

No. 39546-1-II

**IN THE COURT APPEALS
OF THE STATE OF WASHINGTON - DIVISION II**

CLARK COUNTY, CITY OF LaCENTER, GM CAMAS LLC,
MacDONALD LIVING TRUST and RENAISSANCE HOMES,

Respondents,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD, JOHN KARPINSKI, CLARK COUNTY NATURAL
RESOURCES COUNCIL and FUTUREWISE

Appellants.

**RESPONSE BRIEF OF
RESPONDENT CITY OF LaCENTER**

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DIVISION II
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STATE OF WASHINGTON
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- A.** The GMHB misinterpreted and misapplied the statutory definition of “agricultural land,” “long-term significance” and the 10 WAC factors and ignored the substantial evidence in the record that supported the County's decision when it concluded that Areas LB-1, LB-2 and LE were "agricultural land." Had the GMHB properly interpreted and applied these statutory requirements and reviewed the evidence in the record that supported the County’s conclusions, it would have been legally bound by RCW 36.70A.320 to defer to the County’s determination and decision 19
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I. INTRODUCTION TO LaCENTER’S RESPONSE BRIEF:

Respondent, City of LaCenter, is the northern-most city in Clark County on the Interstate 5 corridor, approximately two miles east of I-5, which is the primary north-south corridor for transportation and commerce in western Washington. In its recent GMA up-date decision (adopted as Ordinance 2007-09-13 on Sept. 25, 2007), the Clark County Board of Commissioners approved, among other things, a 652-acre expansion of LaCenter’s Urban Growth Area (UGA), extending from the City’s current limits west along NW LaCenter Road to a cluster of land at LaCenter’s I-5 interchange (Exit 16 – the “LaCenter Junction”). The land at the Junction at issue in this appeal (Areas LB-1, LB-2 & LE) were previously designated “agriculture,” but have not been actively farmed in over 10 years. The newly acknowledged Cowlitz Indian Tribe has a proposal currently pending with the federal government to take 152 acres (Area LB-2) into trust for a large casino and resort development. Petitioners Futurewise and John Karpinski challenged the LaCenter element of Clark County’s decision on several grounds all premised on the land’s previous designation as “agricultural land” and what petitioners called its “de-designation” to non-resource. The Western Washington Growth Management Hearings Board (the “GMHB” or the “Board”) agreed with petitioners’ characterization of the land as agricultural land that must be preserved under GMA.

Several fundamental legal defects permeate the GMHB's decision with regard to the LaCenter Junction areas (LB-1, LB-2 & LE) that are repeated in appellants' brief. First, Nowhere in its opening brief to this Court do appellants mention or even cite the GMHB's standard of review, which the GMHB repeatedly violated in the FDO. *See* RCW 36.70A.320 & 36.70A.3201. A quick review of appellants' opening brief gives the impression that the GMHB heard evidence and testimony, acted as the finder of fact in an adjudicative proceeding and generally served as the initial decision maker. In fact, the GMHB sat in an appellate capacity subject to the deferential standard of review in RCW 36.70A.321. In that light, the GMHB violated its standard of review, substituted its evaluation of the WAC locational factors for that of the Clark County Board of Commissioners and its view of the evidence in concluding that these disputed areas were "agricultural land." The GMHB's failure to follow its statutory standard of review was a principal reason for the Superior Court's reversal in this case. The Court of Appeals' primary function on review is to determine whether the GMHB properly performed its review function under its statutory standard of review.

Second, the GMHB ignored the substantial evidence in the record that supported Clark County's decision to include Areas LB-1, LB-2 and LE in LaCenter's UGA. The GMHB discounted Clark County's evaluation and balancing of the 10 locational factors in WAC 365-190-050 and substituted its view of which factors were most important and what

evidence was credible. All of the disputed LaCenter expansion areas were previously designated as agricultural, but in every GMA up-date the County is required to consider anew, evaluate the facts in the record, balance and prioritize the 10 WAC locational factors, and designate all of these areas as “agricultural land” or not. As a matter of law, none of these areas is presumptively agricultural land until the County’s evaluation process is complete. The County is charged with the collection of testimony and evidence and the evaluation of the 10 WAC locational factors in determining which areas are “agricultural.” In that evaluation GMA vests the County with a “broad range of discretion” in how it plans for growth, harmonizes the planning goals and implements its future. RCW 36.70A.3201. Throughout this appeal, appellants presume the starting point is that all of the disputed areas are “agricultural land,” which must therefore be preserved. Appellants and the GMHB ignored the County’s fundamental role under GMA to evaluate the evidence in the record, balance and prioritize the 10 WAC factors for identifying what is and what is not agricultural land, and the GMHB

Finally, in overruling the Board of Commissioners and substituting its decision for that of the County, the GMHB focused on two of the WAC factors as preeminent, to the apparent exclusion of the rest. The GMHB focused exclusively on soil type and the lack of adjacent existing urban development as the most important, if not the only, factors in identifying “agricultural land.” The GMHB ignored the other factors upon which

Clark County legitimately based its decision to approve LaCenter's UGA expansion, most notably the proximity of this land to LaCenter I-5 interchange, the ease with which the area can be provided with urban services such as sewer, water and transportation, the logic of focusing urban development and services at LaCenter's only freeway interchange and ultimately the possibility of more intense (urban) uses on these lands immediately surrounding LaCenter's freeway interchange. These are the factors GMA requires the County – not the GMHB – to balance and evaluate in determining what areas have long-term commercial significance for agricultural production. The GMHB violated its statutory standard and scope of review by focusing on soil type and proximity to existing adjacent urban development to the exclusion of the factors that Clark County found most relevant. It is immaterial that there is substantial evidence in the record that these areas have soils suitable for agriculture and are not adjacent to existing urban development. It does not matter that the record contains evidence supporting the GMHB's and appellants' view of where Clark County could have expanded LaCenter's UGA. What matters in this judicial review is whether the GMHB violated its statutory standard and scope of review in substituting its priorities and view of the evidence for those of Clark County and whether there is substantial evidence in the record supporting Clark County's decision.

II. STATEMENT OF FACTS:

A. **The City of LaCenter:** LaCenter has a population of just over 2,315 people and is located in north Clark County, north of the East Fork of the Lewis River and approximately two miles east of Interstate 5. LaCenter has experienced rapid residential growth over the past 15 years, increasing at an average annual rate of 8.9% per year. As a bedroom community to Vancouver and Portland, LaCenter anticipates a continued growth rate of approximately 8.7% over the 20-year planning period. However, the City has an exceedingly limited economic base. Virtually the only commercial enterprises in the City are four social cardrooms with no industrial base and no industrially zoned land.

Early in the County's GMA up-date process, the LaCenter city council made the policy decision to diversify the City's economic base by designating industrial and commercial land at the LaCenter Junction at I-5. Few alternatives were available. If the City designated a large industrial/commercial area near the current city limits, *i.e.*, north of the Lewis River, a new bridge across the Lewis River would be required to accommodate the traffic – something that would be prohibitively expensive. Plus, it would be bad planning to locate a significant commercial/industrial hub at the farthest distance from the LaCenter Junction and the primary transportation corridor. Instead, the only logical option is an industrial/commercial land base south of the East Fork of the Lewis River, closer to I-5. Virtually all of the land immediately south of

the City and the East Fork of the Lewis River are critical lands, wetlands, steep slopes, riparian areas and the like. The only area where there is a sufficient amount of developable land for industrial and commercial uses is right at the LaCenter Junction I-5 Interchange in Areas LB-1, LB-2 and LE. After considering all of the options through a complete and thoroughly vetted Environmental Impact Statement (“EIS”), the City concluded there were no alternatives that could accomplish the its objective of creating a industrial and commercial land base except to expand to the LaCenter I-5 Junction. *See* LaCenter’s Final EIS (Dec 19, 2006).

LaCenter’s expansion westward to the I-5 corridor is part of a long-term City policy to regain a position on the primary north-south transportation corridor. This expansion simply allows the City a position at the LaCenter Interchange and direct access to I-5. Moreover, LaCenter has experienced extremely rapid residential growth over the past 10 years, but very little commercial or industrial growth. The City is almost entirely dependant upon gambling tax revenues from four social cardrooms, which it views as a precarious economic base. The tenuous nature of this single source of municipal tax revenue and the need for economic diversification is made all the more urgent by the pending proposal of the Cowlitz Indian Tribe for a destination resort and casino on 152 acres on the west side of the LaCenter I-5 Junction. If the federal Bureau of Indian Affairs (BIA) approves the Cowlitz proposal, LaCenter could see its single economic

engine (social cardrooms) decline and leave the city with virtually no source of revenue. The Cowlitz Tribal land (152 acres, in Area LB-2) is included in the UGA expansion approved by the County, but if this land is taken into trust by the federal government, it will be unavailable as a source of tax revenue for the city, and its utility as an employment base for the city would be questionable. Consequently, additional land (Area LE) was included as Urban Reserve and Industrial Reserve in case this occurs. In any event, the city's exceedingly narrow employment base and the pending tribal casino proposal put LaCenter in a uniquely precarious position. More than any other city in Clark County, LaCenter has a need for an economic (commercial and industrial) land base, which the UGA expansion to the I-5 corridor provides, while having little or no impact on existing agriculture. None of the contested expansion areas (LB-1, LB-2 or LE) are currently in agricultural production, nor have they been for many years.

B. Clark County's decision to expand LaCenter's UGA:

Based on the foregoing considerations, LaCenter evaluated several plans for expansion of its UGA out to the I-5 Interchange as a means to expand and diversify its employment and tax base. The land surrounding the LaCenter Interchange at I-5 is primarily flat and open. Land in the southeast quarter is mostly planned Industrial Reserve and zoned Urban Reserve. Some of this area is a resurfaced landfill. The northeast quarter of the LaCenter Interchange is zoned Ag-20 with approximately 5 acres of

rural commercial zoned land. The northwest quarter of the LaCenter Interchange is mostly zoned Ag-20 with a small portion of rural commercial zoned land. All of the land in the southwest quarter of the LaCenter Interchange is zoned Ag-20. The newly recognized Cowlitz Indian Tribe controls 152 acres on the west side of the LaCenter Interchange, where it has applied to develop its casino resort.

The City compiled an EIS as part of its SEPA compliance for its proposed UGA expansion. LaCenter's Final EIS, which is part of the record of this appeal, documented the City's extensive and detailed review of the alternatives that could have possibly achieved the City's objective. The FEIS documents how none of those alternatives was feasible or could achieve the City's stated objective of obtaining economic diversification. The City's FEIS documents the feasibility of providing public services, most notably public water and sewer, to the land at the LaCenter I-5 Junction. The FEIS documents the logic and connectivity between the City's current city limits and the LaCenter Junction. Finally, the City's FEIS documents the importance of the proximity of this land to I-5, with an existing interchange, as the key to providing viable economic diversification for the City through the designation of a limited amount of industrial and commercial zoning.

The City submitted its FEIS during the County's extensive public process, which then became part of the County's SEPA review and documentation. The County's process involved two years of public

hearings and meetings, the compilation of tens of thousands of pages of documents, testimony and evidence, including LaCenter's request to establish a commercial and industrial land base at the LaCenter Junction. After evaluating multiple plans for the LaCenter UGA, the Board revised and refined LaCenter's proposal to an expansion of approximately 652 acres – some located north of the East Fork Lewis River, but most of it at the LaCenter Junction at the I-5 Interchange. The final proposal included land in all four corners of the Junction, Area LA (southeast corner of the Junction), Area LB-1 (northeast corner), Area LB-2 (west side of the junction) and Area LE (south of Area LB-2). Area LE was added as an urban reserve area that could not be brought into the City's UGA or converted to urban uses unless the BIA approved the Cowlitz Casino proposal, which would remove it from consideration by LaCenter.

C. **The GMHB's decision challenged in this appeal:** On appeal, petitioners Futurewise and John Karpinski, argued that urban expansion Areas LB-1, LB-2 were unlawful because they had agricultural soils and were not adjacent to currently existing urban areas. The GMHB embraced the opponents' arguments and invalidated Clark County's inclusion of Areas LB-1, LB-2 and LE with the following discussion:

La Center (Areas LA, LB -1, LC, LE)

Positions of the Parties

Petitioners summarize their objections in their Reply brief. They claim that LaCenter ignored rural land north and northeast of the city and instead expanded its UGA into agricultural lands and thrust a

peninsula of urban development into agricultural lands. Petitioners argue that economic desire cannot be a basis for de-designation of commercially significant agricultural lands. The LB and LE areas of the UGA expansion are isolated from the UGA and surrounded by open fields, rural residences, and forest land, and have a high percentage of prime soils (56-80%) and of critical areas (36-46%), Petitioners assert.

Petitioners further contend that the area is well suited for agriculture, but not for offices or shopping centers, and the area has no history of development and no water or sewer.

Intervenor LaCenter does not deny that this area has prime soils, but insists that this is the only area where a fast growing city (8.7% annually), with a limited tax base can expand. LaCenter declares that it explored expansion options in an EIS. Going north of the Lewis River would require an expensive bridge and south of the East Fork of the Lewis River was constrained by various wetlands.

LaCenter argues that Petitioners use good soils as their only criterion, when the County can consider other factors. LaCenter says that its situation is similar to that of Arlington's UGA which the Court of Appeals found a similar result as Clark County did. LaCenter says that the County used the WAC factors to evaluate the area and concluded that proximity to public facilities - Interstate 5, and that ease that water and sewer could be delivered were valid reasons for de-designation.

To answer Petitioners' challenge that the UGA contains lands that are not contiguous to the UGA, LaCenter replies that the UGA had to be long and skinny for several reasons: to follow existing transportation and utility corridors, to avoid critical areas, and to not add more land to accommodate its population allocation.

Board Discussion

The County divided the La Center area in five areas for analysis: LA (6.85 acres adjacent to the UGA), LB-1 (218.81 acres adjacent to the UGA's eastern boundary) LB-2 (244.63 acres that on the east border I-5), LC (69.57 acres adjacent to the UGA), and LE (112.47 acres adjacent to I-5).

Area LA is adjacent to the UGA ,City limits, and water and sewer, with few prime soils, even though 85% is in current use. The UGA that is near this area is characterized by urban growth with urban services. The combination of its relationship to an area characterized by urban growth and the availability of services supports the County's decision to de-designate this area. Likewise, LC is adjacent to area within the UGA that is characterized by urban growth that has available water and sewer. Although it has few prime soils, 79 % is enrolled in agricultural current use program. Again, its relationship to an area of characterized by urban growth and urban services show the County's decision to de-designate Area LC was not clearly erroneous. Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA characterized by urban growth. In fact, the County's matrix describes all the areas as having rural land uses in and adjacent to the areas. All the areas have a high percentage of prime soils and LB-1 has 85% of its land in the agricultural/ farm current tax program. All areas are capable of being farmed. LB-1 has water and sewer located at its eastern boundary.

LB-2 and LE have no public sewer or water available, the County's matrix describes the areas as being surrounded by rural land uses, open fields, and forested land. No permits have been issued in the vicinity. Both areas border I-5. The BOCC's reason for de-designating these areas is that it borders I-5 therefore presents a unique economic development opportunity for LaCenter. Here, the area is not adjacent to an area characterized by urban growth, has prime soils capable of being farmed, and has no public water and sewer available. Here adjacency to I-5 does not combine with other WAC factors to make these lands not viable for agricultural use. Petitioners are correct that LB-1 and LE still meets the *Lewis County's* Court three prong test. The BOCC desire to further economic development can not outweigh its duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry. LaCenter presents its environmental impact analysis as evidence that it weighed other opportunities for economic development when considering its expansion into agricultural lands. The Board does not doubt LaCenter's need for more industrial and commercial land. However, the EIS does not lay out the how the County's jobs to population goals translates into acres of land needed for development. Nor, could the

Board find anything in the EIS that acknowledged that alternatives to agricultural lands were being considered and found them described as rural lands with agriculture uses and one unit per 20 acre zoning. However, it is not LaCenter's need for urban land that is being evaluated here, but the County's rationale for de-designating this land. That is the first step needed to be taken before the land can be added to the UGA, and the de-designation of areas LB-2 and LE do not comply with the GMA's goals and requirements.

Conclusion: The de-designation of Areas LA and LC are not clearly erroneous. The designation of LB-1, LB-2 and LE do not comply with RCW 36.70A.170(1) and RCW 36.70A.020(8).

GMHB decision pp 64-67 (footnotes omitted).

Findings of Fact:

46. Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA characterized by urban growth. In fact, the County's matrix describes all the areas as having rural land uses in and adjacent to the areas. All the areas have a high percentage of prime soils and LB-1 has 85% of its land in the agricultural/ farm current tax program. All areas are capable of being farmed. LB-1 has water and sewer located at its eastern boundary.

GMHB decision p 77.

LaCenter, Clark County and the other respondents appealed the Board's decision to Clark County Superior Court, which after briefing and a full hearing on the merits, reversed the Board with regard to all of the issues and all of the UGA expansion areas that were argued on appeal.

RCW 34.05.570(3).¹ The Superior Court reversed the GMHB's

¹ Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

- (a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;
- (b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

invalidation of 8 out of 11 UGA expansion areas, including AreB-1, LB-2 and LE, about which the Court said:

The La Center growth management sites LB, LB-2 and LE, while having agricultural lands, face the same general fate that all major interchanges of I-5 in Clark County having led to commercial development. A proposed casino operated by the Cowlitz Indian Tribe would exceed anything currently operated in the Northwest and has been the subject of much discussion and its impact on surrounding properties. The casino would not be subject to growth management. The Board in ignoring these growth stimulators and relying solely upon the soils did not take into consideration the other factors as set forth in WAC 365-109.

The County conducted hearings over a period of two years and received testimony from numerous individuals, including reports from specialists dealing with the nature and extent of agricultural productivity and likely future in being able to maintain the property for such a specialized use. Over 2,000 pages of material were considered, plus the recognition that the County expansion growth continues to outpace available lands for development, it was necessary to expand the growth boundaries of the various cities to reflect the reality of the current situation. The GMB did not give deference to the county's decision-making, which has experienced problems associated [with] the reality of present day influx of individuals and the necessary planning for the future.

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- (c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;
 - (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 agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;
 - (f) The agency has not decided all issues requiring resolution by the agency;
 - (g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;
 - (h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or
 - (i) The order is arbitrary or capricious.

Therefore, having considered the decision of the GMB, I hereby reverse the decision as to WB, CB, LB-1, LB-2, LE, VA, VA-2. And if the representation is correct, RB-2 by annexation is no longer an issue. The balance of the GMB decision is affirmed.

Superior Court Memorandum Decision, May 19, 2009.

The Superior Court's findings were reflected in the Court's Final Order:

The Court considered the pleadings filed in this action, the administrative record and the argument of counsel, and HEREBY ORDERS THAT:

1. The Amended Final Decision and Order of the Western Washington Growth Management Hearings Board dated June 3, 2008 (FDO) is affirmed with regard to areas BV and VB. The FDO is reversed with regard to areas CB, LB-1, LB-2, LE, VA, VA-2, and WB.
2. Area RB-2 is moot and remanded to the Board for proceedings consistent with this decision.
3. The FDO of the Growth Management Hearings Board was previously reversed as to Area CA-1 by way of Stipulated Order filed by this Court on February 26, 2009.

Superior Court June 12, 2009 Order.

This appeal by Futurewise, et al. followed.

III. STANDARD OF REVIEW

Appellants mischaracterize the Court's standard of review in this appeal and imply that the Court is reviewing an agency adjudication or permit decision to which great deference is owed. *See* Appellants' Brief at 4-6. In reality, the GMHB decision at issue here was an on-the-record, appellate-type review of a Clark County legislative decision to which the GMHB was required to apply a very deferential standard of review. *See* RCW 36.70A.320 and 36.70A.3201. The GMHB, in fact, violated its

standard of review, second-guessed Clark County in those areas where GMA grants the County substantial deference, and the GMHB substituted its view of which locational factors in WAC 365-190-050 were most important. For that reason, the Superior Court reversed the GMHB, and appellants on appeal make no mention in their brief of the standard of review that the GMHB was supposed to have applied, but didn't.

The critical function of the Court of Appeals in this appeal is to determine if the GMHB violated its standard of review and failed to give proper deference to Clark County's legislative decision, the County's evaluation of the 10 factors in WAC 365-190-050 for identifying "agricultural land." See e.g., *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 193 P.3d 1077 (2008). Also, the Court must determine if the GMHB properly deferred to Clark County's evaluation and weighing of facts in the record, and the County's policy choices as it "balance[d] priorities and options for action in full consideration of local circumstances." The critical question for this Court is not so much whether there is substantial evidence supporting the GMHB's factual findings, but whether the GMHB correctly interpreted the law, most notably its standard of review in RCW 36.70A.320 and 36.70A.3201 and the statutory definitions and other provisions for identifying "agricultural land" in RCW 36.70A.170(1)(a), 36.70A.030(2) and WAC 365-190-050(1).

The GMHB is charged with adjudicating GMA compliance and, when required, invalidating noncompliant plans and regulations. RCW 36.70A.280. However, comprehensive plan amendments, such as this one, are presumed valid upon adoption. RCW 36.70A.320(1). The Board is required to “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 this chapter.” RCW 36.70A.320(3). In reviewing such legislative decisions, GMHBs are required to defer to the County’s “broad range of discretion.” The Legislature’s intent in imposing this standard of review on the GMHBs is clearly stated:

In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. 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 that while this chapter 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 this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201 (emphasis added).

RCW 36.70A.320 requires the GMHB to accord a high degree of deference to the County's legislative enactments. *Swinomish Indian Tribal Cmty. V. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424, 166 P.3d 1198 (2007) (citing RCW 36.70A.3201 and RCW 34.05.570(3)). In *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 110 P.3d 1132 (2005), the Washington Supreme Court granted deference to the agency's interpretation of the law in cases where the agency had a specialized expertise in the subject area, but also determined that the courts were not bound by the agency's interpretation of a statute. *Id.* 154 Wn.2d at 233 (quoting *City of Redmond*, 136 Wn.2d at 46). Specifically, "deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general." *Id.* at 238. While "this deference ends when it is shown that a county's actions are in fact a 'clearly erroneous' application of the GMA, [the appellate courts] should give effect to the legislature's explicitly stated intent to grant deference to county planning decisions." *Id.* An action is "clearly erroneous" if the board or the Court has a "firm and definite conviction that a mistake has been committed." *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 497, 139 P.3d 1096 (2006), quoting *State, Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Judicial review of GMHB decisions is governed by the Administrative Procedures Act (RCW ch 34.05). *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 341, 190 P.3d 38 (2008). This Court reviews the Board's legal conclusions *de novo*, giving substantial weight to the Board's interpretation of the GMA; however, the court is not bound by the Board's interpretations. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.2d 38, 46, 959 P.2d 1091 (1998), citing *Soccer Fields*, 142 Wash.2d at 553, 14 P.3d 133; *see also Lewis County*, 157 Wash.2d at 497-98, 139 P.3d 1096. On mixed questions of law and fact, the Court determines the law independently, then applies it to the facts as found by the agency. *Lewis County*, 157 Wash.2d at 498, 139 P.3d 1096, *quoting Thurston County v. Cooper Point Ass'n*, 148 Wash.2d 1, 8, 57 P.3d 1156 (2002). The Board's findings of fact are reviewed for substantial evidence. *Swinomish Indian Tribal Comm. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424, 166 P.3d 1198 (2007).

IV. LaCENTER'S RESPONSE TO APPELLANTS' ASSIGNMENT OF ERROR:

The GMHB erroneously interpreted and applied the law regarding the identification of "agricultural land" and rendered a decision unsupported by substantial evidence when it focused solely on soil type and proximity to areas characterized by urban growth, to the exclusion of the other factors in WAC 365-190-050, and invalidated Clark County's decision to include Areas LB-1, LB-2 and LE in LaCenter's UGA.

Appellants claim that the GMHB got it right when it invalidated most of the UGA expansion areas that Clark County approved in its 2007 GMA up-date, and that the Superior Court erred in reversing the GMHB. In reality, the GMHB was extreme in its myopic fixation on soil type and adjacency to areas of already established urban development. The GMHB was extreme in its presumption that all of these areas were “agricultural land” that could not be altered no matter how the Clark County BOCC weighed and balanced the 10 locational factors in WAC 365-190-050 or evaluated the evidence in the record. With regard to LaCenter’s Areas LB-1, LB-2 and LE, these areas are predominated by farm soils and are not located adjacent to already developed urban areas. However, both LaCenter and Clark County viewed these areas as suitable for urban expansion because of their proximity to the already established LaCenter Junction and I-5 interchange and LaCenter’s need for commercial and industrial land and a jobs base. For these reasons, both LaCenter and Clark County concluded these areas did not have long-term commercial significance for agriculture but did have clear potential for more intense uses. RCW 36.70A.030(2) and (10).

A. The GMHB misinterpreted and misapplied the statutory definition of “agricultural land,” “long-term significance” and the 10 WAC factors and ignored the substantial evidence in the record that supported the County's decision when it concluded that Areas LB-1, LB-2 and LE were "agricultural land." Had the GMHB properly interpreted and applied these statutory requirements and reviewed the evidence in the record that supported the County’s

conclusions, it would have been legally bound by RCW 36.70A.320 to defer to the County’s determination and decision.

According to the Court of Appeals, “[t]o determine whether the redesignation of the ... property was clearly erroneous, we must examine whether the property meets the GMA definition of “agricultural land.” *Yakima County v. E. Wash. Growth Mgmt. Hearings Bd.*, *supra*. This is the appellate function that the GMHB was supposed to have performed in this case, but instead started from the presumption that Areas LB-1, LB-2 and LE were agricultural land because of soil type and lack of adjacent/abutting urban development, and thus had to be preserved.

(1) The law controlling local identification of “agricultural land”: As a starting point, Goal 8 states the following overarching policy with regard to the preservation of resource land:

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(8).

The fundamental question under Goal 8 and central to this appeal is whether Areas LB-1, LB-2 and LE qualify as “agricultural land” – a determination the County was required to make anew in this legislative decision, without regard to the land’s previous designation. To implement this Goal, the County is required to identify and designate:

Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.

RCW 36.70A.170(1)(a) (emphasis added).

The operative definition of “agricultural land” under the GMA is:

land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

RCW 36.70A.030(2) (emphasis added).

GMA then defines expression “long-term significance” as follows:

"Long-term commercial significance" includes 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(10) (emphasis added).

This definition is further refined in administrative rule, which provides that:

In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (a) The availability of public facilities;
- (b) Tax status;

- (c) The availability of public services;
- (d) Relationship or proximity to urban growth areas;
- (e) Predominant parcel size;
- (f) Land use settlement patterns and their compatibility with agricultural practices;
- (g) Intensity of nearby land uses;
- (h) History of land development permits issued nearby;
- (i) Land values under alternative uses; and
- (j) Proximity of markets.

WAC 365-190-050(1) (emphasis added).

On top of these factors, RCW 36.70A.320 and 36.70A.3201 explicitly state the Legislature’s objective of vesting with local governments the discretion evaluate, weigh and balance all of these factors as they designate “agricultural land.” The Supreme Court has acknowledged this local government prerogative multiple times, most recently in a case factually similar to LaCenter’s situation:

Because clear error is such a high standard to meet, it follows that situations may exist where a county could properly designate land either agricultural or urban commercial depending on how the county exercises its discretion in planning for growth, without committing clear error. The legislature recognized this when it implemented the clear error standard of review:

In recognition of the *broad range of discretion* that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant great deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter.

City of Arlington v. Central Puget Sound Growth Management Hearings Bd., 164 Wash.2d 768, 793-794, 193 P.3d 1077, 1090 (2008), quoting RCW 36.70A.3201 (emphasis added).

(2) Substantial evidence in the record supporting Clark County's decision: By way of evidence, the City completed a thorough and detailed FEIS on its proposal to expand its UGA westward to the LaCenter I-5 Junction, which set forth the factual circumstances concerning Areas LB-1, LB-2 and LE in support of LaCenter's expansion options. Through two years of public hearings, County staff and consultants thoroughly evaluated the inventory of agricultural land in the County, the degree to which those lands were intact and used or usable for commercial or long-term agricultural production, and compiled the results the Globalwise Report (Exhibit 6548), county staff's report "Bring Resource Lands into UGAs" (also part of Exhibit 6548), and Board Issue Paper #7 on Agricultural Lands (Exhibit 6605). After this 2-year process and thousands of exhibits, the evidence was compiled; the Board of Commissioners distilled the factors and factual issues germane to each proposed expansion area into a matrix and reached a conclusion as to whether each was or was not "agricultural land" (Exhibit 6605). The reason for the County's ultimate selection was not that the land surrounding the LaCenter Interchange was composed of poor farm soils, in fact the soils are adequate for farming. According to the evidence and the County's analysis of that evidence, this proposal makes the best sense and this is the most logical area for the expansion of LaCenter's UGA because of the other (non-soil based) factors in WAC 365-190-050.

The locational factors that the County found to be most compelling included the land's proximity to public facilities in the form of an interstate transportation corridor (the LaCenter I-5 junction), an already constructed interchange, and the ease with which sewer and water can be provided to the site. The LaCenter Junction is clearly a primary urban transportation facility that connects urban areas, serves and supports urban development and, as such, is the logical location for LaCenter to develop a commercial and industrial job base contingent upon the Junction where sewer and water services can be provided easily.² Equally important to the County were the definitions of "agricultural land" and "long-term commercial significance" in RCW 36.70A.030 and WAC 365-190-050(1) describing how the 10 WAC factors are to be used. Collectively, these GMA provisions require the County to consider the proximity of Areas LB-1, LB-2 and LE to population areas, public facilities and services, such as transportation, sewer and water, and the possibility of more intense uses of the land. These are precisely the factors and issues that RCW 36.70A.030 and WAC 365-190-050 require the County to consider; yet, the GMHB ignored the County's evaluation, the evidence and policy considerations upon which it was based and focused exclusively on soil type and the lack of existing adjacent urban development.

² The City has adopted a capital facilities master plan for its sanitary sewer utility that provides for the extension of sanitary sewer to the LaCenter Junction to serve industrial and commercial development focused on the Junction. These critical urban services make possible the City's highway-dependent development plans.

(3) **The GMHB’s fixation on soil type and adjacency to existing urban development are not valid bases for overturning the County’s decision:** The GMHB reversed Clark County’s decision on LaCenter’s three expansion areas solely because of the predominant soil type and the GMHB’s view that the areas were not adjacent to (abutting) existing urban development. Neither argument is sufficient to overcome the local government’s evaluation of the evidence in the record and the local government’s balancing of the 10 locational WAC factors.

a. **Soil type and other physical characteristics:** The GMHB lists soil type as the primary basis for its decision. FD&O at 66. The Supreme Court has explicitly stated that, under the GMA, a decision of whether land is “agricultural land” or not cannot be based solely on its physical characteristics, *e.g.*, soil type.

The GMA says that long-term commercial significance “includes 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(10) (emphasis added). Thus, counties must do more than simply catalogue lands that are physically suited to farming. They must consider development prospects (the “possibility of more intense uses”) in determining if land has the enduring commercial quality needed to fit the agricultural land definition.

Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 500-501, 139 P.3d 1096 (2006) (italics in the original, underline emphasis added).

While it is true that the LaCenter Areas' soil type has not changed over the years, soil type is only one physical factor and is not determinative. In the case of the LaCenter Areas, the other locational factors are far more important, *e.g.*, proximity to the LaCenter interchange on I-5 and the ease with which the LaCenter Junction can be served with sewer and water.

b. Proximity and adjacency to areas characterized by urban growth: Respondents point to the GMHB's view that LaCenter Areas LB-1, LB-2 and LE are "not adjacent to an area characterized by urban growth" and are not near La Center's UGA. However, the operative factor in WAC 365-190-050(1)(d) requires the county to evaluate the land's "Relationship or proximity to urban growth areas." LaCenter's corporate boundary and current UGB are less than two miles from the LaCenter junction and I-5 interchange as measured along NW LaCenter Road by which the citizens of LaCenter access the freeway. There is already a small commercial development at the LaCenter junction interchange and a previously designated Industrial Reserve area of approximately 130 acres.

Granted, LaCenter's UGB is not "adjacent" to (abutting) the LaCenter junction at the I-5 interchange, but it is clearly proximate, nearby and readily accessible, just as the Island Crossing area was to the City of Arlington in *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 193 P.3d 1077 (2008). The GMHB's view

that the LaCenter junction at the I-5 Interchange was not proximate enough is legally immaterial, an unlawful reweighing of the facts, and an unlawful reevaluation of WAC 365-190-050(1)(d).

c. **Availability of public facilities and services:** In support of its decision, the GMHB also took the view that LaCenter Areas LB-1, LB-2 and LE have no public sewer and water available. However, immediate availability of these urban services is not the issue. The operative factors in WAC 365-190-050(1)(a) & (b) require the County to evaluate the “availability of public facilities” and the “availability of public services.” In fact, City sewer is available to Areas LB-1, LB-2 and LE less than two miles down NW LaCenter Road at the southern edge of the City’s limits as is water provided by CPU. The City is currently in the process of constructing increased capacity at its wastewater treatment plant, and CPU has confirmed it has the capacity to serve LaCenter’s junction with water. It will be a fairly simple and inexpensive matter to extend both sewer and water up NW LaCenter Road to serve Areas LB-1, LB-2 and LE. Again, the GMHB’s view that sewer and water were “not available” to the LaCenter junction at the I-5 Interchange is factually wrong, legally immaterial, an unlawful reweighing of the facts, and an unlawful reevaluation of WAC 365-190-050(1)(a) & (b).

The GMHB overlooked the most critically important “urban facility” – Interstate 5 with an already constructed interchange, which supports the County’s decision. The LaCenter Junction at the I-5

Interchange is also “proximate” to the City and brings markets into close proximity to the City. WAC 365-190-050(1)(j). The Supreme Court has held that it is unlawful and reversible error for the GMHB to second-guess the County on these issues of what is “proximate,” what is “available” and what is “adjacent” when evaluating these locational WAC factors:

We find that the unique location of the land at Island Crossing as abutting the intersection of two freeways and its connection to the Arlington UGA together meet the requirements of RCW 36.70A.110(1). Thus, the County's reliance on such facts in expanding the Arlington UGA was proper and the Board's decision reversing the County's action is erroneous.

The County stated in its ordinance: “This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area... This land has unique access to utilities.” In other words, the County concluded that the land is appropriate for urban growth because the land is located at a highway interchange and has unique access to utilities. The County also acknowledged the land has existing freeway service structures on it and is adjacent to the City of Arlington's UGA. Taken together, these facts at least support a conclusion that the land in question is “located in relationship to an area with urban growth on it as to be appropriate for urban growth” and thus characterized by urban growth.

...the Board's conclusion that Island Crossing is not adjacent to the Arlington UGA for GMA purposes is also erroneous. It is undisputed that the area in question borders Arlington's UGA. The question posed here is whether the 700 foot border consisting entirely of freeway and access road rights-of-way constitute the adjacency to “territory already ... characterized by urban growth” required by RCW 36.70A.110(1). In reaching its decision the Board emphasized the geography and topography of the land in question and decided that, in this case, such concerns should control whether the land involved was adjacent to land characterized by urban growth and not simply the 700 foot UGA boundary to the south.

The Board offers no support for its definition of “adjacent,” which to the Board implies something more than the simple dictionary definition of “abutting” or “touching.” We decline to adopt the Board's definition of adjacent in favor of the plain meaning of the term.

Because the land in question touches the Arlington UGA, it is adjacent to territory already characterized by urban growth for the purposes of RCW 36.70A.110(1).

City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 164 Wash.2d 768, 790-791, 193 P.3d 1077, 1088 - 1089 (2008) (emphasis added).

Thus, the GMHB erred in its interpretation of the 10 WAC factors and what qualifies as “agricultural land,” but under its standard of review in RCW 36.70A.320, it was not allowed to make these determinations in the first place. RCW 36.70A.3201. Instead, the GMHB was obligated to review the County’s decision for substantial evidence and clear error. Finally, the GMHB erred in failing to acknowledge the fact that the LaCenter Junction was and remains LaCenter’s only feasible opportunity to establish a commercial and industrial land base. In other words, RCW 36.70A.320 required the Board to defer to the County’s and the City’s fact-based determination of the land’s proximity to population and urban areas, the policy decision that more intense uses of the land are possible, and the policy decision that Areas LB-1, LB-2 and LE lacked long-term significance for agricultural production.

B. The Supreme Court has previously rejected GMHB decisions invalidating UGA expansions that were based on a single factor, such as soil type. The Supreme Court has also ratified UGA expansions, such as this one, that extend out to principal transportation facilities, such as an existing interchange on Interstate 5.

(1) **The Lewis County case:** In *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 139 P.3d 1096 (2006), the Supreme Court held that the fact that land was capable of being farmed is just one consideration among three equally important factors in the definition of long-term commercial significance. As this Court should do, the Supreme Court started with the definition of “agricultural land” and held that the county must do more than simply catalog soil types:

The GMA says that long-term commercial significance "includes 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(10). Thus, counties must do more than simply catalog lands that are physically suited to farming. They must consider development prospects (the "possibility of more intense uses") in determining if land has the enduring commercial quality needed to fit the agricultural land definition.

* * *

[A]gricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance.

Lewis County, 157 Wn.2d at 500-502, citing with approval *Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 959 P.2d 1173 (1998), *review denied*, 137 Wn.2d 1018 (1999) (italics emphasis in the original, underline emphasis added).

The fact that land is capable of being farmed, with nothing more, does not compel the conclusion that it is “agricultural land” and must be preserved. Instead, the local government is obligated to evaluate the 10 factors in WAC 365-190-050, including whether the land is close enough to urban areas and thus vulnerable to more intense uses. Instead, the GMHB focused on soil type and whether the land was adjacent to an existing urban development, ultimately concluding that Areas LB-1, LB-2 and LE should remain “agricultural land” because they are capable of being farmed. GMHB decision at 66. *Lewis County* also reaffirms the broad discretion of counties to make choices within the confines of the 10 WAC factors and evidence in the record, holding that:

While it is true that no statute specifically authorizes counties to weigh industry needs above all other considerations in designating and conserving agricultural land, this does not mean the GMA prohibits such an approach. As noted above, the GMA's stated intent is to recognize the "broad ... discretion" of counties to make choices within its confines. RCW 36.70A.3201. Because the GMA does not dictate how much weight to assign each factor in determining which farmlands have long-term commercial significance, and because RCW 36.70A.030(10) includes the possibility of more intense uses among factors to consider, it was not "clearly erroneous" for Lewis County to weigh the industry's anticipated land needs above all else. If the farm industry cannot use land for agricultural production due to economic, irrigation, or other constraints, the possibility of more intense uses of

the land is heightened. RCW 36.70A.030(10) permits such considerations in designating agricultural lands.

* * *

In conclusion, as explained above, we reverse the Board's decision that Lewis County may not designate agricultural lands based on the local farm industry's projected land needs. If the State wants to conserve all land that is capable of being farmed without regard to its commercial viability, it may buy the land

Lewis County, 157 Wn.2d at 503 & 509 (emphasis added).

This is exactly what Clark County did in this case, but the GMHB substituted its judgment and view of the WAC factors for those of the County. The GMHB overruled the County based, not on a comprehensive evaluation of all applicable WAC factors, but its fixation on soil type and what it viewed as a lack of adjacent land already characterized by urban development.³ This improper fixation on one of the factors to the exclusion of the others and the GMHB's substitution of its opinion and priorities for those of the county is exactly what the *Lewis County* court rejected.

(2) **The Arlington (Island Crossing) case:** This is also the type of second-guessing by the GMHB that the Supreme Court firmly rejected in *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings*

³ A fundamental misinterpretation of the fourth WAC factor that permeates its decision is the GMHB's view that "relationship or proximity to urban growth areas" means that an area must be "adjacent to an area characterized by urban growth," *i.e.*, adjacent to an existing UGA. In fact, "proximity" does not mean "adjacent," and many urban areas that are proximate, such as the City of LaCenter, affect and limit the agricultural potential of an area without being physically connected.

Bd., 164 Wn.2d 768, 193 P.3d 1077 (2008) – a case that is factually identical to LaCenter’s situation, involving Arlington’s desire to expand its UGA out to an existing freeway interchange. Snohomish County approved an expansion of Arlington’s UGA out to the Island Crossing I-5 interchange. Arlington needed the expansion to secure its economic, jobs and tax base. The Central GMHB invalidated the City of Arlington’s expansion for the same reasons as the Western GMHB invalidated LaCenter’s expansion to the LaCenter Junction. On appeal, the Court of Appeals and Supreme Court ruled that the Central GMHB had misinterpreted the GMA’s definition of “agricultural land,” misapplied the 10 WAC factors and violated its statutory standard of review:

We find that the unique location of the land at Island Crossing as abutting the intersection of two freeways and its connection to the Arlington UGA together meet the requirements of RCW 36.70A.110(1). Thus, the County's reliance on such facts in expanding the Arlington UGA was proper and the Board's decision reversing the County's action is erroneous.

The County stated in its ordinance: “This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area. ... This land has unique access to utilities.” In other words, the County concluded that the land is appropriate for urban growth because the land is located at a highway interchange and has unique access to utilities. The County also acknowledged the land has existing freeway service structures on it and is adjacent to the city of Arlington's urban growth area. Taken together, these facts at least support a conclusion that the land in question is “located in relationship to an area with urban growth on it as to be appropriate for urban growth” and thus characterized by urban growth.

City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 164 Wash.2d 768, 790-791, 193 P.3d 1077 (2008) (emphasis added, citations and footnotes omitted).

The same outcome should occur here because the same logic and evidence drove Clark County's decision and the same errors drove the GMHB's decision. In LaCenter's case, the City has no viable alternatives for achieving its economic diversification objectives but to move west to I-5 and the LaCenter Junction. No option involving land north of the East Fork Lewis River is viable because of the prohibitive cost of constructing a new bridge across the River. It would be poor planning indeed to locate the City's commercial/industrial job generating area on the other side of the city away from the freeway, at a point farthest from the main transportation corridor, forcing all traffic to pass through the City's residential core. The land south of the River and adjacent to the current city limits is constrained by critical areas associated with the East Fork of the Lewis River, *i.e.*, steep slopes, riparian areas and wetlands. A short distance down the LaCenter Road, past the intervening critical lands and adjacent to LaCenter's I-5 Junction Areas Lb-1, LB-2 and LE include a limited amount of flat developable land with ready access to the already constructed I-5 Interchange and urban services, *i.e.*, sewer and water. In the words of the *Arlington* Court "the land is appropriate for urban growth because the land is located at a highway interchange and has unique access to utilities." As with Arlington, LaCenter's expansion was not adjacent to

land characterized by urban development, but it certainly is in proximity to urban development and adjacent to an existing interstate transportation corridor. LaCenter's expansion areas were approved by Clark county because they are "appropriate for urban growth" due to their proximity to urban facilities (the I-5 LaCenter Interchange), urban services (sewer and water) and population areas (the City of LaCenter). For these reasons, Areas LB-1, LB-2 and LE have well-recognized and clearly established potential for more intensive uses, and their long-term commercial significance for agricultural production is limited. Even though the record would support the designation of Areas LB-1, LB-2 and LE as agricultural land, that was not the County's decision. The GMHB erred in failing to defer to the County's determinations that were grounded in GMA and the factual record compiled over two years of public hearings.

C. In reversing Clark County on LaCenter Areas LB-1, LB-2 & LE, the GMHB misapplied and misinterpreted the law, most notably its standard of review in RCW 36.70A.320, by failing to defer to the County's evaluation of the 10 locational factors in WAC 365-190-050 and its balancing of these policy issues. The GMHB erred by second-guessing the Board of Commissioners' weighing of the facts in the record, by substituting its view of how these competing policies should be resolved, and by imposing its view of what is and is not "agricultural land." The Court of Appeals does not defer to the GMHB's interpretations of law or rulings on mixed law and fact.

RCW 36.70A.320 controlled the GMHB's review of Clark County's decision in this matter.⁴ Legislative enactments, such as Clark

⁴ RCW 36.70A.320 provides the following standard of review for a GMHB reviewing a local legislative enactment:

County's GMA up-date (Ordinance 2007-09-13), are presumed valid upon adoption. RCW 36.70A.320(1). The opponents below – not the County – had the burden of proving that the County's action was not in compliance with GMA. RCW 36.70A.320(2). The standard applied by the GMHB, when reviewing challenges to local enactments, is “clear error” or “clearly erroneous.” RCW 36.70A.320(3). Under this standard, the GMHB may only overturn a local legislative enactment if it is “left with the firm and definite conviction that a mistake has been committed.” *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000), quoting *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993); *see also City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 778-779 (2008) (A county's decision to designate land agricultural or urban commercial, or to expand its urban growth area, is thus an exercise of its discretion that will not be overturned unless found to be

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- (1) Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.
 - (2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.
 - (3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). 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 this chapter.

clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the GMA).

RCW 36.70A.320 required the GMHB to accord a high degree of deference to the County's legislative enactments. *Swinomish Indian Tribal Cmty. V. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424, 166 P.3d 1198 (2007) (citing RCW 36.70A.320(1) and RCW 34.05.570(3)). In *Quadrant Corp. v. Central Puget Sound Growth Management Hearings Board*, 154 Wn.2d 224, 110 P.3d 1132 (2005), the Washington Supreme Court granted deference to the agency's interpretation of the law in cases where the agency had a specialized expertise in the subject area, but also determined that the courts were not bound by the agency's interpretation of a statute. *Id.* at 233 (quoting *City of Redmond*, 136 Wn.2d at 46). Specifically, the Supreme Court held that "deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general." *Id.* at 238. The court also held that while "this deference ends when it is shown that a county's actions are in fact a 'clearly erroneous' application of the GMA, we should give effect to the legislature's explicitly stated intent to grant deference to county planning decisions." *Id.*

As thus interpreted by the Washington Supreme Court, RCW 36.70A.320(1) required a high degree of deference, pursuant to which, the GMHB was legally required to find the County's action to be in

compliance unless it determined the action was “clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” RCW 36.70A.320(3). *Yakima County v. E. Wash. Growth Mgmt. Hearings Bd.*, *supra* 146 Wn.App. at 686-87. The GMHB violated this standard when it created a burden of proof not found in GMA and imposed it on the County, failed to defer to the County’s evaluation of the evidence and its weighing of the 10 WAC factors, substituted its opinion of which WAC factors were most important for that of the County, and ignored the rest of the WAC factors.

In this case, the GMHB erroneously interpreted and applied the law regarding identification of “agricultural land,” and erred in failing to defer to Clark County’s prioritization and balancing of the 10 factors in WAC 365-190-050 as required by RCW 36.70A.320 and 36.70A.3201. The GMHB erred by not deferring to Clark County’s evaluation and weighing of the facts in the record, by second-guessing the County in its balancing the policy issues inherent in the 10 locational factors. RCW 34.05.570(3)(d)&(e). Finally, the GMHB erred and violated its standard of review in failing to defer to Clark County’s selection of policy choices based on the evaluation of the WAC locational factors and evidence in the record when it determined that Areas LB-1, LB-2 and LE were suitable areas into which LaCenter should expand with job creating commercial and industrial zoning. In reversing the GMHB, the Superior Court

correctly concluded that the Board had violated these requirements when it reviewed and invalidated Clark County's decision.

V. CONCLUSION:

The GMHB's decision incorrectly assumes that the identification of agricultural land is purely an exercise in determining whether the land has farm soils, is capable of being farmed or is adjacent to existing urban development. The GMHB's decision ignores the discretion afforded local governments under GMA's statutory scheme for identifying and designating agricultural land. Nothing in the state scheme dictates that soil type or any one factor is primary, but rather the County has wide discretion in how it evaluates the credibility of the evidence and weights and applies the WAC factors. *Futurewise v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 141 Wn. App. 202, 210-11, 169 P.3d 499 (2007), citing *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096 (2006). The statutory framework makes it clear that the identification of "agricultural land" requires a thorough discussion of many competing factors. In this regard, local governments have wide discretion in evaluating the factual record, analysis of the data about the land within their jurisdiction, and identifying "agricultural land" under these criteria and the 10 factors in WAC 365-190-050(1). RCW 36.70A.3201.

The Clark County Board of Commissioners had correctly and thoroughly evaluated Goal 8's directive to maintain and enhance natural

resource-based industries, including agriculture, on lands that have long-term significance for the commercial production of food or other agricultural products. Through a public hearing process that lasted longer than two years, the Board of Commissioners evaluated, weighed and balanced the 10 factors in WAC 365-190-050(1), deliberated and made the policy decision to expand LaCenter's UGA by 652 acres out to and around the LaCenter Junction on Interstate 5. Given the evidentiary support in the record and the Board of Commissioner's findings, its decision was not clearly erroneous. The GMHB misapplied and misinterpreted the applicable laws and violated its own standard of review when it reversed Clark County with regard to LaCenter's three expansion areas (Areas LB-1, LB-2 and LE). For these reasons, this Court should reverse the GMHB's decision with regard to LaCenter's Areas LB-1, LB-2 and LE.

Respectfully submitted this 18th day of December 2009.

REEVE KEARNS PC

A handwritten signature in black ink, appearing to read "Daniel H. Kearns", with a stylized flourish at the end.

Daniel H. Kearns, WSBA No. 20653
Attorney for Respondent City of LaCenter

Appendix 1

Excerpt, portions of the WWGMHB Final Decision and Order
addressing LaCenter's three UGA expansion areas (Areas LB-1,
LB-2 & LE)

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 JOHN KARPINSKI, CLARK COUNTY
4 NATURAL RESOURCES COUNCIL and
5 FUTUREWISE,

6 Petitioners,

7
8 v.

9 CLARK COUNTY,

10 Respondent.

11
12 And

13
14 GM Camas L.L.C., Johnston Dairy, et al and
15 MacDonald Properties, Daryl Germann, Curt
16 Gustafson, T3G, LLC and Hinton Development
17 Corporation, Building Industry Association of
Clark County and City of La Center,

18 Intervenors.
19
20
21

Case No. 07-2-0027

FINAL DECISION AND ORDER
AMENDED FOR CLERICAL AND
GRAMMATICAL ERRORS
JUNE 3, 2008

22 *On May 14, 2008, the Western Washington Growth Management Board (Board) issued its*
23 *Final Decision and Order (FDO) in the above-captioned matter.*

24 *Subsequent to this issuance, the Board determined that the FDO contained various clerical*
25 *and grammatical errors. This Amended FDO corrects only those errors which, at times, may*
26 *involve the restructuring of a sentence for clarity or format purposes. With the exception of*
27 *including Battle Ground Area BC, which had been found to be inappropriately de-designated*
28 *on Page 69 and at Conclusion of Law T of the original FDO but was erroneously omitted*
29 *from the listing of invalidated areas provided on Page 72 of the original FDO AND Findings*
30 *of Fact 35, 38, 39, 43 and Conclusion of Law M in the May 14, 2008 order were deleted as*
31 *they were duplicates, this Amended FDO does not amend or modify any procedural or*
32 *substantive findings or conclusions of the May 14, 2008 FDO.*

1 I. SYNOPSIS

2 Just two years after the adoption of its 2004 Growth Management Act (GMA) update, on
3 September 9, 2007, Clark County passed Ordinance 2007-09-13 de-designating 19 areas of
4 previously designated agricultural lands of long-term commercial significance, consisting of
5 4,351 acres, and added that land to Clark County cities' UGAs. John Karpinski, Clark
6 County Natural Resource Council, and Futurewise (Petitioners) challenged the County's
7 environmental review and public participation processes, the de-designation of the
8 agricultural lands of long-term commercial significance, and the addition of these lands to
9 the UGA.
10

11
12 This order finds that the County's choice of a no action alternative complies with the State
13 Environmental Policy Act (SEPA) and related rules. Additionally, the Board finds that
14 although the County's public participation process was not without irregularities and, at
15 times, may not have seemed to be fair, the irregularities are not clearly erroneous violations
16 of the GMA's public participation requirements.
17

18 Decisions by the Courts, in regards to GMA goals and requirements, provide parameters for
19 the decisions of the County and the Growth Management Hearings Boards. The
20 Washington Department of Community Trade and Economic Development also provides
21 guidance for counties on how to determine the long-term commercial significance (LTCS) of
22 agricultural lands through WAC 365-190-050. Past decisions of the Boards have held that
23 to de-designate LTCS agricultural lands the County must go through the same process and
24 evaluate the requirements of the statutes and the WAC applicable to the designation of
25 these lands. The County went through a process to de-designate agricultural lands and at
26 the same time considered adding them to the UGA.
27
28

29 To assist them in their de-designation process, the County developed a principle/values
30 statement that put economic development as its primary goal to increase the tax bases of
31 the county, city, and school districts. The Board finds that the Supreme Court held the GMA
32

1 creates a mandate to designate agricultural lands because the Act includes goals with
2 directive language and specific requirements.¹ The Board finds that the GMA's economic
3 development goal cannot supersede the agricultural mandate defined by the Supreme
4 Court. The Supreme Court, in a later case, also set out a three-part test for evaluating
5 agricultural lands.² These three factors come into play when designating agricultural lands.
6

7 The County developed a matrix to evaluate the factors set out in WAC 365-190-050 as well
8 as factors to consider for de-designating agricultural lands. The Board finds that some of
9 the factors, such as closeness of the rural centers, were not within the parameters of the
10 GMA, while others, such as alternative value under other uses, cannot be determinative in
11 designating agricultural lands but can be considered.
12

13
14 The Board evaluated the County's decision from its Matrix and its deliberations. We find
15 that the County's de-designations for the others areas challenged comply with the GMA.
16

17 We find that the designation of the following areas do not comply: **BATTLEGROUNDS –**
18 **BC(68.16 acres), CAMAS – CA-1 (342.56 acres), CAMAS – CB (402.19 acres), LA**
19 **CENTER LB-1 (218.81 acres),LA CENTER LB-2 (244.53 acres), LA CENTER LE 112.47**
20 **acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER – VA (125.02 acres),**
21 **VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB (780.43 acres), WASHOUGAL –**
22 **WB (116.06 acres).**
23

24 Those areas that have been de-designated that comply with the GMA can be added to the
25 UGAs. Those which do not, may not be added because they are not characterized by
26 urban growth and, therefore, cannot be added pursuant to RCW 36.70A.110(1) and (3).
27
28

29
30 ¹ *Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38 (2005)

31 ² *Lewis County v Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 501;139 P.3d
32 1096, 1103 (2006).

1 **II. PROCEDURAL HISTORY**

2 See Appendix A for a complete procedural history.
3

4 **III. BURDEN OF PROOF**

5 For purposes of board review of the comprehensive plans and development regulations
6 adopted by local government, the GMA establishes three major precepts: a presumption of
7 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
8 decisions of local government.
9

10 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
11 amendments to them are presumed valid upon adoption:
12

13 Except as provided in subsection (5) of this section, comprehensive plans and
14 development regulations, and amendments thereto, adopted under this chapter are
15 presumed valid upon adoption.

16 RCW 36.70A.320(1).
17

18 This same presumption of validity applies when a local jurisdiction takes legislative action in
19 response to a noncompliance finding; that legislative action is presumed valid. The only
20 time that the burden of proof shifts to the County is when the County is subject to a
21 determination of invalidity.³ Here, no finding of invalidity was imposed so the burden
22 remains on the Petitioners.
23

24 The statute further provides that the standard of review shall be whether the challenged
25 enactments are clearly erroneous:
26

27 The board shall find compliance unless it determines that the action by the state
28 agency, county, or city is clearly erroneous in view of the entire record before the
29 board and in light of the goals and requirements of this chapter.

30 RCW 36.70A.320(3)
31

32 ³ RCW 36.70A.320(2) and (4).
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1 In order to find the County's action clearly erroneous, the Board must be "left with the firm
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
4

5 Within the framework of state goals and requirements, the boards must grant deference to
6 local governments in how they plan for growth:

7 In recognition of the broad range of discretion that may be exercised by counties and
8 cities in how they plan for growth, consistent with the requirements and goals of this
9 chapter, the legislature intends for the boards to grant deference to the counties and
10 cities in how they plan for growth, consistent with the requirements and goals of this
11 chapter. Local comprehensive plans and development regulations require counties and
12 cities to balance priorities and options for action in full consideration of local
13 circumstances. The legislature finds that while this chapter requires local planning to
14 take place within a framework of state goals and requirements, the ultimate burden and
15 responsibility for planning, harmonizing the planning goals of this chapter, and
16 implementing a county's or city's future rests with that community.

17 RCW 36.70A.3201 (in part).

18 In sum, the burden is on Petitioners to overcome the presumption of validity and
19 demonstrate that any action taken by the County is clearly erroneous in light of the goals
20 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
21 Where not clearly erroneous, and thus within the framework of state goals and
22 requirements, the planning choices of local government must be granted deference.
23

24 IV. ISSUES PRESENTED

- 25
- 26 1. In the adoption of Ordinance 2007-09-13:
27 Did Clark County fail to include an adequate "no-action" alternative and fail to include
28 an adequate range of alternatives to adopting an increase in the population growth
29 targets, expanding the Urban Growth Areas, rezoning properties, and amending the
30 development regulations in the EIS released on May 4, 2007 in violation of RCW
31 43.21C.030, RCW 43.21C.031, and WAC 197-11-440(5)(b)(ii)?
 - 32 2. In the adoption of Ordinance 2007-09-13:

1 a. Did Clark County violate RCW 36.70A.020(8), 36.70A.050(3), 36.70A.070, (1),
2 (3), and 36.70A.170(1) & (2) in Ordinance No. 2007-09-13 by de-designating
3 agricultural land in violation of RCW 36.70A.170, in violation of RCW
4 36.70A.050(3) and WAC 365-190-050, and in violation of the County's own
5 criteria for designating agricultural land contained within the comprehensive
6 plan and the GMA's requirements for internal consistency in RCW
7 36.70A.070?

8 b. Did Clark County violate RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060,
9 36.70A.110(1) & (3) in Ordinance No. 2007-09-13 by including land within
10 Urban Growth Areas that is not characterized by urban growth, should be
11 designated as agricultural land, and is adjacent to agricultural land?

12 3. Did Clark County fail to:

- 13 a. Have a public participation plan or broadly disseminate that plan to the public;
14 b. Provide for early and continuous public involvement in the comprehensive plan
15 update;
16 c. Provide adequate public notice of proposed amendments to the Comprehensive
17 Plan and rezones;
18 d. Provide timely and complete public notice of hearings and the documents that are
19 being considered; and
20 e. Allow public testimony and comment when proponents are allowed to testify; and
21 f. Other public participation failures;
22 In violation of RCW 36.70A.020(11), RCW 36.70A.035(1), RCW 36.70A.070, material
23 preceding subsection (1), RCW 36.70A.130(2), and RCW 36.70A.140?

24 V. DISCUSSION OF THE ISSUES

25 A. ENVIRONMENTAL REVIEW

26 ***Issue: In the adoption of Ordinance 2007-09-13:***

27 ***Did Clark County fail to include an adequate "no-action" alternative and fail to***
28 ***include an adequate range of alternatives to adopting an increase in the***
29 ***population growth targets, expanding the Urban Growth Areas, rezoning***
30 ***properties, and amending the development regulations in the EIS released on May***
31 ***4, 2007 in violation of RCW 43.21C.030, RCW 43.21C.031, and WAC 197-11-***
32 ***440(5(b)(ii))?***

1 The County's Matrix describes the land as having 82 % prime agricultural soils. Most soils
2 appear to be Class I and II.¹⁴⁵ The Matrix also says that it is to be brought into the area to
3 provide tax base for the Battle Ground School District. The area is not adjacent to the UGA
4 and no permits for development have been issued nearby. Intervenor says that his land is
5 not productive as a farm based on analysis by Globalwise. However, productivity is a
6 character of the soil as described by WAC 365-190-050. In evaluating critical areas, cities
7 and counties use Best Available Science to help designate critical areas. The resource that
8 the GMA gives cities and counties is USDA soil characteristics and that is what the Board
9 needs to rely on. The County's Ordinance says that this area was de-designated because
10 it no longer has long-term commercial significance.
11

12
13 **Conclusion:** Based on the County's decision making criteria, the Board finds the County
14 erred in de-designating this land. This designation does not comply with RCW
15 36.70A.020(8) and RCW 36.70A.170.
16

17 *La Center (Areas LA, LB -1, LC, LE)*

18 **Positions of the Parties**

19 Petitioners summarize their objections in their Reply brief. They claim that La Center
20 ignored rural land north and northeast of the city and instead expanded its UGA into
21 agricultural lands and, thrust a peninsula of urban development into agricultural lands.
22 Petitioners argue that economic desire cannot be a basis for de-designation of commercially
23 significant agricultural lands. The LB and LE areas of the UGA expansion are isolated from
24 the UGA and surrounded by open fields, rural residences, and forest land, and have a high
25 percentage of prime soils (56 – 80%) and of critical areas (36 – 46%), Petitioners assert.
26 Petitioners further contend that the area is well suited for agriculture, but not for offices or
27 shopping centers, and the area has no history of development nor water or sewer.¹⁴⁶
28
29
30

31 ¹⁴⁵ 6605 Matrix at 7. Washougal Map 1.

32 ¹⁴⁶ Petitioners' Prehearing Brief at 28 and 29.
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1 Intervenor La Center does not deny that this area has prime soils, but insists that this is the
2 only area where a fast growing city (8.7% annually) with a limited tax base can expand. La
3 Center declares that it explored expansion options in an EIS. Going north of the Lewis
4 River would require an expensive bridge and south of the East Fork of the Lewis River was
5 constrained by various wetlands.¹⁴⁷
6

7
8 La Center argues that Petitioners use good soils as their only criterion, when the County
9 can consider other factors.¹⁴⁸ La Center says that its situation is similar to that of Arlington's
10 UGA which the Court of Appeals found a similar result as Clark County did.¹⁴⁹ La Center
11 says that the County used the WAC factors to evaluate the area and concluded that
12 proximity to public facilities - Interstate 5 - and that ease that water and sewer could be
13 delivered were valid reasons for de-designation.¹⁵⁰
14

15
16 To answer Petitioners' challenge that the UGA contains lands that are not contiguous to the
17 UGA, La Center replies that the UGA had to be long and skinny for several reasons: to
18 follow existing transportation and utility corridors, to avoid critical areas, and to not add
19 more land than needed to accommodate its population allocation.¹⁵¹
20

21 **Board Discussion**

22 The County divided the La Center area in five areas for analysis: LA (6.85 acres adjacent to
23 the UGA), LB-1 (218.81 acres adjacent to the UGA's eastern boundary) LB-2 (244.63 acres
24 that on the east border I-5), LC (69.57 acres adjacent to the UGA), and LE (112.47 acres
25 adjacent to I-5).
26
27
28
29

30 ¹⁴⁷ Prehearing Brief of Intervenor Respondent City of La Center at 3.

31 ¹⁴⁸ *Ibid* at 7.

32 ¹⁴⁹ *Ibid* at 9.

¹⁵⁰ *Ibid* at 10.

¹⁵¹ *Ibid* at 1, 12.

1 Area LA is adjacent to the UGA, City limits, water, sewer, with few prime soils, even though
2 85% is in current use. The UGA that is near this area is characterized by urban growth with
3 urban services. The combination of its relationship to an area characterized by urban
4 growth and the availability of services supports the County's decision to de-designate this
5 area. Likewise, LC is adjacent to area within the UGA that is characterized by urban growth
6 that has available water and sewer. Although it has few prime soils, 79% is enrolled in
7 agricultural current use program. Again, its relationship to an area of characterized by
8 urban growth and urban services show the County's decision to de-designate Area LC was
9 not clearly erroneous.
10

11
12 Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA
13 characterized by urban growth. In fact, the County's Matrix describes all the areas as having
14 rural land uses in and adjacent to the areas. All the areas have a high percentage of prime
15 soils and LB-1 has 85% of its land in the agricultural/ farm current tax program. All areas
16 are capable of being farmed. LB -1 has water and sewer located at its eastern boundary.
17

18 LB-2 and L-E have no public sewer or water available, the County's Matrix describes the
19 areas as being surrounded by rural land uses, open fields, and forested land. No permits
20 have been issued in the vicinity. Both areas border I-5. The BOCC's reason for de-
21 designating these areas is that they border I-5 therefore presents a unique economic
22 development opportunity for La Center. The area is not adjacent to an area characterized
23 by urban growth, has prime soils capable of being farmed, and has no public water and
24 sewer available. Here, adjacency to I-5 does not combine with other WAC factors to make
25 these lands not viable for agricultural use. Petitioners are correct that LB-1 and LE still meet
26 the *Lewis County Court's* three prong test. The BOCC's desire to further economic
27 development can not outweigh its duty to designate and conserve agricultural lands so as to
28 assure the maintenance and enhancement of the agricultural industry.
29
30
31
32

1 La Center presents its environmental impact analysis as evidence that it weighed other
2 opportunities for economic development when considering its expansion into agricultural
3 lands. The Board does not doubt La Center's need for more industrial and commercial land.
4 However, the EIS does not lay out how the County's jobs to population goals translates into
5 acres of land needed for development. Nor, could the Board find anything in the EIS that
6 acknowledged that alternatives to agricultural lands were being considered, rather the
7 Board found them described as rural lands with agriculture uses and one unit per 20 acre
8 zoning. However, it is not La Center's need for urban land that is being evaluated here, but
9 the County's rationale for de-designating this land. That is the first step needed to be taken
10 before the land can be added to the UGA, and the de-designation of areas LB-2 and LE do
11 not comply with the GMA's goals and requirements.
12
13

14 **Conclusion:** The de-designation of Areas LA and LC are not clearly erroneous. The
15 designation of LB-1, LB-2 and LE do not comply with RCW 36.70A.170(1) and RCW
16 36.70A.020(8).
17

18 *Battle Ground (Area BB)*

19 **Positions of the Parties**

20
21 Petitioners challenge all the de-designations, including this one, a 345 acre site, based on
22 the fact that the County considered the use of inappropriate WAC factors, but does not offer
23 a specific critique of the factors used in the de-designation of the agricultural lands that have
24 been added to the UGAs.
25

26 **Board Discussion:**

27 The County directs us to its Matrix and BOCC deliberations. Our review of the County's
28 maps and Matrix show that the County considered that this area is adjacent to the City limits
29 and an area characterized by urban growth. While the County's reason to add this to the
30 Battle Ground school district tax base is not a legitimate reason to de-designate this land, it
31 no longer meets the three part test.
32

1 If these lands are *properly* de-designated, the GMA does not prohibit the County from
2 considering the land as an area for inclusion within an urban growth area. Lands that
3 were not *appropriately* de-designated are not candidates for inclusion in the UGA and do
4 not comply with RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.060, 36.70A.110(1) & (3). The
5 Record reflects that the County's process to de-designate and to the add land to the UGAs
6 was combined in a single process.
7

8
9 As note *supra*, the County's de-designation of some of the agricultural lands was compliant
10 with the GMA and therefore, these lands are available for inclusion within their respective
11 UGAs. The Board finds no error on the part of Clark County in this regard.
12

13 Those agricultural lands for which the Board found the County's process did not reflect the
14 requirements of the GMA: **BATTLE GROUND (68.16 acres), CAMAS – CA-1 (342.56**
15 **acres), CAMAS – CB (402.19 acres), LA CENTER LB-1 (218.81 acres), LA CENTER LB-2**
16 **(244.53 acres), LA CENTER LE 112.47 acres), RIDGEFIELD – RB-2 (199.69 acres),**
17 **VANCOUVER – VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER –**
18 **VB (780.43 acres), WASHOUGAL – WB (116.06 acres) were not available for**
19 **consideration or inclusion within any UGA.¹⁵⁴**
20
21

22 **INVALIDITY**

23 Petitioners request the Board enter a finding of invalidity on the areas of agricultural lands
24 inappropriately designated and included with the UGA expansions. The basis for this
25 request is to protect those lands from potential development given Washington's Vested
26 Rights Doctrine and ensure that the GMA's goals in regard to agricultural conservation and
27 urban sprawl are realized.¹⁵⁵
28
29
30

31 ¹⁵⁴ Agricultural lands may be including within a UGA if a jurisdiction has adopted a Transfer of Development
32 Rights (TDR) program pursuant to RCW 36.70A.060(4). Clark County has not adopted such a program.

¹⁵⁵ Petitioners' Prehearing Brief, at 31.
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1 Applicable Law

2 The GMA's Invalidation Provision, RCW 36.70A.302, provides:

3 (1) A board may determine that part or all of a comprehensive plan or development
4 regulation are invalid if the board:

5 (a) Makes a finding of noncompliance and issues an order of remand under RCW
6 36.70A.300;

7
8 (b) Includes in the final order a determination, supported by findings of fact and
9 conclusions of law, that the continued validity of part or parts of the plan or
10 regulation would substantially interfere with the fulfillment of the goals of this
11 chapter; and

12 (c) Specifies in the final order the particular part or parts of the plan or regulation
13 that are determined to be invalid, and the reasons for their invalidity.

14
15 (2) A determination of invalidity is prospective in effect and does not extinguish rights
16 that vested under state or local law before receipt of the board's order by the city or
17 county. The determination of invalidity does not apply to a completed development
18 permit application for a project that vested under state or local law before receipt of
19 the board's order by the county or city or to related construction permits for that
20 project.

21
22 Discussion

23 In the discussion of the Legal Issues in this case, the Board found and concluded that Clark
24 County's adoption of Ordinance No. 2007-09-13 was **clearly erroneous** in regard to several
25 areas for which it removed agricultural designation. These actions were **non-compliant**
26 with the requirements of RCW 36.70A.170 because it requires the designation of
27 agricultural lands of long-term commercial significance. The Board further found and
28 concluded that the County's action **was not guided by the goals** of the Act, specifically
29 Goal 8 – the Natural Resources Goal – and Goal 2 – Preventing Urban Sprawl. The Board
30 is **remanding** Ordinance No. 2007-09-13, in regard to the designation of certain agricultural
31
32

2. On September 9, 2007, Clark County passed Ordinance 2007-09-13 de-designating 19 areas of previously designated agricultural lands of long-term commercial significance and added to these lands to Clark County cities' UGAs.
3. On November 16, 2007, the Western Washington Growth Management Hearings Board (Board) received a Petition for Review (PFR) from John Karpinski, Clark County Natural Resource Council, and Futurewise (collectively, Petitioners). The PFR challenged Clark County's adoption of Ordinance No. 2007-09-13.
4. GM Camas, T3G LLC, Daryl Germann, Curt Gustafson, McDonald Properties, Hinton Development Corporation, Johnston Dairy LLC, ET Royal Family Partnership, Pacific Lifestyle Homes, Vision First LLC, Renaissance Homes, Lagler Real Property LLC (collectively, Johnston Dairy Intervenors) the Building Industry Association of Clark County, and the City of La Center filed motions intervene in this case.
5. The No-Action Alternative is the adopted September 2004 Comprehensive Plan's adopted urban growth boundaries.
6. The record shows that the County spent time reviewing the data and revised several assumptions, including the growth rate.
7. The County says the data showed that since 1990 the County's growth rate had exceeded 2%.
8. The comprehensive plan is a non-project action based on a broad range of assumptions.
9. The record shows the County adopted a public participation program for revising its comprehensive plan.
10. CCC 40.240.030(C) explains how the Clark County Comprehensive Plan will be amended.
11. The Board's review of the Index to the Record shows that this amendment process went on for two years and was extended on several occasions.

1 12. The Index shows the public participation process was lengthy, broad, and generally
2 with good notification through newspaper announcements and an e-mail distribution
3 list.

4 13. The Board finds that the County's failure to disseminate its public participation
5 program was not a clearly erroneous violation of the spirit of GMA public participation
6 requirements.

7
8 14. The County's principles and values statement is not an amendment to the
9 comprehensive plan nor is it a requirement of the GMA.

10 15. The County gave four actual working days notice of the November 29, 2005 work
11 session. The discussion of the proposed expansion of the UGA went on for almost
12 two years after the work session, and the process included many workshops, an
13 environmental review process, and several public hearings.

14 16. The County released the BOCC's June 27 Map Preliminary Recommendations just
15 three days prior to the July 5, 2007 public hearing in violation of CCC 40.510.040D.

16 17. The index shows that four public hearings, subsequent to the July 25, 2007 hearing,
17 were held before the County adopted the revised CP.

18 18. Petitioners had many opportunities to participate in the process and provide
19 comments after the meeting where only proponents of UGA expansions were allowed
20 to address the Board of County Commissioners.

21 19. The verbs in the economic development goal are similar to the verbs in the
22 recreational goal.

23 20. The economic development goal does not have any corresponding requirements.

24 21. Almost all of the lands that Clark County considered could be targeted for de-
25 designated based on the WAC factor of land value under alternative uses.

26 22. Rural services should not be of the scale and intensity that interfere with agricultural
27 lands.

28 23. An Urban Reserve Area is an overlay designation on land still designated as
29 agricultural resource land.
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- 1 24. In Area CA, the Matrix shows that there are four farms that generate \$25,000 or
2 more, the area is made of 73% prime agriculture soils, and 85% of the area is in
3 ag/current use.
- 4 25. In Area CB, Johnston's operation is not the only farm in the area and the Matrix
5 clearly shows that the land is capable of being farmed.
- 6 26. In Area CB, the County's other reason for de-designating this property was that it
7 provides a unique opportunity for Camas, due to the mill's downsizing.
- 8 27. Area RB -1 is almost completely surrounded by the Ridgefield UGA and urban uses.
- 9 28. While Area RB-2 touches the UGA, it is not adjacent to an area characterized by
10 urban growth and no sewer and water lines are indicated near the subarea, except
11 what appear to be those limited to an isolated subdivision.
- 12 29. In Area RB-2 the majority of the areas has prime soils, so is capable of being farmed
13 as well as having 85.9% in current tax, indicating use of the land as farms, as well as
14 one farm generating an income of \$25,000, showing the land is capable of being
15 farmed.
- 16 30. In Area RB-2, the presence of critical areas, a road that serves agricultural and rural
17 areas, and a school are not criteria for de-designation, as described *supra*. No WAC
18 factors are implicated to suggest a lack of long-term commercial significance.
- 19 31. Area RC adjoins a city limits and a UGA.
- 20 32. Areas VA and VA-2 are near the UGA but are not near areas characterized by urban
21 growth or adjacent to areas characterized by urban growth.
- 22 33. Further examination of the Matrix shows that the VA area is made up of 85% prime
23 soils, and prime soils comprise about 59% of VA -2. The land within the subareas
24 and surrounding the area is comprised of rural land uses, open fields, forested land,
25 interspersed with residential and farm buildings. About 40% of VA is in current
26 ag/farm status, while none of VA-2 has current ag/farm current use.¹⁵⁶ The map
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1 shows a water line at the southern edge of the parcel of the VA area. An evaluation
2 of the WAC factors does not indicate the area is vulnerable to more intense uses.

3 34. In Area VB, 85% of the area is in current use programs, and three "commercial"
4 farms exist in the area. The Matrix also shows that the area's southern tip touches
5 the Vancouver UGA, while the area is surrounded by rural land uses including a
6 Rural Center to the north.
7

8 35. Area VB barely touches the UGA and itself is not characterized by urban growth. The
9 area's water line's capacity is not described. This is important as water lines can be
10 an urban as well as rural service.

11 36. Area VC is adjacent to the Vancouver UGA and adjacent to an area within the UGA
12 characterized by urban growth. Sewer lines are adjacent to property increasing its
13 potential for urban development. Adjacency to an area characterized by urban
14 growth and having sewer available at its boundary increases this area's development
15 potential.
16

17 37. A study of the VE area showed that, since 1990, this area has experienced a steady
18 decline of farming.¹⁵⁷

19 38. An economic analysis of farming in Area VE showed an annual loss of in a variety of
20 agricultural practices.

21 39. In Area WA, the County's Matrix notes that the area is adjacent to the urban growth
22 boundary and the county's map confirms it is adjacent to an area characterized by
23 urban growth. Less than half of the area has prime soils, although 71 % is in current
24 agricultural use.
25

26 40. In Area WB, the County's Matrix describes the land as having 82% prime agricultural
27 soils. Most soils appear to be Class I and II.¹⁵⁸ The Matrix also says that it is to be
28 brought into the area to provide tax base for the Battle Ground School District. The
29 area is not adjacent to the UGA and no permits for development are nearby.
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31
32 ¹⁵⁷ See, Exhibit 5837.

¹⁵⁸ 6605 Matrix at 7. Washougal Map 1.
AMENDED FINAL DECISION AND ORDER
Case No. 07-2-0027
Amended on June 3, 2008
Page 76 of 86

- 1 41. Area LA is adjacent to the UGA, City limits, and water and sewer, with few prime
2 soils.
- 3 42. Area LC is adjacent to area within the UGA that is characterized by urban growth
4 that has available water and sewer
- 5 43. Areas LB-1, LB-2, and LE while near the La Center's UGA are not areas of the UGA
6 characterized by urban growth. In fact, the County's Matrix describes all the areas as
7 having rural land uses in and adjacent to the areas. All the areas have a high
8 percentage of prime soils and LB-1 has 85% of its land in the agricultural/ farm
9 current tax program. All areas are capable of being farmed. LB -1 has water and
10 sewer located at its eastern boundary.
- 11 44. In Area BB, the County's maps and Matrix show that the County considered that this
12 area is adjacent to the City limits and an area characterized by urban growth.
- 13 45. In Area BC, a great majority of the land has prime soils and is currently farmed based
14 on lands in the current ag/farm tax program. The area is capable of being farmed.
- 15 46. The fact that Area BC is adjacent to a Rural Center and water and sewer are
16 available from there is not an appropriate factor to consider for de-designation. A
17 rural center is a LAMIRD. Without sewer, the availability of public utilities does not
18 combine to make this area not viable for agriculture.
- 19 47. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.
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23 V. CONCLUSIONS OF LAW

- 24 A. The Board has jurisdiction over the matter and the parties in this case.
- 25 B. Petitioners have standing to participate in this case.
- 26 C. Intervenors have been granted leave to participate in this case.
- 27 D. The Board finds that Clark County's decision to use the 2004 Comprehensive Plan's
28 adopted urban growth boundaries is not clearly erroneous pursuant to WAC 197-11-
29 442 and RCW 43.21C.090.
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- 1 E. The County's failure to disseminate its public participation program was not a clearly
2 erroneous violation of the GMA public participation requirements (RCW 36.70A.140,
3 RCW 36.70A.035, RCW 36.70A.070, RCW 36.70A. 130).
- 4 F. The Board does not have jurisdiction to decide whether the public participation
5 process for the adoption of the principles/values statement violated the GMA,
6 pursuant to RCW 36.70A.280(1).
- 7 G. The County's decision to de-designate the CA-1 area and the CB area was clearly
8 erroneous and does not comply with RCW 36.70A.020(8) and 36.70A.170.
- 9 H. The de-designation of RB-1 complies with RCW 36.70A.170(1) and RCW
10 36.70A.020(8).
- 11 I. The de-designation of Area RB-2 does not comply with RCW 36.70A.170(1)(a) and
12 RCW 36.70A.020(8) and was clearly erroneous
- 13 J. The de-designation of Area RC was not clearly erroneous.
- 14 K. Based on the foregoing, the de-designation of VA and VA -2 does not comply with
15 RCW 36.70A.170(1) and RCW 36.70A.020(8) and was clearly erroneous.
- 16 L. The designation of Area VB does not comply with RCW 36.70A.170(1) and RCW
17 36.70A.020(8).
- 18 M. The de-designation of Area VC complies with RCW 36.70A.170(1) and RCW
19 36.70A.020(8).
- 20 N. The de-designation of Area WB does not comply with RCW 36.70A.170(1) and RCW
21 36.70A. 020(8).
- 22 O. The de-designation of LB -1, LB-2, and LE do not comply with RCW 36.70A.170(1)
23 and RCW 36.70A.020(8).
- 24 P. Areas LA and LC's de-designation complies with the GMA.
- 25 Q. The public process for the adoption of the County's revised CP was not a clearly
26 erroneous violation of RCW 36.70A.140, RCW 36.70A.130(2), RCW 36.70A.035, or
27 RCW 36.70A.070.
- 28 R. Area BB does comply with RCW 36.70A.170 and RCW 36.70A.020(8).
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- 1 S. Area BC does not comply with RCW 36.70A.020(8) and RCW 36.70A.170.
 2 T. The following Areas do not comply with RCW 36.70A.170(1) and interfere with RCW
 3 36.70A.020 (2), and (8): CAMAS – CA-1 (342.56 acres) CAMAS – CB (402.19
 4 acres), LA CENTER LB-1 (218.81 acres), LA CENTER LB-2 (244.53 acres), LA
 5 CENTER LE (112.47 acres), RIDGEFIELD – RB-2 (199.69 acres), VANCOUVER –
 6 VA (125.02 acres), VANCOUVER – VA-2 (22.89 acres), VANCOUVER – VB
 7 (780.43 acres), WASHOUGAL – WB (116.06 acres), Area BC.
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 9

10 VIII. ORDER

11 Compliance Due	November 12, 2008
12 Compliance Report and Index to Compliance	November 24, 2008
13 Any Objections to a Finding of Compliance and Record Additions/Supplements Due	December 8, 2008
14 County's Response Due	December 22, 2008
15 Compliance Hearing (location to be 16 determined)	January 6, 2009

17
 18
 19 The Board's May 14, 2008 Final Decision and Order is hereby amended this 3rd day of
 20 June, 2008.
 21

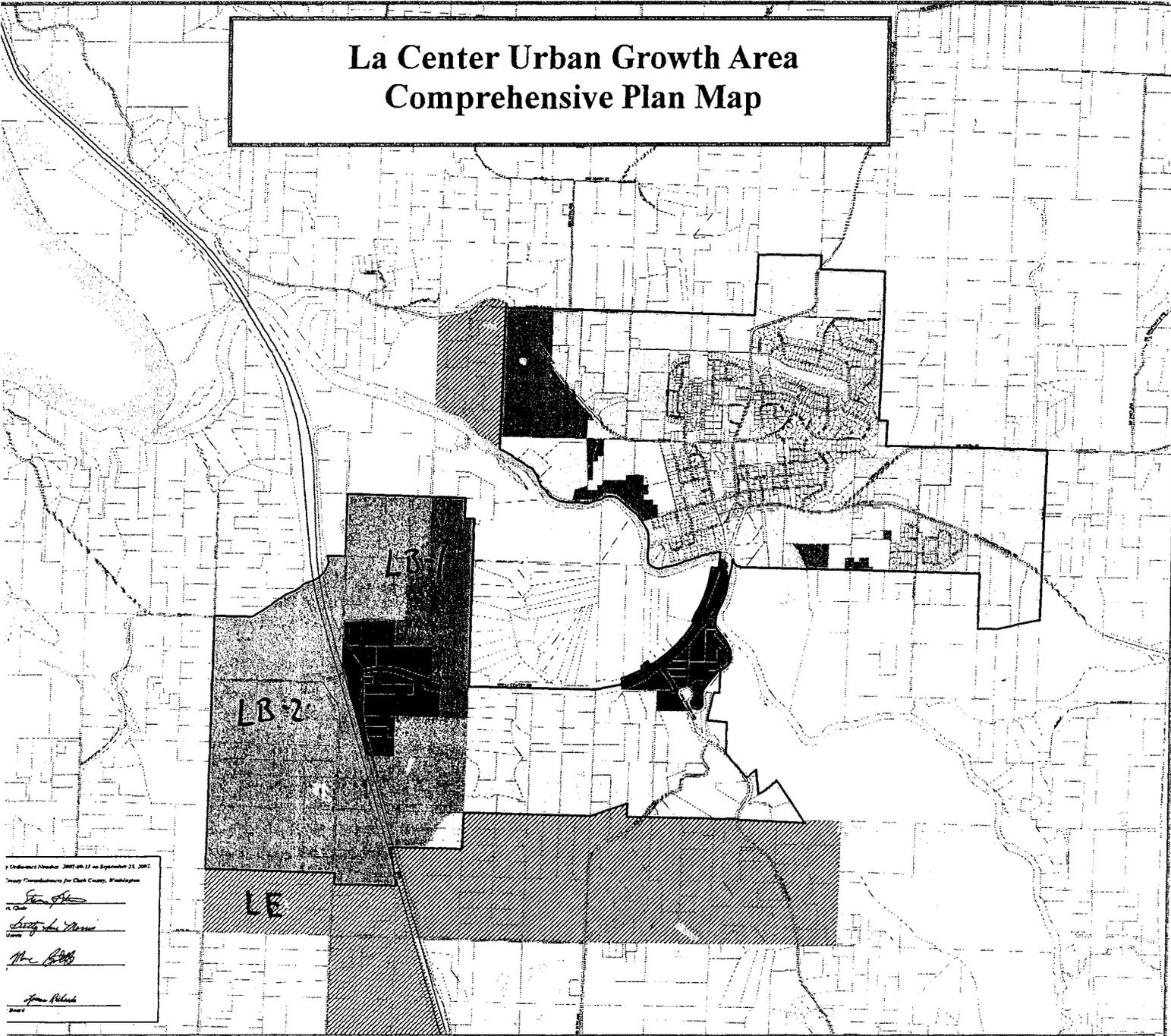
22 
 23 _____
 24 Holly Gadbow, Board Member

25 
 26 _____
 27 James McNamara, Board Member
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Appendix 2

Map of the existing City boundaries and UGA expansion areas approved by Clark County in its September 25, 2007 GMA update.

La Center Urban Growth Area Comprehensive Plan Map



Ordinance Number: 2007-04-11 on September 21, 2007
 Mayor: *[Signature]*
 City Administrator: *[Signature]*
 Council Members: *[Signatures]*

- | | | | |
|----------------------------------|------------------|--------------------|----------------------------|
| Urban Low Density Residential | Mixed Use | Water | Urban Growth Area Boundary |
| Urban Medium Density Residential | Light Industrial | Urban Reserve | City Limits |
| Community Commercial | Public Facility | Industrial Reserve | |
| | Parks/Open Space | | |

Effective Date: January 1, 2008



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 DEPARTMENT OF PLANNING AND GIS

Appendix 3

Clark County Board Issue Paper #7 (Agricultural Lands) and portions of the matrix attached thereto addressing LaCenter's three UGA expansion areas (Areas LB-1, LB-2 & LE) - Exhibit 6605.



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CLARK COUNTY
WASHINGTON

COMMUNITY PLANNING

MEMORANDUM

TO: Board of Clark County Commissioners
FROM: Marty Snell, Director *M. S.*
DATE: August 3, 2007
SUBJECT: Issue Papers

Following the Board's deliberation of July 5, 2007, staff commenced work on issue papers related to the Comprehensive Plan update. The list of issue papers below are intended to provide the Board a more clear set of findings that support its ultimate decision.

The issue papers are as follows:

1. Capacity Numbers (VBLM) – July 5, 2007 Tentative Map
2. City Overrides (pending completion)
3. Sequencing
4. 5-Year Rule / Triggers (pending completion)
5. County-wide Planning Policies
6. Employment Land (pending completion)
7. Agricultural Land
8. SEPA Issues
9. Fish & Wildlife – Open Space Corridor (pending completion)
10. CFP (pending completion re: Ridgefield sewer)
11. Schools (pending completion)
12. Transportation
13. Public Involvement

Attached to this memorandum are the issue papers completed to date. On or before August 14, 2007, all of the issue papers will be substantially completed and distributed to the Board.

From the August 8 work session, staff will be seeking Board direction on the following items:

- Discussions between Clark County and the city of Vancouver (executive session);
- Ridgefield sewer issue;
- Employment land designation and jobs implication; and
- County-wide planning policies on:
 - Annexing Agriculture lands
 - City of La Center – Area LE, card rooms increase, 2nd bridge across the East Fork of the Lewis River
 - City of Ridgefield – (staff direction on the "donut hole" and TDR).



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20-YEAR COMPREHENSIVE GROWTH MANAGEMENT PLAN 2004-2024

Issue Paper #7 – Agricultural Lands

Background

The update of the 20-year Comprehensive Growth Management Plan for Clark County was initiated in 2005 as a result of Western Washington Growth Management Hearing Board appeals to the 2004 plan. Part of the plan includes a proposal to expand urban growth boundaries around each of the cities. A percentage of the land proposed for inclusion is currently designated as agricultural land.

The Growth Management Act (GMA) requires that each county shall designate where appropriate “agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production” (RCW 36.70A.170). RCW 36.70A.060 requires that counties “...develop regulations to assure the conservation of agriculture, forest, and mineral resource lands...”, and that “such regulations shall assure that the use of lands adjacent to agriculture, forest, and mineral resource lands shall not interfere with the continued use.” The county has designated resource lands and development regulations to assure their conservation in the current comprehensive plan.

A matrix of analytical information was presented to the Board of County Commissioners (Board) regarding those lands that were proposed to come into the Urban Growth Boundaries according to the Preferred Alternative map. In order for the agricultural land to be brought in as urban land, it must first be de-designated from agriculture or subject to a Transfer Development Rights Program.

In order to de-designate agricultural lands, the Board is required to make findings based upon the record that the lands do not meet one or more of the criteria listed below. The matrix mentioned above includes information based on these criteria. The revised matrix which indicates those areas that were tentatively approved to be included in the urban growth areas per the July 5, 2007 map is included as Attachment A.

- *Characterized by urban growth:*

Staff used the plain reading of “land already characterized by urban growth” as lands parcelized to urban levels with water and or sewer lines within the boundaries. Also noted was whether the sub-area is adjacent to an urban growth area, an urban reserve area, or a rural center.

- *Primarily devoted to commercial production of agricultural products or capable of production:*

This criterion relates to whether or not the land is in production or is capable of being used. The matrix indicates whether the land is actually being farmed by referencing the maps included in the Globalwise Report regarding the 145 farms that were identified as commercial farms. The percentage of land in the County's agriculture/farm current use program is also provided. Regarding capability, percentage of prime agricultural soils is indicated, as well as environmental constraints.

- *Having long-term commercial significance:*

This criterion considers the potential long-term commercial significance of land for agriculture based on growing capacity, productivity, and soil composition as well as proximity to population areas and the possibility of more intense uses of the land (RCW 36.70A.030(10)). The matrix indicates the land's soil types. With respect to proximity to population areas and the possibility of more intense use, the rest of the columns reflect the WAC criteria (WAC 365-190-050) that address this issue:

- Availability of public facilities;
- Tax status;
- Availability of public services (combined with public facilities);
- Relationship or proximity to urban growth areas;
- Predominant parcel size;
- Land use settlement patterns and their compatibility with agricultural practices;
- Intensity of nearby land uses;
- History of Land development permits issued nearby;
- Land values under alternative uses; and
- Proximity to markets.

Three recent court cases regarding the criteria used by counties in the designation and de-designation of resource lands were also discussed. The Supreme Court, in the *Lewis County* case emphasized the broad discretion counties have in making choices within the parameters set by the GMA and the implementing regulations issued by the Department of Community Trade and Economic Development.

BOCC Deliberation/Decision

Provided herein is a synopsis of the Board's decisions regarding the de-designation of agricultural land and inclusion into the cities' Urban Growth Boundaries. For further information regarding the analysis, please refer to Attachment A (Matrix), Attachment B (Agricultural Sub-Area Maps) and Attachment C (Cumulative Agricultural Analysis).

Battle Ground

For the Battle Ground UGA, the Board concluded that 413.56 acres should be de-designated from agriculture and brought into the UGA. The deliberations included 1) the proximity to urban areas; 2) the fact that parcels were not identified as primarily devoted to commercial production of agricultural products; and 3) that parcels were environmentally constrained. Further discussion centered on the importance of an employment land component to the City of Battle Ground's tax base and the benefit that that land use would also have on the School District.

The proximity to existing adequate infrastructure, potential for job production and opportunity to increase the tax base for the City led the Board to de-designate sub-areas *BB* and *BC* from agriculture and to bring those lands in as employment and residential land. The land proposed as Urban Low Density Residential is already parcelized and characterized by urban growth.

Camas

For the Camas UGA, the Board concluded that 721.32 acres should be de-designated from agriculture and brought into the UGA as Residential, Mixed Use, Employment Land, and Parks. During the deliberations of long term agricultural commercial significance, the prime agriculture soils within sub-area *CA-1* were identified as located mostly under the existing golf course. Sub-area *CB* has an identified farm within the boundaries. The area, however, provides unique economic development opportunities for Camas, which is important for the city because of the downsizing of the Georgia Pacific paper mill. The long term commercial significance of the farm was discussed and Commissioner Boldt noted that the dairy farm is far from any agricultural services. As costs increase, it will not be economically feasible to continue to farm at that location. Once the cows leave, the soils will worsen, thus decreasing the economic viability of the land.

The Board also concluded that 68.45 additional acres should be de-designated from Forestry and brought into the UGA. A forestry analysis report was done for this area (Attachment D), which concluded that there would be no public benefit in attempting to manage the site for commercial timber production. It also concluded that there was no incentive for an owner of the property to invest in any timber management practices because the current stand is not increasing in usable volume or value. There would be insufficient time to realize any return on investment by rehabilitating the site and establishing a new rotation.

La Center

For the La Center UGA, the Board concluded that 634.61 acres should be de-designated from agriculture and brought into the UGA as Residential and Employment Land. Some of the sub-areas were already characterized by urban growth and none were currently devoted to commercial production of agricultural products. Most were determined incapable of being used for production due to low percentage of prime agricultural soils, environmentally constrained land and/or the lack of water available to the area in order to farm. Some of the agricultural land being proposed is located near the I-5 transportation corridor, and is the only Industrial opportunity for La Center. The importance of providing employment land for La Center to diversify their economy was a critical part of the decision.

It was further stated that a County-wide Planning policy would be written for sub-area *LE* that explained that the land could only be developed, if the Tribal land received 'trust' status from the federal government.

Ridgefield

For the Ridgefield UGA, the Board concluded that 788.04 acres should be de-designated from agriculture and brought into the UGA as Residential and Commercial land. The sub-areas are already characterized by urban growth with proximity to the existing Urban Growth Area and City limit boundaries.

Although farms in commercial production were identified within the sub-areas, it was determined that they do not have long term commercial significance because of their adjacency to urban land uses, such as schools and residential uses. One of the areas is located along a roadway that is planned to be built out in order to provide another access in and out of the city.

Sub-area *RB-1* had three identified farms within its boundaries, but is surrounded on three sides by Ridgefield's existing Urban Growth Boundary and city limits. It was concluded that this would be an appropriate spot for the sending area of a Transfer of Development Rights (TDR) program. In an effort to avoid creating an island of agricultural land surrounded by urban land, it was decided that a County-wide Planning policy should be created with cooperation from the city to allow annexation only after the adoption of a TDR program.

Vancouver

For the Vancouver UGA, the Board concluded that 1,383.18 acres should be de-designated from agriculture and brought into the UGA as Residential and Employment land. Most of the sub-area's land mass is characterized by urban growth with close proximity or adjacency to urban land uses such as schools, infrastructure and urban residential areas. Although there are three identified farms within one of the sub-areas, none of the land was determined to be of long-term commercial significance because of the proximity to existing urban areas. In addition, the sub-area with the three farms within its boundaries is in a location that provides a unique opportunity for industry. It is adjacent to the railroad, SR 503, and NE 119th Street. It was determined that it should be converted to a higher and better use (Employment land), which will provide a greater tax base for Battle Ground School District.

Washougal

For the Washougal UGA, the Board concluded that 369.71 acres should be de-designated from agriculture and brought into the UGA as Residential and Employment land. Neither of the two sub-areas was identified as primarily devoted to the commercial production of agricultural products. It was determined that sub-area *WA* did not have long term commercial significance because of the close proximity to urban areas and the fact that parts of the area were already within Urban Reserve overlays. Sub-area *WB* has good agricultural soils and low critical land, but has no access to water. It was determined that both these sub-areas would serve a higher purpose as employment land, which would create more jobs, increase the tax base for the City and benefit the School District.

Further information

The Board hired Globalwise, an agricultural/economic consultant, to study the state of agriculture in Clark County. The Globalwise report was utilized as part of the information provided to the Board for their deliberations. The report concluded that traditional agriculture is declining in Clark County, primarily due to increasing property values.

By request from some property owners, Globalwise has completed analysis reports for parcels within the sub-areas that are proposed to be included in the cities' urban growth boundaries. The sub-areas and the conclusions from the reports are included below:

- **BB:** The report concludes that the parcel has not been producing agricultural products in recent times and it does not have significant long-term commercial agricultural potential. Further conclusions state, "...other land in the vicinity...does not meet the GMA definition of agricultural resource lands".
- **LB-2:** The report concludes that the subject parcel fails to meet the Growth Management Act definition of Agricultural Resource Lands. It states that it has not been producing agricultural products in recent times and it does not have significant long term commercial agricultural potential. Further conclusions state, "...other land in the vicinity...does not meet the GMA definition of agricultural resource lands".
- **VC:** The report concludes that the subject parcel fails to meet one element of the GMA definition, which it does not have long-term significant commercial agricultural potential and that the property is already characterized by urban growth.
- **VE:** The report concludes that the Fifth Plain Creek project properties and surrounding land fails to meet Growth Management Act Definition of Agricultural Resource lands. It further states that the only to a very limited extent does any agricultural production exist in the Fifth Plain Creek area. The report also includes the statement that most farmers have already left this area and those who remain are in the process of closing their farm operations due to lack of profit. Within two to three years this area will have no commercial production of agricultural crops or livestock products.
- **WB:** The report concludes that the subject parcel fails to meet both elements of the GMA definition and that it has not been producing agricultural products in recent times and that it does not have significant commercial agricultural potential for the future. The report further states that the land in the vicinity of the area does not meet the GMA definition of agricultural resource lands.



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20-YEAR COMPREHENSIVE GROWTH MANAGEMENT PLAN 2004-2024

Issue Paper#3 – Sequencing

Background

1. Legal standard to expand the UGAs not followed (CCNRC)

RCW 36.70A.110(3) requires that urban growth be located first in areas characterized by urban growth with adequate public facilities/services, second in areas characterized by urban growth where adequate public facilities/services will be provided, and third, adjacent areas. CCNRC alleges that the county did not follow RCW 36.70A.110(3) in determining where UGAs should be expanded, but provides no specifics as to how the county failed to follow this section. Pre-GMA, the county had urban service boundaries (primarily for sewer), and all of these areas were brought into UGAs in the 1994 plan. While there is significant parcelization in rural areas near UGAs, these parcels are not urban development. So, what is being proposed to be added in this update are 'adjacent areas', GMAs' third priority,

Some areas were removed from urban reserve (parcels north of Salmon Creek west of the Fairgrounds) for the same reason.

The Preferred Alternative proposes to add 12,063 acres to current UGAs. Of this, 3,028 acres (25.1%) are currently designated as urban reserve (UR) and 4,002 acres (33.2%) are designated rural (R-5, R-10, R-20). The 3,028 acres represent 50.4% of the current 6,006 acres of urban reserve land; however, as stated above, the Preferred Alternative proposes to remove 882 acres of UR land north of Salmon Creek, so the 3,028 acres represent 59.1% of the remaining 5,124 acres. In addition, 136 acres of designated industrial reserve land was added to the La Center UGA. Most of the rest is resource land (4,728 acres or 39.1% of the total). The Board undertook an analysis to de-designate these resource lands and to determine if they should be brought into UGAs. See Issue Paper #7.

JULY 5, 2007 BOCC TENTATIVE LAND USE MAP: AGRICULTURAL ANALYSIS, DELIBERATION AND DECISION

AG SUB AREAS (See Attachment A for locations)	IS IT CHARACTERIZED BY URBAN GROWTH?	IS IT PRIMARILY DEVOTED TO COMMERCIAL PRODUCTION OF AGRICULTURAL PRODUCTS OR CAPABLE OF BEING USED FOR PRODUCTION?	DOES IT HAVE LONG TERM COMMERCIAL SIGNIFICANCE FOR AGRICULTURAL PRODUCTION?									BOCC DELIBERATION/ DECISION
			PUBLIC FACILITIES/ SERVICES	TAX STATUS	UGA	PARCEL SIZE	LAND USE SETTLEMENT PATTERNS AND COMPATIBILITY	INTENSITY OF NEARBY LAND USES	HISTORY OF LAND DEVL.P. PERMITS	LAND VALUES UNDER ALT USES (\$ in thousands)	PROX. TO MARKETS	
<p>CB 402.19 acres (Cumas)</p>	<p>The 17 parcels range in size from 0.2 - 80.56 acres, but are predominantly large parcels No sewer or water within sub area Mostly large parcels, open space, forested land</p>	<p><u>IN COMMERCIAL PRODUCTION?</u> 4 of the 17 parcels in this sub area are identified as a commercial farm 85% is in the farm and ag current use program <u>CAPABLE?</u> 73% prime ag soils 55.11% critical land steep slopes, wetlands, riparian habitat, hydric soils</p>	<p>The sub area is partially within the Airport Environs Overlay district</p>	<p>85% in ag/farm current use program</p>	<p>Across Lacamas Lake from UGA and City limit boundary</p>	<p>Range: 0.2-80.56 acres Median parcel size: 23.66 acres</p>	<p>Mostly rural land use settlements including forested land, open fields and rural residential. The farm is classified as a livestock/dairy farm. Across Lacamas Lake is small-lot urban residential lots - R1-15 (within UGA and city limits).</p>	<p>Rural land uses including open field, large parcels, rural residential and forested land. Across Lake from urban residential lots.</p>	<p>No urban development permits proposed in the vicinity of the sub area.</p>	<p>AG-20: \$16/acre Proposed zoning: Mixed Use: \$67/acre Employment Center/Business Park:</p>	<p>In close proximity to Camas, Vancouver, and Washougal markets.</p>	<p>Commissioner Boldt stated that the current farm use of this land is based on an industry that will eventually move to Idaho. This dairy farm, more than any other in the County, is the most distant dairy farm from any agricultural services. Once it becomes impossible to financially sustain the land in agriculture and the dairy leaves, the manure leaves, the soils worsen and the economic viability is gone. The area provides unique economic development opportunities, which is important for Cumas, especially with the mill downsizing. The sub area should be de-designated and brought into the UGB as Employment Center/business park and Mixed Use.</p>
<p>LA-2 6.85 acres (La Center)</p>	<p>The 2 parcels range in size from 2.75-4.09 acres No water or sewer lines within sub area Water lines run along the southern border of sub area along NE North Fork Avenue Adjacent to UGA/City Limits (R1-7.5 - urban residential development)</p>	<p><u>IN COMMERCIAL PRODUCTION?</u> Neither parcel in this sub area were identified as commercial farms in the Globalwise report maps. 0% is in the farm and ag current use program <u>CAPABLE?</u> 0.58% prime ag soils 13.58% critical land steep slopes, riparian habitat</p>	<p>Water lines run along the southern boundary of the sub area. Water and sewer lines are within the urban residential neighborhood to the South within UGA.</p>	<p>0% in ag/farm current use program</p>	<p>Southern boundary is adjacent to La Center's UGA.</p>	<p>Range: 2.75-4.09 Median parcel size: 6.85 acres</p>	<p>Rural land use to the North, west and east. Includes open fields, forested land and rural residential. Borders urban dense residential neighborhood to the South.</p>	<p>Rural land uses including open fields, rural residential and forested land. Dense urban residential to South.</p>	<p>No urban development permits proposed in the vicinity of the sub area.</p>	<p>AG-20: \$16/acre Proposed zoning: R1-6 \$242/acre</p>	<p>Directly adjacent to La Center market.</p>	<p>Based on the analysis provided herein, this area does not have long term commercially significant agricultural viability. The sub area shall be de-designated from agricultural zoned land and brought into La Center's UGA as Urban Low Density Residential.</p>
<p>LB-1 218.81 acres (La Center)</p>	<p>The 17 parcels range in size from 3.72-31.03 acres No water/sewer lines within sub area Part of the eastern boundary is adjacent to the UGA and adjacent to public sewer and water</p>	<p><u>IN COMMERCIAL PRODUCTION?</u> None of the 17 parcels within the sub area were identified as commercial farms in the Globalwise report maps 83.79% in farm/ag current use prg. <u>CAPABLE?</u> 56.58% prime ag soils 36.06% critical land hydric soils, riparian habitat, wetland, steep slopes</p>	<p>Water and sewer lines adjacent to eastern boundary bordering UGA. Western parcels border I-5</p>	<p>83.79% in ag/farm current use program</p>		<p>Range: 3.72-31.03 acres Median parcel size: 12.87 acres</p>	<p>Mostly rural land uses (open fields, forested land and rural residential).</p>	<p>Rural land uses including open fields, rural residential & forested land.</p>	<p>No urban development permits proposed in the vicinity of the sub area.</p>	<p>AG-20: \$16/acre Proposed: Parks: \$27/acre Employment Center-Business Park: Community Comm: \$261/acre R-22: \$34/acre</p>	<p>In close proximity to La Center market.</p>	<p>Although the sub area has the potential to be beneficial for farming, there is no water available and water rights for ag lands are difficult to receive. Also, because of its location near the transportation corridor, it can be utilized at a higher and better use. The area is to be brought in as Commercial; Employment Center/ Business Park; and Urban Medium Density Residential.</p>

AG SUB AREAS (See Attachment A for locations)	IS IT CHARACTERIZED BY URBAN GROWTH?	IS IT PRIMARILY DEVOTED TO COMMERCIAL PRODUCTION OF AGRICULTURAL PRODUCTS OR CAPABLE OF BEING USED FOR PRODUCTION?	DOES IT HAVE LONG TERM COMMERCIAL SIGNIFICANCE FOR AGRICULTURAL PRODUCTION?									BOCC DELIBERATION/ DECISION
			PUBLIC FACILITIES/ SERVICES	TAX STATUS	UGA	PARCEL SIZE	LAND USE SETTLEMENT PATTERNS AND COMPATIBILITY	INTENSITY OF NEARBY LAND USES	HISTORY OF LAND DEVL.P. PERMITS	LAND VALUES UNDER ALT USES (\$ in thousands)	PROX. TO MARKETS	
LB-2 244.63 acres (La Center)	The 25 parcels range in size from 0.34-66 acres No water or sewer lines within the sub area. Surrounded by AG-20 zoning on north, south and NE sides	<u>IN COMMERCIAL PRODUCTION?</u> None of the 25 parcels in this sub area were identified as commercial farms in the Globalwise report maps 12% in ag/farm current use program <u>CAPABLE?</u> 80% prime ag soils 50.14% critical land hydric soils, riparian habitat, wetland	Eastern parcels border I-5	12% in ag/farm current use program (Southern parcels)	Not adjacent to UGA	Range: 0.34-66.92 acres Median parcel size: 9.79 acres	Rural land uses (open fields, forested land, rural residential). Small parcel of rural commercial within sub area. Industrial urban reserve overlay on sub area.	Rural land uses (open fields, forested land, rural residential)	No urban development permits proposed in the vicinity of the sub area.	AG-20: \$16/acre Proposed zoning: Employment Center Business Park	Adjacent to I-5.	This area next to the I-5 junction is the only Industrial opportunity for La Center, therefore it holds special value. Although it has 80% prime agricultural soils, no commercial farming is in place. Sub area shall be de-designated from agriculture and brought into the UGB as Employment Center/Business Park.
LC 69.57 acres (La Center)	The 9 parcels range in size from 1.61-19.52 acres Water lines run through the sub area Adjacent to UGA Mostly surrounded by AG-20 zoning	<u>IN COMMERCIAL PRODUCTION?</u> None of the 9 parcels in this sub area were identified as commercial farms in the Globalwise report maps 87% in ag/farm current use program <u>CAPABLE?</u> 35% prime ag soils 76.99% critical land hydric soils, riparian habitat, wetland	Water lines run through southern portion of sub area, along NE Lockwood Creek Road. Water and sewer lines are on land adjacent within UGA.	87.7% in ag/farm current use program	Directly adjacent to La Center's UGA's eastern boundary	Range: 1.61-19.52 acres Median parcel size: 7.73 acres	Rural land uses (open fields, rural residential, farm buildings) Surrounded on three sides by AG-20 zoning.	Northern parcels are adjacent to UGA and urban residential neighborhood (R1-7.5). Urban Reserve zoning to North.	No urban development permits proposed in the vicinity of the sub area.	AG-20: \$16/acre Proposed zoning: R1-7.5 \$218/acre	Adjacent to La Center's UGA (market).	The land is environmentally constrained for agriculture. There is not much agricultural value because of the constraints imposed by the critical area ordinance. It has been requested by both the property owner and the City to be brought in, therefore the sub area shall be de-designated from agriculture and brought into the UGB as Urban Low Density Residential.
LF 94.77 acres (La Center)	The 8 parcels range in size from 1.95-39.92 acres No public water No public sewer	<u>IN COMMERCIAL PRODUCTION?</u> None of the 8 parcels in this sub area were identified as commercial farms in the Globalwise report maps 0% of the land is enrolled in the Current Use Program <u>CAPABLE?</u> 84.41% of the land has prime agriculture soils 43.49 % critical land hydric soils, riparian & non-riparian habitat, wetland, steep slopes, severe erosion	Eastern parcels adjacent to I-5. NW 31 st Street intersects sub area.	0% of land area is in ag/farm current use program	Not adjacent to existing UGA	Range 1.95-39.92 acres Median parcel size: 9.88 acres	The land within the sub area is mostly open fields, forested land, and rural residential.	Surrounding area consists of rural land uses (rural residential, open fields, forested land)	No urban development permits proposed in the vicinity.	AG-20: \$16/acre Proposed zoning: Employment Center Business Park	Close proximity to I-5 corridor	Commissioner Boldt stated that although it has prime agricultural soils, you cannot get water to the area, therefore it is not economically feasible for farming. It was decided that this sub-area would be de-designated from agriculture and brought into the UGB as Employment Center/Business Park because of its access to infrastructure and the importance of providing employment land for La Center to diversify their economy. It was further determined that a County-wide Planning Policy be created that explained the area would come in to the UGB, but could not be developed until the Tribal land received the Federal designation and was put into a Trust.

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on the date indicated below, I caused to be filed the original of the enclosed RESPONSE BRIEF OF RESPONDENT CITY OF LaCENTER with the:

Washington Court of Appeals, Division II
Court Clerk
950 Broadway, Suite 300
Tacoma, WA 98402

by first-class U.S mail, postage prepaid. On the same date I caused to be served a true, complete and correct copy of the same document by first-class U.S mail, postage prepaid, on the following parties or attorneys:

Tim Trohimovich and
Robert Beattey
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Christine Cook and Chris Horne
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Prosecuting Attorney's Office
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Vancouver, WA 98666

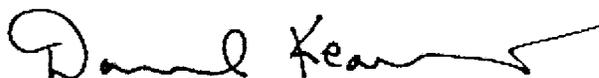
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Randall B. Printz and Brain Gerst
Landerholm, Memovich, et al.
805 Broadway St., Suite 1000
PO Box 1086
Vancouver, WA 98660

DATED this 18th day of December 2009.

REEVE KEARNS, PC



By: _____

Daniel H. Kearns, WSBA No. 20653
Attorney for Respondent City of LaCenter

CERTIFICATE OF SERVICE AND FILING

I hereby certify that on the date indicated below, I caused to be filed the original and one copy of the enclosed REVISED RESPONSE BRIEF OF RESPONDENT CITY OF LaCENTER with the:

Washington Court of Appeals, Division II
Court Clerk
950 Broadway, Suite 300
Tacoma, WA 98402

by first-class U.S mail, postage prepaid. On the same date I caused to be served a true, complete and correct copy of the same document by first-class U.S mail, postage prepaid, on the following parties or attorneys:

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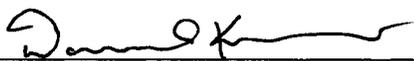
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DATED this 5th day of January 2010.

REEVE KEARNS, PC

By: 
Daniel H. Kearns, WSBA No. 20653
Attorney for Respondent City of LaCenter

STATE OF WASHINGTON
10 JAN -9 AM 11:10
DEPUTY

COURT OF APPEALS
DIVISION II