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**FILED**

**JUN 26 2009**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 271234

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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KITTITAS COUNTY, a political subdivision of the State of Washington, BUILDING INDUSTRY ASSOCIATION OF WASHINGTON (BIAW), CENTRAL WASHINGTON HOME BUILDERS (CWHBA), MITCHELL WILLIAMS, d/b/a MF WILLIAMS CONSTRUCTION CO., TENAWAY RIDGE, LLC, KITTITAS COUNTY FARM BUREAU, and SON VIDA  
II,

Petitioners,

v.

KITTITAS COUNTY CONSERVATION, RIDGE, FUTUREWISE, and EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,

Respondents.

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**AMERICAN FOREST LAND COMPANY'S  
REPLY BRIEF**

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Alexander W. Mackie, WSBA #6404  
Patrick W. Ryan, WSBA #25499  
Eric S. Merrifield, WSBA #32949  
PERKINS COIE LLP  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
(206) 359-8000

## I. INTRODUCTION

Intervenor-Petitioner American Forest Land Company ("AFLC") respectfully submits this Reply Brief in the appeal of a Final Decision and Order of the Eastern Washington Growth Management Hearings Board ("Hearings Board") in Hearings Board Cause No. 07-1-0015.

## II. ARGUMENT AND AUTHORITY

In order to avoid presenting duplicative or redundant arguments, AFLC incorporates and adopts the arguments made by Kittitas County in its Reply Brief. AFLC submits this additional brief to clarify the standard of review that applies to Hearings Board orders under the Growth Management Act ("GMA"), Chapter 36.70A RCW, and the Administrative Procedure Act ("APA"), Chapter 34.05 RCW.

On a challenge to a municipal land use action under the GMA, the challenged action must be presumed valid. RCW 36.70A.320. A highly deferential standard of review attaches to the underlying municipal action throughout review before the Hearings Board, superior court, and the Court of Appeals. Under that deferential standard, the Hearings Board's review is limited to whether "the action of the . . . County . . . 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). This Court's review under

the APA is limited to whether the Hearings Board's decision was supported by substantial evidence or was arbitrary and capricious. RCW 34.05.570.

As the Washington Supreme Court recently held,

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

*City of Arlington v. CPSGMHB*, 164 Wn. 2d 768, \_\_\_\_, 193 P.3d 1077, 1090 (2008). The "clearly erroneous" standard requires a "firm and definite conviction that a mistake has been committed," *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993), a highly deferential standard consistent with the GMA's purpose of granting "deference to counties and cities in how they plan for growth, consistent with the requirements and goals of [the GMA]." RCW 36.70A.3201.

The Hearings Board is entitled to some deference or "substantial weight" in its interpretations of the GMA. *See Lewis County v. WWGMHB*, 157 Wn.2d 488, 498 (2006). The Hearings Board's review does not, however, eliminate the substantial deference to the County that attaches pursuant to the GMA's intent to vest discretion for growth planning in cities and counties. In their Response Brief, Futurewise et al. appear to minimize the deference owed to Kittitas County and to overstate the "substantial weight" owed to the Hearings Board decision. To accomplish that task, the Respondents downplay the holdings of the *City of Arlington* case to require only that the Hearings Board not dismiss "out of hand" a single piece of evidence. *See Resp.* at 4-6. The *City of Arlington* case stands for a much broader, more deferential standard than Futurewise suggests, however. Under its analysis, the Hearings Board's decision is erroneous for precisely the reasons fully explained by Kittitas County in briefing that AFLC fully adopts here.

### III. CONCLUSION

Based on the arguments advanced by Kittitas County and the prior briefs submitted by Petitioners in this case, AFLC respectfully requests that the Hearings Board's Final Decision and Order be reversed.

Respectfully submitted this 25th day of June, 2009.

**PERKINS COIE LLP**

By   
Alexander W. Mackie, WSBA #6404  
Patrick W. Ryan, WSBA #25499  
Eric S. Merrifield, WSBA #32949  
Attorneys for Intervenor-Petitioner American  
Forest Land Company