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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FUTUREWISE, Appellant, v. THURSTON COUNTY and STATE OF WASHINGTON, GROWTH MANAGEMENT HEARINGS BOARD, Respondents.	No. 61611-4-II UNPUBLISHED OPINION

MAXA, J. – Futurewise appeals a Final Decision and Order of the Growth Management Hearings Board (the Board) upholding certain portions of Thurston County's 2019 and 2024 amendments to its comprehensive plan relating to the County's designation of agricultural lands of long term commercial significance (ALLTCS).

The Growth Management Act (GMA), chapter 36.70A RCW, requires counties to create a comprehensive plan that accounts for natural resource lands, including agriculture. RCW 36.70A.040(3)(d). This process involves establishing both designation criteria (the factors a county uses when evaluating land uses) and land designations (the actual map identifying parcels of land for a particular zoning use). RCW 36.70A.070. A county's land use map must be "internally consistent" with its designation criteria. RCW 36.70A.070. The GMA and its

accompanying regulations require counties to consider 11 nonexclusive factors, including soil type and parcel size, when designating ALLTCS. WAC 365-190-050(3)(c). And when considering those factors, WAC 365-190-050(5) states that a county's designation process "should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agriculture industry in the county over the long term." Finally, RCW 36.70A.070(1) requires counties to give special consideration to "achieving environmental justice."

Thurston County previously had approximately 15,500 acres of land designated as ALLTCS. In response to litigation from Futurewise in 2019, the County amended its designation criteria for ALLTCS in 2024. The County's amendments to the designation criteria changed its consideration of various soils, but did not change the minimum block size (320 acres) that the comprehensive plan required for ALLTCS designations. The County did not reevaluate the 15,500 acres that already qualified as ALLTCS, and only applied its new designation criteria to see if new land qualified as ALLTCS. When the County applied its new designation criteria, no new land met the criteria. As a result, the County did not designate any new land as ALLTCS in its comprehensive plan amendments.

Futurewise filed a petition for review to the Board regarding the 2024 amendments, and the Board mostly upheld the County's comprehensive plan amendments in a Final Decision and Order. The Board issued a limited remand for the County to consider "farmlands of statewide importance" as a part of its designation criteria, but left how the County should address this factor to the County's discretion.

We hold that (1) the Board did not err when it gave the County discretion on remand in considering farmlands of statewide importance, (2) substantial evidence supports that the County

applied its designation criteria to its ALLTCS designations correctly, (3) substantial evidence supports that the County properly considered the long term economic viability of the agriculture industry, (4) substantial evidence supports that the County did not violate Countywide Planning Policy 3.1g, (5) the Board did not err in ruling that Futurewise's challenge to the minimum block size was untimely, and (6) the Board did not err in ruling that the County did not violate RCW 36.70A.070(1)'s environmental justice requirement.

Accordingly, we affirm the Board's Final Decision and Order.

FACTS

Growth Management Act Background

The GMA requires counties to adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan. RCW 36.70A.040(3)(d). A comprehensive plan is a "generalized coordinated land use policy statement of the governing body of a county or city." RCW 36.70A.030(9). Development regulations must "assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170." RCW 36.70A.060(1)(a).

RCW 36.70A.170(1)(a) requires counties to 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." These lands are referred to as ALLTCS.

The GMA delegates authority to the Department of Commerce to adopt minimum guidelines that jurisdictions must follow when creating designation criteria for and designating agricultural lands. RCW 36.70A.050(1). A Department of Commerce regulation, WAC 365-190-050(3), states in part,

> Lands should be considered for designation as agricultural resource lands based on three factors:

> (a) The land is not already characterized by urban growth.
> . . . .
> (b) The land is used or capable of being used for agricultural production.
> . . . .
> (c) The land has long-term commercial significance for agriculture.

In addressing factor (c), counties should consider 11 "nonexclusive criteria, as applicable," WAC 365-190-050(3)(c), including: "(i) [t]he classification of prime and unique farmland soils, and farmlands of statewide importance, as mapped by the Natural Resources Conservation Service" and "(vi) [p]redominant parcel size."

WAC 365-190-050(5) further states,

> When applying the criteria in subsection (3)(c) of this section, the process should result in *designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term*; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

(Emphasis added.)

In updating a comprehensive plan, a county can amend both its designation criteria – the factors a county considers when evaluating whether certain land use designations should be made – and the land use designation of land itself. *See Concerned Friends of Ferry County v. Ferry County*, 191 Wn. App. 803, 818, 828-30, 365 P.3d 207 (2015) [*Ferry County*].

2019 Comprehensive Plan Amendments

In 2019, the County adopted resolution number 15836, which amended portions of its comprehensive plan. Resolution 15836 did not alter the County's prior designation of ALLTCS.

The County's 2019 comprehensive plan preserved existing limits on the size of an area that could be considered for designation as agricultural land. The plan states,

> A diversity of agricultural activities should exist, or the area should be sufficiently large to support diverse agricultural activities. No single designated agricultural area should be smaller than 320 acres, or 200 acres if near another designated area.

> This helps assure land use compatibility for long-term resource use, and a diversity of agriculture uses in one area. Boundaries should follow landmarks visible on the ground when possible, to provide visual distinction of land use areas.

Admin. R. (AR) at 1379. The parties refer to this minimum acreage as "minimum block size criteria."

Futurewise appealed the County's 2019 amendments to the Board. The Board allowed multiple continuances over five years while Futurewise and the County worked toward settling their dispute. The County intended to amend its comprehensive plan regarding agricultural designations to address Futurewise's concerns.

2024 Comprehensive Plan Amendments

In response to Futurewise's appeal of the 2019 amendments, the County gathered relevant data and information from experts and stakeholders.

County planning officials consulted with Natural Resources Conservation Service (NRCS) soil surveyors regarding the federal government's newest soil surveys in the County and whether it evidenced additional agricultural land. Erik Dahlke, a surveyor with NRCS, told County planning officials that prime farmland soils have properties "to sustain continuous economically viable agriculture," as defined by the United States Department of Agriculture (USDA). AR at 1788. Dahlke also stated that soil surveys identified "prime if" soils, meaning that some additional measure would have to be taken for the soils to be adequate for agriculture use. Dahlke explained that "prime if" soils do not meet the requirements for prime farmland, but repeated measures such as artificial drainage or irrigation over the course of years could create the conditions for the soils to become prime farmland.

In meetings regarding soil classifications, the County identified the soil types within the County as compared to its existing ALLTCS zoning. One draft map showed that many of the

soil classifications were "[p]rime if [i]rrigated" soils. AR at 802. The County's existing ALLTCS designation mostly encompassed prime farmland soils and prime if drained farmland soils.

The County Planning Commission also considered the impact of non-zoning related agriculture development. One survey conducted by the County indicated that current farmers prefer property tax relief over designation of additional agricultural land. One senior planner explained in a work group that ALLTCS designations decrease the value of land, and farmers reported to the County that an ALLTCS designation can make it harder for them to secure loans for equipment. County planning officials also discussed how more recent County data showed an increase in agricultural activity as compared to USDA data.

The County also provided the workflow documentation used in its computer mapping program to combine the relevant data and designation criteria to map new ALLTCS land within the County. An initial step in the process of creating this map was eliminating features such as cities, urban growth areas, federal lands, and existing ALLTCS zoning from its analysis of new ALLTCS. The County then removed soils that did not qualify as agricultural and created a map where soils met the 320 acre block size requirement. The County stated in its documentation, "The revised analysis used 320 acres [as a minimum block size] and no blocks were identified." AR at 1882.

The County subsequently amended its comprehensive plan by adopting resolutions 16492 and 16493. Resolution 16492 amended the County's designation criteria for agricultural lands. The County stated that it included updated NCRS soil data in its review of ALLTCS designation criteria, and concluded that the percentage of "prime soils" needed to be designated as ALLTCS should be increased from 50 to 75 percent. The County also changed its criteria for ALLTCS

designations to include lands with "prime if drained" soils if they also do not overlap an existing wetland and have been drained or can be drained. The County determined that only properties "with the highest percentage of prime farmland soils should be protected through zoning." AR at 1744.

The County added language to its designation criteria for ALLTCS, which states,

> Designation of [ALLTCS] intends to conserve lands that are used or can be used for commercial agriculture use, while discouraging residential encroachment and other incompatible development, and to encourage continued viability of agriculture. The designation does this primarily by limiting the number of houses on a property within it, limiting uses and development on prime farmland soils to those that support agriculture, and by protecting agricultural uses from nuisance claims, which is done by notifying nearby neighbors that agricultural uses could occur nearby which might cause dust, noise, and odors and limiting adjacent owners' recovery from nuisances arising from pre-existing agricultural activities.

AR at 1759.

Other 2024 amendments to the County's ALLTCS designation criteria state,

> Thurston County uses prime farmlands as listed in the Natural Resources Conservation Service, United States Department of Agriculture Web Soil Survey (2024). A list of soils used is included in Appendix C.
> . . . .
>
> Designated lands should include predominantly (75% or more) prime farmland soils.
>
> - "Prime if drained" soils are included, except in cases where they overlap with wetlands. When overlapping with wetlands, only the area of overlap is removed from the total area of prime farmland.
> - "Prime if irrigated" soils are not included because these soils are not considered prime for agriculture without the addition of irrigation.

AR at 1760. Many of the additional soils identified by NRCS in the 2024 amendments are identified as prime farmland if drained or prime farmland if protected from flooding.

The County also enacted ordinance number 16493, which implemented its amendments to the comprehensive plan to its zoning map. The County's 2024 amendments did not amend the 320 acre block size requirement from the 2019 amendments.

The County identified that 14,894 acres of land within the county were designated as ALLTCS.[1] The County's 2024 amendments did not designate any new land as ALLTCS.

Procedural History

In 2020, Futurewise petitioned the Board for review of the County's 2019 comprehensive plan amendments. In 2025, Futurewise petitioned the Board for review of the County's 2024 comprehensive plan amendments in ordinances 16492 and 16493. The Board consolidated these two petitions.

Futurewise argued that the County's designation criteria and designation of agricultural land in the 2024 amendments violated the GMA, WAC 365-190-050, and Thurston County Countywide Planning Policy 3.1g.

First, Futurewise argued that the County failed to include prime if irrigated soils, prime if drained soils, prime farmland soils, farmlands of statewide importance, and smaller but contiguous parcels of ALLTCS in its designation criteria for agricultural land. Second, Futurewise argued that the County failed to designate ALLTCS consistent with its own designation criteria, which failed to preserve natural resource lands. Third, Futurewise argued that the County's 320 acre minimum block requirement did not comply with the GMA by failing to sufficiently preserve ALLTCS. Fourth, Futurewise argued that the County's designation criteria for ALLTCS did not meet the GMA's environmental justice requirements.

[1] The amended comprehensive plan stated 14,894 acres of ALLTCS and 984 acres as "Nisqually Agriculture." Futurewise appears to include Nisqually Agriculture in their suggestion that 15,500 acres of ALLTCS land was not considered under the new designation criteria.

The Board issued a Final Decision and Order that largely upheld the County's comprehensive plan amendments with one exception. The Board ruled that the County erred in failing to consider farmlands of statewide importance as a criterion for designating ALLTCS. The Board's order states, "*How* the County addresses the consideration of farmlands of statewide importance is a matter that, on remand, is left to the sound discretion of the County Council." AR at 1933 (emphasis in original).

The Board also ruled in part that (1) "the County appropriately applied its criteria in designating ALLTCS lands," AR at 1936; (2) "the County has designated an amount of agricultural resource land sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term," AR at 1939; (3) Futurewise did not demonstrate that the County violated Thurston County Planning Policy 3.1g; (4) Futurewise's challenge to the 320 acre minimum block size was untimely because the County did not amend this portion of the comprehensive plan; and (5) Futurewise failed to demonstrate a violation of RCW 36.70A.070(1)'s environmental justice requirement because it did not demonstrate an unfair treatment of the class of people the statute protects.

Futurewise filed a petition for review in superior court, which was transferred to this court pursuant to RCW 34.05.518(2)(a)(i).

ANALYSIS

A. STANDARD OF REVIEW

The Administrative Procedure Act (APA), chapter 34.05 RCW, governs our review of the Board's order. *King County v. Friends of Sammamish Valley*, 3 Wn.3d 793, 802, 556 P.3d 132 (2024). RCW 34.05.570(3) provides nine grounds for invalidating an administrative agency's order. Futurewise argues that two of these grounds apply in this appeal: (1) the Board

"erroneously interpreted or applied the law," RCW 34.05.570(3)(d); and (2) 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).

A party asserting error carries the burden of demonstrating that the Board's order erroneously interpreted the law or is not supported by substantial evidence. *Friends of Sammamish Valley*, 3 Wn.3d at 802. We give deference to the Board because of its specialized expertise. *Id.* Substantial evidence is "a sufficient quantity of evidence exists in the record that a fair-minded person could be persuaded of the truth or correctness of the board's order." *Id.* at 802-03.

The GMA also guides our review of the Board's order. Under the GMA, "comprehensive plans and development regulations, and amendments thereto, adopted under [the GMA] are presumed valid upon adoption." RCW 36.70A.320(1). "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." RCW 36.70A.320(3) (emphasis added). An action is clearly erroneous when the Board has a " 'firm and definite conviction that a mistake has been committed.' " *Friends of Sammamish Valley*, 3 Wn.3d at 802 (quoting *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000)).

The APA requires that we give deference to the Board, and the GMA requires the Board's deference to planning agencies. *See Friends of Sammamish Valley*, 3 Wn.3d at 803. However, "deference afforded to county planning actions supersedes the deference granted by the APA, so long as the county planning action meets and is consistent with the goals and requirements of the GMA." *Id.*; *see also Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 154 Wn.2d

224, 110 P.3d 1132 (2005) (establishing this principle). Therefore, if the Board fails to apply a deferential standard of review to the planning agency, we do not defer to the Board's ruling. *Friends of Sammamish Valley*, 3 Wn.3d at 803.

B. GROWTH MANAGEMENT ACT PRINCIPLES

1. Substantive Rules

As noted above, the GMA requires counties to adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan. RCW 36.70A.040(3)(d). A comprehensive plan is a "generalized coordinated land use policy statement of the governing body of a county or city." RCW 36.70A.030(9). Development regulations must "assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170." RCW 36.70A.060(1)(a). A comprehensive plan must be "internally consistent document and all elements shall be consistent with the future land use map." RCW 36.70A.070.

The GMA requires jurisdictions subject to the GMA to designate "[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1)(a). RCW 36.70A.030(6) defines agricultural land as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products . . . and that has long-term commercial significance for agricultural production.[2] " 'Long-term commercial significance' includes the growing capacity, productivity, and soil composition of the land for

[2] The legislature regularly adds definitions for new terms in RCW 36.70A.030, resulting in a renumbering between when Futurewise filed its petition for review and this appeal. The definitions of "agricultural land," "long-term commercial significance," and "environmental justice" have not changed. *See, e.g.*, LAWS OF 2025, ch. 267, § 2; LAWS OF 2023, ch. 332, § 2. We reference the current statute for clarity.

long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." RCW 35.70A.030(25).

The GMA delegates authority to the Department of Commerce to adopt minimum guidelines that jurisdictions must follow when creating designation criteria for and designating agricultural lands. RCW 36.70A.050(1). WAC 365-190-050 outlines the designation process. WAC 365-190-050(3), states in part,

> Lands should be considered for designation as agricultural resource lands based on three factors:
>
> (a) The land is not already characterized by urban growth.
> . . . .
> (b) The land is used or capable of being used for agricultural production.
> . . . .
> (c) The land has long-term commercial significance for agriculture.
>
> In determining [factor c], counties and cities should consider the following *nonexclusive* criteria, as applicable:
> (i) The classification of prime and unique farmland soils, and farmlands of statewide importance, as mapped by the Natural Resources Conservation Service;
> (ii) The availability of public facilities, including roads used in transporting agricultural products;
> (iii) Tax status . . . ;
> (iv) The availability of public services;
> (v) Relationship or proximity to urban growth areas;
> (vi) Predominant parcel size, which may include smaller parcels if contiguous with other agricultural resource lands;
> (vii) Land use settlement patterns and their compatibility with agricultural practices;
> (viii) Intensity of nearby land uses;
> (ix) History of land development permits issued nearby;
> (x) Land values under alternative uses; and
> (xi) proximity to markets

WAC 365-190-050(3)(c) (emphasis added). The GMA does not prohibit a county from weighing factors differently when evaluating land use designations. *Cf. Lewis County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 157 Wn.2d 488, 503, 139 P.3d 1096 (2006) (holding that it was not clearly

erroneous for a county to "weigh industry needs above all other considerations" when designating ALLTCS).

WAC 365-190-050(5) further states,

> When applying the criteria in subsection (3)(c) of this section, the process should result in *designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term*; and to retain supporting agricultural businesses, such as processors, farm suppliers, and equipment maintenance and repair facilities.

(Emphasis added.)

RCW 36.70A.070(1) states in part that a county's land use element "must give special consideration to achieving environmental justice in its goals and policies, including efforts to avoid creating or worsening environmental health disparities." RCW 36.70A.030(17) states,

> "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities and the equitable distribution of resources and benefits.

Thurston County Countywide Planning Policy 3.1g states that one planning policy is to protect rural areas by:

> Designating rural areas for low intensity, non-urban uses that preserve natural resource lands, protect rural areas from sprawling, low-density development and assure that rural areas may be served with lower cost, non-urban public services and utilities.

AR at 1697.

2. Procedural Rules

Counties must periodically review, and "if needed," revise their comprehensive plans "to ensure the plan and regulations comply" with the GMA. RCW 36.70A.130(5).[3]

As stated above, comprehensive plans and their amendments are presumed valid upon adoption. RCW 36.70A.320(1). A party must file a petition for review within 60 days of publication of a comprehensive plan. RCW 36.70A.290(2). An unchallenged comprehensive plan "is conclusively deemed legally compliant" with the GMA. *Thurston County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 164 Wn.2d 329, 345, 189 P.3d 38 (2008).

"[T]he GMA does not explicitly require a county to revise every aspect of its comprehensive plan and [this court] refuse[s] to imply such an onerous requirement in the absence of an explicit GMA provision to the contrary." *Id.* at 343-44. In *Thurston County*, the Supreme Court addressed when a party may challenge a county's failure to update its comprehensive plan in a manner consistent with GMA amendments. The court stated,

> [A] party may challenge a county's failure to revise a comprehensive plan only with respect to those provisions that are directly affected by new or recently amended GMA provisions, meaning those provisions related to mandatory elements of a comprehensive plan that have been adopted or substantively amended since the previous comprehensive plan was adopted or updated, following a [periodic] update. This rule provides a means to ensure a comprehensive plan complies with recent GMA amendments, recognizes the original plan was legally deemed compliant with the GMA, and preserves some degree of finality.

Id. at 344.

[3] Thurston County must review its comprehensive plan every 10 years. RCW 36.70A.130(5)(b). Counties may reevaluate their comprehensive plans at any time. *See* RCW 36.70A.130(6)(a).

C. COUNTY'S DISCRETION ON REMAND

Futurewise argues that the Board erred as a matter of law by remanding consideration of farmlands of statewide importance to the County rather than determining whether the County's consideration of farmlands of statewide importance violated the GMA. We disagree.

One of the criteria for designating ALLTCS is "[t]he classification of prime and unique farmland soils, and farmlands of statewide importance." WAC 365-190-050(3)(c)(i). The Board ruled that the County's failure to meaningfully consider farmlands of statewide importance as a criterion for designating ALLTCS did not comply with the GMA. But the Board stated, "*How* the County addresses the consideration of farmlands of statewide importance is a matter that, on remand, is left to the sound discretion of the County Council." AR at 1933 (emphasis in original).

Futurewise challenged the County's failure to account for prime farmland soils and farmland of statewide importance as part of the designation criteria for evaluating ALLTCS designations. After a hearing, the Board determined that the County's failure to include farmland of statewide importance as part of its ALLTCS designation criteria was "clear error." AR at 1933. Contrary to Futurewise's contention that the Board failed to determine whether the County violated the GMA, this determination was a finding of noncompliance with the GMA.

Futurewise specifically alleged that the amendments to the County's designation criteria failed to account for farmland of statewide importance. But Futurewise did not challenge the designation of ALLTCS itself as not accounting for farmland of statewide importance. Therefore, the Board did not commit error because it reviewed Futurewise's specific allegation and agreed with Futurewise. And because the Board must defer to planning agencies regarding the development of comprehensive plans, RCW 36.70A.320(1), the Board did not err in

remanding for the County to consider how to incorporate farmlands of statewide importance into its designation criteria once it determined the County committed clear error.

Accordingly, we hold that the Board did not err when it remanded for the County to exercise discretion in how to incorporate farmland of statewide importance into its designation criteria.

D. APPLICATION OF DESIGNATION CRITERIA

Futurewise argues that the Board committed legal error and that substantial evidence does not support its ruling that the County appropriately applied its criteria in designating ALLTCS lands and that the County created an internally inconsistent comprehensive plan. We disagree.

The Board's Final Decision and Order stated, "The Board is satisfied that the record demonstrates that the County appropriately applied its criteria in designating ALLTCS lands." AR at 1936. Therefore, the Board ruled that Futurewise failed to meet its burden of showing that the County's action was clearly erroneous.

Futurewise emphasizes that once the County created new designation criteria for ALLTCS, no land in the County – including the 15,500 acres previously designated – satisfied that criteria. Nevertheless, the County retained the ALLTCS designation for the existing 15,500 acres anyway. Futurewise argues that by not applying its new designation criteria to the existing ALLTCS lands, the County created an internally inconsistent comprehensive plan in violation of RCW 36.70A.070 (requiring comprehensive plans to be internally consistent), RCW 36.70A.050 (directing the Department of Commerce to develop guidelines), WAC 365-190-040 (outlining the designation process). and WAC 365-190-050 (establishing criteria for designating ALLTCS).

The County counters that Futurewise's premise – that none of the existing ALLTCS lands would satisfy the new designation criteria – is unsubstantiated. The County points out that it simply did not evaluate the existing ALLTCS land under the new criteria.

1. Previous ALLTCS Designations

The County chose to retain its previous ALLTCS designations, and evaluated only whether additional ALLTCS should be designated under its new designation criteria. Futurewise appears to argue that the County was required to either (1) reevaluate its previous ALLTCS designations under the new criteria, which presumably would result in the de-designation of all of those lands; or (2) adopt new criteria that would allow the existing 15,500 acres to be designated as ALLTCS under those criteria.

However, Futurewise provides no authority for the proposition that a County must reconsider its existing ALLTCS land once new designation criteria are adopted. In fact, the law is contrary to Futurewise's position. In *Clark County v. Western Washington Growth Management Hearings Board*, this court stated,

> The County designated these parcels as ALLTCS in its 2004 comprehensive plan, which it intended to follow for 20 years. *Absent a showing that this designation was both erroneous in 2004 and improperly confirmed by the Growth Board, or that a substantial change in the land occurred since the ALLTCS designation, the prior designation should remain*. Without such deference to the original designation, there is no land use plan, merely a series of quixotic regulations.

161 Wn. App. 204, 234, 254 P.3d 862 (2011) (emphasis added), *vacated in part*, 177 Wn.2d 136, 298 P.3d 704 (2013).[4]

[4] In *Clark County*, the Supreme Court vacated this court's opinion in part because the opinion addressed issues that were not raised on appeal. 177 Wn.2d at 139. The quoted portion of the Court of Appeals opinion was not vacated. *See id.* at 147-48.

Futurewise has not shown that the original ALLTCS designation was erroneous or that there had been a substantial change in the land. Therefore, we conclude that the County did not err when it preserved its existing ALLTCS designations without evaluating them under the new designation criteria.

Futurewise's concern is that failing to evaluate the previous ALLTCS designation puts those 15,500 acres of land at risk for de-designation because they do not meet the County's new designation criteria. But the County was not obligated to reevaluate its ALLTCS designation. And whether land may be de-designated in the future is not an issue the court can resolve in this appeal.

2. Evaluation of New ALLTCS Designations

It does not appear that Futurewise challenges the County's determination that no new lands qualify for ALLTCS under the new designation criteria. To the extent that Futurewise is making this argument, we disagree.

Here, substantial evidence supports that the County properly applied its designation criteria. The County's new designation criteria considered prime farmland soils and excluded farmland soils that would need to be drained or irrigated to be viable as agricultural land. The County then applied its 320 acre block requirement to those eligible soils, among other criteria relating to agricultural land's proximity to other areas such as urban growth areas. This resulted in no additional land that qualified as ALLTCS under its criteria. The Board noted that "the newly classified soils either occur outside of Thurston County's jurisdiction, are covered by existing [ALLTCS] designations, or were disqualified by other criteria in the Comprehensive Plan." AR at 1936. This is sufficient evidence to convince a fair minded person that the County applied its designation criteria in a consistent manner.

Futurewise points to the County's workflow documentation to show that no new land qualified as ALLTCS. But this documentation supports the Board's order. The documentation shows that the County attempted to find eligible lands for ALLTCS that were prime farmland soils and met the relevant parcel and block size criteria *outside of its existing ALLTCS designations*. This supports that the County correctly applied its designation criteria.

Accordingly, we hold that the Board did not err when it ruled that the County appropriately applied its criteria in designating ALLTCS.

E. LONG TERM ECONOMIC VIABILITY

Futurewise argues that the Board's ruling regarding the long term economic viability of the agricultural industry is not supported by substantial evidence and violates WAC 365-190-050(5). We disagree.

The Board's Final Decision and Order stated that "the County has designated an amount of agricultural resource land sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term." AR at 1939. The Board's ruling tracks WAC 365-190-050(5), which states that applying the criteria in WAC 365-190-050(3)(c) "should result in designating an amount of agricultural resource lands sufficient to maintain and enhance the economic viability of the agricultural industry in the county over the long term."

We conclude that substantial evidence supports the Board's order. Futurewise's primary argument is that Thurston County designated as ALLTCS only 27 percent of the available agricultural land, relying on a USDA report. However, the County's designation criteria does not only consider the amount of available agricultural land when designating ALLTCS. Rather, pursuant to WAC 365-190-050(3)(c) the County takes a variety of factors into account, including lot size, soil type, and proximity to other land uses. For example, a parcel that may be fit for

agricultural designation based on soil type may not enhance any long term viability of the industry if it is next to an urban growth area, or a protected wetland, or too small. The GMA permits the County to make these types of land use decisions.

Here, the County consulted with relevant stakeholders. A County survey showed that tax relief, not additional ALLTCS designation, was a significant concern for farmers. In addition, feedback from farmers in the county revealed that ALLTCS designation can inhibit economic development because ALLTCS zoning decreases their ability to acquire loans for farm equipment. The County considered the addition of soils to its ALLTCS designation criteria, but NRCS experts stated that "prime if drained" and "prime if irrigated" soils would require additional study after they were drained and irrigated to determine if they met the requirements of prime farmland. And finally, the County considered its ALLTCS designations in conjunction with other non-zoning programs, such as tax relief and stewardship programs. The County did not err in considering this and limiting its ALLTCS designations accordingly.

Futurewise carries the burden of establishing that substantial evidence does not support the Board's order. *Friends of Sammamish Valley*, 3 Wn.3d at 802. But Futurewise fails to identify where within the county additional ALLTCS designations could exist. And Futurewise also fails to identify (1) what amount of land would be, in its view, sufficient to comply with WAC 365-190-050(5); and (2) why the amount of land designated was not enough. Futurewise's dispute over the number of acres of ALLTCS, relying on a USDA report, also provides no guidelines for where the County should have designated ALLTCS. This is insufficient to show that the County failed to designate enough land for long-term economic viability.

Futurewise analogizes the County's designation of only 15,500 acres of ALLTCS to *Ferry County*, 191 Wn. App. 803. In *Ferry County*, the county's main agricultural product was

livestock, which relied on a consistent supply of hay for feed. *Id.* at 831-32. Using a system in which the county applied points to soil types, land uses, and block sizes, the county identified 2,816 acres that met its designation criteria as agricultural land that was not federal or state grazing land (which exceeded 450,000 acres). *Id.* at 830. But the county did not designate any of that land as ALLTCS, which limited the county's production of hay. *Id.* at 831. This court held that the county violated WAC 365-190-050(5) because the county overlooked a critical component of the county's "principal agricultural industry," which did not maintain or enhance the long term economic viability of the agricultural industry. *Id.* at 834-35.

Ferry County is distinguishable. Unlike the production of hay in *Ferry County*, which supported the county's significant livestock industry, Futurewise points to no specific agricultural industry that Thurston County failed to account for in its ALLTCS designations. In addition, the county in *Ferry County* failed to explain its lack of designation for agricultural land that met its own designation criteria. By contrast, Thurston County kept its designation of 15,500 acres of ALLTCS, and application of its updated designation criteria resulted in no additional ALLTCS within the county. Therefore, *Ferry County* provides little insight as to whether the County's designations failed to account for long term economic viability of the agriculture industry.

Accordingly, we hold that the Board did not err when it ruled that the County did not violate WAC 365-190-050(5).

F. COUNTYWIDE PLANNING POLICY 3.1g

Futurewise argues that the Board's ruling that Futurewise failed to carry its burden of demonstrating that the County violated Countywide Planning Policy 3.1g is an error of law and not supported by substantial evidence. We disagree.

A comprehensive plan " 'must comply with both the countywide planning policies and the [GMA].' " *Stickney v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 11 Wn. App. 2d 228, 244, 453 P.3d 25 (2019) (quoting WAC 365-196-305(3)) (alteration in original).

Here, Policy 3.1g states a policy goal of designating rural areas in a manner that preserves natural resource lands. As discussed above, the County's designation of ALLTCS was consistent with the GMA in considering long term economic viability, indicating that the County sufficiently designated natural resource areas in a manner consistent with the policies. The plain language of the policy does not require additional ALLTCS designation beyond what the GMA requires.

Futurewise relies heavily on a report from the Thurston County Regional Planning Council indicating that Thurston County has lost natural resource lands and has exceeded the report's targets for housing in rural areas. But this report is not the county policy, and Futurewise points to no legal authority requiring the County to follow the Regional Planning Council's goals or targets.

Futurewise also argues that Policy 3.1g requires designation of additional ALLTCS. But the policy does not contain such language. The County designated ALLTCS consistent with the GMA and considered the long term economic viability of farmland, a natural resource land. We decline to add metrics to a county policy that the policy does not contain.

Accordingly, we hold that the Board did not err when it ruled that the County did not violate Countywide Planning Policy 3.1g.

G. TIMELINESS OF ALLTCS BLOCK SIZE CHALLENGE

Futurewise argues that the Board's ruling that its challenge to the County's 320 acre minimum block size criteria for agricultural land was untimely is an error of law. We disagree.

The County did not amend its 320 acre minimum block size in its 2019 or 2024 amendments. Therefore, the 320 acre minimum block size presumptively is compliant with the GMA. *Thurston County*, 164 Wn.2d at 344-45. In order to timely challenge the County's failure to amend its 320 acre minimum block size requirement, Futurewise must show that there was a "new or recently amended GMA provision" relating to a "mandatory element[] of a comprehensive plan" in the intervening time frame. *Id.* at 344.

Futurewise points to no intervening GMA amendment or regulation in 2019 or 2024 that would require the County to amend its minimum block size requirement. Therefore, the County was under no obligation to reconsider its decision, and Futurewise's challenge is untimely. The Board did not err when it ruled accordingly.

Futurewise argues that the criteria and process including the 320-acre block requirement can be challenged because the County amended its ALLTCS designation criteria, which required evaluating the block size requirement. But that is not the relevant rule. The court in *Thurston County* unequivocally addressed when a party may challenge an unamended portion of a comprehensive plan: "[A] party may challenge a county's failure to revise a comprehensive plan only with respect to those provisions that are directly affected by new or recently amended GMA provisions." 164 Wn.2d at 344. An amendment to a comprehensive plan does not create an " 'open season' for challenges previously decided or time barred." *Id.* (quoting *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378, 390, 166 P.3d 748 (2007), *aff'd in part, rev'd in part*, 167 Wn.2d 723, 222 P.3d 791 (2009)).

In addition, WAC 365-190-050(3)(c) specifically states that soil type and predominant parcel size are two of 11 "nonexclusive" factors that a county should consider with ALLTCS designations. Contrary to Futurewise's assertions, it makes little sense that a decision to amend

the soil type designation criteria would automatically make the criteria for a different, unamended, "nonexclusive" factor reviewable.

Accordingly, we hold that the Board did not err when it ruled that Futurewise's challenge to the 320 acre block size requirement was untimely.

H. ENVIRONMENTAL JUSTICE CONSIDERATIONS

Futurewise argues that the Board's ruling that Futurewise failed to demonstrate a violation of RCW 36.70A.070(1)'s environmental justice requirement was an error of law. We disagree.

RCW 36.70A.030(17) defines "environmental justice" to mean "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income." Futurewise fails to establish how the County's ALLTCS designations fail to provide "fair treatment" to people based on "race, color, national origin, or income." RCW 36.70A.030(17). Futurewise provided a report that stated that underrepresented farmers struggle to access adequate farmland. The same report stated that this is true for nearly all "new, beginning, or expanding" farms. AR at 1084. But Futurewise fails to connect this to the County's decision-making process in designating ALLTCS. Futurewise does not provide any evidence that the County's designation criteria or designations resulted in a specific impact on a group protected by RCW 36.70A.070(1).

Futurewise argues that the Board ignored how a lack of protected farmland reduced access to farms for underrepresented farmers. But Futurewise's own report suggests that this is an industry-wide issue that is not specific to particular underrepresented farmers based on "race, color, national origin, or income." RCW 36.70A.030(17). We therefore reject this argument.

Futurewise also argues that the County's ALLTCS designations are a "under-designation and under-conservation of ALLTCS" that "allow[s] these lands to be converted to rural residential development." Br. of Appellant at 60. The assertion that the agricultural lands will be turned into rural residential development is speculative. Futurewise fails to connect the County's designation criteria or designation for ALLTCS to an unfair treatment that violates RCW 36.70A.070(1)'s environmental justice requirement.

Accordingly, we hold that the Board did not err when it ruled that Futurewise failed to demonstrate a violation of RCW 36.70A.070(1).

CONCLUSION

We affirm the Board's Final Decision and Order.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, J.

We concur:

PRICE, A.C.J.

I□□., J.