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NO.

SUPREME COURT 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.

PETITION FOR REVIEW BY THE SUPREME COURT

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I. IDENTITY OF PETITIONER

The Director of the State of Washington Department of Community, Trade and Economic Development (CTED), an agency of the State of Washington and a Respondent in this action, asks the Supreme Court to accept review of the decision designated in Part II of this Petition.

II. COURT OF APPEALS' DECISION

CTED seeks review of the Court of Appeals' published decision filed March 26, 2007. A copy of the decision is reported at 154 P.3d 936 and is attached as Appendix A. Three motions for reconsideration were filed, one by CTED and two by other Respondents. All three motions were denied by an order dated May 29, 2007, a copy of which is attached as Appendix B.

III. ISSUES PRESENTED FOR REVIEW

The issues raised in this petition relate to the designation and conservation of agricultural lands under the Growth Management Act (GMA), RCW 36.70A; the GMA's limits on expansion of urban growth areas; and the proper standards of judicial review of Growth Management Hearings Board decisions under the Administrative Procedure Act (APA), RCW 34.05. Four issues are presented:

(1) The Board determined Snohomish County's decisions affecting the "Island Crossing area" did not comply with the GMA because they

were not supported by the weight of the evidence in the record. Did the Court of Appeals err by failing to apply the substantial evidence test in reviewing the Board's decisions, as required under the APA and the decisions of this Court?

(2) The GMA establishes criteria that govern the designation of agricultural lands of long-term commercial significance. In applying those criteria, did the Board correctly conclude the County's removal of the agricultural designation from the "Island Crossing area" was not supported by the weight of the evidence and did not comply with the GMA?

(3) The GMA establishes criteria that must be satisfied before an urban growth area (UGA) may be expanded. Did the Court of Appeals err by failing to give any weight to the Board's interpretation of these criteria, as required by the decisions of this Court?

(4) In interpreting and applying the statutory limitations on the expansion of urban growth areas under the GMA, did the Board correctly conclude the County did not comply with the GMA when it expanded the Arlington UGA to include the "Island Crossing area"?

IV. STATEMENT OF THE CASE

A. Nature of Action

The "Island Crossing area" lies in the floodplain of the Stillaguamish River north of the City of Arlington in Snohomish County.

In two decisions issued in 2004, the Central Puget Sound Growth Management Hearings Board (Board) found the County did not comply with the GMA when it removed the agricultural designation from Island Crossing, expanded the Arlington Urban Growth Area (UGA) to include Island Crossing, and redesignated Island Crossing for urban commercial development. The Snohomish County Superior Court affirmed the Board, but the Court of Appeals reversed.

B. Factual and Procedural Background

For decades, the Island Crossing area has been in agricultural use; it was formally designated as agricultural land in 1978. CP vol. XIII, p. 2565. Although bordered on one side by Interstate 5, Island Crossing is surrounded by other agricultural lands in the Stillaguamish River floodplain that comprise an important center of agricultural activity in Snohomish County. CP vol. XIII, pp. 2565, 2570-2571; CP vol. XV, pp. 2891, 2901-2903.

In 1995, Snohomish County adopted an ordinance to remove the agricultural designation and expand the Arlington UGA to include Island Crossing. Following an appeal, the County was required to return Island

Crossing to agricultural designation, and the agricultural designation was upheld by the Court of Appeals in 2001.¹

In 2003, the County adopted another ordinance, Ordinance 03-063, which again removed the agricultural designation from Island Crossing, expanded the Arlington UGA to include Island Crossing, and redesignated Island Crossing for urban commercial development. CP vol. IV, pp. 692-707. CTED and others challenged the Ordinance. In a Final Decision and Order issued March 22, 2004, the Board found the ordinance did not comply with the GMA and was invalid. CP vol. XIII, pp. 2562-2602.

The County responded by adopting a third ordinance, Ordinance 04-057, which was virtually identical to the ordinance the Board had invalidated in its Final Decision and Order. CP vol. III, pp. 513-31. In a Compliance Order issued June 24, 2004, the Board found this ordinance also did not comply with the GMA and was invalid. CP vol. XV, pp. 2886-2918.

The County and others appealed the two Board decisions. The Snohomish County Superior Court affirmed the Board on all issues.

¹ *Lane v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 2001 WL 244384 (Wash. App. Div. I, Mar. 12, 2001). This unpublished decision is cited solely to provide history and context, since it involves a previous effort by the County to expand the Arlington UGA to include the same land addressed by the two ordinances at issue in the present appeal. See *State v. Nolan*, 98 Wn. App. 75, 78 n.1, 988 P.2d 473 (1999), *affirmed*, 141 Wn.2d 620, 8 P.3d 300 (2000) (unpublished decision may be cited as evidence of facts established in earlier proceeding in same case or in different case involving same parties).

CP vol. I, pp. 96-130 (oral decision); CP vol. 1, pp. 21-25 (decision affirming Board).

The Court of Appeals reversed, holding (1) the Board had improperly “dismissed” evidence the County cited to justify its decision to remove the agricultural designation from Island Crossing, 154 P.3d at 945-46 ¶¶27-28; and (2) the Board had incorrectly defined “adjacent” in concluding Island Crossing was not “adjacent to territory already characterized by urban growth” under RCW 36.70A.110(1), 154 P.3d at 946-47 ¶¶ 29-35.² The Court of Appeals denied reconsideration on May 29, 2007.

V. ARGUMENT FOR ACCEPTING REVIEW

A. **This Appeal Involves Issues of Substantial Public Interest: the Designation and Conservation of Agricultural Lands of Long-Term Commercial Significance, and Limitations on the Expansion of Urban Growth Areas**

On the merits, this appeal concerns two core requirements of the GMA: the designation and conservation of agricultural lands of long-term commercial significance, and the limitations on expanding urban growth areas.

² The Court of Appeals also reversed the Superior Court’s dismissal of the County’s appeal under principles of collateral estoppel and/or res judicata. 154 P.3d at 947-49 ¶¶36-46. These issues have been raised by the other parties that petitioned the Board; CTED has not joined in those arguments or responded to them, and CTED continues to take no position as to their merit. CTED understands the preclusion issues will be brought before this Court in petitions for review filed by other parties.

In adopting the GMA, the Legislature paid particular attention to agricultural lands. *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091 (1998); *King Cy. v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 142 Wn.2d 543, 555, 14 P.3d 133 (2000) (*King Cy. III*). The GMA requires that all counties in Washington designate agricultural lands of long-term commercial significance. *King Cy. III*, 142 Wn.2d at 556 (citing RCW 36.70A.170). Certain counties, including Snohomish County, also are required to adopt development regulations to conserve those agricultural lands designated under RCW 36.70A.170. *Id.* at 556 (citing RCW 36.70A.060). The comprehensive plan and implementing development regulations must continue the designation and conservation of agricultural lands of long-term commercial significance, discourage incompatible uses on designated agricultural lands, and include provisions that maintain and enhance the agricultural industry in the county. *King Cy. III*, 142 Wn.2d at 556-57 (citing RCW 36.70A.020(8)).³ These coordinated requirements comprise “a legislative mandate for the conservation of agricultural land.” *King Cy. III*, 142 Wn.2d at 562.

³ See also RCW 36.70A.070(5)(c) (the rural element in a comprehensive plan must protect against conflicts with the use of agricultural lands designated under RCW 36.70A.170). Pursuant to RAP 13.4(c)(9), the text of all relevant statutes is provided in Appendix D to this petition.

The Legislature also focused the GMA's attention on controlling urban sprawl. *King Cy. v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 138 Wn.2d 161, 167, 979 P.2d 374 (1999) (*King Cy. II*) (citing RCW 36.70A.010). One of the central requirements of the GMA is that counties planning under it must designate urban growth areas "within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature." *Quadrant Corp. v. Growth Mgmt. Hrgs. Bd.*, 154 Wn.2d 224, 232 ¶ 11, 110 P.3d 1132 (2005) (quoting RCW 36.70A.110(1)).

UGAs are to be designated through a "carefully specified process" in the GMA that provides a rational framework for urban growth while reducing urban sprawl. *King Cy. v. Wash. State Boundary Rev. Bd. for King Cy.*, 122 Wn.2d 648, 653-54, 860 P.2d 1024 (1993) (*King Cy. I*). When, as here, a county considers a proposal to expand an urban growth area, the GMA requires the county to evaluate both the need to expand the UGA (i.e., whether the current size of the UGA is adequate to support projected population growth over the GMA planning horizon) and the appropriateness of expanding onto the particular land in question. RCW 36.70A.110. See *Skagit Surveyors & Engineers LLC v. Friends of Skagit Cy.*, 122 Wn.2d 542, 548, 860 P.2d 963 (1998) (the primary method

for meeting the GMA's anti-sprawl goal is set forth in RCW 36.70A.110); *Quadrant*, 154 Wn.2d at 246 ¶ 37 (same).

As demonstrated in the following sections of this Petition, this case merits review by this Court under the standards of RAP 13.4(b)(1) and (4). It involves mandates that are at the heart of the comprehensive planning required statewide under the GMA⁴ and raises fundamental issues about the extent to which local decisions under the GMA must be supported by evidence. By failing to apply the substantial evidence standard of review, the Court of Appeals improperly substituted its view of the facts of that of the Board, thereby assuming statutory authority that the Legislature vested in the Growth Management Hearings Boards.⁵ By rejecting the Board's construction of RCW 36.70A.110 in favor of a narrow definition that fails to comport with legislative intent, the Court of Appeals nullified a key part of the GMA's locational requirements governing the expansion of urban growth areas. This Court should accept review.

⁴ All counties must designate agricultural lands of long-term commercial significance. RCW 36.70A.170. At present, 29 of Washington's 39 counties are subject to the full planning requirements of the GMA, which include the requirements addressing urban growth areas in RCW 36.70A.110. See <http://www.mrsc.org/Subjects/Planning/compplan.aspx> (visited June 20, 2007). Approximately 95% of Washington residents live in jurisdictions that fully plan under the GMA. *Id.*

⁵ A Growth Management Hearings Board must support its decision with findings of fact that are based on the evidence before it. RCW 36.70A.270(6), .302(1). The decision must be based on the entire record presented to the Board, not just those portions cited by a county or city to support its determination. RCW 36.70A.320(3). The Board has discretion to admit additional evidence that it determines is necessary or of assistance in reaching its decision. RCW 36.70A.290(4).

B. Contrary to the Decisions of This Court, the Court of Appeals Disregarded the Applicable Standard of Review by Failing to Apply the Substantial Evidence Test to the Board's Weighing of the Evidence (Issue 1)

In an unbroken line of cases, this Court has held that decisions of Growth Management Hearings Boards are reviewed under the Administrative Procedure Act, RCW 34.05.⁶ A reviewing court applies the standards of RCW 34.05 directly to the record before the Board.⁷ The burden of demonstrating the Board erred is on the party challenging the Board's decision—in this case the County and its supporters.⁸

The County found the agricultural lands in Island Crossing were no longer of long-term commercial significance. CP vol. IV, pp. 694-694; CP vol. III, pp. 515-21. The Board reviewed all relevant evidence in the record concerning the current status of the agricultural lands in Island Crossing, and it found the evidence that supported continued agricultural

⁶ *Skagit Surveyors*, 122 Wn.2d at 555; *Torrance v. King Cy.*, 136 Wn.2d 783, 790, 966 P.2d 891 (1998); *King Cy. III*, 142 Wn.2d at 552; *Thurston Cy. v. Cooper Point Ass'n*, 148 Wn.2d 1, 7, 57 P.3d 1156 (2002); *Quadrant*, 154 Wn.2d at 233 ¶ 14; *Ferry Cy. v. Concerned Friends of Ferry Cy.*, 155 Wn.2d 824, 833 ¶ 17, 123 P.3d 102 (2005); *Chevron, Inc. v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 156 Wn.2d 131, 136 ¶ 6, 124 P.3d 640 (2005); *Lewis Cy. v. W. Wash. Growth Mgmt. Hrgs. Bd.*, 157 Wn.2d 488, 497 ¶ 7, 139 P.3d 1096 (2006). See also *Diehl v. W. Wash. Growth Mgmt. Hrgs. Bd.*, 153 Wn.2d 207, 213, 103 P.3d 193 (2004) (APA establishes the exclusive means of judicial review for agency action, unless the sole issue is a claim for money damages or compensation or the agency whose action is at issue lacks statutory authority to determine the claim) (citing RCW 34.05.510(1)).

⁷ *Redmond*, 136 Wn.2d at 45; *King Cy. III*, 142 Wn.2d at 553; *Thurston Cy.*, 148 Wn.2d at 7; *Ferry Cy.*, 155 Wn.2d at 833 ¶ 17; *Lewis Cy.*, 157 Wn.2d at 497 ¶ 7.

⁸ RCW 34.05.570(1); *Redmond*, 136 Wn.2d at 45; *Torrance*, 136 Wn.2d at 790; *King Cy. III*, 142 Wn.2d at 553; *Quadrant*, 154 Wn.2d at 233 ¶ 14; *Thurston Cy.*, 148 Wn.2d at 7-8; *Chevron*, 156 Wn.2d at 136 ¶ 6; *Lewis Cy.*, 157 Wn.2d at 498 ¶ 9.

designation⁹ clearly outweighed the evidence relied upon by the County.¹⁰
See 154 P.3d at 943-45 ¶¶ 24-27; CP vol. XIII, pp. 2587-2591;
CP vol. XV, pp. 2900-2903.

The Court of Appeals inaccurately characterized the Board as having “dismiss[ed]” evidence that supported the County’s position. 154 P.3d at 942 ¶ 22, 945-46 ¶ 28. The Board did not “dismiss” that evidence; rather, it found the evidence cited by the County to be less credible and less useful than the other evidence in the record—most of which had been generated by the County itself. The Board found the weight of the evidence in the record did not support the County’s determination that Island Crossing no longer satisfies the statutory criteria for designation as agricultural lands of long-term commercial significance.¹¹ CP vol. XIII, pp. 2587-2591; CP vol. XV, pp. 2900-2903.

⁹ The evidence supporting continued agricultural designation included the report of the Snohomish County Planning and Development Services, the County’s Draft Supplemental Environmental Impact Statement, the United States Department of Agriculture soils report, and the recommendations and conclusions of the Snohomish County Agricultural Advisory Board. See 154 P.3d at 943-44 ¶¶ 24-25.

¹⁰ The County relied primarily on a report prepared by a consultant hired by Dwayne Lane (a party to this litigation and the leading proponent of commercial development of the Island Crossing area) and testimony from a former landowner. See 154 P.3d at 942 ¶ 21, 944-45 ¶ 26.

¹¹ The Board’s summary paragraph addressing agricultural designation issues in its Final Decision and Order show that the Board reviewed and *weighed* all the evidence in the record:

In summary, the Board concludes that the County’s Ordinance draws scant credible and objective support from the record. In contrast, the arguments advanced by Petitioners are supported by credible and objective evidence in the record. The record suggests that the land

The Board concluded the County's action was clearly erroneous and did not comply with the GMA.

This Court has held consistently that judicial review of a Growth Management Hearings Board's decision is under RCW 34.05.570(3), under which the Court may grant relief only if the appellant satisfies one

continues to meet the criteria for the designation of agricultural land. This is true regarding the question of prime farmland soil characteristics and whether the 75.5 acres are of long-term commercial significance. Contrary to the County's Ordinance Finding, the record weighs heavily toward the denial of the de-designation. The Board's review of the record and arguments presented, leads to the conclusion that the 75.5 acres previously designated as Riverway Commercial Farmland are **devoted to agriculture and continue to be of long-term commercial significance** and should not have been de-designated from the Riverway Commercial Farmland designation and A-10 zoning.

CP vol. XIII, pp. 2590-2591 (bold text in original). In its compliance order, the Board again reviewed the record evidence. The Board explained that the additional landowner testimony solicited by the County did not address whether agricultural lands in Island Crossing continued to have long-term commercial importance:

In the final analysis, however, the relative weight or credibility that the County assigned to the opinions expressed by individuals during the May 19, 2004 hearing sheds little light on the question of whether agricultural lands at Island Crossing have long-term commercial significance. While the Board would agree that soils information alone is not determinative, neither is reliance on anecdotal, parcel-focused expression of opinion nor is landowner intent....

Historical or speculative statements by individuals regarding their personal inability to profitably farm certain parcels does not inform a GMA-required inquiry into the *long term commercial significance of area-wide patterns of land use* that are to *assure the maintenance and enhancement of the agricultural land resource base to support the agricultural industry*. By de-designating resource lands based on anecdotal testimony regarding specific parcels (the Island Crossing triangle viewed in isolation), as opposed to the contextual land use pattern of the agricultural lands and industry infrastructure that serves the surrounding Stillaguamish River Valley (*see Findings of Fact 16-18*), the County has committed a clear error.

CP vol. XV, pp. 2901-2902 (footnotes omitted) (italics in original).

of nine standards listed.¹² A challenge to the evidence relied upon by the Board is reviewed under RCW 34.05.570(3)(e), under which the County must demonstrate that the Board's order "is not supported by evidence that is substantial when viewed in light of the whole record before the court." Substantial evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order."¹³

The Court of Appeals did not apply this test. Instead of the substantial evidence test it should have applied when conducting a review of the evidence relied upon by the Board, the Court of Appeals substituted in its place the GMA's deference to local legislative choices. The Court of Appeals held the Board *must* uphold an action of the County if the County can cite to *any* evidence in the record that supports its action—no matter the quality or quantum of that evidence, and no matter whether the weight of the evidence in the record is to the contrary.¹⁴ Using the Court of Appeals' logic, a county or city could rely on a mere scintilla of

¹² *Redmond*, 136 Wn.2d at 45; *Torrance*, 136 Wn.2d at 790-91; *King Cy. III*, 142 Wn.2d at 553; *Thurston Cy.*, 148 Wn.2d at 8; *Quadrant*, 154 Wn.2d at 233 ¶ 14; *Lewis Cy.*, 157 Wn.2d at 498 ¶ 9.

¹³ *Redmond*, 136 Wn.2d at 46 (quoting *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510, review denied, 132 Wn.2d 1004 (1997)); *King Cy. III*, 142 Wn.2d at 553; *Thurston Cy.*, 148 Wn.2d at 8; *Ferry Cy.*, 155 Wn.2d at 833 ¶ 18.

¹⁴ See 154 P.3d at 946 ¶ 28 ("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").

evidence—or perhaps completely insubstantial evidence—and the Board would have to defer to the county or city because it cited to evidence supporting its conclusion.

Nothing in the decisions of this Court or the GMA requires this result. It is true that counties and cities are given broad discretion as to how they comply with the GMA, but that discretion is bounded by the goals and requirements in the GMA; local planning decisions are entitled to deference only if they are consistent with the GMA's goals and requirements. *Thurston Cy.*, 148 Wn.2d at 14; *Quadrant*, 154 Wn.2d at 238 ¶ 23. The Legislature established the Growth Management Hearings Boards to evaluate local governments' GMA compliance. *Lewis Cy.*, 157 Wn.2d at 493 n.1. To that end, the Legislature directed the Boards to adjudicate GMA compliance and, when necessary, invalidate noncompliant comprehensive plans and development regulations until they are brought into compliance with the GMA. *King Cy. III*, 142 Wn.2d at 552 (citing RCW 36.70A.280, .302); *Lewis Cy.*, 157 Wn.2d at 498 n.7 (citing RCW 36.70A.300(3), .302(1), .320(3)). The Boards are statutorily obligated to review the evidence in the record and to support their conclusions with findings based on that evidence. RCW 36.70A.270(6), .290(4), .302(1), .320(3).

By disregarding the substantial evidence test established in statute and applied consistently by this Court, the Court of Appeals effectively substituted itself in place of the Board, thereby depriving the Board of its statutory authority to review the evidence in the record, to find some evidence more credible or useful than other evidence, or to find a local decision is not supported by the weight of the evidence in the record. The Court of Appeals' decision thereby precludes the Board from fulfilling its statutory mandate to determine GMA compliance in response to petitions for review. The Court of Appeals' decision conflicts with this Court's decisions regarding the standards for judicial review of Board orders and potentially interferes statewide with the Boards' authority to determine GMA compliance. This issue merits review under RAP 13.4(b)(1) and (4).

C. The Board's Conclusion Regarding Agricultural Lands in Island Crossing Was Supported by the Weight of the Evidence in the Record (Issue 2)

The Board reviewed the evidence in the record that addressed whether agricultural lands in Island Crossing continue to be devoted to agriculture and of long-term commercial significance, as required for designation under RCW 36.70A.170.¹⁵ The Board's review of the

¹⁵ Although both Board decisions were issued before this Court's decision in *Lewis Cy.*, the Board applied all three parts of the test for designation set out in *Lewis Cy.*, 157 Wn.2d at 498-502 ¶¶ 10-17. See CP vol. XIII, pp. 2587-2591.

evidence to determine whether it supported the County's decision is consistent with the Legislature's directive that the Board base its decision on the entire record presented to the Board, not just those portions cited by a county or city to support its determination, RCW 36.70A.320(3), and consistent with its duty to enter findings of fact to support its decision, RCW 36.70A.270(6), .302(1).

Based upon the evidence in the record, the Board rejected the County's conclusion that Island Crossing contains no agricultural lands of long-term commercial significance.¹⁶ The Board found the evidence strongly supported continued agricultural designation in Island Crossing. Because there is substantial evidence in the record that supports the Board's decision, the Court of Appeals erred by reversing the Board. Because every county in Washington must designate agricultural lands of long-term commercial significance, the quantum and quality of evidence necessary to support designation is of substantial public interest statewide. This issue merits review under RAP 13.4(b)(4).

D. Contrary to this Court's Decisions, the Court of Appeals Gave No Weight to the Board's Interpretation of the Statutory Criteria for Expanding an Urban Growth Area (Issue 3)

The Island Crossing area is shaped like a narrow triangle, approximately a mile long from north to south, with a few freeway

¹⁶ See footnote 11, above.

services at the north end alongside I-5. CP vol. XIII, p. 2571. To the southern tip of Island Crossing, the County attached a 700-foot extension that runs along I-5 and an access road to “connect” Island Crossing to the existing Arlington UGA. *Id.* The UGA expansion thus has the appearance of a kite (Island Crossing) on a string (the 700-foot extension). *See* Appendix C (an aerial photograph of Island Crossing produced by the County). The Board concluded this UGA expansion violated the locational requirements in RCW 36.70A.110(1), which permits UGA expansion only into areas “already characterized by urban growth” or “adjacent to territory already characterized by urban growth.” CP vol. XIII, pp. 2591-2598.

The Court of Appeals reversed. As it did with respect to agricultural lands, the Court of Appeals again disregarded the substantial evidence test: it found there were some facts that “at least support a conclusion” that Island Crossing is characterized by urban growth, and it concluded the Board therefore should have deferred to the County’s conclusion. 154 P.3d at 947 ¶ 33. As explained above, at pages 11-14, this failure to apply the substantial evidence test conflicts with this Court’s consistent application of that test when reviewing Growth Management Hearings Boards’ decisions.

In addition, the Court of Appeals failed to afford any weight to the Board's conclusion that Island Crossing is not "adjacent" to the existing UGA by virtue of a 700-foot "kite string." 154 P.3d at 947 ¶¶ 34-35. On judicial review the County has the burden of demonstrating that the Board "has erroneously interpreted or applied the law." RCW 34.05.570(3)(d). Review is de novo, but substantial weight is afforded the Board's interpretation of the GMA. *Redmond*, 136 Wn.2d at 46; *King Cy. III*, 142 Wn.2d at 553; *Thurston Cy.*, 148 Wn.2d at 14-15; *Lewis Cy.*, 157 Wn.2d at 498 ¶ 9. It is not enough to argue that the Board must defer to the County's interpretation of the GMA; the County must demonstrate that the Board's interpretation of the GMA was in error:

[W]hile the Board must defer to [a city or 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 weight" to the Board's interpretation of the GMA.

Lewis, 157 Wn.2d at 498 ¶ 8 (citing *King Cy. III*, 142 Wn.2d at 553).

The Board rested its conclusion on its findings that (1) the extension is comprised entirely of freeway and roadway, (2) Island Crossing is nearly a mile from the Arlington municipal boundary, (3) the freeway services at the north end of Island Crossing are nearly two miles from Arlington, and (4) Island Crossing is functionally and topographically separated from Arlington because it lies in the floodplain

of the Stillaguamish River while Arlington and its UGA are located on higher land outside the floodplain. CP vol. XIII, pp. 2570-2571, 2591-2598; CP vol. XV, pp. 2890-2891, 2906-2907.

The Board interpreted the GMA's adjacency language to preclude the type of gerrymandered UGA expansion evident here¹⁷ as contrary to the legislative policy that is implemented through RCW 36.70A.110: the GMA's goal of preventing urban sprawl. See *Skagit Surveyors*, 122 Wn.2d at 548; *Quadrant*, 154 Wn.2d at 246 ¶ 37 (same). The Board's interpretation is consistent with this Court's direction that the plain meaning of a statutory term is to be derived not just from the dictionary, but "from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Thurston Cy.*, 148 Wn.2d at 12 (quoting *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). In addition to dictionary definitions, the Court gives "careful consideration to the subject matter involved, the context in which words are used, and the purpose of the statute." *Quadrant*, 154 Wn.2d at 239 (quoting *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 693, 743 P.3d 793 (1987)).

¹⁷ "[T]he 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." CP vol. XV, p. 2907.

The Court explained that this approach “is more likely to carry out legislative intent” than simple resort to a dictionary definition of a word in isolation. *Thurston Cy.*, 148 Wn.2d at 12 (quoting *Campbell & Gwinn* at 11-12).

In contrast, the Court of Appeals applied a “simple dictionary definition” of “adjacent,” without regard to statutory context or legislative intent. 154 P.3d at 947 ¶ 35. Indeed, the Court of Appeals’ interpretation logically would allow the Arlington UGA to be extended north along I-5 beyond Island Crossing to the next freeway interchange, then to the one after that, so long as the end of the “kite string” “touches” the existing UGA. This result is inconsistent with this Court’s recognition that RCW 36.70A.110 is intended to prevent urban sprawl.

This issue merits review under RAP 13.4(b)(1) and (4).

E. The Board Correctly Concluded the Island Crossing Area Is Not “Adjacent” to the Arlington Urban Growth Area Under RCW 36.70A.110 (Issue 4)

Even if the Court of Appeals used the proper standard of review (which CTED does not concede), it still reached an erroneous result. The Board’s interpretation of RCW 36.70A.110 is consistent with the Legislature’s intent to control urban sprawl; the Court of Appeals’ decision is not. The Court of Appeals’ decision effectively eliminates any meaningful locational limit on UGA expansion, thereby allowing urban

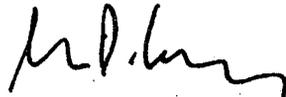
sprawl. Because the prevention of urban sprawl is one of the GMA's core requirements (as set out above at pages 7-8), the Court of Appeals' decision potentially has widespread impact on comprehensive planning statewide under the GMA. This issue merits review under RAP 13.4(b)(4).

VI. CONCLUSION

CTED respectfully requests the Supreme Court accept review of this case.

RESPECTFULLY SUBMITTED this 28th day of June, 2007.

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Development

H
City Of Arlington v. Central Puget Sound Growth
Management Hearings Bd.
Wash.App. Div. 1,2007.

Court of Appeals of Washington, Division 1.
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-I.

March 26, 2007.
Reconsideration Denied May 29, 2007.

Background: City, county, and landowner
appealed determination of the Growth Management
Hearings Board which determined that, under the
Growth Management Act of 1990, county could not
re-designate land from agricultural to commercial.
The Superior Court, Snohomish County, Linda C.
Krese, J., granted Board's motion to dismiss and
also affirmed the decision on the merits, and city,
county, and landowner appealed.

Holdings: The Court of Appeals, Grosse, J., held
that:

- (1) report was sufficient to support county's
determination that parcel had no long-term
commercial significance for agricultural production;
- (2) parcel was already characterized by urban
growth and was adjacent to other urban growth, and
thus met the locational requirements for expansion
of urban growth area;

(3) current action was not barred on grounds of res
judicata and collateral estoppel; and

(4) burden was on Board to show that county's
action did not comply with the Act.

Reversed and remanded.

See also 1996 WL 734917.; 105 Wash.App. 1016,
2001 WL 244384
West Headnotes

[1] Zoning and Planning 414 ↪279

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k278 Particular Terms and Uses
414k279 k. Agricultural Uses;
Farm; Nursery; Greenhouse. Most Cited Cases
Under the Growth Management Act of 1990,
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.
West's RCWA 36.70A.170(1)(a).

[2] Zoning and Planning 414 ↪279

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k278 Particular Terms and Uses
414k279 k. Agricultural Uses;
Farm; Nursery; Greenhouse. Most Cited Cases
Counties must adopt development regulations to
assure the conservation of those agricultural lands
designated under the Growth Management Act of
1990. West's RCWA 36.70A.060(1)(a),

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36.70A.170(1)(a).

[3] Zoning and Planning 414 ↪167.1

414 Zoning and Planning

414III Modification or Amendment

414III(A) In General

414k167 Particular Uses or Restrictions

414k167.1 k. In General. Most Cited

Cases

Report from consulting firm retained by interested landowner was sufficient to support county's determination that parcel of agricultural land had no long-term commercial significance for agricultural production for purposes of the Growth Management Act of 1990 such that county could redesignate land for urban commercial use, although other reports, including both a county planning and development services report and a draft supplemental environmental impact statement, concluded that the land was agricultural land of long-term commercial significance. West's RCWA 36.70A.170(1)(a); WAC 365-190-050(1).

[4] Zoning and Planning 414 ↪279

414 Zoning and Planning

414V Construction, Operation and Effect

414V(C) Uses and Use Districts

414V(C)1 In General

414k278 Particular Terms and Uses

414k279 k. Agricultural Uses;

Farm; Nursery; Greenhouse. Most Cited Cases

"Agricultural land" for the purposes of the Growth Management Act of 1990 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. West's RCWA 36.70A.170(1)(a).

[5] Zoning and Planning 414 ↪279

414 Zoning and Planning

414V Construction, Operation and Effect

414V(C) Uses and Use Districts

414V(C)1 In General

414k278 Particular Terms and Uses

414k279 k. Agricultural Uses;

Farm; Nursery; Greenhouse. Most Cited Cases

Counties may consider the development-related factors enumerated in regulation outlining the minimum guidelines to classify agriculture, forest, mineral lands and critical areas in determining which lands have long-term commercial significance for purposes of the Growth Management Act of 1990. West's RCWA 36.70A.170(1)(a); WAC 365-190-050(1).

[6] Zoning and Planning 414 ↪279

414 Zoning and Planning

414V Construction, Operation and Effect

414V(C) Uses and Use Districts

414V(C)1 In General

414k278 Particular Terms and Uses

414k279 k. Agricultural Uses;

Farm; Nursery; Greenhouse. Most Cited Cases

Parcel of agricultural land was already characterized by urban growth and was adjacent to other urban growth such that it met the locational requirements for expansion of urban growth area under the Growth Management Act of 1990, where land abutted the intersection of two freeways, contained existing freeway service structures, and had unique access to utilities, and land contained a 700-foot border of freeway and access road rights-of-way with adjacent urban growth area. West's RCWA 36.70A.110(1).

[7] Zoning and Planning 414 ↪727

414 Zoning and Planning

414X Judicial Review or Relief

414X(D) Determination

414k727 k. Effect of Decision. Most Cited

Cases

Issues in current action regarding whether county's exercise of its discretion in redesignating land as urban commercial and expanding urban growth area to include certain parcel was clearly erroneous in view of the entire record before the Growth Management Hearings Board and in light of the goals and requirements of the Growth Management Act of 1990 were not the same issues or claims that were before the Board and the courts in prior litigation concerning whether the county's previous decision to designate the land as agricultural was

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APPENDIX A

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clearly erroneous, and thus current action was not barred on grounds of res judicata and collateral estoppel. West's RCWA 36.70A.320(1, 3).

[8] Judgment 228 ↪584

228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(B) Causes of Action and Defenses Merged, Barred, or Concluded

228k584 k. Nature and Elements of Bar or Estoppel by Former Adjudication. Most Cited Cases Resurrecting the same claim in a subsequent action is barred by res judicata.

[9] Judgment 228 ↪584

228 Judgment

228XIII Merger and Bar of Causes of Action and Defenses

228XIII(B) Causes of Action and Defenses Merged, Barred, or Concluded

228k584 k. Nature and Elements of Bar or Estoppel by Former Adjudication. Most Cited Cases 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.

[10] Judgment 228 ↪724

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k723 Essentials of Adjudication

228k724 k. In General. Most Cited Cases

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.

[11] Judgment 228 ↪634

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(A) Judgments Conclusive in General

228k634 k. Nature and Requisites of Former Adjudication as Ground of Estoppel in General. Most Cited Cases

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.

[12] Judgment 228 ↪720

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k716 Matters in Issue

228k720 k. Matters Actually Litigated and Determined. Most Cited Cases

Judgment 228 ↪724

228 Judgment

228XIV Conclusiveness of Adjudication

228XIV(C) Matters Concluded

228k723 Essentials of Adjudication

228k724 k. In General. Most Cited Cases

For collateral estoppel to apply, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.

[13] Zoning and Planning 414 ↪620

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)1 In General

414k619 Matters of Discretion

414k620 k. Regulations. Most Cited Cases

A county's decision to designate land agricultural or urban commercial, or to expand its urban growth area, is 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 Growth

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Management Act of 1990. West's RCWA
36.70A.320(1, 3).

[14] Zoning and Planning 414  167.1

414 Zoning and Planning
414III Modification or Amendment
414III(A) In General
414k167 Particular Uses or Restrictions
414k167.1 k. In General. Most Cited

Cases

County which wished to re-designate agricultural resource land as urban under the Growth Management Act of 1990 was not required to show a change in circumstances, but rather burden was on Growth Management Hearings Board to show that county's action did not comply with the Act. West's RCWA 36.70A.320(2).

Steven James Peiffle, Attorney at Law, Arlington, WA, for Appellant City of Arlington.

Todd Charles Nichols, Cogdill Nichols ReinWartelle Andrews, Everett Wa, for Appellant Dwayne Lane.

*938 John Roberts Moffat Civil Div Snohomish County Prosecutor's Everett, WA, for Appellant Snohomish County.

Martha Patricia Lantz, Office of Atty Gen, Lic & Admin Law Div, Olympia, for Respondent Central Puget Sound.

Alan D. Copesey, Office of the Atty General, Olympia, WA, for Respondent Dept. of Trade and Economic.

John T. Zilavy, Tim Trohimovich, Futurewise, Futurewise, Seattle, for Respondents Agriculture for Tomorrow Futurewise, Pilchuck Audubon Society.

Henry E. Lippek, The Public Advocate, Seattle, WA, for Respondent Stillaquamish Flood Control. GROSSE, J.

¶ 1 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

¶ 2 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

¶ 3 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, 1996 WI 734917).^{FN1}

FN1. 1996 WL 734917, pt. 8 of 10, at 86-87 (Wash. Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Mar. 12, 1996).

¶ 4 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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¶ 5 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.

¶ 6 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 *939 the County's conclusion was not clearly erroneous. The superior court affirmed the Board's decision.

¶ 7 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.^{FN2}

FN2. *Dwayne Lane v. Central Puget Sound Growth Mgmt. Hearings Bd.*, noted at 105 Wash.App. 1016, 2001 WL 244384 at*5-6, 2001 Wash.App. LEXIS 425, at *16-188 (citations omitted).

Current Appeal

¶ 8 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, changed the designation of that land from Riverway

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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.

¶ 9 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.

¶ 10 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*940 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.

¶ 11 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.

¶ 12 A compliance hearing was held by the Board in June 2004 and the Board entered an Order Finding Continuing Noncompliance and Invalidation 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.

¶ 13 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.

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

ANALYSIS

Standard of Review

¶ 15 The appropriate standard of review, as summarized in the recent Supreme Court opinion *Lewis County v. Western Washington Growth Management Hearings Board*,^{FN3} is as follows:

FN3. *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.*, 157 Wash.2d 488, 139 P.3d 1096 (2006).

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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 Wash.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 Wash.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 *941 the superior court." *Id.* (quoting *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.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 weight" to the Board's interpretation of the GMA. *Soccer Fields*, 142 Wash.2d at 553, 14 P.3d 133.^[FN4]

FN4. *Lewis County*, 157 Wash.2d at 497-98, 139 P.3d 1096.

¶ 16 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)." FN5 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)).

FN5. *Lewis County*, 157 Wash.2d at 498, 139 P.3d 1096.

¶ 17 Errors of law alleged under subsections (c) and (d) are reviewed de novo. FN6 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. FN7 Substantial evidence is " 'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.' " FN8

FN6. *Magula v. Dep't of Labor and Indus.*, 116 Wash.App. 966, 969, 69 P.3d 354 (2003) (citing *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wash.2d 38, 45, 959 P.2d 1091 (1998)).

FN7. *Lewis County*, 157 Wash.2d at 498, 139 P.3d 1096.

FN8. *City of Redmond*, 136 Wash.2d at 46, 959 P.2d 1091 (quoting *Callegod v. State Patrol*, 84 Wash.App. 663, 673, 929 P.2d 510 (1997)).

¶ 18 For the purposes of (i), arbitrary and capricious actions include " 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.' " FN9 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.' " FN10

FN9. *City of Redmond*, 136 Wash.2d at 46-47, 959 P.2d 1091 (quoting *Kendall v.*

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Douglas, Grant, Lincoln & Okanogan County Pub. Hosp. Dist. No. 6, 118 Wash.2d 1, 14, 820 P.2d 497 (1991)).

FN10. *City of Redmond*, 136 Wash.2d at 47, 959 P.2d 1091 (quoting *Kendall*, 118 Wash.2d at 14, 820 P.2d 497).

Redesignation of Island Crossing from Agricultural Resource Land to Urban Commercial

[1][2] ¶ 19 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.”^{FN11} Furthermore, counties must adopt development regulations “to assure the conservation of” those agricultural lands designated under RCW 36.70A.170.^{FN12}

FN11. RCW 36.70A.170(1)(a); *see also*, *Lewis County*, 157 Wash.2d at 498-99, 139 P.3d 1096.

FN12. RCW 36.70A.060(1)(a); *see also* *Lewis County*, 157 Wash.2d at 499, 139 P.3d 1096.

¶ 20 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:

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

that counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance. [^{FN13}]

FN13. *Lewis County*, 157 Wash.2d at 502, 139 P.3d 1096.

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.^[FN14]

FN14. WAC 365-190-050(1).

¶ 21 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

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Crossing Interchange Docket Proposal site. Locating and then expanding I-5 put them out of the dairy business. They soon 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.

[3] ¶ 22 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.

[4][5] ¶ 23 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." FN15 Furthermore, "counties may consider the development-related *943 factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance." FN16

FN15. *Lewis County*, 157 Wash.2d at 502, 139 P.3d 1096.

FN16. *Lewis County*, 157 Wash.2d at 502, 139 P.3d 1096.

¶ 24 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.

¶ 25 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

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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 are as:* 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.

*944 • *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.

¶ 26 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

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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 *945 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 47th 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.

¶ 27 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."

¶ 28 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.^{FN17}

FN17. *City of Redmond*, 136 Wash.2d at

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53, 959 P.2d 1091.

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 *946 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

¶ 29 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 demonstrating a need for additional commercial land. In response, the County submitted a Large Plot Parcel Analysis prepared by Higa-Burkholder ^{FN18} 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.

FN18. This is a different report than the one that evaluated whether the land at Island Crossing was agricultural land of long-term commercial significance.

[6] ¶ 30 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.[^{FN19}]

FN19. RCW 36.70A.110(1) (emphasis added).

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).^{FN20}

FN20. (Emphasis in original).

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 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.

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¶ 31 "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 *947 on it as to be appropriate for urban growth.[FN21]

FN21. RCW 36.70A.030(18) (emphasis added).

¶ 32 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.

¶ 33 The County stated in its ordinance: "This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area.... This land has unique access to utilities." In other words, the County concluded that the land is appropriate for urban growth because the land is located at a highway interchange and has unique access to utilities. The County also acknowledged the land has existing freeway service structures on it and is adjacent to the City of Arlington's urban growth area. Taken together, these facts at least support a conclusion that the land in question is "located in relationship to an area with urban growth on it as to be appropriate for urban growth" and thus characterized by urban growth.^{FN22}

FN22. RCW 36.70A.030(18).

¶ 34 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.

¶ 35 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).

Res Judicata and Collateral Estoppel

[7] ¶ 36 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.

[8][9] ¶ 37 "Resurrecting the same claim in a subsequent action is barred by res judicata." FN23 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.'" FN24

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FN23. *Hilltop Terrace Ass'n v. Island County*, 126 Wash.2d 22, 31, 891 P.2d 29 (1995).

FN24. *In re Election Contest Filed by Coday*, 156 Wash.2d 485, 500-01, 130 P.3d 809 (2006) (quoting *Loveridge v. Fred Meyer, Inc.*, 125 Wash.2d 759, 763, 887 P.2d 898 (1995)).

[10][11][12] ¶ 38 “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.” FN25
Collateral estoppel, or issue preclusion, requires:

FN25. *Hilltop Terrace Ass'n*, 126 Wash.2d at 31, 891 P.2d 29.

“(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 *948 the party against whom the doctrine is to be applied.” [FN26]

FN26. *Shoemaker v. Bremerton*, 109 Wash.2d 504, 507, 745 P.2d 858 (1987) (quoting *Malland v. Dep't of Retirement Sys.*, 103 Wash.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.” FN27

FN27. *Shoemaker*, 109 Wash.2d at 508, 745 P.2d 858.

¶ 39 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-I), 105 Wash.App. 1016, 2001 WL 244384. 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.

¶ 40 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. [FN28]

FN28. (Emphasis added).

¶ 41 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 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

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goals and requirements of the GMA. This distinction is crucial.

¶ 42 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.”^{FN29} 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],”^{FN30} and our review was limited to whether the Board’s decision was supported by substantial evidence or was arbitrary and capricious.

FN29. *Dwayne Lane v. Central Puget Sound Growth Management Hearings Board*, 2001 WL 244384 at *5-6, 2001 Wash.App. LEXIS 425, at *18.

FN30. RCW 36.70A.320(3).

[13] ¶ 43 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:

*949 In recognition of the *broad range of discretion* that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant great deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter.^{FN31}

FN31. RCW 36.70A.320(1) (emphasis added).

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.

¶ 44 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.

¶ 45 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 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.

[14] ¶ 46 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,

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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*),^{FN32} 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*.

FN32. *City of Redmond*, 116 Wash.App. 48, 56, 65 P.3d 337 (2003).

¶ 47 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 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.^{FN33}

FN33. See RCW 36.70A.3201.

¶ 48 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 *950 territory already characterized by urban growth.

¶ 49 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.^{FN34}

FN34. RCW 34.05.574(1); *Manke Lumber Co. v. Diehl*, 91 Wash.App. 793, 809-10, 959 P.2d 1173 (1998).

WE CONCUR: SCHINDLER, A.C.J., and COLEMAN, J.
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CITY OF ARLINGTON, DWAYNE)
LANE and SNOHOMISH COUNTY)

No. 57253-9-1

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.)

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COURT OF APPEALS
STATE OF WASHINGTON

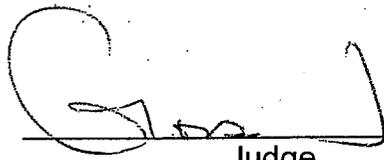
Respondents Stillaguamish Flood District, Futurewise, Pilchuck Audubon Society, Agriculture for Tomorrow, and the Director of the Washington State Department of Community, Trade and Economic Development have filed motions for reconsideration herein. The court has taken the matters under consideration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

Now, therefore, it is hereby

ORDERED that the motions for reconsideration are denied.

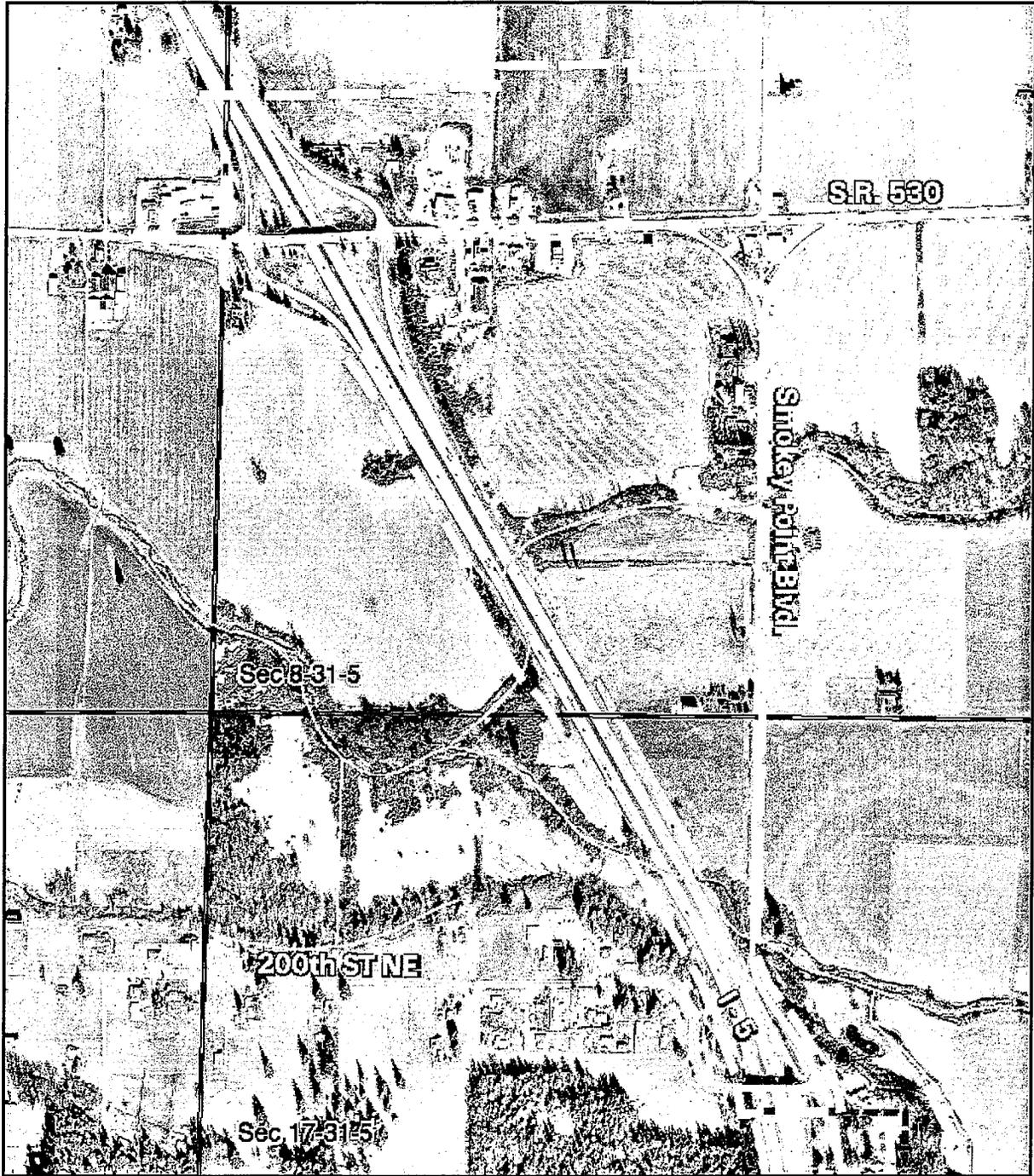
Done this 29th day of May, 2007.

FOR THE COURT:



Judge

Figure 1-2



Snohomish County 2003 Docket
Proposed Comprehensive Plan Amendment
Dwayne Lane



LEGEND



January 2003

2001 Aerial Photo



Docket Proposal



Incorporated Cities



Existing Urban Growth Area Bdy.

This map is a graphic representation derived from the Snohomish County Geographic Information System. It does not represent survey accuracy. Property lines are for illustrative purposes and do not carry general liability. Produced by Snohomish County Planning Div, GIS Services. c:\dock\dock03\data\astelatel

Scale in Feet
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Chapter 34.05 RCW

Administrative Procedure Act

34.05.510 Relationship between this chapter and other judicial review authority.

This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law.

[1988 c 288 § 501.]

34.05.570 Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

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

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

Notes:

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 36.70A RCW
Growth Management—Planning by
Selected Counties and Cities

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.]

**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.]

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.

36.70A.070 Comprehensive plans—Mandatory elements.

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be

adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities,

showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban

growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity

shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to *RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to *RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer

boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by **RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce

ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and **RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and

recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

[2005 c 360 § 2; (2005 c 477 § 1 expired August 31, 2005); 2004 c 196 § 1; 2003 c 152 § 1. Prior: 2002 c 212 § 2; 2002 c 154 § 2; 1998 c 171 § 2; 1997 c 429 § 7; 1996 c 239 § 1; prior: 1995 c 400 § 3; 1995 c 377 § 1; 1990 1st ex.s. c 17 § 7.]

Notes:

Reviser's note: *(1) RCW 36.70A.030 was amended by 2005 c 423 § 2, changing subsection (14) to subsection (15).

** (2) RCW 47.05.030 was amended by 2005 c 319 § 9, changing the six-year improvement program to a ten-year improvement program.

Expiration date—2005 c 477 § 1: "Section 1 of this act expires August 31, 2005." [2005 c 477 § 3.]

Effective date—2005 c 477: "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 13, 2005]." [2005 c 477 § 2.]

Findings—Intent—2005 c 360: "The legislature finds that regular physical activity is essential to maintaining good health and reducing the rates of chronic disease. The legislature further finds that providing opportunities for walking, biking, horseback riding, and other regular forms of exercise is best accomplished through collaboration between the private sector and local, state, and institutional policymakers. This collaboration can build communities where people find it easy and safe to be physically active. It is the intent of the legislature to promote policy and planning efforts

that increase access to inexpensive or free opportunities for regular exercise in all communities around the state." [2005 c 360 § 1.]

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.

Construction—Application—1995 c 400: "A comprehensive plan adopted or amended before May 16, 1995, shall be considered to be in compliance with RCW 36.70A.070 or 36.70A.110, as in effect before their amendment by this act, if the comprehensive plan is in compliance with RCW 36.70A.070 and 36.70A.110 as amended by this act. This section shall not be construed to alter the relationship between a county-wide planning policy and comprehensive plans as specified under RCW 36.70A.210.

As to any appeal relating to compliance with RCW 36.70A.070 or 36.70A.110 pending before a growth management hearings board on May 16, 1995, the board may take up to an additional ninety days to resolve such appeal. By mutual agreement of all parties to the appeal, this additional ninety-day period may be extended." [1995 c 400 § 4.]

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

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.

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.]

36.70A.270 Growth management hearings boards—Conduct, procedure, and compensation.

Each growth management hearings board shall be governed by the following rules on conduct and procedure:

(1) Any board member may be removed for inefficiency, malfeasance, and misfeasance in office, under specific written charges filed by the governor. The governor shall transmit such written charges to the member accused and the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Removal of any member of a board by the tribunal shall disqualify such member for reappointment.

(2) Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060. If it is determined that the review boards shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined that a review board shall operate on a part-time basis, each member shall receive compensation pursuant to RCW 43.03.250, provided such amount shall not exceed the amount that would be set if they were a full-time board member. The principal office of each board shall be located by the governor within the jurisdictional boundaries of each board. The boards shall operate on either a part-time or full-time basis, as determined by the governor.

(3) Each board member shall not: (a) Be a candidate for or hold any other public office or trust; (b) engage in any occupation or business interfering with or inconsistent with his or her duty as a board member; and (c) for a period of one year after the termination of his or her board membership, act in a representative capacity before the board on any matter.

(4) A majority of each board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act even though one position of the board is vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law.

(5) The board may appoint one or more hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact and, if requested by the board, to make recommendations to the board for decisions in cases before the board. Such hearing examiners must have demonstrated knowledge of land use planning and law. The boards shall specify in their joint rules of practice and procedure, as required by subsection (7) of this section, the procedure and criteria to be employed for designating hearing examiners as a presiding officer. Hearing examiners selected by a board shall meet the requirements of subsection (3) of this section. The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the board. This authorization to use hearing examiners does not waive the requirement of RCW 36.70A.300 that final orders be issued within one hundred eighty days of board receipt of a petition.

(6) Each board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open for public inspection at all reasonable times.

(7) All proceedings before the board, any of its members, or a hearing examiner appointed by the board shall be conducted in accordance with such administrative rules of practice and procedure as the boards jointly prescribe. All three boards shall jointly meet to develop and

adopt joint rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. The boards shall publish such rules and decisions they render and arrange for the reasonable distribution of the rules and decisions. Except as it conflicts with specific provisions of this chapter, the administrative procedure act, chapter 34.05 RCW, and specifically including the provisions of RCW 34.05.455 governing ex parte communications, shall govern the practice and procedure of the boards.

(8) A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The joint rules of practice of the boards shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

(9) The members of the boards shall meet jointly on at least an annual basis with the objective of sharing information that promotes the goals and purposes of this chapter.

[1997 c 429 § 11; 1996 c 325 § 1; 1994 c 257 § 1; 1991 sp.s. c 32 § 7.]

Notes:

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.

Severability—1996 c 325: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 325 § 6.]

Effective date—1996 c 325: "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 [March 30, 1996]." [1996 c 325 § 7.]

Severability—1994 c 257: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 257 § 26.]

36.70A.290 Petitions to growth management hearings boards— Evidence.

(1) All requests for review to a growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the local government shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology. For purposes of this section, the date of publication

for the adoption or amendment of a shoreline master program is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW 36.70A.295, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

[1997 c 429 § 12; 1995 c 347 § 109. Prior: 1994 c 257 § 2; 1994 c 249 § 26; 1991 sp.s. c 32 § 10.]

Notes:

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—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

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

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

36.70A.300 Final orders.

(1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and

amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the

board on the progress the jurisdiction is making towards compliance.

(4) Unless the board makes a determination of invalidity as provided in RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board.

[1997 c 429 § 14; 1995 c 347 § 110; 1991 sp.s. c 32 § 11.]

Notes:

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—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.302 Determination of invalidity—Vesting of development permits—Interim controls.

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

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

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

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

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law

before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

(3)(a) Except as otherwise provided in subsection (2) of this section and (b) of this subsection, a development permit application not vested under state or local law before receipt of the board's order by the county or city vests to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.

(b) Even though the application is not vested under state or local law before receipt by the county or city of the board's order, a determination of invalidity does not apply to a development permit application for:

(i) A permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before receipt by the county or city of the board's order, except as otherwise specifically provided in the board's order to protect the public health and safety;

(ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before receipt of the board's order by the county or city; and

(iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before receipt of the board's order by the county or city.

(4) If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

(5) A county or city subject to a determination of invalidity may adopt interim controls and other measures to be in effect until it adopts a comprehensive plan and development regulations that comply with the requirements of this chapter. A development permit application may vest under an interim control or measure upon determination by the board that the interim controls and other measures do not substantially interfere with the fulfillment of the goals of this chapter.

(6) A county or city subject to a determination of invalidity may file a motion requesting that the board clarify, modify, or rescind the order. The board shall expeditiously schedule a hearing on the motion. At the hearing on the motion, the parties may present information to the board to clarify the part or parts of the comprehensive plan or development regulations to which the final order applies. The board shall issue any supplemental order based on the information provided at the hearing not later than thirty days after the date of the hearing.

(7)(a) If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

(b) If the board determines that part or parts of the plan or regulation are no longer invalid as provided in this subsection, but does not find that the plan or regulation is in compliance with all of the requirements of this chapter, the board, in its order, may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

[1997 c 429 § 16.]

Notes:

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.

36.70A.320 Presumption of validity—Burden of proof—Plans and regulations.

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

(2) Except as otherwise provided in subsection (4) of this section, the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

(4) A county or city subject to a determination of invalidity made under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

(5) The shoreline element of a comprehensive plan and the applicable development regulations adopted by a county or city shall take effect as provided in chapter 90.58 RCW.

[1997 c 429 § 20; 1995 c 347 § 111; 1991 sp.s. c 32 § 13.]

Notes:

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—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.3201 Intent—Finding—1997 c 429 § 20(3).

In amending RCW 36.70A.320(3) by section 20(3), chapter 429, Laws of 1997, the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

[1997 c 429 § 2.]

Notes:

Prospective application—1997 c 429 §§ 1-21: "Except as otherwise specifically provided in RCW 36.70A.335, sections 1 through 21, chapter 429, Laws of 1997 are prospective in effect and shall not affect the validity of actions taken or decisions made before July 27, 1997." [1997 c 429 § 53.]

Severability—1997 c 429: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 429 § 54.]

NO. 57253-9

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

CITY OF ARLINGTON, DWAYNE LANE,
and SNOHOMISH COUNTY,

Appellant,

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,

Respondent.

DECLARATION
OF SERVICE

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 JUN 28 PM 4:36

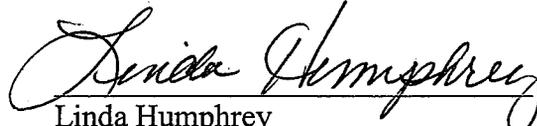
I declare under penalty of perjury under the laws of the state of Washington that on the 28th day of June, 2007, I caused a true and correct copy of CTED's *Petition For Review By The Supreme Court* to be served on the following in the manner indicated:

Office of Clerk Court of Appeals – Division I One Union Square 600 University Street Seattle, WA 98101-1176	<input checked="" type="checkbox"/> Via ABC Legal Messenger
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<p>Martha Lantz, Assistant Attorney General 1125 Washington Street PO Box 40110 Olympia, WA 98504 MarthaL1@atg.wa.gov Attorney for Central Puget Sound Growth Management Hearings Board</p>	<p><input checked="" type="checkbox"/> Via Electronic Mail as agreed by counsel and US Mail Postage Prepaid</p>
<p>John Zilavy 1617 Boylston Ave, Ste 200 Seattle, WA 98104 johnz@futurewise.org Attorney for FutureWise</p>	<p><input checked="" type="checkbox"/> Via Electronic Mail as agreed by counsel and US Mail Postage Prepaid</p>
<p>Henry E. Lippek 999 Third Ave, Ste 1080 Seattle, WA 98104 lippek@aol.com Attorney for Stillaquamish Flood Control District</p>	<p><input checked="" type="checkbox"/> Via Electronic Mail as agreed by counsel and US Mail Postage Prepaid</p>
<p>Todd Nichols Cogdill Nichols Rain Wartelle Andrews 3232 Rockefeller Ave Everett, WA 98201 toddn@cnrlaw.com Attorney for Dwayne Lane</p>	<p><input checked="" type="checkbox"/> Via Electronic Mail as agreed by counsel and US Mail Postage Prepaid</p>
<p>Steven J. Peiffle Bailey, Duskin, Peiffle & Canfield, P.S. Arlington, WA 98223 steve@snolaw.com Attorney for City of Arlington</p>	<p><input checked="" type="checkbox"/> Via Electronic Mail as agreed by counsel and US Mail Postage Prepaid</p>
<p>John R. Moffat Snohomish County Prosecutor's Office Civil Division Admin East 7th Floor, M/S 504 3000 Rockefeller Ave Everett, WA 98201-4060 Jmoffat@co.snohomish.wa.us Attorneys for Snohomish County</p>	<p><input checked="" type="checkbox"/> Via Electronic Mail as agreed by counsel and US Mail Postage Prepaid</p>

Tim Trohimovich Futurewise 814 Second Avenue Suite 500 Seattle, Wa 98104-1530 tim@futurewise.org Attorney for Futurewise	<input checked="" type="checkbox"/> Via Electronic Mail agreed by counsel and US Mail Postage Prepaid
Clerk WA Supreme Court 415 12 th Avenue PO Box 40929 Olympia, WA 98504-0929	<input checked="" type="checkbox"/> Hand Delivery

DATED this 28st day of June, 2007, at Olympia, Washington.


 Linda Humphrey
 Legal Assistant