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No. 57253-9-I

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**THE COURT OF APPEALS DIVISION I  
OF THE STATE OF WASHINGTON**

CITY OF ARLINGTON, DWAYNE LANE, and SNOHOMISH  
COUNTY,

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS  
BOARD, STATE OF WASHINGTON; 1000 FRIENDS OF  
WASHINGTON aka FUTUREWISE; STILLAGUAMISH FLOOD  
CONTROL DISTRICT; PILCHUCK AUDUBON SOCIETY; THE  
DIRECTOR OF THE STATE OF WASHINGTON DEPARTMENT OF  
COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT; and  
AGRICULTURE FOR TOMORROW,

Respondents.

**PETITION FOR REVIEW BY THE SUPREME COURT**

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## I. IDENTITY OF PETITIONERS

Petitioners Futurewise, Agriculture for Tomorrow, and Pilchuck Audubon Society are non-profit Washington State corporations. They represent many citizens concerned about the designation and conservation of agricultural lands. Futurewise, Agriculture for Tomorrow, and Pilchuck Audubon Society were the respondents in the Court of Appeals and the Superior Court, and the petitioners before the Central Puget Sound Growth Management Hearings Board. The three organizations ask this Court to accept review of the Court of Appeals decision terminating review and designated in Part II of this petition.

## II. CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals published opinion *City of Arlington et. al. v. Central Puget Sound Growth Management Hearings Board*, No. 57253-9-I filed on March 26, 2007. A copy of the decision is attached as Appendix A. Futurewise, Agriculture for Tomorrow, and Pilchuck Audubon Society filed a motion for reconsideration with the Court of Appeals, as did two other petitioners. All three motions were denied by an order dated May 29, 2007; a copy of that order is attached as Appendix B.

### III. ISSUES PRESENTED FOR REVIEW

This petition for review raises four issues concerning the conservation of agricultural lands of long-term commercial significance and the proper delineation of urban growth areas (UGAs) under the Growth Management Act (GMA), chapter 36.70A RCW.

(1) Did the Central Puget Sound Growth Management Hearings Board (Central Board or the Board) correctly conclude that Snohomish County's redesignation of the land known as "Island Crossing" from agricultural and rural to urban commercial was unsupported by the weight of the record evidence, and did the Court of Appeals err when it failed to apply the substantial evidence test in reviewing the Board's decisions as required by the Administrative Procedures Act and Supreme Court precedent?

(2) The GMA establishes requirements for the designation of agricultural lands of long-term commercial significance. In applying these requirements did the Central Board correctly conclude that the County's removal of the agricultural designation from the land at "Island Crossing" was unsupported by the weight of the evidence in record, did not comply with the GMA, and was therefore clearly erroneous?

(3) The GMA includes requirements for the designation of urban growth areas (UGAs). Did the Court of Appeals err in failing to give any

weight to the Central Board's interpretation of these requirements as required by the precedents of the Supreme Court?

(4) In applying the GMA's requirements for designating urban growth areas, did the Central Board correctly conclude that Snohomish County failed to comply with the GMA when it expanded the Arlington UGA to include the "Island Crossing" area?

#### IV. STATEMENT OF THE CASE

This case arises out of Snohomish County's latest effort to redesignate 110.5 acres of countryside known as Island Crossing from agricultural and rural to urban commercial in order to accommodate the intentions of a small handful of landowners while ignoring the existing character of the land itself. The land at issue here is roughly triangular and is bounded on the west by Interstate 5, on the north by State Highway 530 (a portion of the subject land extends north of Highway 530), and on the east by Smokey Point Boulevard. The southern tip of the triangle points towards Arlington, approximately 0.9 miles to the south.<sup>1</sup> Island Crossing is connected to Arlington only by the rights of way along I-5 and an access road; there is no urban development between the two.<sup>2</sup>

Island Crossing consists of open space, active farms, and low-density rural development lying within the floodplain of the Stillaguamish

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<sup>1</sup> CP vol. XI, p. 2183.

<sup>2</sup> *Id.*

River. It has been zoned agricultural since 1978, with the exception of 35 acres zoned rural freeway service and dedicated to providing gas, food, and lodging for travelers on Interstate 5.<sup>3</sup> Island Crossing is surrounded by farmland, including the land separating Island Crossing from the City of Arlington.<sup>4</sup>

This case represents the second attempt by Snohomish County to strip Island Crossing of the protections afforded agricultural and rural land under the GMA. The first attempt at redesignation occurred in 1995, when Snohomish County, as part of its initial Comprehensive Plan under the Growth Management Act, redesignated Island Crossing from agricultural and rural to urban commercial and included the land within the Arlington UGA.<sup>5</sup> The Central Board affirmed, but on appeal the Snohomish County Superior Court determined that Island Crossing was being actively and productively used for commercial agriculture, and that the land was not characterized by urban growth according to the standards specified in the Growth Management Act.<sup>6</sup> Accordingly, the Superior Court remanded the case to the Central Board, and the Central Board

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<sup>3</sup> *City of Arlington v. Central Puget Sound Growth Management Hearings Board*, No. 57253-9-I Slip Op. p. 2 (March 26, 2007), \_\_\_ Wn. App. \_\_\_, 154 P.3d 936, 939 (2007). Hereinafter Slip Op.

<sup>4</sup> CP vol. XI, p. 2183.

<sup>5</sup> Slip Op. 2, 154 P.3d at 938.

<sup>6</sup> *Id.*

remanded to Snohomish County.<sup>7</sup> Upon reconsideration, Snohomish County designated 75.5 acres of Island Crossing as Riverway Farmland Commercial, and 35 acres as Rural Freeway Service.

Dwayne Lane, a party in this case and the owner of 15 acres of Island Crossing bordering Interstate 5, filed an appeal with the Central Board challenging the County's designation of the land as agricultural and rural.<sup>8</sup> Then, as now, Mr. Lane desired to move his automobile dealership from the City of Arlington to a parcel of land at Island Crossing, but he could not do so while the land retained its agricultural designation.<sup>9</sup> The Central Board held that the County's action complied with the GMA, and the Superior Court affirmed the Board's decision.<sup>10</sup>

Mr. Lane then appealed the Board's determination to the Court of Appeals.<sup>11</sup> In an unpublished opinion quoted in the Court of Appeals decision in this case, the Court found that Island Crossing was properly designated as agricultural resource land, as "the record supports a finding that Island Crossing is capable of being used for agricultural production" and "most of the land in Island Crossing is being actively farmed."<sup>12</sup> Further, the Court of Appeals determined that "[a]lthough Island Crossing

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3, 154 P.3d at 938.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3-4, 154 P.3d at 939.

borders the interchange of Interstate 5 and State Road 530, it is separated from Arlington by farmland,” and “adequate public facilities and services do not currently exist” to make urban development of Island Crossing appropriate under the GMA.<sup>13</sup> The Court concluded:

“[T]he record contains substantial evidence supporting the conclusion that the designation of Island Crossing as agricultural land encourages the conservation of productive agricultural lands and discourages incompatible uses in accordance with the GMA. And the removal of Island Crossing from Arlington’s UGA is consistent with the GMA’s goal to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. The record supports the Board’s decision that the County’s designation of Island Crossing as agricultural resource land was not clearly erroneous.”

Slip Op. p. 4, 154 P.3d at 939.

Failing in the courts, Mr. Lane turned his efforts once more to Snohomish County, where he again persuaded the County Council to remove Island Crossing from the County’s agricultural resource land base. In September 2003, only two years after the Court of Appeals ruled in the previous case and with nothing changed at Island Crossing, Snohomish County passed Amended Ordinance No. 03-063 again changing the land use designations for Island Crossing from Riverway Commercial Farmland and Rural Freeway Service to Urban Commercial and once

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<sup>13</sup> *Id.*

more including Island Crossing within the Arlington UGA.<sup>14</sup> In October 2003 the second redesignation of Island Crossing was appealed to the Central Board.<sup>15</sup>

The Board held that Snohomish County's action failed to comply with the goals and requirements of the GMA. Regarding the redesignation of agricultural lands, the Board concluded that Amended Ordinance No. 03-063 was neither guided by nor in compliance with RCW 36.70A.020(8), the GMA planning goal aimed at preservation of natural resource lands.<sup>16</sup> The Board also concluded that the ordinance violated the GMA requirements contained in RCW 36.70A.040 (local governments must adopt development regulations that preserve agricultural lands), RCW 36.70A.060(1) (local governments must conserve agricultural lands), and RCW 36.70A.170(1)(a) (local governments must designate agricultural lands).<sup>17</sup> The Central Board found Snohomish County's redesignation of Island Crossing to be clearly erroneous.<sup>18</sup>

The Board concluded that the UGA expansion failed to be guided by or to comply with RCW 36.70A.020(1), (2), and (8), the GMA planning goals encouraging urban growth within urban growth areas,

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<sup>14</sup> *Id.* at 4-5, 154 P.3d at 939.

<sup>15</sup> *Id.* at 5, 154 P.3d at 939.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.*

reduction of sprawl, and protection of natural resource industries.<sup>19</sup>

Because it determined that Snohomish County's actions were clearly erroneous, the Central Board remanded Ordinance No. 03-063 back to the county for action consistent with the GMA.<sup>20</sup>

On remand, Snohomish County adopted Emergency Ordinance No. 04-057,<sup>21</sup> which largely mirrored Ordinance No. 03-063. Following a compliance hearing, the Central Board entered an Order Finding Continuing Noncompliance and Invalidity and Recommendation for Gubernatorial Sanctions.<sup>22</sup> Snohomish County, the City of Arlington, and Dwayne Lane appealed both the Board's Amended Final Decision and Order and the Board's Order on Compliance to the superior court.<sup>23</sup> The superior court affirmed the Board's decision on the merits, as well as holding that the issue of whether the land redesignation and UGA expansion complied with the GMA was barred by res judicata and collateral estoppel.<sup>24</sup> Snohomish County, the City of Arlington, and Dwayne Lane then appealed to the Court of Appeals.

The Court of Appeals reversed, finding that the Central Board had failed to grant proper deference to Snohomish County. Disregarding the

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<sup>19</sup> *Id.* at 6, 154 P.3d at 940.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

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

<sup>24</sup> *Id.* at 7, 154 P.3d at 940.

mandate in the GMA to conserve agricultural lands, the Court of Appeals concluded that the County was free to change the designation of Island Crossing and include it within the UGA boundary so long as any evidence in the record supported the change.<sup>25</sup> The Court of Appeals denied reconsideration of its decision on May 29, 2007.

## V. ARGUMENT

This petition for review will show that the Supreme Court should grant discretionary review of the Court of Appeal's decision under RAP 13.4(b)(1) because the decision conflicts with previous decisions of the Supreme Court on the designation and protection of agricultural lands of long-term commercial significance and the designation of urban growth areas. The Court should also grant review under RAP 13.4(b)(4) because this case raises issues of substantial public interest that should be determined by the Supreme Court.

- A. The Supreme Court should grant review under RAP 13.4(b)(1) because the Court of Appeals decision permitting Snohomish County to redesignate agricultural lands of long-term commercial significance at Island Crossing as Urban Commercial conflicts with the Washington State Supreme Court decisions which recognize a legislative mandate to conserve agricultural lands. (Issues 1 and 2)**

This Court has long recognized the legislature's intent to conserve agricultural lands through the Growth Management Act.

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<sup>25</sup> *Id.* at 25-26, 154 P.3d at 949-50.

In seeking to address the problem of growth management in our state, the Legislature paid particular attention to agricultural lands. One of the 13 planning goals of the GMA addresses 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 purpose is to ‘assure the conservation’ of these lands. RCW 36.70A.060(1). A more recent indication of the Legislature’s concern for preserving agricultural lands is a new section the Legislature added in its 1997 amendments to the GMA, RCW 36.70A.177, which urges employment of ‘innovative zoning techniques’ to conserve agricultural lands.

*City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 47, 959 P.2d 1091 (1998) referred to in *Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 139 P.3d 1096 (2006) as *Benaroya I.*

As part of the Growth Management Act, the legislature established a set of safeguards for agricultural lands. As this Court noted in *Redmond*, those safeguards begin with the “Natural Resource Industries” goal “adopted to guide the development and adoption of comprehensive plans and development regulations” under the GMA.<sup>26</sup> County comprehensive plans and development regulations must “[m]aintain 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.”<sup>27</sup>

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<sup>26</sup> RCW 36.70A.020.

<sup>27</sup> RCW 36.70A.020(8).

The goals contained in the GMA are not merely aspirational; counties must comply with them when planning under the GMA.<sup>28</sup>

Counties must also meet the specific requirements of the GMA. Initially, counties must 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.”<sup>29</sup> Snohomish County designated Island Crossing as agricultural resource land under this section of the GMA after its first attempt to designate the land as urban commercial was determined to be GMA non-compliant by the Central Board.<sup>30</sup> Following designation of agricultural lands, counties also “shall adopt development regulations ... to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.”<sup>31</sup> Regarding these specific requirements and the Natural Resource Industries goal of the GMA, this Court has held “[w]hen read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.”<sup>32</sup>

This Court has also read the GMA as containing a three-part test for determining what lands must be protected under this legislative

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<sup>28</sup> *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wn.2d 543, 556-57, 14 P.3d 133 (2000).

<sup>29</sup> RCW 36.70A.170.

<sup>30</sup> Slip Op. p. 3, 154 P.3d at 938-39.

<sup>31</sup> RCW 36.70A.060.

<sup>32</sup> *King County*, 142 Wn.2d at 562.

mandate for the conservation of agricultural land:

In sum, based on the plain language of the GMA and its interpretation in *Benaroya I*, we hold that agricultural 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.

*Lewis County v. Western Washington Growth Management Hearings Bd.*, 157 Wn.2d 488, 502, 139 P.3d 1096 (2006).

Here the record shows that the Island Crossing farmland is not characterized by urban growth.<sup>33</sup> As to the second factor, whether land is “primarily devoted to the commercial production of agricultural products,”<sup>34</sup> this Court has held that “land is ‘devoted to’ agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production.”<sup>35</sup> It is the characteristics of the land, not the current or intended use of the land, that governs the classification: “[w]hile the land use on the particular parcel and the owner’s intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current

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<sup>33</sup> CP vol. IX, p. 1767.

<sup>34</sup> *Lewis County*, 157 Wn.2d at 502.

<sup>35</sup> *Benaroya I*, 136 Wn.2d at 53.

use nor land owner intent of a particular parcel is conclusive for purposes of this element of the statutory definition.”<sup>36</sup> Here, the land is in an area that is used or capable of being used for agriculture.<sup>37</sup>

The third step in the analysis, determination of lands that have “long term commercial significance for agricultural production,”<sup>38</sup> is controlled by the statutory definition of “long term commercial significance” and by guiding factors adopted by the Washington Department of Community, Trade, and Economic Development (CTED).<sup>39</sup> RCW 36.70A.030(10) provides “[l]ong 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.”

WAC 365-190-050 gives guidance in applying the last two factors from RCW 36.70A.030(10) by providing:

- that counties 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;

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<sup>36</sup> *Id.*

<sup>37</sup> CP vol. XI, p. 2183.

<sup>38</sup> *Lewis County*, 157 Wn.2d at 502.

<sup>39</sup> *Id.*

- (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.<sup>40</sup>

These factors, the so-called “WAC factors,” are central to this case. Snohomish County considered two items of evidence in concluding that Island Crossing lacked long-term commercial significance. First, Snohomish County found “very persuasive”<sup>41</sup> the testimony of Roberta Winter. Mrs. Winter testified that she and her husband owned land in Island Crossing in the mid 1950s, which they were unable to profitably farm after the construction of Interstate 5.<sup>42</sup> The second piece of evidence relied upon by Snohomish County was a private analysis of the WAC factors, performed by the consulting firm Higa-Burkholder and financed by Dwayne Lane.<sup>43</sup> Unsurprisingly, this analysis concluded that the WAC factors justified redesignating Island Crossing from agricultural and rural to urban commercial.<sup>44</sup> Accepting these two items and dismissing the rest of the record, Snohomish County concluded that “[Island Crossing] cannot be profitably farmed, and is not agricultural land of long

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<sup>40</sup> *Id.* at 501, 139 P.3d at 1102 *citing* WAC 365-190-050.

<sup>41</sup> Slip Op. p. 10, 154 P.3d at 942.

<sup>42</sup> Slip Op. pp. 10-11, 154 P.3d at 942.

<sup>43</sup> Slip Op. pp. 14-16, 154 P.3d at 944-45.

<sup>44</sup> *Id.*

term commercial significance.”<sup>45</sup>

The Central Board disagreed. Noting that Mrs. Winters’ testimony “was contradicted by others with present day experience in crop farming in the Stillaguamish Valley,”<sup>46</sup> the Board found that “[a]necdotal testimony, particularly from an individual whose declared [sic] was in dairy rather than crop farming, does not constitute credible evidence on which to support the County’s action.”<sup>47</sup> Similarly, the Board concluded that the Higa-Burkholder report lacked credibility, because its analysis of the WAC factors reflected Mr. Lane’s designs for the land.<sup>48</sup> The Board then looked to the Snohomish County Planning and Development Services (PDS) report, the Draft Supplemental Environmental Impact Statement (DSEIS), the United States Department of Agriculture (USDA) soils report, and the recommendations of the Snohomish County Agricultural Advisory Board, all of which concluded that Island Crossing fit the GMA requirements for agricultural lands of long-term commercial significance.<sup>49</sup> In light of this evidence in the record, the Central Board found that Snohomish County’s redesignation of Island Crossing to urban commercial uses was unsupported by the weight of the record evidence

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<sup>45</sup> Slip Op. p. 11, 154 P.3d at 942.

<sup>46</sup> Slip Op. p. 12, 154 P.3d at 943.

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

<sup>48</sup> CP vol. XIII, pp. 2589-90.

<sup>49</sup> Slip Op. pp. 3-4, 154 P.3d at 943.

and the goals and requirements of the GMA; accordingly, the Board determined that the redesignation was clearly erroneous.

Given the “legislative mandate for the conservation of agricultural land” which this Court has identified in the GMA, the Central Board correctly concluded that Island Crossing should remain designated as agricultural land. The Central Board carefully considered all three prongs of the test for agricultural lands, including whether the land continued to have long-term commercial significance.<sup>50</sup> Island Crossing has been zoned as farmland since 1978, and was agricultural land for many years prior to that.<sup>51</sup> Island Crossing is still capable of being farmed, as the Court of Appeals determined in the previous round of litigation over this land.<sup>52</sup> The farmers on the Snohomish County Agricultural Advisory Committee also determined “they could farm Mr. Lane’s land today.”<sup>53</sup> Snohomish County has failed to protect this agricultural land as the GMA requires. Consequently, Snohomish County’s action fails to comply with the goals and requirements of the GMA, and deference to the County’s decision is unwarranted. The Court of Appeals decision conflicts with this Court’s line of rulings holding that the GMA contains a mandate to protect agricultural land such as Island Crossing.

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<sup>50</sup> CP vol. XIII, pp. 2575-91.

<sup>51</sup> Slip Op. p. 2, p. 10, 154 P.3d at 938, 942.

<sup>52</sup> Slip Op. p. 2, 154 P.3d at 939.

<sup>53</sup> CP vol. XIII, p. 2580.

- B. The Supreme Court should grant review under RAP 13.4(b)(4) because the goals and requirements of the GMA show that the designation of agricultural land is an issue of substantial public interest and this appeal presents two important issues that should be determined by the Supreme Court. (Issues 1 and 2)**

The GMA's mandate to protect agricultural land embodied in its goal and requirements shows that the designation and protection of agricultural lands is of substantial public interest; indeed it is one of the reasons the GMA was adopted.<sup>54</sup> This case presents two important issues related to this substantial public interest and review should be granted under RAP 13.4(b)(4).

- C. The Supreme Court should grant review under RAP 13.4(b)(1) and RAP 13.4(b)(4) because the redesignation of agricultural lands to expand UGAs conflicts with Supreme Court precedent, and the issues related to the UGA expansion are questions of substantial public interest that should be determined by the Supreme Court. (Issues 3 and 4)**

In *Benaroya I*, the Supreme Court concluded that:

Thus, GMA required municipalities to designate agricultural lands for preservation even *before* those municipalities were obliged to declare their UGAs and adopt comprehensive plans in compliance with GMA. The "designation and interim protection of such areas [are] the first formal step in growth management implementation ... to preclude urban growth area status for areas unsuited to urban development." [Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in*

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<sup>54</sup> Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. PUGET SOUND L. REV. 867, 880 (1993); *King County v. Central Puget Sound Growth Management Hearings Bd.*, 138 Wn. 2d 161, 166-67, 979 P.2d 374, 377 (1999), as amended on denial of reconsideration September 22, 1999.

*Washington: Past, Present, and Future*, 16 U. Puget Sound L. Rev. 867, 907 (1993).]

*Benaroya I*, 136 Wn.2d at 48, 959 P.2d at 1095.

Here the Court of Appeals decision does exactly what the Supreme Court concluded should not be done, it designates the farmland at Island Crossing for urban development. This conflicts with *Benaroya I*, and the Supreme Court should take review to resolve this conflict.

The designation of urban growth areas is also of substantial public interest. This is shown by the GMA provisions the legislature has adopted.<sup>55</sup>

Two of the issues in this petition for review address the Central Board's and the Court of Appeal's interpretation of the statutory provisions requiring designation of urban growth areas. These provisions include RCW 36.70A.110(1) which requires that "[a]n urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350."

Much of Island Crossing is used for agriculture and so is not

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<sup>55</sup> See RCW 36.70A.040; RCW 36.70A.060; RCW 36.70A.110; RCW 36.70A.210; RCW 36.70A.215.

already characterized by urban growth.<sup>56</sup> There are some “Rural Freeway Service” uses at the intersection of I-5 and SR 530, but only a small area has been built on.<sup>57</sup> As Snohomish County’s DSEIS states, Island Crossing is “approximately 0.9 miles from the Arlington city limits and is functionally separated from the City because it is within the Stillaguamish River floodplain.”<sup>58</sup> Island Crossing only connects to the UGA at one point, I-5 and a county road; at the point of connection the urban growth area is undeveloped except for the county road and I-5.<sup>59</sup> So Island Crossing is not adjacent to urban growth either.

Given the standards in RCW 36.70A.110(1) and these facts, the Growth Board concluded that Island Crossing did not meet the requirements of the GMA for inclusion in the Arlington UGA. The Court of Appeals disagreed, concluding that I-5, SR 530, and the rural services either qualified as urban growth or were in a relationship that made it suitable for urban growth.<sup>60</sup>

The logical extension of this conclusion is that every intersection of two highways in the state with some rural service uses can be used to create an urban growth area. This is clearly important to the management

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<sup>56</sup> CP vol. XI, p. 2133 (Figure 1-2).

<sup>57</sup> CP vol. XI, p. 2175.

<sup>58</sup> CP vol. XI, p. 2183.

<sup>59</sup> CP vol. XI, p. 2133 (Figure 1-2).

<sup>60</sup> Slip Op. pp. 19-20, 154 P.3d at 947.

of growth and the effectiveness of the GMA. These are questions of substantial public interest that qualify for review under RAP 13.4(b)(4) and should be determined by the Supreme Court.

## VI. CONCLUSION

As we have seen, the Court of Appeal's decision in this case conflicts with the prior decisions of the Supreme Court. Further, the issues related to agricultural designation and urban growth area designation are issues of substantial public interest and should be decided by the Supreme Court. For these reason, the four issues in this appeal merit review under RAP 13.4(b)(1) and (4). Futurewise, Agriculture for Tomorrow, and Pilchuck Audubon Society respectfully request that the Supreme Court accept review of this case.

Dated this \_\_\_\_ day of June, 2007.

Respectfully submitted,

By: 

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APPENDIX A:

*City of Arlington et. al. v. Central Puget Sound  
Growth Management Hearings Board, No. 57253-9-I  
Slip Opinion (March 26, 2007).*

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

CITY OF ARLINGTON, DWAYNE )  
LANE and SNOHOMISH COUNTY )

Appellants, )

v. )

CENTRAL PUGET SOUND GROWTH )  
MANAGEMENT HEARINGS BOARD, )  
STATE OF WASHINGTON; 1000 )  
FRIENDS OF WASHINGTON nka )  
FUTUREWISE; STILLAGUAMISH )  
FLOOD CONTROL DISTRICT; )  
PILCHUCK AUDUBON SOCIETY; )  
THE DIRECTOR OF THE STATE OF )  
WASHINGTON DEPARTMENT OF )  
COMMUNITY, TRADE, AND )  
ECONOMIC DEVELOPMENT and )  
AGRICULTURE FOR TOMORROW )

Respondents. )

No. 57253-9-1

DIVISION ONE

PUBLISHED OPINION

FILED: March 26, 2007

**GROSSE, J.** – The Growth Management Hearings Board must find compliance with the Growth Management Act of 1990 (GMA) unless it determines that a county action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. Here, the Board failed to consider important evidence in the record that supports Snohomish County’s finding that the land at Island Crossing was not land of long-term commercial significance to agriculture and thus eligible for redesignation to urban commercial use. Because, in light of the improperly dismissed evidence, the County’s action redesignating the land was not clearly erroneous, we reverse and remand.

## FACTS

This appeal is the latest episode in a long fight over the designation of a triangular piece of land in Snohomish County located north of the City of Arlington. The land borders the interchange of Interstate 5 and State Road 530, and is part of an area known as Island Crossing.

### Prior Appeal

The land at issue was designated and zoned agricultural in 1978. In 1995, Snohomish County adopted a comprehensive plan under the Growth Management Act (GMA). As part of the plan, the County redesignated Island Crossing as urban commercial and included it in Arlington's Urban Growth Area (UGA). The Growth Management Hearings Board affirmed the decision in Sky Valley v. Snohomish County, No. 95-3-0068c (Final Decision and Order).<sup>1</sup>

In 1997, the Snohomish County Superior Court reviewed the Board's decision affirming the County's action and determined substantial evidence in the record did not support the redesignation of Island Crossing and the inclusion of the land in the UGA. Specifically, the superior court found that Island Crossing is in active/productive use for agricultural crops on a commercial scale and that the area is not characterized by urban growth under GMA standards. The superior court remanded to the Board for a detailed examination. The Board in turn ordered the County to conduct additional public hearings on this issue.

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<sup>1</sup>1996 WL 734917, pt. 8 of 10, at 86-87 (Wash. Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Mar. 12, 1996).

The County held public hearings and after considering the oral and written testimony and the Planning Commission's public hearings record, the Snohomish County Council passed two ordinances redesignating Island Crossing as agricultural resource land and removing it from Arlington's UGA. Specifically, the Council found that Island Crossing is devoted to agriculture and is actually used or is capable of being used as agricultural land. It also found that the area is in current farm use with interspersed residential and farm buildings. The County Executive approved the ordinances.

Dwayne Lane, a party in the current case and owner of 15 acres of land bordering Interstate 5 in Island Crossing, challenged the County's designation of Island Crossing as agricultural resource land. Lane planned to locate an automobile dealership on his land at Island Crossing. He filed a petition for review of the County's 1998 decision with the Board, contending that the County failed to comply with the GMA. The Board concluded the County complied with the GMA and that the County's conclusion was not clearly erroneous. The superior court affirmed the Board's decision.

Lane then appealed to this court. Lane argued that the record did not support the Board's decision to affirm the County's designation of Island Crossing as agricultural resource land under the GMA. In an unpublished decision this court disagreed with Lane, concluding:

Island Crossing is composed of prime agricultural soils and has been described as having agricultural value of primary significance. Except for the County's 1995 dedesignation of Island Crossing as agricultural land, Island Crossing has been designated and zoned agricultural since 1978. Thus, the record supports a

finding that Island Crossing is capable of being used for agricultural production. Although Island Crossing borders the interchange of Interstate 5 and State Road 530, it is separated from Arlington by farmland. Indeed, the record contains evidence to indicate that most of the land in Island Crossing is being actively farmed, except a small area devoted to freeway services. Thus, the record indicates that the land is actually used for agricultural production. The only urban development permits issued for Island Crossing are for the area that serves the freeway. Further, the substantial shoreline development permit for sewer service in the freeway area explicitly "prohibits any service tie-ins outside the Freeway Service area." Thus, adequate public facilities and services do not currently exist. Although Lane speculates that it may be possible for him to obtain permits under exceptions to the present restrictions, he fails to demonstrate that such permits can be provided in an efficient manner as required by statute.

Although the record may contain evidence to support a different conclusion, this court cannot reweigh the evidence. Indeed, the record contains substantial evidence supporting the conclusion that the designation of Island Crossing as agricultural land encourages the conservation of productive agricultural lands and discourages incompatible uses in accordance with the GMA. And the removal of Island Crossing from Arlington's UGA is consistent with the GMA's goal to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. The record supports the Board's decision that the County's designation of Island Crossing as agricultural resource land was not clearly erroneous. Further, as discussed above, Lane failed to show that the Board made a legal error or that its decision was arbitrary and capricious. Thus, he failed to satisfy his burden of showing that the Board's action was invalid and, as a result, Lane is not entitled to relief.<sup>2</sup>

#### Current Appeal

Two years later, in September 2003, the Snohomish County Council passed Amended Ordinance No. 03-063. The ordinance amended the County's Comprehensive Plan to add 110.5 acres in Island Crossing to the Arlington UGA,

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<sup>2</sup> Dwayne Lane v. Central Puget Sound Growth Mgmt. Hearings Bd., noted at 105 Wn. App. 1016, 2001 Wash. App. LEXIS 425, at \*16-18 (citations omitted).

changed the designation of that land from Riverway Commercial Farmland (75.5 acres) and Rural Freeway Service (35 acres) to Urban Commercial, and rezoned the land from Rural Freeway Service and Agricultural-10 Acres to General Commercial.

An appeal was filed with the Board in October 2003. The Board divided the issues into three groups: the redesignation of agricultural resource land (issue 2); urban growth and expansion issues (issues 3 and 4); and critical areas issue (issue 5). The Board declined to address the critical areas issue and that issue is no longer part of this appeal.

Regarding the redesignation of Island Crossing as urban commercial from agricultural resource land, the Board stated in its Corrected Final Decision and Order that the petitioners had carried their burden of proof to show the ordinance failed to be guided by and did not substantively comply with RCW 36.70A.020(8) (planning goal to preserve natural resource land) and that it failed to comply with RCW 36.70A.040 (local governments must adopt development regulations that preserve agricultural lands), RCW 36.70A.060(1) (conservation of agricultural lands) and RCW 36.70A.170(1)(a) (designation of agricultural lands). The Board found that the County's action was unsupported by the record and thus was clearly erroneous in concluding that the land in Island Crossing no longer met the criteria for designation as agricultural land of long-term commercial significance and remanded the ordinance to the County to take legislative action to bring it into compliance with the goals and requirements of the GMA.

Regarding the Urban Growth Area and expansion issues the Board stated in its decision and order that petitioners had carried their burden of proof to show the ordinance failed to be guided by and did not substantively comply with RCW 36.70A.020(1),(2), and (8) (planning goals requiring encouragement of urban growth in urban growth areas, reduction of sprawl, enhancement of natural resource industries) and that it failed to comply with RCW 36.70A.110 and .215 (limiting UGA expansions to land necessary to accommodate projected future growth and setting priorities for the expansion of urban growth areas) and .210(1). The Board therefore concluded that the County's action regarding the UGA expansion was clearly erroneous and remanded the ordinance to the County to take legislative action to bring it into compliance with the goals and requirements of the GMA. Upon remand the County held new hearings, took new testimony and adopted a new land capacity analysis. Based on the new evidence, the County adopted Emergency Ordinance No. 04-057.

A compliance hearing was held by the Board in June 2004 and the Board entered an Order Finding Continuing Noncompliance and Invalidity and Recommendation for Gubernatorial Sanctions. The Board found that the County had achieved compliance with RCW 36.70A.215 but had failed to carry its burden of proving compliance with the other GMA provisions.

Snohomish County, the City of Arlington, and Dwayne Lane jointly appealed the Board's Amended Final Decision and Order and the Order on Compliance to the superior court. Futurewise and the Stillaguamish Flood Control District filed a motion to dismiss, claiming that the issue of whether the

county ordinances complied with the GMA was barred by res judicata and collateral estoppel. The superior court granted the motion to dismiss and also affirmed the Board's decisions on the merits.

The City of Arlington, Snohomish County and Dwayne Lane appeal.

## ANALYSIS

### Standard of Review

The appropriate standard of review, as summarized in the recent Supreme Court opinion Lewis County v. Western Washington Growth Management Hearings Board,<sup>3</sup> is as follows:

The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations. RCW 36.70A.280, .302. The Board "shall find compliance" unless it determines that a county action "is 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). To find an action "clearly erroneous," the Board must have a "firm and definite conviction that a mistake has been committed." Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). On appeal, we review the Board's decision, not the superior court decision affirming it. King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 553, 14 P.3d 133 (2000) (hereinafter referred to as Soccer Fields). "We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court." Id. (quoting City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

The legislature intends for the Board "to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of" the GMA. RCW 36.70A.3201. But while the Board must defer to Lewis County's choices that are consistent with the GMA, the Board itself is entitled to deference in determining what the GMA requires. This court gives "substantial

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<sup>3</sup> Lewis County v. Western Washington Growth Mgmt. Hearings Bd., 157 Wn.2d 488, 139 P.3d 1096 (2006).

weight” to the Board’s interpretation of the GMA. Soccer Fields, 142 Wn.2d at 553.[<sup>4</sup>]

Furthermore, “[u]nder the Administrative Procedure Act (APA), chapter 34.05 RCW, a court shall grant relief from an agency’s adjudicative order if it fails to meet any of nine standards delineated in RCW 34.05.570(3).”<sup>5</sup> Here, the appellants assert the Board engaged in unlawful procedure or decisionmaking process or failed to follow a prescribed procedure (RCW 34.05.570(3)(c)), the Board erroneously interpreted the law (RCW 34.05.570(3)(d)), the Board’s order is not supported by evidence that is substantial when viewed in light of the whole record before the court (RCW 34.05.570(3)(e)), and the Board’s order was arbitrary and capricious (RCW 34.05.570(3)(i)).

Errors of law alleged under subsections (c) and (d) are reviewed de novo.<sup>6</sup> Errors alleged under subsection (e) are mixed questions of law and fact, where the reviewing court determines the law independently, then applies it to the facts as found by the Board.<sup>7</sup> Substantial evidence is “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.”<sup>8</sup>

For the purposes of (i), arbitrary and capricious actions include “willful and unreasoning action, taken without regard to or consideration of the facts and

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<sup>4</sup> Lewis County, 157 Wn.2d at 497-98.

<sup>5</sup> Lewis County, 157 Wn.2d at 498.

<sup>6</sup> Magula v. Dep’t of Labor and Indus., 116 Wn. App. 966, 969, 69 P.3d 354 (2003) (citing City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

<sup>7</sup> Lewis County, 157 Wn.2d at 498.

<sup>8</sup> City of Redmond, 136 Wn.2d at 46 (quoting Callecod v. State Patrol, 84 Wn. App. 663, 673, 929 P.2d 510 (1997)).

circumstances surrounding the action.”<sup>9</sup> Furthermore, “[w]here there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.”<sup>10</sup>

Redesignation of Island Crossing from Agricultural Resource Land to Urban Commercial

Under the GMA, counties must designate “[a]gricultural lands that are not already characterized by urban growth and that have long term significance for the commercial production of food or other agricultural products.”<sup>11</sup> Furthermore, counties must adopt development regulations “to assure the conservation of” those agricultural lands designated under RCW 36.70A.170.<sup>12</sup>

While this case was awaiting oral argument the definition of “agricultural land” for GMA purposes was addressed by the Supreme Court in Lewis County v. Western Washington Growth Management Hearings Board. The court held that three factors must be met before land may be designated agricultural land for the purposes of the GMA. The court stated:

[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-

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<sup>9</sup> City of Redmond, 136 Wn.2d at 46-47 (quoting Kendall v. Douglas, Grant, Lincoln & Okanogan County Pub. Hosp. Dist. No. 6, 118 Wn.2d 1, 14, 820 P.2d 497 (1991)).

<sup>10</sup> City of Redmond, 136 Wn.2d at 47 (quoting Kendall, 118 Wn.2d at 14).

<sup>11</sup> RCW 36.70A.170(1)(a); see also, Lewis County, 157 Wn.2d at 498-99.

<sup>12</sup> RCW 36.70A.060(1)(a); see also Lewis County, 157 Wn.2d at 499.

190-050(1) in determining which lands have long-term commercial significance.<sup>[13]</sup>

The WAC factors include:

- (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.<sup>[14]</sup>

In the ordinances at issue in this case, Snohomish County made the following finding regarding whether the land in question was agricultural land for GMA purposes:

The land contained within the Island Crossing Interchange Docket Proposal is not agricultural land of long term commercial significance. Although some of the soils may be of a type appropriate for agricultural use, soil type is only one factor among many others in the legal test for agricultural land of long term commercial significance. The County Council has addressed the question as to whether the land is:

“primarily devoted to the commercial production of agricultural products and has long term commercial significance for agricultural production”

and found that it is not.

At the public hearing, the testimony of Mrs. Roberta Winter (Exh. 111) was very persuasive on this point. Since the mid-1950's, she and her husband had a dairy farm in the very location of the Island Crossing Interchange Docket Proposal site. Locating and then expanding I-5 put them out of the dairy business. They soon

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<sup>13</sup> Lewis County, 157 Wn.2d at 502.

<sup>14</sup> WAC 365-190-050(1).

discovered that crops generated less revenue than the property taxes. The Winters sold the land because the land could not be profitably farmed.

Council finds that this land cannot be profitably farmed, and is not agricultural land of long term commercial significance.

The Board found that the County's action in redesignating the land was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. We find the Board erred in concluding the County committed clear error in determining the land in question has no long-term commercial significance for agricultural production. There is evidence in the record supporting the County's determination on this point, and the Board wrongly dismissed this evidence. Because this evidence supports the County's finding that the land at Island Crossing has no long-term commercial significance for agricultural production, the Board erred in not deferring to the County's decision to redesignate the land for urban commercial use.

As stated in the Lewis decision, agricultural land for the purposes of the GMA is, among other things, land 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."<sup>15</sup> Furthermore, "counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance."<sup>16</sup>

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<sup>15</sup> Lewis County, 157 Wn.2d at 502.

<sup>16</sup> Lewis County, 157 Wn.2d at 502.

In regards to whether the land at Island Crossing has long-term commercial significance for agricultural production, the Board stated:

2. Do the 75.5 acres of land at Island Crossing have long-term commercial significance?

Again, the Board answers in the affirmative. The County relies on Finding T, set forth in Finding of Fact 3, supra, to support its conclusion that the Riverway Commercial Farmland no longer has long-term commercial significance. The "evidence" relied upon is testimony from an individual who operated a dairy farm in the vicinity fifty years ago who opined that she sold her farm "because the land could not be profitably farmed." Ex. 111. Anecdotal testimony, particularly from an individual whose direct experience with the area is decades removed from the present and whose declared was in dairy rather than crop farming, does not constitute credible evidence on which to support the County's action. Also, as Petitioners noted, this "Finding" was contradicted by others with present-day experience in crop farming in the Stillaguamish Valley.

The Board went on to cite the report of the Snohomish County Planning and Development Services (PDS), the Draft Supplemental Environmental Impact Statement (DSEIS), the United States Department of Agriculture (USDA) soils report, and the recommendations of the Snohomish County Agricultural Advisory Board as substantial evidence contrasting sharply with the testimony relied upon by the County.

For example, both the PDS report and DSEIS specifically address the relevant WAC factors and conclude that the land in question is agricultural land of long-term commercial significance:

Analyses of the proposal conducted by PDS conclude that under the GMA's minimum guidelines for classification of agricultural lands, the portion of the proposal site currently designated and zoned for agricultural uses should continue to be classified as such. This conclusion is based on the following analysis of the GMA guidelines:

- Availability of Public Facilities: Public water and sanitary sewer facilities are physically located in and adjacent to the proposal site. However, sanitary sewer service is restricted by the [General Policy Plan (GPP)] to Urban Growth Areas. The shoreline substantial development permit for the existing sewer line restricts availability of sanitary sewer to the existing parcels zoned Rural Freeway Service.
- Tax Status: Several large parcels in the area (approximately 32% of the area) are classified as Farm and Agricultural Land by the Snohomish County Assessor and are valued at their current use rather than "highest and best use." The other parcels in the area, however, are valued and taxed at their "highest and best use".
- Availability of Public Services: Public Services such as public water and sanitary sewer service are physically located within and adjacent to the proposal site. However, sanitary sewer service is restricted by the GPP to Urban Growth Areas. The existing sanitary sewer line is available by conditions in the shoreline substantial development permit to existing parcels zoned Rural Freeway Service.
- Relationship or proximity to urban growth areas: The proposal site is approximately 0.9 miles from the Arlington city limits and is functionally separated from the City because it is within the Stillaguamish River floodplain. The southern tip of the proposal site, however, is adjacent to the Arlington UGA.
- Land Use Settlement Patterns and Compatibility with Agricultural Practices: Most of the proposal site is currently in farm use with interspersed residential and farm buildings.
- Predominant Parcel Size: Predominant parcel sizes are large and of a size typically found in areas designated commercial farmland. Nine parcels are located within the 75.5 acres of the proposal site designated Riverway Commercial Farmland. Approximate sizes of these parcels are 20.7 acres, 15.8 acres, 14.6 acres, 8.1 acres, 2.9 acres, and three smaller parcels.
- Intensity of Nearby Uses: More intense land uses and urban land developments are located within the Rural Freeway

Commercial node at the I-5/SR 530 interchange that has existed essentially in its present configuration since 1968. Farmland is located immediately to the east, and, separated by I-5, to the west.

- History of Land Development Permits Issues Nearby: No urban development permits have been issued in the vicinity of the proposal site except for the substantial shoreline development permit issued for the sewer line that serves only the existing rural freeway commercial uses.
- Land Values under Alternative Uses: The area of the proposal site outside of the Rural Freeway Service designation is in the floodway fringe area of the Stillaguamish River. Higher uses than farming would be difficult to locate in the area because of the floodplain constraints.
- Proximity of Markets: Markets within Arlington, Marysville, and Stanwood are located in close proximity to the site.

In addition, soils in the proposal area are prime farmland soils as defined by the [United States Department of Agriculture Soil Conservation Service (SCS)] and Snohomish County. . . .

Based on review of the site characteristics and the GMA criteria, the proposal area meets the criteria for an agricultural area of long-term commercial significance. The proposal area contains prime farmland soils, is not characterized by urban growth, and is adjoined by uses that are compatible with agricultural practices.

Respondents argue that the DSEIS is unique because it is “the only comprehensive, GMA-focused analysis” in the record.

However, Dwayne Lane, a litigant in this case, hired consulting firm Higa-Burkholder to conduct a similar analysis employing the WAC criteria, and Higa-Burkholder came to the opposite conclusion. Higa-Burkholder’s analyzed the WAC factors as follows:

- (a) Availability of public facilities: The interchange is currently serviced by water and sewer, power, telecommunications, and

gas. The fact that sewer expansion is limited by the existing Shoreline permit (1977) only means that to expand sewer service, a proposal must be approved by the Snohomish County Council under a Shoreline Permit application. In fact, the facilities exist and, in the case of water are in use.

- (b) Tax Status: All but one parcel is smaller than 20 Acres Minimum for Open Space Taxation. Many property owners are being assessed tax rates that, according to the Snohomish County Assessor's Office, reflect "freeway influence" implying that the County believes that these properties have a "higher and better use" than agriculture. Taxes on this land are higher than the revenues generated from farming. Tax assessments reflect the availability of water.
- (c) Availability of Public Services: Island Crossing has automobile services, lodging, food, and transit access.
- (d) Relationship and Proximity to UGA: The Arlington UGA border is the southern boundary of the subject area. The City will annex the area through a special election in November of 2003.
- (e) Predominant Parcel Size: The 1982 Snohomish County Agricultural Provision Plan (SCAPP) suggests the optimum size for agricultural parcels is 40 acres with 20 acres minimum for crop production if adjacent to other large parcels. Minimum size for specialty crops is ten acres. A majority of the parcels are smaller than the 20 acres considered minimum for large-scale farming and for qualification for the open space tax abatement program for agriculture.
- (f) Land Use and Settlement Patterns and Their Compatibility with Agricultural Practices: Well-documented conflicts exist with traffic and urban development. Traffic counts have increased to the point where it is dangerous for farm vehicles to cross the highway and certainly to pasture animals that often escape endangering the traveling public. These things limit the viability of agricultural [sic].
- (g) Intensity of Nearby Land Uses: This interchange represents one of two connections to I-5 for a large market area including Darrington, Arlington, Smokey Point and North Marysville. These communities have been some of the fastest growing areas in Snohomish County. Arlington has approved the development of an Airport Industrial Park that has the potential

to add 4000 jobs to the community, half of which will use the Island Crossing Interchange over the next ten years.

The Stillaguamish Tribe has developed a tribal center that includes several high traffic generating businesses including a smoke shop, a pharmacy, fireworks store, a police station and a community center. This development is located at the intersection of SR 530 and Old Highway 99. Currently, the Tribe's property is served by City of Arlington Water, but it has no public sewer service. The Tribe has plans to expand their operation at Island Crossing by purchasing other land and converting it to Trust Land.

- (h) History of Development Permits Nearby: Over 200 homes have recently been developed on 47<sup>th</sup> Street NE less than one half mile from Island Crossing. Smokey Point Boulevard has been the center of residential growth over the past ten years. Island Crossing represents one of two access points to I-5 for all of this growth.
- (i) Land Values under Alternative Uses: Island Crossing has the potential to benefit Snohomish County economically. Jobs, sales tax revenue and property taxes are but a few of the economic benefits.
- (j) Proximity to Markets: Although this area is in the Puget Sound population center and access to markets for farm products is close by, most production is occurring elsewhere, for example, in Eastern Washington where fewer conflicts with urban land uses, access to large parcels and lower priced land make agriculture viable. Twin City Foods imports its raw product from the east side of the State and no longer grows product in this area.

Relying on our Supreme Court's decision in Redmond, the Board dismissed the entire Higa-Burkholder analysis out of hand. Specifically, the Board construed the Higa-Burkholder report to be "reflections, if not direct expressions, of 'landowner intent'" and assigned it "the appropriate weight."

The Board incorrectly relied on Redmond to dismiss this evidence. In Redmond, the Supreme Court analyzed the meaning of the phrase “devoted to” as used in the GMA definition of agricultural land and held:

While the land use on the particular parcel and the owner’s intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor landowner intent of a particular parcel is conclusive for purposes of this element of the statutory definition.<sup>17</sup>

All Redmond holds is that a landowner cannot control whether land is primarily devoted to agriculture by taking his or her land out of agricultural production. It does not say the Board may dismiss evidence supporting the County’s decision if it was obtained at the request of an interested party. The Board erroneously used Redmond as a tool with which to dismiss of an important piece of evidence that supported the County’s position with regards to whether Island Crossing was agricultural land of long-term commercial significance. To the extent this evidence supports the County’s conclusion that the land was not of long-term commercial significance to agricultural production, and we find that it does, the Board would be required under the GMA to defer to the County and affirm its decision redesignating the land urban commercial.

#### Expansion of the Arlington UGA

The Board also found the expansion of the Arlington UGA in Amended Ordinance No. 03-063 did not comply with the GMA for two reasons. First, the Board found the record did not contain a valid land capacity analysis

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<sup>17</sup> City of Redmond, 136 Wn.2d at 53.

demonstrating a need for additional commercial land. In response, the County submitted a Large Plot Parcel Analysis prepared by Higa-Burkholder<sup>18</sup> as part of its statement of compliance and the Board found this action cured noncompliance with RCW 36.70A.215. This issue is therefore not part of this appeal.

Second, the Board found the Expanded UGA including Island Crossing did not meet the locational requirements of RCW 36.70A.110(1), which states in pertinent part:

An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is designated new fully contained community as defined by RCW 36.70A.350.[<sup>19</sup>]

The Board concluded in its Corrected Final Decision and Order:

As to whether the expanded UGA for Island Crossing meets the locational requirements of RCW 36.70A.110, the Board agrees with Petitioners. The closest point of contact between Arlington's city limits and private property within the expansion area is approximately 700 feet. . . . Also, the fact that limited sewer service is adjacent to, or even existing within, a rural area is not dispositive on the question of whether the area is urban in character. Therefore, the Board concludes the subject property is not "adjacent to land characterized by urban growth," and does not comply with RCW 36.70A.110(1).<sup>20</sup>

The Board explained further in its Order Finding Continuing Noncompliance:

No new facts or reasoning are presented to disturb the Board's conclusions that Island Crossing continues to have agricultural lands of long-term commercial significance, that the presence of a

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<sup>18</sup> This is a different report than the one that evaluated whether the land at Island Crossing was agricultural land of long-term commercial significance.

<sup>19</sup> RCW 36.70A.110(1) (emphasis added).

<sup>20</sup> (Emphasis in original).

sewer line is irrelevant, particularly given its limitations, that the freeway service uses do not rise to the status of “urban growth,” and that Island Crossing is not “adjacent” to the Arlington UGA or a residential “population” of any sort. In fact, the private lands within this proposed UGA expansion would be connected to the Arlington UGA only by means of a 700 foot long ‘cherry stem’ consisting of nothing but public right-of-way. . . . While such dramatically irregular boundaries were common in the pre-GMA era, the meaning of “adjacency” under the GMA precludes such behavior.

“Urban growth” is defined in the GMA as:

growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.<sup>21</sup>

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

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<sup>21</sup> RCW 36.70A.030(18) (emphasis added).

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.<sup>22</sup>

Furthermore, 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).

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<sup>22</sup> RCW 36.70A.030(18).

Res Judicata and Collateral Estoppel

The parties argue much over whether the issues of res judicata and collateral estoppel were timely raised below; however, an analysis of the issues on the merits reveals the superior court erred in granting the motion to dismiss the appeal based on res judicata and collateral estoppel.

“Resurrecting the same claim in a subsequent action is barred by res judicata.”<sup>23</sup> Under the doctrine of res judicata, or claim preclusion, “a prior judgment will bar litigation of a subsequent claim if the prior judgment has ‘a concurrence of identity with [the] subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.’”<sup>24</sup>

“When a subsequent action is on a different claim, yet depends on issues which were determined in a prior action, the relitigation of those issues is barred by collateral estoppel.”<sup>25</sup> Collateral estoppel, or issue preclusion, requires:

“(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.”<sup>26</sup>

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<sup>23</sup> Hilltop Terrace Ass’n v. Island County, 126 Wn.2d 22, 31, 891 P.2d 29 (1995).

<sup>24</sup> In re Election Contest Filed by Coday, 156 Wn.2d 485, 500-01, 130 P.3d 209 (2006) (quoting Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898 (1995)).

<sup>25</sup> Hilltop Terrace Ass’n, 126 Wn.2d at 31.

<sup>26</sup> Shoemaker v. Bremerton, 109 Wn.2d 504, 507, 745 P.2d 858 (1987) (quoting Malland v. Dep’t of Retirement Sys., 103 Wn.2d 484, 489, 694 P.2d 16 (1985)).

"In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action."<sup>27</sup>

Here, the superior court dismissed the appeal on grounds that the appellants' claims were barred by res judicata and collateral estoppel. The superior court stated in its Decision on Appeal Affirming Growth Board:

4.2 In prior proceedings involving many of the same parties, in 1998 the Board affirmed Snohomish County's designation of the subject property (Island Crossing property) as agricultural resource land (75.5 acres) and Rural Freeway Service (35 acres) and removed it from the Arlington urban growth area (UGA). That decision was eventually affirmed by the Court of Appeals in an unreported decision (Dwayne Lane v. Central Puget Sound Growth Management Hearings Board, No. 46773-5-1). In order to re-designate the land, the County must show that there has been a change in circumstances since 1998, and that the property is no longer properly designated as agricultural resource land and Rural Freeway service.

4.3 The Petitioners have failed to demonstrate any material change in circumstances justifying a change in the designation of the land.

The superior court explained further in its oral decision:

As I've already stated, these issues have twice before been the subject of proceedings before the Board and the Court. On both occasions the Court has held that the lands should be properly designated as agricultural, and that the area should not be included in the Urban Growth Area. The causes of action are identical, the persons and parties are the same, although on the second appeal in 2001, the County was on the other side. I don't think this detracts from the applicability of the other principles and the quality of the parties are the same.<sup>[28]</sup>

The superior court in its decision and the respondents in their briefs misstate the issues and claims that were before the Board and the courts. The

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<sup>27</sup> Shoemaker, 109 Wn.2d at 508.

<sup>28</sup> (Emphasis added).

inquiry before the Board and the courts in the prior litigation was not whether the land was properly designated agricultural resource land as opposed to urban commercial land. The inquiry was whether the County committed clear error in designating the land agricultural in view of the entire record before the Board and in light of the goals and requirements of the GMA. This distinction is crucial.

In the prior Island Crossing litigation we ultimately held “the Board’s decision that the County’s designation of Island Crossing as agricultural resource land was not clearly erroneous.”<sup>29</sup> This court did not hold that the land was agricultural resource land of long-term commercial significance. We could not have done so even had we tried. This is because the Board’s review is limited to whether “the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA],”<sup>30</sup> and our review was limited to whether the Board’s decision was supported by substantial evidence or was arbitrary and capricious.

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

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<sup>29</sup> Dwayne Lane v. Central Puget Sound Growth Management Hearings Board, 2001 Wash. App. LEXIS 425, at \*18.

<sup>30</sup> RCW 36.70A.320(3).

deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter.<sup>31</sup>

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

In the present case, the issues include whether the County's exercise of its discretion in redesignating the same land as urban commercial and expanding the Arlington UGA to include Island Crossing was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. This is not the same issue or claim that was before the Board and the courts in the prior litigation. As stated before, the issue in that litigation was whether the County's decision to designate the land agricultural was clearly erroneous. The superior court's decision to bar the appeal on res judicata and collateral estoppel grounds was in error. The appellants were entitled to a decision on appeal as to whether the County's subsequent decision to redesignate Island Crossing was clearly erroneous.

In short, simply because the Board and courts previously held that the agricultural designation was not clearly erroneous in view of the record and in light of the GMA, does not mean that an urban commercial designation would be clearly erroneous in view of the same or similar record and in light of the goals and requirements of the GMA. The prior judgment and the current litigation do

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<sup>31</sup> RCW 36.70A.320(1) (emphasis added).

not involve the same claim, nor are the issues identical. Thus, the superior court should not have precluded the petitioners from challenging the Snohomish County ordinances at issue in this case.

The superior court's decision is erroneous in another respect. Specifically, the superior court's holding that "[i]n order to re-designate the land, the County must show that there has been a change in circumstances since 1998, and that the property is no longer properly designated as agricultural resource land and Rural Freeway service" impermissibly shifts the burden away from the petitioners. Under RCW 36.70A.320(2), "the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under [the GMA] is not in compliance with the requirements of [the GMA]." In the court of appeals decision in City of Redmond v. Central Puget Sound Growth Management Hearings Board (hereinafter referred to as Redmond II),<sup>32</sup> we held that the Board erroneously placed the burden on the city to demonstrate conclusive evidence of changed circumstances in order to justify the de-designation of agricultural resource land. The superior court's ruling that the County be required to show evidence of changed circumstances in order to overcome collateral estoppel and res judicata thus directly conflicts with the statutorily mandated burden of proof set forth in RCW 36.70A.320(2) and affirmed in Redmond II.

In sum, we hold the Board erred in finding the County committed clear error in concluding that the land at Island Crossing had no long term commercial

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<sup>32</sup> City of Redmond, 116 Wn. App. 48, 56, 65 P.3d 337 (2003).

significance to agricultural production. The Board erred because it dismissed a key piece of evidence that supported the County's conclusion on this point. Because there is evidence in the record to support the County's conclusions, the Board should have deferred to the County.<sup>33</sup>

Furthermore, we hold the Board erred in finding the County committed clear error in including the land at Island Crossing within the newly expanded Arlington UGA. There are facts in the record to support the conclusions that the land in question is characterized by urban growth and/or adjacent to territory already characterized by urban growth.

Finally, we hold the superior court erred in dismissing the appeal on res judicata and collateral estoppel grounds. We thus reverse and remand this matter to the Board for a decision consistent with the opinion of this court.<sup>34</sup>

Grosse, J

WE CONCUR:

Schindler, ACT      Colman, J

<sup>33</sup> See RCW 36.70A.3201.

<sup>34</sup> RCW 34.05.574(1); Manke Lumber Co. v. Diehl, 91 Wn. App. 793, 809-10, 959 P.2d 1173 (1998).

APPENDIX B:

*City of Arlington et. al. v. Central Puget Sound  
Growth Management Hearings Board, No. 57253-9-  
1 Order Denying Motions for Reconsideration (May  
29, 2007).*

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

CITY OF ARLINGTON, DWAYNE )  
LANE and SNOHOMISH COUNTY )

No. 57253-9-I

Appellants, )

ORDER DENYING MOTIONS  
FOR RECONSIDERATION

v. )

CENTRAL PUGET SOUND GROWTH )  
MANAGEMENT HEARINGS BOARD, )  
STATE OF WASHINGTON; 1000 )  
FRIENDS OF WASHINGTON nka )  
FUTUREWISE; STILLAGUAMISH )  
FLOOD CONTROL DISTRICT; )  
PILCHUCK AUDUBON SOCIETY; )  
THE DIRECTOR OF THE STATE OF )  
WASHINGTON DEPARTMENT OF )  
COMMUNITY, TRADE, AND )  
ECONOMIC DEVELOPMENT and )  
AGRICULTURE FOR TOMORROW )

Respondents. )

Futurewise  
MAY 30 2007

2007 MAY 29 AM 7:57

COURT OF APPEALS  
STATE OF WASHINGTON

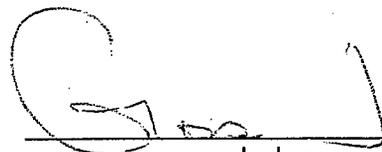
Respondents Stillaguamish Flood District, Futurewise, Pilchuck Audubon Society, Agriculture for Tomorrow, and the Director of the Washington State Department of Community, Trade and Economic Development have filed motions for reconsideration herein. The court has taken the matters under consideration and has determined that the motions for reconsideration should be denied.

Now, therefore, it is hereby

ORDERED that the motions for reconsideration are denied.

Done this 29<sup>th</sup> day of May, 2007.

FOR THE COURT:

  
\_\_\_\_\_  
Judge

APPENDIX C:

Relevant Statutory Provisions.

## **RCW 36.70A.020**

### **Planning goals.**

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.
- (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (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.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
- (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.
- (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.
- (13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.

[2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

## RCW 36.70A.030 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means 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.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

(6) "Department" means the department of community, trade, and economic development.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under \*RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "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.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under \*\*RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW

36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(19) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

[2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

**Notes:**

**Reviser's note:** \*(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

\*\*\*(2) RCW 36.70A.1701 expired June 30, 2006.

**Intent -- 2005 c 423:** "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing nonconforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

**Effective date -- 2005 c 423:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2005]." [2005 c 423 § 7.]

**Prospective application -- 1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.

**Finding -- Intent -- 1994 c 307:** "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

**Effective date -- 1994 c 257 § 5:** "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

**Severability -- 1994 c 257:** See note following RCW 36.70A.270.

**RCW 36.70A.040**

**Who must plan — Summary of requirements — Development regulations must implement comprehensive plans.**

(1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline

for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forest lands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of community, trade, and economic development of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000.

[2000 c 36 § 1; 1998 c 171 § 1; 1995 c 400 § 1; 1993 sp.s. c 6 § 1; 1990 1st ex.s. c 17 § 4.]

**Notes:**

**Effective date -- 1995 c 400:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 400 § 6.]

**Effective date -- 1993 sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1993." [1993 sp.s. c 6 § 7.]

**RCW 36.70A.060**

**Natural resource lands and critical areas — Development regulations.**

(1)(a) Except as provided in \*RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

[2005 c 423 § 3; 1998 c 286 § 5; 1991 sp.s. c 32 § 21; 1990 1st ex.s. c 17 § 6.]

**Notes:**

\*Reviser's note: RCW 36.70A.1701 expired June 30, 2006.

Intent -- Effective date -- 2005 c 423: See notes following RCW 36.70A.030.

**RCW 36.70A.110****Comprehensive plans — Urban growth areas.**

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110. Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

[2004 c 206 § 1; 2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

**Notes:**

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.

**Construction -- Application -- 1995 c 400:** See note following RCW 36.70A.070.

**Effective date -- 1995 c 400:** See note following RCW 36.70A.040.

**Severability -- Application -- 1994 c 249:** See notes following RCW 34.05.310.

**Effective date -- 1993 sp.s. c 6:** See note following RCW 36.70A.040.

**RCW 36.70A.170**

**Natural resource lands and critical areas — Designations.**

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

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

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;

(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and

(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050.

[1990 1st ex.s. c 17 § 17.]

**RCW 36.70A.210****County-wide planning policies.**

(1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a county-wide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a county-wide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a county-wide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed county-wide planning policy.

(3) A county-wide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a county-wide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for county-wide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for county-wide economic development and employment; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the county-wide planning policy adoption process. Adopted county-wide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a county-wide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a county-wide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a county-wide planning policy.

(6) Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region.

[1998 c 171 § 4; 1994 c 249 § 28; 1993 sp.s. c 6 § 4; 1991 sp.s. c 32 § 2.]

**Notes:**

**Severability -- Application -- 1994 c 249:** See notes following RCW 34.05.310.

**Effective date -- 1993 sp.s. c 6:** See note following RCW 36.70A.040.

**RCW 36.70A.215****Review and evaluation program.**

(1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, county-wide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection every five years as provided in subsection (3) of this section. The first evaluation shall be completed not later than September 1, 2002. The county and its cities may establish in the county-wide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the county-wide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the county-wide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the county-wide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this

subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the county-wide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section.

[1997 c 429 § 25.]

**Notes:**

**Severability -- 1997 c 429:** See note following RCW 36.70A.3201.



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I declare under penalty of perjury and the laws of the State of Washington  
that the foregoing is true and correct.

DATED this 28<sup>th</sup> Day of June, 2007



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