@workwith.com
- tammy@plauchecarr.com
- thume@workwith.com
- treistroffer@workwith.com

### Comments:

A declaration of service is attached to the petition for review.

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Sender Name: Tim Trohimovich - Email: tim@futurewise.org  
Address:  
816 2ND AVE STE 200  
SEATTLE, WA, 98104-1535  
Phone: 206-343-0681 - Extension 102

**Note: The Filing Id is 20230814151828D3463570**