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CP16#0615

VIA E-MAIL
OLIVER.ORJIAKO@CLARK.WA.GOV

April 3, 2015

Clark County Community Planning
Oliver Orjiako
1300 Franklin Street 3rd Floor
Vancouver WA 98666

Re: *Gustafson DEIS Comment*
Our File No. 51516-73506

Dear Oliver:

This comment to the Draft Environmental Impact Statement is to address the site specific property request and the conversion of natural resource lands to urban use. The parcel number is APN 200537000 which is known as "Gustafson." A map is also attached for reference as Exhibit A. We believe it is important to address the specific factors related to these properties. While GMA encourages the conservation of agricultural lands, nothing in the act specifically prohibits the conversion of these lands to more intensive uses,[1] especially when "agricultural lands" are not suitable for commercial agricultural use.

In the leading Washington State Supreme Court decision, *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wash. 2d 488, 139 P.3d 1096 (2006), (Exhibit B) the Court decided what agriculture land is and what factors a County may consider in converting such land to urban use, holding that:

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

[1] Goal 8 – Natural Resource Industries: Maintain and enhance natural resource based industries including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive agricultural lands, and discourage incompatible uses. RCW 36.70A.020.

Gustafson is currently designated Agriculture (AG). We believe that under the Lewis County case, conversion of these lands to urban use is warranted after the consideration of definition of agricultural lands and the WAC 365-190-050(1) development factors.

Gustafson is Characterized by Urban Growth

We believe that this property is characterized by urban growth under the definitions given to us by GMA and the Courts. The property is near several urban subdivisions including the Fieldstone Estates, Falcon's Nest and Dunning subdivisions. Of course it is also bounded by urban areas on the west, northwest and south, at the fast growing edge of North Orchards, and to the east is the Hockinson Meadows Community Park.

During the appeals of the 2007 Clark County plan the Division II Court of Appeals gave a hint at additional guidance as to what it means to be characterized by urban growth. In that case the Court examined two properties listed as VA and VA-2 located just north of 179th Street and west of 50th Avenue in the Vancouver Urban Growth Area (UGA). The Court stated that GMA defines "[c]haracterized by urban growth as referring to land having urban growth located on it, **or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.**"[2] The Court went on to state that the first prong of the Lewis County test "requires an assessment of the overall context of the land's relationship to the surrounding land - **not just the land itself**."[3] [Emphasis added].

Given the fact that these parcels are encroached upon by urban development immediately to the south (Urban Oaks), down the NE 152nd corridor, and throughout Orchards which has now expanded up to North Orchards, these parcels are already characterized by urban growth. Additional factual information follows below in examination under the WAC Factors for demonstrating the land's urban character.

Gustafson is Not Devoted Primarily to Commercial Production of Agricultural Products

Gustafson does not provide a significant farm income, and there are no dwellings on the site. Commercial farming has changed dramatically in the County in recent decades, and numerous dairies which used to dot the landscape of Clark County closed. Shifts in the regional economy, increased environmental protection of wetlands, waterways and habitat, and the move towards larger scale farms have pushed most commercial agricultural operations east of the Cascades where less environmental constraints are present and where land is more conducive to commercial scale operations.

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[2] Clark County et al v. Western Washington Growth Management Hearings Board et al, 161 Wn. App. 204 (2011). The Court cited RCW 36.70A.030(18) [Emphasis Added]. The Definition is now cited as RCW 36.70A.030(19). See Exhibit C.
[3] Id.

The County urban growth area expanded to the south and west property boundaries in 2007. The popularity of North Orchards generated market interest, and the property has been held for investment purposes since 2009.

More specifically, Gustafson is not devoted primarily to commercial scale production of the products listed in RCW 36.70A, which are horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, or of berries, grain, hay, straw, turf, seed, Christmas trees, or livestock. Gustafson lacks a well and irrigation water rights, which precludes commercial scale agriculture.

The bulk of Gustafson is mown annually, and there are no livestock, poultry or other animal husbandry activities. These actions are consistent with responsible weed and vegetation control, but do not rise to the level of commercial scale agriculture. For example, they do not generate sufficient income to qualify for the current agricultural use property classification. That classification requires an income of "relevant monetary profit" for this 20 acre property. By comparison, if it was 19 acres, the minimum income would be $200 per acre or $3800 for the entire parcel. Because the agricultural income generated by leasing the land to a local farmer has been substantially less, the parcel does not qualify and will be removed from the program.

The property lacks sufficient water rights to grow commercial scale vegetables or row crops.

Gustafson Does Not Have Long-Term Commercial Significance for Agricultural Production

The soil composition, capacity, and productivity of Gustafson do not support long-term commercial production. This is particularly true in light of the ten economic factors for evaluating whether land has "long-term commercial significance." In an earlier day, in the absence of development pressures and regulatory restrictions, Gustafson was part of a larger agricultural operation. Today, water-intensive facilities can possibly support long-term commercial production in the face of encroaching development and enhanced regulation.

The Soils

The subject property is about 60 percent MIA, McBee silt loam, with a 40 percent DoB, Dollar loam in the western portion of the property. MIA soils are poorly drained and not conducive to farming. The cost to install agricultural drainage is prohibitive, as is the problem of disposing surplus water. The property has historically been used for pasture land. Pasture land is not productive farming in Clark County, because it does not produce income to qualify for the current agricultural use property tax benefit.

As for parcels containing the MIA and DoB soils, WAC 365-190-050 directs counties and cities to use the land-capability classification system of the United States Department of Agricultural Soil Conservation Service (now the Natural Resources Conservation Service). This system divides soil types into eight "capability classes" based on their ability to produce common cultivated crops and pasture plants without deterioration over a long period of time. MIA is rated 6, and DoB is rated 3. Thus 60% of the soils on the Gustafson are rated class IV or higher. Class 6 soils "have severe

limitations that make them generally unsuitable for cultivation and that restrict their use mainly to pasture, rangeland, forestland or wildlife habitat."
(http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx)

And 100 percent of the soils are rated class III or higher. Class III soils "have severe limitations that reduce the choice of plants or require special conservation practices, or both." In sum, the soils are not conducive to commercial agricultural use.

The Development-Related Factors

(a) The availability of public facilities.

Clark Regional Wastewater District already invested in this area with a pump station and transmission line right across 152nd. This is also demonstrated by the proliferation of nearby urban developments. The south and west boundary of Gustafson is the existing urban area boundary. A county park is adjacent to the east. All necessary public and private utilities are available along NE 152nd and can be extended into the Property.

Tax status. The income from leasing the land for small scale farming does not satisfy the requirement for the current agricultural use designation, so the Gustafson parcels are being removed from the current use agriculture designation.

(b) The availability of public services.

Clark PUD provides water and electricity. Clark Regional Wastewater District provides public sewer. Given the fact that they are already adjacent to these properties and the fact that the area is already characterized by urban growth it would be cost effective to accommodate growth in this area.[4]

(c) Relationship or proximity to urban growth areas.

Gustafson is adjacent to the County urban growth area on the south and west sides, and the east boundary is the County park. The Property overlooks dozens of houses in the Dunning Meadows and Urban Oaks development just south. NE 152nd connects the property directly with the urban area to the south.

(d) Predominant parcel size.

Gustafson is 20 acres. Immediately south is the Urban Oaks property, also 20 acres, which is zoned and planned for single family lots. Southeast is the Nehalem 2 single family subdivision with 2 acre lots. East is the regional County park. North is the Silver

[4] 36.70A.030(19).

Buckle Equestrian Center. Northwest is urban land and the Fieldstone Estates single family subdivision. West and southwest is the urban designated Dempsy property currently designated for Business Park use and which is being planned for a K-8 school and single family development. The increasing residential density around Gustafson leads to more conflicts between residential interests and farming interests. This makes long-term commercial farming unsustainable. It is not equitable to allow increasing residential density around farming areas while requiring farm owners to forever keep the land in an uneconomic agricultural use.

(e) Land use settlement patterns and their compatibility with agricultural practices.

Numerous plats have been approved by the Clark County in the immediate vicinity, as the urban area borders Gustafson on two sides. Urban uses are not compatible with commercial farming because of odor, transportation needs, and other impacts.[5]

(f) Intensity of nearby land uses.

Gustafson is right on NE 152nd, and adjacent to the urban area on two sides. These two factors and the popularity of North Orchards cause the intensity of nearby land uses to grow steadily. There are no commercial scale agricultural uses, such as dairy farms or container nurseries, in the immediate vicinity.

(g) History of land development permits issued nearby.

North Orchards is growing rapidly. The urban growth area which abuts Gustafson is zoned for single family residential and business park uses. Hundreds of single family lots have been approved or are in process for approval, most notably Fieldstone Estates with 60 lots and Dunning Meadows with 113 lots and Urban Oaks that are plainly visible from the Property. Innumerable other subdivisions in North Orchards have been developed in recent years.

(h) Land values under alternative uses.

Because of the proximity of these parcels to adjacent single family residential zone, the land value is set by these land uses.

Alternatively, the land has minimal value for agricultural use on a rental basis, and no value for a purchaser of agricultural land.

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[5] Id.

(i) Proximity of markets.

The market for grass hay grown on the property is limited to local hobby farms. markets There are no grain elevators or other commercial scale agricultural buyers or commodity storage facilities in the vicinity.

Conclusion

We believe that the conversion of these properties to urban use is consistent with the Supreme Court holding in the Lewis County case, the Clark County case, and by the criteria identified in the WAC. We thank you for the opportunity to comment on Gustafson and would be happy to provide further information upon request. We intend to present a more detailed analysis of each parcel during the Board of County Councilors' hearings on the matter, so that should they choose to include these parcels in the 2016 UGA update, those specific findings may be adopted. If you have any questions, comments or concerns please do not hesitate to contact me.

Sincerely,

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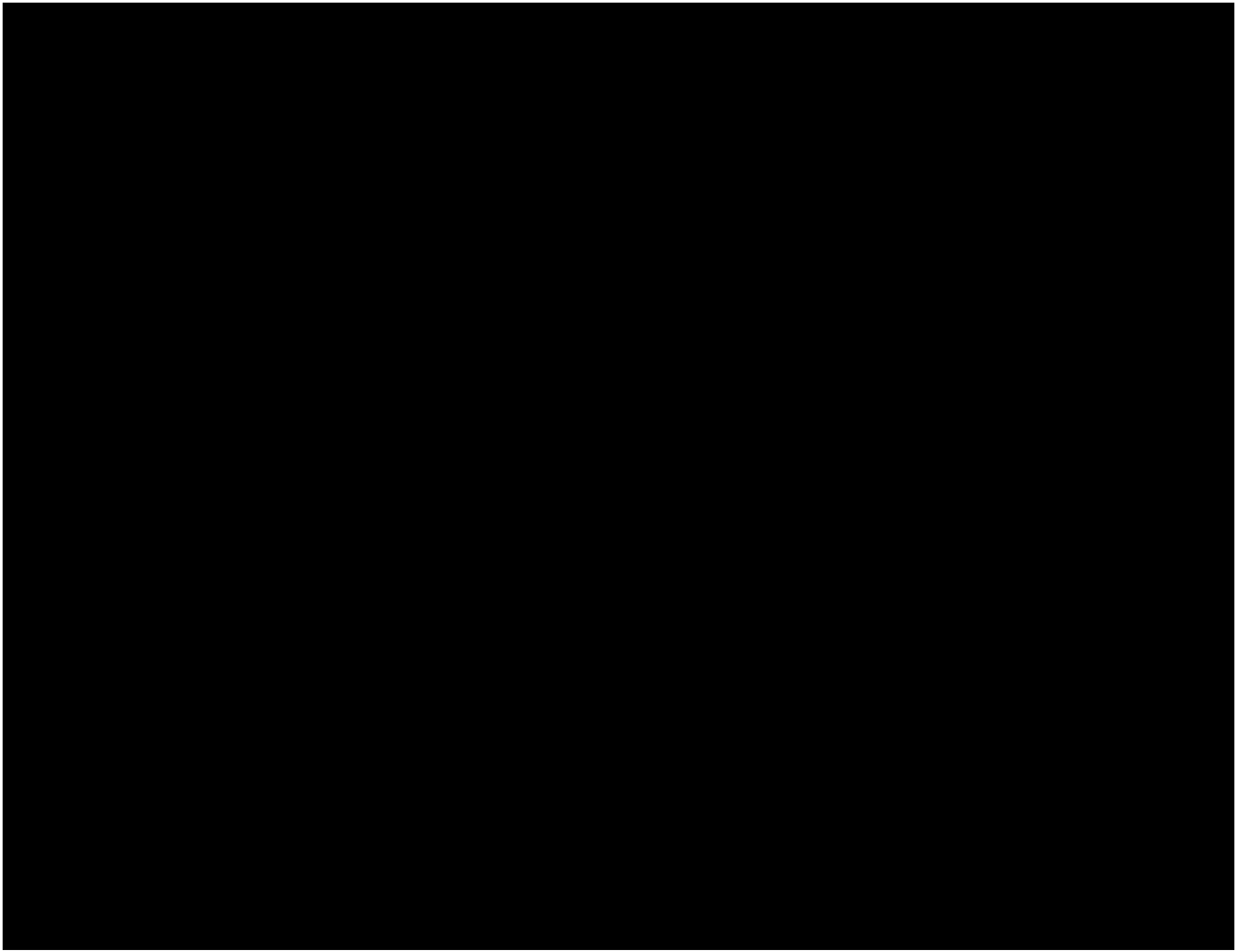
Enclosures

cc: Client



157 Wn. 2d. 488, Aug. 2006 Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.

[No. 76553-7. En Banc.]

Argued November 10, 2005. Decided August 10, 2006.

LEWIS COUNTY , *Appellant* , v. THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD ET AL ., *Respondents* .

[1] Counties - Land Use Controls - Growth Management Act - Administrative Review - Growth Management Hearings Board - Local Compliance With Act - Clearly Erroneous Test. A growth management hearings board may invalidate a local comprehensive plan provision or development regulation under the clearly erroneous standard of RCW 36.70A.320 (3) if, after reviewing the entire record and considering the goals and requirements of the Growth Management Act (chapter 36.70A RCW), the board has a firm and definite conviction that a mistake was made.

[2] Counties - Land Use Controls - Growth Management Act - Hearings Board Decision - Judicial Review - Appellate Review - Board Record. When reviewing a growth management hearings board decision, an appellate court sits in the same position as the superior court and applies the review standards of RCW 34.05.570 (3) directly to the record created before the board.

[3] Counties - Land Use Controls - Growth Management Act - Construction - Deference to Hearings Board. While a growth management hearings board is required by RCW 36.70A.3201 to defer to a county's or city's planning choices that are consistent with the Growth Management Act (chapter 36.70A RCW), the board itself is entitled to deference in determining what the Growth Management Act requires; i.e., a court must give "substantial weight" to the board's interpretation of the act.

[4] Administrative Law - Judicial Review - Standard of Review - In General. Under RCW 34.05.570 (3), a court shall grant relief from an agency's adjudicative order if the order fails to meet any of the nine standards delineated in the statute.

[5] Counties - Land Use Controls - Growth Management Act - Hearings Board Decision - Judicial Review - Burden of Proof. The burden of demonstrating that a growth management hearings board erroneously applied the law or failed to follow prescribed procedures is on the party asserting error.

[6] Administrative Law - Judicial Review - Question of Law - Standard of Review. An issue of law in an administrative adjudication is reviewed by a court de novo under the error of law standard of RCW 34.05.570 (3)(d).

[7] Administrative Law - Judicial Review - Mixed Question of Law and Fact - Standard of Review. A court reviews a mixed question of law and fact in an agency adjudication by independently determining the law and then applying the law to the facts as found by the agency.

[8] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Designation - Factors - Development Prospects. Under RCW 36.70A.170 (1)(a), which requires counties to designate as agricultural land those lands not already characterized by urban growth and having long-term significance for the commercial production of food or other agricultural products, and under RCW 36.70A.030 (10), which defines "long-term commercial significance" to include the growing capacity, productivity, and soil composition of land for long-term commercial production in consideration with its proximity to population areas and the possibility of more intense uses thereof, counties must do more than simply catalogue lands that are physically suited to farming. They must consider development prospects - i.e., the "possibility of more intense uses" - in determining whether land has the enduring commercial quality needed to fit the agricultural land definition.[9] Counties - Land Use Controls - Growth Management Act - Agricultural Land - What Constitutes - Determination - Factors. For purposes of the Growth Management Act (chapter 36.70A RCW), and applying its definitions, "agricultural land" is land (1) not already characterized by urban growth; (2) 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 (3) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether the land is near population areas or vulnerable to more intense uses. Counties may consider the development-related factors enumerated in WAC 365-190-050 (1) in determining which lands have long-term commercial significance.

[10] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Designation - Factors - Agriculture Industry Needs. Although counties are not specifically authorized by statute to weigh the needs of the agriculture industry above all other considerations in designating and conserving agricultural lands, the Growth Management Act (chapter 36.70A RCW) does not prohibit such an approach inasmuch as the Growth Management Act does not dictate how much weight to assign each factor in determining which farmlands have long-term commercial significance, and where RCW 36.70A.030 (10) includes the possibility of more intense uses among factors to consider, it is not "clearly erroneous" for a county to weigh the agriculture industry's anticipated land needs above all else. If the farm industry cannot use land for agricultural production due to economic, irrigation, or other constraints, the possibility of more intense uses of the land is heightened. RCW 36.70A.030 (10) permits such considerations in designating agricultural lands

[11] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Designation - Factors - "Nonfarm" Economic Needs of Farmers. Serving the "nonfarm" economic needs of farmers is not a logical or permissible consideration in designating agricultural lands under the Growth Management Act (chapter 36.70A RCW) The "nonfarm" economic needs of farmers is a goal Thus, it is not a characteristic of farmland to be evaluated in determining whether such land has long-term commercial significance. A farmer's presumed need for "nonfarm" income does not necessarily relate to soil, productivity, or growing capacity under RCW 36.70A.030 (10), or to proximity to population areas or the possibility of more intense uses of land.

[12] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Designation - Nonagricultural Uses - Blanket Exclusions - Validity. In designating agricultural lands under the Growth Management Act (chapter 36.70A RCW), a county may not exclude a specified number of acres on every farm for nonfarm uses without regard to soil, productivity, or other specified factors in each farm area.[13] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Conservation - Methodology - County Discretion - In General. Under RCW 36.70A.177 , counties may choose how best to conserve designated agricultural lands

so long as their methods are designed to conserve agricultural lands and encourage the agricultural community.

[14] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Nonagricultural Uses - Validity - Test. Under the Growth Management Act (chapter 36.70A RCW), a county's agricultural land conservation regulations that allow specific nonfarm uses of farm land may be invalidated if they are not fashioned in such a way as to ensure that they do not negatively impact resource lands and activities and do not substantially interfere with the Growth Management Act goal of maintaining and enhancing the agricultural industry.

[15] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Nonagricultural Uses - Residential Development - Zoning Code Protections - Sufficiency. A county's agricultural land conservation regulations may be invalidated under RCW 36.70A.060 if they fail to regulate farm housing to conserve agricultural prime soils, fail to prevent residential densities inconsistent with agriculture, and allow clustered residential subdivisions that are not designed either to ensure conservation of agricultural lands or to

encourage the agricultural economy. These deficiencies are not mitigated by a zoning code provision requiring that such nonfarm uses not detract from the overall productivity of the resource activity; such a provision provides insufficient protection to conserve agricultural lands and encourage the agricultural economy as required by RCW 36.70A.060

[16] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Nonagricultural Uses - Innovative Zoning Techniques - Validity - Test. A zoning technique that allows nonfarm uses on designated agricultural lands constitutes a permissible "innovative zoning technique" within the meaning of RCW 36.70A.177 of the Growth Management Act only so long as it does not undermine the act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry. After properly designating agricultural lands, a county may not then undermine the act's agricultural conservation mandate by adopting "innovative" amendments that allow the conversion of prime agricultural soils to an unrelated use.

[17] Counties - Land Use Controls - Growth Management Act - Agricultural Land - Nonagricultural Uses - Innovative Zoning Techniques - Validity - Question of Law or Fact. Whether a provision in a county's zoning code that allows nonfarm uses of designated agricultural lands constitutes a permissible "innovative zoning technique" within the meaning of RCW 36.70A.177 of the Growth Management Act is a question of law.

J.M. JOHNSON , SANDERS , and CHAMBERS , JJ., dissent in part by separate opinion.

Aug. 2006 Lewis County v. W. Wash. Growth Mgmt. Hearings Bd. 492
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Nature of Action: A county sought judicial review of a growth management hearings board decision (1) that the county's designations of agricultural land in its growth management plan did not comply with the Growth Management Act (chapter 36.70A RCW) and (2) that county ordinances (a) allowing nonfarm uses within designated agricultural lands, (b) excluding "farm centers" and farm homes from agricultural lands, and (c) requiring "sufficient irrigation capability" for designation as Class A farmland were invalid. The county also sought review of a separate hearings board order requiring that potential agricultural resource lands in rural zones be preserved from incompatible development until a compliant approach is utilized by the county so that such lands will be available for assessment under a compliant approach.

Superior Court: The Superior Court for Lewis County, No. 04-2-00477-1, H. John Hall, J., on February 23, 2004, entered a judgment upholding the board's decisions.

Supreme Court: Holding that the hearings board applied the wrong definition of "agricultural land" in assessing the county's compliance with the Growth Management Act, but holding that the hearings board properly invalidated the county's ordinances which allowed nonfarm uses within designated agricultural lands and which excluded "farm centers" and farm homes from those lands, the court *affirms* the judgment in part, *reverses* it in part, and *remands* the case to the hearings board for further proceedings .

Deanna Zieske , pro se.

Alexander W. Mackie (of Perkins Cole, L.L.P.); and *Jeremy R. Randolph* , Prosecuting Attorney, and *Douglas E. Jensen* , Deputy, for appellant.

Lewis H. Zieske, Jr. , for respondents.

Timothy E. Allen and *Tim Trohimovich* on behalf of Futurewise, amicus curiae.

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Robert M. McKenna , Attorney General, *Maureen A. Hart* , Senior Assistant, and *Alan D. Copsey* , Assistant, on behalf of the Washington Attorney General, amicus curiae.

¶1 ALEXANDER, C.J. - After failing four times to satisfy the Western Washington Growth Management Hearings Board (Board) that it properly designated agricultural lands for conservation under the Growth Management Act (GMA), chapter 36.70A RCW, Lewis County now asks us to reverse the latest Board orders rebuffing its efforts. We conclude that the Board incorrectly defined agricultural land in reviewing Lewis County's 2003 ordinances. Accordingly, we reverse the Board's conclusion that the county violated the GMA by focusing on the farm industry's projected needs, rather than on soil and land characteristics, in designating agricultural lands for conservation. We also remand the case to the Board to determine whether the county's designations of agricultural land comply with the GMA, using the correct definition of agricultural land.«1»We conclude, however, that the Board did not err by invalidat

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«1»We disagree with the dissent's assertion that this court should "instruct the Board to remand to Lewis County to allow the county and its legislative body to correct the designations of land given this new definition." Dissent at 514. First of all, we are not establishing a "new definition." The legislature defined agricultural land when it adopted RCW 36.70A.030 (2). We are simply interpreting that definition, using traditional tools of statutory construction in order to resolve the present dispute over what the legislature meant in adopting RCW 36.70A.030 (2). Secondly, the GMA already requires the Board to remand to the county any regulation or plan that is determined to be noncompliant RCW 36.70A.300 (3). Therefore, to the extent that Lewis County's designation of 54,400 acres of agricultural land turns out to be off the mark, the GMA already ensures that the county will decide how to correct that problem in that sense, we do not disagree with the dissent. Besides, because we affirm the Board's other findings of noncompliance, Lewis County already will have to reconsider its approach to conserving designated lands. Finally, although we conclude that both the Board and Lewis County misinterpreted the definition of agricultural land in RCW 36.70A.030 (2), that does not necessarily mean that Lewis County designated the wrong parcels (or too few of them). The extent to which the designated parcels match the actual definition of agricultural land is a compliance question, and therefore is properly directed to the Board, the agency charged with determining GMA compliance. RCW 36.70A.320 (3). It seems that the dissent would bypass the Board and allow counties to decide whether their own actions comply with the GMA. For example, the dissent complains that these "unelected boards" may "micromanage land use plans for counties." Dissent at 510 n 19. While bypassing the Board certainly would promote the dissent's goal of "allowing the . . . local government to govern" it would contradict the intent of the legislature for a quasi-judicial body to evaluate GMA compliance. Dissent at 514

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ing the ordinances that: (a) allowed nonfarm uses within designated agricultural lands, and (b) excluded "farm centers" and farm homes from those ands. Therefore, we partially affirm the Board's orders.

I

¶2 Lewis County has long struggled to meet GMA requirements to designate and conserve agricultural lands. In June 2000, March 2001, and July 2002, the Board found the county's efforts noncompliant.

¶3 In response to the Board's September 8, 2003, deadline to achieve GMA compliance, the county staff prepared a report explaining how it identified agricultural lands to be conserved. The 2003 staff report said that of the 1,117 farms existing in Lewis County as of the 1997 census, only 176 farms had gross sales of $25,000 or more, and only 161 of them were larger than 180 acres. The report also said that of about 150,000 acres eligible for agricultural designation based on soil type, about 50,000 had no recent agricultural activity. The report described a decline in dairies and field crops, an absence of "significant clusters" of organic farms, and a poultry industry constrained by a lack of water rights. Clerk's Papers (CP) at 242. The report also said no land conservation was needed for the hay and Christmas tree industries because they do not depend on soil, and "[g]rass hay in particular is a marginal operation, in that in good years the return is often barely enough to pay taxes on the property" *Id.* at 254. Finally, the staff report said most Lewis County farms are not economically self sufficient and

therefore need "non farm income" for survival. *Id.* To address that need, the report recommended allowing each farm to have a "farm center" of up to five acres where rural commercial and industrial uses would be allowed. *Id* . at 255.

¶4 The Lewis County Planning Commission held public hearings and approved the staff report almost entirely. It recommended that the Lewis County Commission designate 54,500 acres of agricultural land, "appropriate in location and amount to reasonably conserve the land-based needs of the commercial agriculture industry for the foreseeable future."«2» *Id.* at 283. On September 8, 2003, the Lewis County Commission adopted by ordinance the planning commission findings and most of its recommendations, along with maps designating an agricultural zone of about 54,400 acres. And while prohibiting certain nonfarm land uses, the commission allowed others - including residential subdivisions, home-based businesses and telecommunication facilities - to be located in agricultural lands as long as they met certain conditions «3»The ordinances designated 13,767 of "Class A" farmlands, characterized by prime farm soils, over 40,000 acres of "Class B" farmlands, and "[f]armlands of [l]ocal [i]mportance." *Id.* at 670. The commission removed some lands from designation because they: (1) had "already been divided," (2) "lost irrigation rights," or (3) were "isolated and in areas where land development and potential changes create the potential for conflict and . . significant change." *Id.* at 283. The latter included lands near Interstate 5 where the county wants to attract "major industry." *Id* .

¶5 The county's designation of 54,400 acres of agricultural lands, as compared with 66,000 acres receiving special agricultural tax status and 283,000 acres of land with prime farm soils in Lewis County, was controversial. In

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«2»Planning Commissioners ultimately recommended conserving 2,800 acres fewer than the county staff had recommended

«3»One condition was to "not adversely affect the overall productivity of the farm nor affect any of the prime soils on any farm." CP at 381.

January 2004, the Board held a hearing to review citizen petitions challenging the county's 2003 actions and to determine GMA compliance.«4»The citizen petitioners, using soil and aerial maps, claimed to identify 140,645 acres that were currently or recently used for agriculture and that should have been conserved. In February 2004, the Board issued a 49-page order concluding that Lewis County still failed to comply with the GMA. The Board reasoned as follows·

> The GMA defines the requirements for designating natural resource lands based on the characteristics of the lands. Instead of basing its designation decisions on the characteristics of agricultural land, Lewis County focused its decision-making on its assessment of the needs of the local agricultural industry . . . . Historically, in Lewis County as well as in other counties, the agricultural industry has changed as the market for agricultural products changed. Agricultural economists are not able to predict which products will be in demand next year, let alone for the foreseeable future. The legislature, therefore, did not tie the designation of agricultural lands to economic conditions which shift unpredictably but to the characteristics of the land The moving concern underlying the GMA's requirement for designation and conservation of agricultural lands is to preserve lands capable of being used for agriculture because once gone, the capacity of those lands to produce food is likely gone forever.

CP at 634. The Board invalidated the ordinances and maps that (a) designated the agricultural lands to be conserved, (b) excluded " 'farm centers' " and farm homes from designated agricultural lands, (c) allowed nonagricultural uses on the designated lands, and (d) required " 'sufficient irrigation capability' " for designation as Class A farmland.«5»CP at 674, 675. In a May 2004 order on reconsideration, the Board said that "until the County utilizes a compliant approach . potential agricultural resource lands in the

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«4»Petitioners included Vince Panesko, Eugene Butler, and 14 other respondents in this case.

«5»The Board found that only 5,765 of the 117,767 acres being farmed in Lewis County as of 1997 were irrigated.

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rural zones must be preserved from incompatible development so that they will be *available* for assessment under a compliant approach."«6» *Id.* at 684.

¶6 Lewis County appealed both 2004 orders to the Lewis County Superior Court. On December 23, 2004, the superior court affirmed the Board's orders, agreeing with the Board that "the . 'needs of the industry' argument is clearly erroneous" and that "the definition of long-term significance efers to the growing capacity and productivity of the soil." *Id.* at 10. We granted review.

II

[1, 2]¶7 The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations. RCW 36.70A.280 , .302. The Board "shall find compliance" unless it determines that a county action "is clearly erroneous in

view of the entire record before the board and in light of the goals and requirements" of the GMA. RCW 36.70A.320 (3). To find an action "clearly erroneous," the Board must have a "firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). On appeal, we review the Board's decision, not the superior court decision affirming it. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000) (hereinafter referred to as *Soccer Fields*) " 'We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court.' " *Id.* (quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

«6»The reconsideration order also reversed the Board's invalidation of maps designating Class A and Class B farmlands, finding that those lands were adequately protected pending full compliance. But the order upheld the invalidation of maps designating "Class C" farmlands in rural zones - citing concerns that land with prime soils or recent farming activity could be lost to nonfarm development in the absence of agricultural zoning.

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[3]¶8 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 Wn.2d at 553.«7»

[4-7]¶9 Under 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). Here, Lewis County asserts that the Board erroneously applied the law, warranting relief under RCW 34.05.570 (3)(d), and engaged in an unlawful decision-making process. RCW 34.05.570(3)(c). The burden of demonstrating that the Board erroneously applied the law or failed to follow prescribed procedure is on the party asserting error. *Soccer Fields*, 142 Wn.2d at 553. Our review of issues of law under RCW 34.05.570 (3)(d) is de novo. *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156 (2002). "On mixed questions of law and fact, we determine the law independently, then apply it to the facts as found by the agency." *Id.* (citing *Hamel v. Employment Sec. Dep't*, 93 Wn. App. 140, 145, 966 P.2d 1282 (1998), *review denied*, 137 Wn.2d 1036 (1999)).

III

¶10 Under the GMA, Lewis County must designate "[a]gricultural lands that are not already characterized by

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«7»The dissent wrongly summarizes the Board's role as merely this: "to ensure that the proper legislative bodies under the GMA are making the decisions mandated," as if *any* decisions will do. Dissent at 514. Actually, the Board is empowered to determine whether county decisions comply with GMA requirements, to remand noncompliant ordinances to counties, and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance. RCW 36.70A.300 (3), .320(3), 302(1) In other words, the Board is more than a deskbook dayminder telling counties what decisions are due.

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urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170 (1)(a). In addition, the county must adopt development regulations "to assure the conservation of" those agricultural lands designated under RCW 36.70A.170. RCW 36.70A.060 (1).«8»The parties in this case offer contrary definitions of the lands subject to these requirements. As a threshold matter, then, we must identify the correct definition of "agricultural lands" under the GMA.

¶11 Lewis County designated agricultural lands based on its own definition: "those lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils." CP at 418. The Board called the county's definition clearly erroneous, saying, "We note that throughout the GMA and the court decisions construing it the focus is on the nature of the *land*, not on the nature of the agricultural industry that is using the land at any given time." *Id.* at 640. The Board also said "[t]he GMA calls for designation of agricultural lands based on characteristics of the land" that affect long-term production capability. *Id.* But to be guided strictly by the physical nature of the land would stifle economic development in counties like Lewis, which have a significant amount of potentially good farmland, much of which is unproductive. For reasons set forth below, we conclude that the Board's and county's definitions of agricultural land are both incorrect.

¶12 The GMA defines agricultural land as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees . . . or livestock, and that has long-term commercial significance for agricultural production." RCW 36-

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«8»Lewis County became subject to GMA planning mandates in July 1993 and first designated agricultural lands in 1996. Until 1996, the county had no zoning laws at all.

.70A.030(2). Thus, the legislature established that agricultural lands are those which (1) are "primarily devoted to" commercial agricultural production and (2) have "long-term commercial significance" for such production. RCW 36.70A.030 (2). We now turn to what these terms mean.

¶13 This court previously addressed the meaning of the term "primarily devoted to" in *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 959 P.2d 1091 (1998) (hereinafter referred to as *Benaroya I*),«9»a case in which landowners challenged designation of their land as agricultural. We said there that land is primarily " 'devoted to' " commercial agricultural production "if it is in an area where the land is actually used or capable of being used for agricultural production," and that a landowner's intended use of land is not conclusive. *Id.* at 53.

¶14 In the present case, the Board relied partly on the aforementioned language in concluding that Lewis County improperly excluded from

designation those lands that are "capable of being used" for farm production. CP at 637. But *Benaroya* I dealt only with whether land is " 'primarily devoted to' " farming under RCW 36.70A.030 . *Benaroya* I, 136 Wn.2d at 49 . The other question in designating agricultural land, neglected by the Board in this case, is whether land also has "long-term commercial significance" for farm production.

[8]¶15 The GMA says that long-term commercial significance "includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, *in consideration with* the land's proximity to population areas, and *the possibility of more intense uses of the land.* " RCW 36.70A.030 (10) (emphasis added). Thus, coun

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«9»The issue in *Benaroya* I was whether a landowner must intend for the land to be "devoted to" agriculture to be subject to designation. We said, "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." *Benaroya* I, 136 Wn.2d at 53 .

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ties must do more than simply catalogue lands that are physically suited to farming They must consider development prospects (the "possibility of more intense uses") in determining if land has the enduring commercial quality needed to fit the agricultural land definition. .

¶16 While this court has not previously interpreted RCW 36.70A.030 (10), we approve of the approach used by the Court of Appeals in *Manke Lumber Co. v. Diehl* , 91 Wn. App. 793 , 959 P.2d 1173 (1998), *review denied* , 137 Wn.2d 1018 (1999). In *Manke* , Mason County challenged a Board decision to invalidate its designation of forest lands, subject to the same GMA conservation requirements as agricultural lands. In holding that the Board erred, the court relied largely on WAC 365-190-050 ,«10»a Washington Department of Community, Trade and Economic Development regulation designed to guide counties in determining which agricultural and forest lands have "long-term commercial significance." That regulation says that counties

> shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:
>
> (a) The availability of public facilities;
>
> (b) Tax status;
>
> (c) The availability of public services;
>
> (d) Relationship or proximity to urban growth areas;
>
> (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.

«10»The decision refers to WAC 365-190-060 but cites language identical to the current WAC 365-190-050 .

WAC 365-190-050 (1).«11»The court in *Manke* determined that the Board misapplied the GMA, and that the county could limit forest land designations to parcels of at least 5,000 acres that have a forest tax classification because the guidelines allow consideration of "predominant parcel size" and "tax status" in determining long-term significance. *See Manke* , 91 Wn. App. at 807 -08.

[9]¶17 In sum, based on the plain language of the GMA and its interpretation in *Benaroya* I, we hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030 (2), including land in areas used or capable of being used for production based on land characteristics, *and* (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. 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. We, therefore, remand this case for the Board to apply the correct definition of agricultural land in determining whether Lewis County's 2003 ordinances complied with RCW 36.70A.170 (1).

IV

[10]¶18 The respondent citizens in this case argue that "[n]owhere in the GMA or in the implementing WACs is there authority to limit agricultural resource lands designations using an industry needs assessment." Br. of Resp'ts

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«11»Interestingly, while the state of Washington's amicus brief argues that the "structure" of WAC 365-190-050 supports the primacy of soil characteristics, it does not mention the extensive text devoted to these development-related considerations that have nothing to do with soil. State's Amicus Curiae Br at 10 Besides, the regulation's structure merely mirrors the order in which the underlying statute, RCW 36.70A.030 (10), lists the factors to consider in determining long-term commercial significance Neither the statute nor the

regulation purports to prioritize those factors.

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at 10. While it is true that no statute specifically authorizes counties to weigh industry needs above all other considerations in designating and conserving agricultural land, this does not mean the GMA prohibits such an approach. As noted above, the GMA's stated intent is to recognize the "broad . . . discretion" of counties to make choices within its confines. RCW 36.70A.3201 . Because the GMA does not dictate how much weight to assign each factor in determining which farmlands have long-term commercial significance, and because RCW 36.70A.030 (10) includes the possibility of more intense uses among factors to consider, it was not "clearly erroneous" for Lewis County to weigh the industry's anticipated land needs above all else. If the farm industry cannot use land for agricultural production due to economic, irrigation, or other constraints, the possibility of more intense uses of the land is heightened. RCW 36.70A.030(10) permits such considerations in designating agricultural lands. Indeed, *Manke* involved some of the same considerations cited in the Lewis County staff report, undersized parcels and possible conflicts with nearby development. Therefore, the Board erred in concluding that Lewis County violated the GMA by designating agricultural lands based on the local farm industry's anticipated needs.

¶19 However, we do not decide whether Lewis County, in focusing on the needs of the local agriculture industry, went beyond the considerations permitted by WAC 365-190-050 and RCW 36.70A.030 in designating agricultural lands. Unfortunately, Lewis County's briefs do not explain the extent to which the county applied the specified factors.«12»

«12»Rather than focusing on the mandates of RCW 36.70A.060 and .170 to designate and conserve agricultural lands as defined in RCW 36.70A.030 , the county's opening brief, reply brief, and its answer to the amicus brief of Futurewise inexplicably dwell on GMA "planning goals," which merely offer guidance. *See* RCW 36.70A.020 ("The following goals are adopted *to guide* the development and adoption of comprehensive plans and development regulations . ." (emphasis added)). The county's line of argument is misguided. *Quadrant Corp v Central Puget Sound Growth Management Hearings Board* held that when there is a conflict between the "general" planning goals and more specific requirements of the GMA, "the specific requirements control." *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd* . 119 Wn. App. 562 , 575, 81 P.3d 918 (2003), *rev'd in part on other grounds* , 154 Wn.2d 224 , 110 P.3d 1132 (2005), *see also Quadrant Corp.* , 154 Wn.2d at 248 (this court "did not rely on the applicable goal in isolation nor did it hold the goals to independently create substantive requirements"). Thus, the county is mistaken in its apparent belief that the general goal in RCW 36.70A.020 (8) is the test for defining agricultural lands.

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And while Lewis County Ordinance 1179C does spell out in detail how the county considered WAC 365-190-050 factors in mapping agricultural lands,«13»the record does not indicate whether the county used permissible criteria in other decisions not explicitly tied to the WAC factors. For example, in not designating Christmas tree farms as agricultural land because they do not depend on a particular soil type, the county could have been considering the soil composition factor listed in RCW 36.70A.030 (10). But in light of the Christmas tree industry's relatively robust $19.8 million in annual sales, it is not apparent why Lewis County would "consider" soil in this way, excluding productive tree farms from designated agricultural lands simply because they don't need the types of prime soil that other farm sectors need. Thus, upon remand, when the Board reviews whether Lewis County properly designated agricultural lands, the inquiry should include whether the county's decisions were "clearly erroneous" in light of the considerations outlined in RCW 36.70A.030 or WAC 365-190-050 .

V

[11, 12]¶20 While most of the county's designation decisions at least possibly could have been based on per

«13»For example, the county said it considered growing capacity and productivity by requiring agricultural land to have certain soil types, as well as sufficient irrigation capability "to grow the primary agricultural crops produced in Lewis County." CP at 378. The county considered predominant parcel size by requiring agricultural land to be at least 20 acres (for economic viability), or to meet the United States Department of Agriculture definition of "commercial" agriculture. The county considered availability of public facilities and services by requiring agricultural lands to be located outside areas where urban-level services are "conducive to the conversion" of farmland. *Id.* at 379

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missible criteria,«14»we note one exception. In excluding "farm centers" and farm homes from designated agricultural lands,«15»the county sought "to serve the farmer's nonfarm economic needs." Opening Br. at 30. Serving the farmer's "nonfarm" economic needs is not a logical or permissible consideration in designating agricultural lands under the GMA. That is because it is a goal in and of itself, not a characteristic of farmland to be evaluated in determining whether such land has long-term commercial significance. A farmer's presumed need for "nonfarm" income does not necessarily relate to soil, productivity, or growing capacity under RCW 36.70A.030 (10), nor to proximity to population areas or the possibility of more intense uses of land. It has to do only with the farmer's bottom line. And while we share Lewis County's concern for the struggles farmers often face, we note that the GMA is not intended to trap anyone in economic failure, as evidenced by the mandate to conserve only those farmlands with long-term commercial significance. The problem with the county's approach is that *any* farmer could convert *any* five acres of farmland to more profitable uses, even if such conversion would remove perfectly viable fields from production. Thus it was clearly erroneous for Lewis County to exclude from designated agricultural lands up to five acres on *every* farm, without regard to soil, productivity, or other specified factors in each farm area.«16»Accordingly, we affirm the Board's invalidation of the blanket exclusion of five-acre farm

«14»For example, in finding that farms need gross sales of $25,000 or more for potential long-term significance, the county could have been considering "productivity" of the land or the "possibility of more intense uses" pursuant to RCW 36.70A.030 (10). It is not necessarily error to assume that farms with meager income are likely to succumb to development pressures. Similarly, in finding that farms smaller than 160 acres may not be cost effective, the county could have been considering productivity, the possibility of more intense uses, or "predominant parcel size "

«15»While the county's briefs discuss this issue in the context of zoning choices, the Board correctly treated it as a designation issue The Board found that excluding farm homes and farm centers from designated agricultural land was "clearly erroneous" because it "creates isolated pockets of inconsistent zoning in farmlands" and makes adjacent lands vulnerable to dedesignation CP at 649, 675

«16»The dissent suggests that a county may designate agricultural land based on a farmer's economic needs or, for that matter, any other factors it deems worthy. Indeed, the dissent repeatedly invokes "discretion" as a mantra, as if the GMA places no bounds on county decisions. Dissent at 510, 511, 517, 518, 520, 524. For example, in defending Lewis County's decision to allow mining, residential subdivisions, and other nonfarm uses within designated farmlands, the dissent merely recites Lewis County's arguments without reference to the applicable GMA language But the GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. RCW 36.70A.3201 . In other words, there *are* bounds. Furthermore, although we agree with the dissent that counties may consider factors besides those specifically enumerated in RCW 36.70A.030 (10) in evaluating whether agricultural land has long-term commercial significance, that is not what happened here. Rather, Lewis County simply decided to serve its own goal, serving the farmer's nonfarm economic needs, instead of meeting the GMA's specific land designation requirements.

centers and farm homes from designated agricultural lands.

VI

[13]¶21 Having discussed whether Lewis County properly designated lands under RCW 36.70A.170 , we now turn to the RCW 36.70A.060 duty to conserve designated lands. The GMA says in relevant part: "Each county . . . shall adopt development regulations . . . to assure the conservation of agricultural . . . lands designated under RCW 36.70A.170 ." RCW 36.70A.060 (1).

> A county . . . may use a variety of innovative zoning techniques in areas designated as agricultural lands . . . . The . . . *techniques should be designed to conserve agricultural lands and encourage the agricultural economy.* A county . . . should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

RCW 36.70A.177 (1) (emphasis added).

> [T]echniques a county . . . may consider include . . .
>
> (a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land . . .
>
> (b) Cluster zoning . . .
>
> (c) Large lot zoning . . .

> (d) [ ]/quarter zoning . . .
>
> (e) Sliding scale zoning . . . .

RCW 36.70A.177 (2). Thus, counties may choose how best to conserve designated lands as long as their methods are "designed to conserve agricultural lands and encourage the agricultural economy." RCW 36.70A.177 (1).

[14, 15]¶22 Lewis County contends that the Board ignored RCW 36.70A.177 and mandated that all agricultural land be zoned for agriculture only, thereby imposing a "per se prohibition" on all nonagricultural uses there. Opening Br. at 33. But as the respondent citizens correctly noted, the Board orders contain no such prohibition. Br. of Resp'ts at 24. Rather, the Board concluded that the nonfarm uses allowed within farmlands, including mining, residential subdivisions, telecommunications towers and public facilities: (a) "are not limited in ways that would ensure that they do not impact resource lands and activities negatively," and (b) substantially interfere with achieving the GMA goal of maintaining and enhancing the agricultural industry. CP at 676. Furthermore, the Board found that the zoning failed to conserve agricultural land as required by RCW 36.70A.060 . For example, the Board found that: (a) "[t]he failure to regulate farm housing to conserve agricultural prime soils and to prevent residential densities inconsistent with agriculture fails to conserve agricultural lands," (b) "[c]lustered residential subdivisions as currently allowed in the 13,767 acres of Class A Farmlands are not designed to ensure conservation of agricultural lands and encourage the agricultural economy," and (c) "the requirement that these uses not detract from the overall productivity of the resource activity is not sufficient protection." CP at 672. That is different from requiring a particular form of zoning or flatly prohibiting all nonfarm uses. In sum, Lewis County has not been stripped of the ability to use innovative zoning techniques pursuant to RCW 36.70A.177 , as it contends. Rather, in invalidating the Lewis County ordinance allowing nonfarm uses of agricultural lands, the Board was simply making sure that the

county's zoning methods are actually "designed to conserve agricultural lands and encourage the agricultural economy" as required by RCW 36.70A.177 (1).«17»

[16]¶23 The county also argued that the Board failed to heed this court's decision in *King County v. Central Puget Sound Growth Management Hearings Board* , 142 Wn.2d 543 , 14 P.3d 133 (2000), which involved whether soccer fields could be located on agricultural lands. Opening Br. at 31-32. The county contends that the *Soccer Fields* test is whether a nonagricultural use "unreasonably" prevents agricultural land "from being used for its intended purpose," or "defeat[s]" the county's ability to maintain and enhance the farm industry. Opening Br. at 32. That is not the test. This court said, "In order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry." *Soccer Fields* , 142 Wn.2d at 560 "After properly designating agricultural lands . . . the County may not then undermine the Act's agricultural conservation mandate by adopting 'innovative' amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use." *Id.* at 561. The court concluded that the soccer field zoning was noncompliant because it "would result in a long-term removal" of agricultural land from agricultural production, possibly never returning to agricultural use. *Id.* at 562. Thus, a zoning technique that allows nonfarm uses on designated agricultural lands satisfies the *Soccer Fields* test if it does not undermine the GMA mandate to conserve

«17»The dissent appears to misperceive the scope of that RCW 36.70A.177 requirement for zoning methods to be "designed to conserve agricultural lands and encourage the

agricultural economy." That is simply the standard that a county must meet if it uses an innovative zoning technique to conserve agricultural lands Confusingly, the dissent asserts that it is also "the standard we use when reviewing a board's determination of noncompliance and invalidity regarding nonresource uses." Dissent at 518. But the standard of review for Board determinations of noncompliance, as already noted, is drawn from the APA. Rather than apply the APA standard of review, the dissent simply offers bare assertions, i.e , "The uses that the Board found noncompliant are actually consistent with the GMA" to justify its conclusion that the Board erred Dissent at 519.

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agricultural lands for the maintenance and enhancement of the farm industry.

[17]¶24 Applying the *Soccer Fields* test to this case, the question is whether Lewis County's ordinance allowing residential subdivisions and other nonfarm uses within designated agricultural lands undermined the GMA conservation requirement. This is a question of law, and we give "substantial weight" to the Board's interpretation of the GMA. *Id.* at 553. In concluding that Lewis County's permitting of nonfarm uses could "impact resource lands and activities negatively," and therefore substantially interferes with maintaining and enhancing the farm industry, the Board essentially interpreted the GMA to prohibit negative impacts on agricultural lands and activities. CP at 676. That is consistent with the RCW 36.70A.060 directive to conserve designated agricultural lands, the RCW 36.70A.020(8) goal of maintaining and enhancing the agricultural industry, and the *Soccer Fields* holding that innovative zoning may not undermine conservation. Therefore, the Board did not err in holding that the nonfarm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands.

VII

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

¶26 We also remand the case for the Board to apply the correct definition of agricultural land, taking into account whether the county used permissible criteria. However, we affirm the Board's invalidation of the exclusion of farm homes and farm centers from designated agricultural lands because "serving the farmer's nonfarm economic needs" is

not a permissible consideration. We also affirm the Board's invalidation of nonfarm uses within agricultural lands.*«18»*\

C JOHNSON , MADSEN , BRIDGE , OWENS , and FAIRHURST , JJ., concur.

¶27 J.M. Johnson, J. (dissenting/concurring) - The legislature recognized the authority and wide discretion of county governments to adopt county comprehensive plans according to local growth patterns, resources, and needs. RCW 36.70A.010 -.902; *Manke Lumber Co. v. Diehl* , 91 Wn. App. 793 , 796, 959 P.2d 1173 (1998). This is the necessary starting point when reviewing any Growth Management Act (GMA), chapter 36.70A RCW, case involving review of local legislative planning decisions by one of the Growth Management Hearings Boards (GMA Boards).*«19»*

¶28 The majority adequately recognizes this deference owed to county legislative bodies and the resulting standards of review. However, the majority disregards this principle when it upholds the GMA Board's decision to overturn Lewis County's (County) determination that farm centers and farm homes and certain other nonresource related uses are appropriate and allowable on agricultural and forest lands in the county. Therefore, I concur in part and dissent in part.

I. THE GROWTH MANAGEMENT ACT AND THE ROLE OF THE GMA BOARDS

¶29 Prior to reviewing these GMA Board decisions, it is necessary to provide a brief overview of the GMA, the creation of the three GMA Boards, the requirements for GMA Board membership, and the GMA Boards' limited role

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*«18»*Because we decide this case on statutory grounds we do not reach the procedural issues raised by Lewis County.

*«19»*A separate concern, of constitutional dimension, is not presented today; whether these sui generis unelected boards, appointed by the governor, may overrule county legislators and micromanage land use plans for counties

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to ensure compliance with GMA, while giving local legislative bodies discretion to address local needs.

¶30 In 1991 the Washington State legislature passed the GMA to help preserve Washington's environmental quality and to balance the inevitable growth with the quality of life concerns for the benefit of Washington residents. *See* LAWS OF 1990, 1st Ex. Sess., ch. 17, codified at ch. 36.70A RCW. The GMA recognizes 13 planning goals, which are not ranked in priority, are not meant to be exclusive, and are permitted to be given varying degrees of emphasis by local legislative bodies. RCW 36.70A.020 ; WAC 365-195-070 (1).

¶31 The GMA was to be a "bottom-up" approach, allowing local cities and counties the authority to make decisions based on their local needs in order to harmonize and balance the 13 statewide planning goals.*«20»*

¶32 GMA was not intended to be a top-down approach with state agencies (or GMA Boards) dictating requirements to local entities. Thus, in accordance with the legislative language of the act, we have held that the GMA does not prescribe a single approach to growth management RCW 36.70A.3201 ; *Viking Props. v. Holm* , 155 Wn.2d 112 , 125-26, 118 P.3d 322 (2005) (" 'the ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county's or city's future

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«20»RCW 36.70A.020 lists the goals as:

1. Urban growth

2. Reduce sprawl

3 Transportation

4. Housing

5. Economic development

6. Property rights

7. Permits

8. Natural resource industries

9. Open space and recreation

10. Environment

11. Citizen participation and coordination

12. Public facilities and services

13. Historic preservation.

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rests with that community.' " (alteration in original) (quoting RCW 36.70A.3201)).

¶33 Thus, the GMA is implemented exclusively by city and county governments and is to be construed with the flexibility to allow local governments to accommodate local needs. *Viking Props.* , 155 Wn.2d at 125 -26.

¶34 Rather than have GMA disputes proceed directly to superior court, the legislature created three regional GMA Boards to resolve land disputes under the GMA - Western Washington Growth Management Board, Eastern Washington Growth Management Board, and Central Puget Sound Growth Management Board. RCW 36 70A.250 . In this case we are dealing with the Western Washington Growth Management Board (Board).

¶35 The role of GMA Boards is quasi-judicial and each may interpret for counties and cities the requirements of the GMA to ensure compliance with the GMA's 13 goals. GMA Boards are the first level to resolve conflicting interpretations in order to resolve land disputes quickly and efficiently. GMA Boards are empowered to "hear and determine" allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA and related provisions of the Shoreline Management Act of 1971«21»and the State Environmental Policy Act.«22»RCW 36.70A.280 .

¶36 GMA Boards review petitions for review regarding (1) designation of resource lands and critical areas, (2) regulations to conserve and protect critical areas, (3) designation of urban growth boundaries, and (4) comprehensive plans, development regulations, and shoreline master plans Each board may also review the 20-year growth management plans, determine issues of standing, and has the task of making adjustments to growth management planning projects while considering statewide implications. RCW 36.70A.280 .

«21»Ch. 90 58 RCW.

«22»Ch. 43.21C RCW

¶37 However, the role of GMA Boards is very limited. The legislature requires each GMA 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 . While we give weight to each GMA Board's decisions, deference is required to county planning actions if consistent with the goals and requirements of the GMA. *State v. Bradshaw* , 152 Wn.2d 528 , 535, 98 P.3d 1190 (2004), *cert. denied* , 544 U.S. 922 (2005). Moreover, if a GMA Board fails to give deference to a county planning decision that complies with the GMA, the GMA Board's ruling is not entitled to deference from this court. *Quadrant Corp. v. State Growth Mgmt. Hearings Bd.* , 154 Wn.2d 224 , 238, 110 P.3d 1132 (2005).

¶38 Some GMA Boards have recognized their very limited authority: that they are not allowed to reach constitutional or equitable issues nor are they empowered to resolve disputes related to impact fees (RCW 82.02.020). *See e.g.* , *Alberg v. King County* , No. 95-3-0041, Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Final Dec. & Order 1109 (Wash. Sept. 13, 1995) (GMA Board can't reach constitutional or equitable issues); *Master Builders Ass'n of Pierce County v. City of Bonney Lake* , No 05-3-0045, Cent. Puget Sound Growth Mgmt. Hr'gs Bd. Final Order (Wash. Jan. 12, 2006) (GMA Board does not have jurisdiction to decide issues related to impact fees imposed under chapter 82.02 RCW.).

¶39 While "substantial weight" is afforded to a GMA Board's interpretation of the GMA,«23»they are not judicial or legislative officers. The board members are not elected, but are appointed by the sitting governor for six-year terms (without legislative confirmation). In order to be eligible to participate on a GMA Board, the GMA simply requires of members (1) that at least one attorney and one former local elected official serve on each board, (2) that each board member reside within the region for which the GMA Board has jurisdiction and is qualified by "experience or training

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«23» *King County v Cent. Puget Sound Growth Mgmt Hearings Bd.* , 142 Wn.2d 543 , 563, 14 P.3d 133 (2000).

in matters pertaining to land use planning," and (3) that no more than two members may reside in the same county nor be from the same political party. RCW 36.70A.260 .

¶40 In summary, in order to effectuate the true legislative intent of the GMA, local legislative bodies must be free to address local needs and concerns. Each GMA Board's limited quasi-judicial role is to ensure that the proper legislative bodies under the GMA are making the decisions mandated.

II. AGRICULTURAL LAND AND FARM CENTERS AND FARM HOMES

¶41 The majority properly ascertains the definition of agricultural land from the plain language of the GMA and our prior case law. *See* majority at 498-500 (citing *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.* , 136 Wn.2d 38 , 959 P.2d 1091 (1998)). However, the majority and I differ as to the appropriate remedy. The majority would remand the issue to the Board and instruct them to apply the definition. Majority at 502. This will further protract and delay while not allowing the appropriate local government to govern.«24»

¶42 I also would remand to the Board (as remand is procedurally necessary) but would instruct the Board to remand to Lewis County to allow the county and its legislative body to correct the designations of land given this new definition. Lewis County must be allowed to alter its plans, if it so desires.

¶43 The majority summarily affirms the Board's finding of noncompliance pertaining to farm homes and farm centers *See* majority at 505-06 Specifically, the Board found that the provisions allowing farm centers and farm homes failed to comply with the GMA requirements for designation

«24»Notably, Lewis County has apparently been under constant review of the Board since 2000 as the Board found Lewis County noncompliant in 2000, 2001, and 2002. Pursuant to RCW 36.70A.130 (4)(b) the Board is to review Lewis County's comprehensive plan every seven years. Thus, by the time this opinion issues, Lewis County will be on the cusp of yet another review and they have not fully completed this review.

of agricultural resource lands. Clerk's Papers (CP) at 31. I disagree. The farm centers and farm homes that Lewis County allowed are compatible with agricultural lands under the requirements of the GMA.

¶44 Lewis County allowed specific farm homes and farm centers to be excluded from the designation of long-term agricultural lands (and thus allowed in those areas):

> Long-term commercially significant designations do not include (a) the "farm home" (a house *currently* on designated lands as the date of designation and a contiguous 5 acres, to be segregated by boundary line adjustment for separate financing purposes; and (2) "farm centers," being those lands *existing at the time of designation* , marked by impervious (gravel or paved) surfaces, including buildings and sheds and storage areas) not to exceed 5 acres, which shall be available for rural commercial and industrial uses under guidelines established as a conditional use. (Non-farm development on the farm center shall not be effective until the County completes the terms of the special use permit.)

Lewis County Ordinance 1179E, CP at 418 (emphasis added). These farm homes and farm centers were areas that had preexisting nonagricultural uses. *Id.* In adopting the above ordinance, Lewis County reasoned that "[t]he family home on the farm is not farmed and is often used for numerous activities that provide economic return to the farm family other than farm agriculture." CP at 255. Regarding farm centers, such as roadside stands for sale of farm products, Lewis County reasoned that "[f]arms in Lewis County have areas developed by paved or gravel level areas, barns, sheds, storage facilities, equipment and machine storage and maintenance areas . . . [s]uch areas support the farm activity, but are not cropped, tilled, or generally used for soil-based agriculture, nor are they likely to in the future." CP at 255. Moreover, the farm centers were to be "centered around the existing barn and shed facilities." CP at 255.

¶45 The purpose of farm homes and farm centers was to ensure the long-term survival of agricultural land by allow

ing farmers to supplement their income. "[M]ost farms are not economically self sufficient . . . 'on farm non farm income' and the ability of the farm to provide non farm economic opportunities are both essential to the survival of long-term agriculture in Lewis County." CP at 254-55; 853. This income is a substantial component of financial viability for farms in Lewis County.

¶46 Such farm centers were often already developed on lands in which the soil was not used for agriculture. A farm house and contiguous land was limited to five acres. Lewis County's Opening Br. at 30. Thus, these farm centers and farm homes have a minimal effect on agricultural land. Lewis County notes that

> The designation of the farm home and the farm center from long-term commercially significant lands will not have a major impact on the conservation and protection of long-term commercially significant agricultural lands because
>
> a. Such lands are commonly not in production; and
>
> b. The land removed from the total designation is estimated to be approximately 2,000 acres, still leaving ample reserve for current agricultural production and future growth.

CP at 255-56. Moreover, home occupations and small commercial activities have previously coexisted with and supported farms and there is no evidence that such coexistence harmed the long term commercial significance of agricultural land. *See* CP at 857.

¶47 The majority states that "[s]erving the farmer's . . . economic needs is not a . . . permissible consideration under the GMA." Majority at 0. This is illogical and would lead to fewer farms. As a legal conclusion, it is wrong; the GMA does not prohibit consideration of farmers economic needs.

¶48 The majority reads RCW 36.70A.030 (10) as an exclusive list of what "long-term commercial significance" means. Majority at 501. However, the plain language of the statute shows that the list is not exclusive: " '[l]ong-term commercial significance' *includes* the growing capacity, pro

ductivity, and soil composition of the land for long-term commercial production." RCW 36.70A.030 (10) (emphasis added). Thus, counties may consider other factors in determining whether land has "long-term commercial significance," including the farmers' economic needs. Moreover, as the planning commission recognized, "most farms are not economically self sufficient, and that 'on farm non farm income' and the ability of the farm to provide non farm economic opportunities are both essential to the survival of long-term agriculture in Lewis County." CP at 254-55. Allowing farm centers actually furthers the goals of the GMA because farmers will continue to farm because they are able to ensure a profit by supplementing their income through sales, etc.

¶49 Farm centers and farm homes are compatible with the requirements of the GMA and may be necessary to perpetuate farms, as the Lewis County elected officials decided after extended and public consideration.

III. NONRESOURCE USES

¶50 The GMA directs counties to do management and planning but allows county government broad discretion to decide what is best for each county. This discretion is especially important when considering nonresource uses on forest and agricultural land.

¶51 RCW 36.70A.060 , the development regulations for natural resource lands and critical areas, uses mandatory language and thus imposes a requirement. RCW 36.70A.060(1) provides:

> Each 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.

(Emphasis added.)

¶52 This court interpreted this statute in the " *Soccer Fields* " case stating: "The County is to conserve agricultural land in order to maintain and enhance the agricultural industry and to discourage incompatible uses." *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.* , 142 Wn.2d 543 , 557, 14 P.3d 133 (2000) (emphasis omitted) (hereinafter *Soccer Fields*).

¶53 RCW 36.70A.177 (1), allowing innovative zoning techniques, uses discretionary language, which indicates a recommendation not a requirement:

> A county or a city *may use* a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 . The innovative zoning techniques *should be* designed to conserve agricultural lands and encourage the agricultural economy. A county or city *should encourage* nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(Emphasis added.) The explicit purpose of this statute is to allow counties to apply creative alternatives that *conserve* agricultural lands and *maintain* and *enhance* the agricultural industry. *Soccer Fields* , 142 Wn.2d at 561 .

¶54 The majority reads these two statutes together to mean that "counties may choose how best to conserve designated lands as long as their methods are 'designed to conserve agricultural lands and encourage the agricultural economy.' " Majority at 507 (quoting RCW 36.7A.177 (1)). Thus, Lewis County has discretion in its land designations, but should aim to conserve agricultural lands and encourage the agricultural economy. This is the standard we use when reviewing a board's determination of noncompliance and invalidity regarding nonresource uses.

¶55 The majority states:

> [T]he Board essentially interpreted the GMA to prohibit negative impacts on agricultural lands and activities. CP at 676. That is consistent with the RCW 36.70A.060 directive to conserve designated agricultural lands, the RCW 36.70A.020(8) goal of maintaining and enhancing the agricultural industry, and the *Soccer Fields* holding that innovative zoning may not undermine conservation.

Majority at 509. However, the Board did not specify any negative impact Lewis County's nonresource uses had on agricultural land. Thus, the Board failed to adequately consider the uses and did not support its findings with evidence. The Board decision did not further the goal of maintaining and enhancing the agricultural industry and may actually undermine farm survival. As discussed above, the many small farms composing "agricultural industry" often need supplemental income to survive. Finally, the *Soccer Fields* case is easily distinguished. In that case entire parcels of agricultural land were being converted to long-term and nonagricultural uses of recreational fields. Here only a small and specified portion of some agricultural land parcels are being used in each instance (cumulatively little).

¶56 The uses that the Board found noncompliant are actually consistent with the GMA when given proper consideration (as Lewis County did here).

A. Lewis County Code (LCC) 17.30.470(2)(c) and (d): Forest Land Incidental Uses

¶57 LCC 17.30.470 allows incidental uses on forest land, which may provide supplementary income, " *without detracting from the overall productivity of the forestry activity* ." (Emphasis added.) The uses must not "adversely affect the overall productivity of the forest nor affect more than five percent of the prime soils«25». . . on any forest resource lands;" the use must be "secondary to the principal activity

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«25»The omitted language of the quote provides "(15 percent as provided below in LCC 17.30.490(3))." Attach. III (Lewis County's Am. Opening Br.) at 178 (Attach. III). A notation next to the quote provides "error - see strike out at 17.30.490(3)(d)." 17.30.490(3)(d) strikes out the words "15 percent or less " Attach. III at 180 The County states that the 15 percent clause was erroneously left in the subsection and should have been struck out. We assume that the County means what it says and has corrected this error.

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of forestry;" and the use must be "sited to avoid prime lands where feasible and otherwise to minimize impact on forest lands of long-term commercial significance." LCC 17.30.470(1); Attach. III (Lewis County's Am. Opening Br.) at 178-79 (Attach. III).

¶58 The Board declared several subsections of LCC 17.30.470 as noncompliant and invalid: (2)(c), allowing telecommunication facilities as an incidental activity, and (2)(d), allowing the "erection, construction, alteration, and maintenance of gas, electric, water, or communication and public utility facilities." Attach. III at 179; CP at 46 The Board reasoned that the restrictions on the incidental uses did not fulfill the GMA requirement that natural resource lands be conserved and incompatible uses discouraged. CP at 46.

¶59 Lewis County had reasoned that these incidental uses are necessary because the county's residential corridors are surrounded by forest lands and any cross county public utility will necessarily cross either forest or agricultural lands. CP at 866. Moreover, most of the prominent hills in the county are located in forest land, thus any desire to run communication lines or towers on tall hills will require that they be located in forest lands. CP at 866.

¶60 Considering the protective limits Lewis County placed on the minimally intrusive incidental uses, as well as the necessity of those uses and their importance to the agricultural economy, the uses meet the GMA's directive to conserve agricultural lands and encourage the agricultural economy. The uses comply with the GMA and are well within Lewis County's discretion under the GMA.

B. LCC 17.30.480: Essential Public Facilities(forest land)

¶61 LCC 17 30.480 provides:

> Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and

> airports are facilities, which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such areas are allowed where:<</qa>\
>
> (1) Identified in the comprehensive plan of a public agency or regulated utility.
>
> (2) The potential impact on forestry lands and steps to minimize impacts to commercial forestry are specifically considered in the siting process.

In deciding that this section was both noncompliant and invalid, the Board admitted that:

> There are essential public facilities such as roads, bridges, pipelines and utility lines that must, of necessity, be located in resource lands. Clearly, the County must take into account the need for the construction of such facilities in resource lands. However, the County must also assure that the construction of these essential public facilities in forest resource lands does not interfere with the use of the resource.

CP at 47. Lewis County notes that one-third of the county is in designated forest lands. CP at 871. Thus, essential public facilities including roads, bridges, pipelines, and utility lines must be located in resource lands.

¶62 This section of Lewis County's code is compliant and valid because the County has appropriately balanced the requirement for essential public facilities with conservation of forest land. The evidence supporting this appropriate balance includes the admitted fact that forest land encompasses a large percentage of Lewis County, and the requirements of section .480 that uses must be identified in the comprehensive plan. The impact of each use on the forest land is considered and minimized in the siting process. The legislature required the counties to receive deference in making such decisions.

C. LCC 17.30.490(3)(b) and (g): Maximum Density and Minimum Lot Area (forest land)

¶63 LCC 17.30.490(3) provides:

> Subdivision as an Incidental Use. A residential subdivision of land for sale or lease within primary or local forest lands,

> whether lots are over or under five acres in size, may be approved under the following circumstances.
>
> (a) The total density, including existing dwellings, is not greater than one unit per 80 acres, for forest land of long-term commercial importance, and that one unit per 20 acres for forest lands of local importance.

(b) The units are clustered on lot sizes consistent with Lewis County board of health rules for wells and septic.

(c) Adequate water and provisions for septic are in fact present.

(d) The project affects none of the prime soils on the contiguous holdings at the time of the adoption of this chapter, including all roads and accessory uses to serve the development; however, that prime lands previously converted to non-forestry uses are not considered prime forest lands for purposes of this section.

(e) The plat shall set aside the balance of the parcel in a designated forest tract.

(f) The plat shall contain the covenants in LCC 17.30.540.

(g) Any subdivision shall meet the cluster subdivision requirements of LCC 17.115.030(10).«26»

«26»LCC 17.115.030(10) provides:

CLUSTER SUBDIVISIONS greater than six units.

(a) Special conditions.

(i) Must be on properties 40 acres and larger.

(ii) No more than 24 cluster subdivision units in any 1/2-mile radius, except where separated by a visual geographic barrier.

(iii) The hearing examiner shall examine the existing and proposed development within a one-mile radius of the perimeter of the proposed site to protect rural character and shall:

(A) Determine the nature of existing development and availability of adequate facilities.

(B) Determine the likelihood of probably future cluster development.

(C) Determine the cumulative effect of such existing and probable future development.

(iv) The hearing examiner shall make written findings that the area in which the cluster is located is within the population targets of Table 4.3, p 4-63 of the Lewis County comprehensive plan.

(v) The hearing examiner shall identify necessary conditions, including caps or specific limitations to assure that urban development defined in RCW 36.70A.030 (17) as prohibited outside urban growth areas by RCW 36.70A.110 does not occur, and that the rural character identified in the comprehensive plan and RCW 36.70A.030 (16) and RCW 36.70A.070 (5)(b) is protected, and to achieve the specific requirements of RCW 36.70A.070 (5)(c).

¶64 The Board found subsections (b) and (g) noncompliant and invalid. CP at 48. The Board stated that "[l]imitations on clustering are needed to ensure that residential subdivisions will not interfere with forestry activities." CP at 46. However, the section contains many limitations designed to protect forest activities - no prime soils may be affected, water provisions must be in place, and clustering restrictions contained in LCC 17.115.030(10). These limitations are sufficient to fulfill the GMA requirement of conserving forest land. Thus, the challenged sections are compliant and valid.

D. LCC 17.30.510: Water Supply

(1) When residential dwellings, other structures, or any other use intended to be supplied with water from off-site sources, an easement and right running with the land shall be recorded from the property owners supplying the water prior to final plat approval, building permit issuance, or regulated use approval.

(2) Due to the potential to interfere or disrupt forest practices on forest lands, new residential or recreational public water supplies shall comply with state standards and shall not be located within 100 feet of classified forest lands without an easement from the adjacent or abutting forest land property owner.

¶65 The Board found LLC 17.30.510 to be in violation of the GMA, RCW 36.70A.110 (4), 36.70A.060«27»and 36.70A.040. CP at 49. The Board based its conclusion on chapter 36.70A RCW claiming the provision "runs afoul of the GMA prohibition against providing urban governmental services outside of urban growth areas." CP at 48. The Board stated

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«27»Natural resource lands and critical areas - Development regulations.

The extension of water systems (whether owned privately or publicly) to natural resource lands for residential purposes clearly violates the GMA by encouraging intense levels of development in resource lands and encouraging nonresource-related uses of those lands.

CP at 48.

¶66 The Board's conclusion ignores the GMA's balancing of the 13 planning goals and fails to implement the GMA's clear mandate that cities and counties are to make planning decisions - not boards.

¶67 To properly apply chapter 36.70A RCW, we must be guided by legislative intent as expressed in the language of the GMA. *Cannon v. Dep't of Licensing* , 147 Wn.2d 41 , 57, 50 P.3d 627 (2002); *Rozner v. City of Bellevue* , 116 Wn.2d 342 , 347, 804 P.2d 24 (1991). All of the GMA provisions must be considered in their relation to one another, and if possible, harmonized to ensure proper construction of each provision. *City of Seattle v Fontanilla* , 128 Wn.2d 492 , 498, 909 P.2d 1294 (1996).

¶68 The Board's decision implies that extension of water systems to natural resource lands for residential purposes may never occur. This is not consistent with the GMA. There are 13 planning goals that must be balanced and harmonized with others. This balancing and harmonizing is within the discretion of the cities and counties. *See Manke Lumber* , 113 Wn. App. at 626 -27. The protection of natural resources and critical areas is just one of the 13 planning goals under the GMA. The other planning goals require, inter alia, cities and counties to balance economic development needs, private property needs, and environmental needs. The blanket ban on extension of water systems to natural resource lands renders RCW 36.70A.110 (4), 36.70A.040, and 36.70A.060 inconsistent with the GMA's harmonizing approach and inconsistent with the discretion given to local cities and counties to balance those goals.

E. LCC 17.30 620(3) and (4): Primary Uses

¶69 LCC 17.30.620(3) and (4) allowed several "primary uses" on agricultural land including:

> (3) One-single family dwelling unit or mobile home per lot, parcel, or tract, and the following farm housing:
>
> (a) Farm employee housing; or
>
> (b) Farm housing for immediate family members.
>
> (4) Active mineral resource activities, including mining, processing, storage, and sales.

LCC 17.30.620(3), (4). The Board held these uses noncompliant and invalid. CP at 38-39.

¶70 Regarding section (3), housing, the Board inconsistently acknowledged that "[f]arm worker housing and housing for immediate family members . may well be a resource-related use." CP at 38. The record here supports the necessity to encourage young members of families to stay on the farm. CP at 877 Further, farm worker housing is a resource related use that maintains and enhances the agricultural industry. Section (3) is an allowable use under the GMA.

¶71 Regarding section (4), mining, the Board held that the provision does not comply with the GMA to the extent mining activities are allowed without restriction in agricultural resource lands. CP at 37. The Board noted that mining activities are nonagricultural uses with great potential to impact agricultural activities and the lands themselves. CP at 38.

¶72 Lewis County argued that mining (presumably sand and gravel) is allowed to provide on-farm nonfarm income. CP at 877.

¶73 The Board erroneously held that allowing any such mining in agricultural areas would not comply with the GMA. It is likely that mining (as further defined) could be allowed in an agricultural area with the appropriate restrictions. However, such use may be better included in the incidental uses section discussed directly below.

F. LCC 17.30.640(2)(b) (c) and (e)

¶74 LCC 17.30.640, Incidental uses, provides for "[u]ses which may provide supplementary income *without detracting from the overall productivity of the farming activity* ." (Emphasis added.) The Board found subsections (2)(b), (c), and (e) noncompliant. CP at 42. LCC 17.30.640(2) (Ord. 1170B, 2000) provides:

> (2) Uses Allowed as Incidental Activities.
>
> . . . .
>
> (b) Telecommunication facilities;
>
> (c) Public and semipublic buildings, structures, and uses including, but not limited to, fire stations, utility substations, pump stations, wells, and transmission lines;
>
> . . . .
>
> (e) Home based business subject to the same size requirements, development conditions, and procedures and processes as home based businesses authorized under LCC 17.42.40.

¶75 Subsection (1) qualifies these allowed uses by stating that such uses "will not adversely affect the overall productivity of the farm nor affect any of the prime soils on any farm." LCC 17.30.640(1)(a). The code itself states that uses may not detract from the overall farming activity and that such uses will not affect any of the prime soils. Lewis County has properly qualified the nonfarm incidental uses in its code. Thus, the County requirements for a nonfarm use assure the conservation of agricultural lands as required by RCW 36.70A.060 .

G. LCC 17.30.650: Essential Public Facilities (agricultural land)

¶76 This section is similar to the requirements in LCC 17.30.480, discussed above. LCC 17.30.650 provides:

> Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports, are facilities,

which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such areas are allowed where:

(1) Identified in the comprehensive plan of a public agency or regulated utility.

(2) The potential impact on farmed lands and steps to minimize impacts to commercial agriculture are specifically considered in the siting process.

The Board concluded that this section was noncompliant and invalid. CP at 43. Regarding roads, bridges, pipelines, and utility lines, the Board found noncompliance because there were no restrictions ensuring minimal interference with agricultural activity. CP at 43. However, the Board overlooked the restrictions which are written into the statute; the public facilities must be identified in the comprehensive plan and the impact on the lands must be considered and minimized when determining the location of such facilities.

¶77 Regarding schools, shops, prisons, and airports, the Board found noncompliance because the uses interfere with agricultural uses and do not need to be placed on agricultural land. CP at 43. It is appropriate that Lewis County consider the need for such facilities on agricultural land. An example of such a need would be allowing some schools to be sited in agricultural areas to shorten student commutes.

H. LCC 17.30.660(1): Maximum Density and Minimum Lot Area (agricultural land)

¶78 This section is similar to the requirements in LCC 17.30.490(3), discussed above. LCC 17.30.660(1) provides:

The minimum lot area for any new subdivision, short subdivision, large lot subdivision or exempt segregation of property shall be as follows, except for parcels to be used for uses and activities provided under LCC 17.30.610 through 17.30 650

(1) Development Standards - Division of Land for Sale or Lease. The minimum lot area for subdivision of commercial farmland shall be 20 acres; provided, however, that a residential subdivision of land for sale or lease, whether lots are over or under five acres in size, may be approved under the following circumstances:

(a) The total density of residential development on the entire contiguous ownership, including existing dwellings, is not more than one unit per 20 acres.

(b) The units are clustered on lot sizes consistent with Lewis County board of health rules for wells and septic.

(c) Adequate water and provisions [for] septic capacity are in fact present.

(d) The project affects none of the prime soils on the contiguous holdings at the time of the adoption of the ordinance codified in this chapter, including all roads and accessory uses to serve the development; provided, however, that prime lands previously converted to non-crop related agricultural uses, including residential, farm and shop buildings and associated yards, parking and staging areas, drives and roads, are not considered prime farm lands for purposes of this section.

(e) The plat shall set aside the balance of the prime farm lands in a designated agricultural tract.

(f) The plat shall contain the covenants and protections in LCC 17.30.680.

(g) Any subdivision shall meet the cluster subdivision requirements of LCC 17.115.030(10)

¶79 The Board found subsections (b) and (g) noncompliant and invalid. CP at 56. The Board expressed concern that clustering would not conserve agricultural lands and encourage the agricultural economy. CP at 44. However, the section contains many limitations designed to protect agricultural activities - no prime soils may be affected, water provisions must be in place, and clustering restrictions are contained in LCC 17.115.030(10). These limitations are sufficient to fulfill the GMA's requirement of conserving agricultural land. Thus, the challenged sections are compliant and valid.

IV. CONCLUSION

¶80 I concur with the majority's conclusion regarding the definition of agricultural land. However, the majority incorrectly proceeds to allow the Board - instead of the County - to decide that farm centers and farm homes are improper on agricultural land and that certain nonresource related uses are improper on agricultural and forest lands.

By remanding to the Board instead of through the Board to the County to apply the decision, the local control mandated by the legislature in the GMA is further frustrated. The proceedings and resulting delay imposes costs easily avoided by my recognition of the legislature's intent. Therefore, I concur in part and dissent in part.\

SANDERS and CHAMBERS , JJ., concur with J.M. Johnson, J

157 Wn. 2d. 529,

Exhibit C

CLARK COUNTY WASHINGTON LA GM LLC v. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS REVIEW BOARD

Court of Appeals of Washington, Division 2.

CLARK COUNTY WASHINGTON, City of LA Center, GM Camas LLC, MacDonald Living Trust, and Renaissance Homes, Respondents, v. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS REVIEW BOARD, John Karpinski, Clark County Natural Resources Council, and Futurewise, Appellants.

No. 39546–1–II.

Decided: April 13, 2011

Tim Trohimovich, Futurewise, Seattle, WA, Robert A. Beattey, Spencer Law Firm, LLC, Tacoma, WA, for Appellants. Christine M. Cook, Clark Co. Prosc. Attny. Office, Vancouver, WA, for Respondents. Meridee E. Pabst, Attorney at Law, Washougal, WA, Randall Bryan Printz, The Landerholm Firm, Michael C. Simon, Brian K. Gerst, Landerholm, Memovich, Lansverk & Whitesi, James Denver Howsley, Miller Nash LLP, Vancouver, WA, Daniel H. Kearns, Reeve Kearns PC, Portland, OR, Marc Worthy, Office of the Attorney General, Seattle, WA, for Respondent Intervenors. Christopher R. Sundstrom, Spencer Sundstrom PLLC, Vancouver, WA, Roger Dyer Knapp, Attorney at Law, Camas, WA, for other interested parties.

¶ 1 In 2004, Clark County (County) designated the 19 land parcels at issue in this case as agricultural lands of long-term commercial significance (ALLTCS).[1] Despite identifying these parcels as having long-term commercial significance for the agricultural industry in the County, less than three years later, in 2007, the County removed the 19 parcels from ALLTCS status. Simultaneously with the dedesignation, the County included the 19 parcels in its then existing urban growth areas (UGAs). Although the ALLTCS designation process and the redrawing of the UGA boundaries are separate processes,[2] the County blended the processes to dedesignate and incorporate the parcels into UGAs in a single proceeding.

¶ 2 John Karpinski, a private citizen and land owner in Clark County; the Clark County Natural Resources Council, a Washington nonprofit corporation; and Futurewise, a Washington nonprofit corporation (hereinafter collectively referred to as Karpinski), petitioned the Western Washington Growth Management Hearings Board (Growth Board)[3] for review of the County's 2007 dedesignation/UGA expansion decisions. Karpinski challenged the County's decisions on the grounds that (1) the parcels still qualified as ALLTCS, (2) the County improperly considered economic factors in deciding to dedesignate the agricultural parcels, and (3) the County improperly included lands not characterized by urban growth in its UGAs. While review of the County's dedesignations/UGA expansions was pending before the Growth Board, the cities of Camas and Ridgefield passed ordinances to annex all of the dedesignated land in parcel CB and part of the dedesignated land in parcels CA–1 and RB–2.

¶ 3 The Growth Board affirmed the County's decisions with regards to eight of the challenged parcels: BB, LA, LC, RB–1, RC, VC, VE, and WA. But the Growth Board found that the County committed clear error in its decisions regarding the other 11 challenged parcels: BC, CA–1, CB, LB–1, LB–2, LE, RB–2, VA, VA–2, VB, and WB. As to these 11 areas, the Growth Board deemed the areas noncompliant with the GMA and the County's actions invalid.

¶ 4 The County appealed the Growth Board's decision to the Clark County Superior Court, assigning error only to the rulings on the 11 parcels that the Growth Board found noncompliant under the GMA; Karpinski did not cross-appeal.[4] In reviewing the Growth Board's rulings, the superior court affirmed in part, reversed in part, held some issues moot, and remanded to the Growth Board for further consideration.

¶ 5 Karpinski sought appellate review of the superior court's decision. Although Karpinski invoked our jurisdiction, because we review the Growth Board's decision, not the superior court decision affirming or reversing it, the burden to prove the propriety of the dedesignations is on the County. Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 157 Wash.2d 488, 497–98, 139 P.3d 1096 (2006); 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).[5] " 'We apply the standards of [the Administrative Procedures Act (APA), ch. 34.05 RCW,] directly to the record before the agency, sitting in the same position as the superior court.' " Soccer Fields, 142 Wash.2d at 553, 14 P.3d 133 (quoting City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wash.2d 38, 45, 959 P.2d 1091 (1998)). Under the APA, we grant relief from an agency's adjudicative order only if it fails to meet one of nine standards delineated in RCW 34.05.570(3). "The burden of demonstrating the invalidity of [an] agency action[, here the Growth Board's decision,] is on the party asserting the invalidity" of the action, here the County. RCW 34.05.570(1)(a).

¶ 6 During our preliminary review of this case, we posed several questions to all the parties relating to jurisdiction and seeking a clarification of the issues on appeal. In particular, we requested citation to authority for Camas's and Ridgefield's annexation of lands while the status of these lands (dedesignation and inclusion into their UGAs) was pending review. We also requested citation to the County's and Growth Board's authority to act on issues pending review before this court that would invariably alter the status quo and impact our analysis.

¶ 7 To review the issues that the parties have raised in this case, we must address the timing and effective date of UGA boundary amendments, the effect of County and Growth Board actions on issues pending review before this court, and the proper standard for dedesignating ALLTCS. In part one of this opinion, we address the jurisdictional questions and hold that the Growth Board had authority to enter findings for parcels CA–1, CB, and RB–2.[6] In addition, we hold that the County had the authority to take legislative action and that the Growth Board had the authority to take agency action on issues pending before this court, but that these actions mooted issues related to parcels BC, CA–1, RB–2, and VB.

¶ 8 In the second part of this opinion, we evaluate whether the Growth Board committed a legal error and whether substantial evidence supports the Growth Board's order with regard to six specific land areas: LB–1, LB–2, LE, VA, VA–2, and WB. We reject the County's argument that the Growth Board is required to review the challenged planning decisions based only on portions of the record selected by the County and is precluded from reviewing the entire record. We affirm the Growth Board's decisions with regards to parcels LB–1, LB–2, and LE. But because the Growth Board committed an error of law with regards to parcels VA, VA–2, and WB, we remand to the Growth Board for further consideration of these parcels.

FACTS

¶ 9 In 2004, the County updated its GMA comprehensive plan.[7] The next year, in 2005, the County began a review of its comprehensive plan culminating in the September 25, 2007 passage of Ordinance No.2007–09–13 (Ordinance). The Ordinance made many revisions to the County's comprehensive plan. Central to this appeal is the County's dedesignation of parcels of land from ALLTCS status and the simultaneous decision to add these lands to the UGA boundaries of the County's cities. The County dedesignated 19 land parcels, consisting of approximately 4,351 acres of land, and incorporated them into the UGAs of the Cities of Battle Ground, Camas, La Center, Ridgefield, Vancouver, and Washougal.

¶ 10 On November 16, 2007, Karpinski petitioned the Growth Board, challenging the County's dedesignation of the 19 parcels and their addition into the various UGAs.[8] In general, Karpinski argued that the County erred in its decisions because (1) the parcels still qualified as ALLTCS under the test established in Lewis County, (2) the County violated, the GMA by improperly considering economic factors when it decided to dedesignate the parcels, and (3) the County improperly included lands not characterized by urban growth into its UGAs.

¶ 11 On April 8, 2008, the Growth Board held a one-day hearing to consider Karpinski's claims.[9] Although the Growth Board heard hours of testimony and reviewed an administrative record consisting of more than 3,000 pages, it focused its analysis on one specific County staff-produced document titled "Issue Paper # 7—Agricultural Lands." Administrative Record (AR) at 2236. This document contains the County's analysis of the statutory and regulatory factors for determining whether land qualifies as ALLTCS, a matrix containing information applying each of the factors to each of the 19 parcels, and maps highlighting the then current land use zoning designations of the 19 parcels.[10]

¶ 12 In late April 2008, while the Growth Board deliberated and prepared its final order on the propriety of

the County's dedesignation/UGA expansion decisions for the 19 parcels, Camas and Ridgefield passed ordinances purporting to annex parts of some of the parcels then pending review before the Growth Board. By City Ordinance No. 991, Ridgefield purported to annex part of parcel RB–2. By City Ordinance No. 2512, Camas purported to annex part of parcel CA–1. And by City Ordinance No. 2511, Camas purported to annex all of parcel CB. These annexed lands were included in Karpinski's petition for review to the Growth Board but the Growth Board had no notice of the cities' legislative annexation actions.

¶ 13 The Growth Board entered its final order on May 14, 2008, and an amended final order on June 3, 2008.[11] The Growth Board's order affirmed the County's decisions on 8 of the challenged parcels, but it found clear error in its decisions on the other 11 challenged parcels. Accordingly, the Growth Board found the County's actions noncompliant with the GMA and invalidated the Ordinance with regard to the following 11 parcels: Battle Ground parcel BC; Camas parcels CA–1 and CB; La Center parcels LB–1, LB–2, and LE; Ridgefield parcel RB–2; Vancouver parcels VA, VA–2, and VB; and Washougal parcel WB.

¶ 14 On June 11, 2008, the County petitioned the Clark County Superior Court, under the APA, to review the Growth Board's decision. The County challenged only the Growth Board's 11 findings of noncompliance related to the County's dedesignation decisions.[12] Karpinski did not file a cross appeal.

¶ 15 On February 26, 2009, Karpinski and GM Camas LLC, which has interests only in parcel CA–1, stipulated that because of Camas's enactment of City Ordinance No. 2512, purporting to annex part of parcel CA–1, that GM Camas LLC prevailed on this part of Karpinski's appeal. The superior court entered the stipulation and reversed the Growth Board's decision of noncompliance for parcel CA–1.[13]

¶ 16 On June 12, 2009, the superior court (1) reversed the Growth Board's decision that the County improperly dedesignated from ALLTCS status parcels CB, LB–1, LB–2, LE, VA, VA–2, and WB; (2) affirmed the Growth Board's decision that the County improperly dedesignated from ALLTCS status parcels BC and VB; (3) acknowledged its previous reversal of the Growth Board's decisions with regard to parcel CA–1 based on the parties' prior stipulation; (4) found issues related to parcel RB–2 moot; and (5) remanded the case to the Growth Board for further consideration. Karpinski timely appealed. The County filed a cross appeal that it later abandoned.

¶ 17 After the parties appealed to this court, the Growth Board and the County continued to pass ordinances and enter orders related to lands whose legal status was pending review before this court. These legislative and agency actions concerned land within parcels that were purportedly annexed (i.e., parcels CA–1, CB, and RB–2) and parcels where the superior court had affirmed the Growth Board's findings (i.e., parcels BC and VB). First, the Growth Board issued an order stating that it lacked jurisdiction over the purportedly annexed parts of parcels CA–1, CB, and RB–2, mistakenly believing that it lost jurisdiction when these lands were annexed prior to its final decision. The Growth Board refused to rescind its noncompliance findings for the purportedly annexed lands in these three parcels, but it "excused [the County] under these unique circumstances from taking legislative action to achieve compliance with the GMA" because the County now lacked authority over the purportedly annexed lands. AR at 3294. Next, the County passed an ordinance redesignating parcels BC, VB, and the portions of parcels CA–1 and RB–2 that were not purportedly annexed, as ALLTCS. Last, after the redesignation of these lands, the Growth Board entered findings of GMA compliance for parcels BC, VB, and the unannexed portions of parcels CA–1 and RB–2.

ANALYSIS

I.

¶ 18 Initially, we address two threshold matters relating to jurisdiction that affect the scope of our review. First, we must answer this question—when is a county's planning decision that is appealed to the Growth Board final such that city governments can rely and take action on it? Specifically, in this case, when, if ever, did parcels CA–1, CB, and RB–2 become incorporated into the Camas and Ridgefield UGAs such that they were subject to annexation? Second, we must evaluate what effect a county's legislative action changing the designation of land has on our jurisdiction to resolve issues in a pending appeal involving that land. We hold that because a County's challenged land designation determination is not final, city governments cannot rely on county planning decisions that are the subject of a pending appeal and any such actions do not divest the reviewing body of jurisdiction. We also hold that in some circumstances, a County's legislative actions during a pending appeal may moot issues on review.

City Governments May Not Rely on County GMA Planning Decisions That Are Pending Review

¶ 19 On June 1, 2010, we requested citation to the authority for Camas's and Ridgefield's annexation ordinances regarding parcel CB and parts of parcels CA–1 and RB–2. Under RCW 35.13.005, "[n]o city or town located in a county in which urban growth areas have been designated under RCW 36.70A.110 may annex territory beyond an urban growth area." Because the propriety of the County's decision to include this land in a UGA had been timely challenged and was pending review before this court, we questioned

what authority allowed the cities to purportedly annex land not yet determined to be properly within their UGAs.

¶ 20 In a consolidated response, the parties first objected, arguing that the validity of the annexations is not properly before this court because no party raised it. But issues related to the annexations directly impact our ability to resolve pending issues on parcels CA–1, CB, and RB–2 raised in this appeal. And jurisdictional questions are, as always, a threshold issue for a reviewing court.

¶ 21 Because we sit in the same position as the superior court, we review issues related to all the challenged portions of the Growth Board's decision appealed to the superior court. See Soccer Fields, 142 Wash.2d at 553, 14 P.3d 133. Here, the County's original appeal challenged each of the Growth Board's decisions related to 11 different parcels, including challenges to parcels CA–1, CB, and RB–2. But in its opening brief to this court, the County argues that issues related to parcels CA–1, CB, and RB–2 are moot because the cities' annexation of the lands deprived the Growth Board and reviewing courts of jurisdiction. Moreover, the County argues on appeal that the Growth Board committed an error of law because it entered decisions evaluating the County's actions with regard to these lands without jurisdiction to do so.14

¶ 22 From these arguments, the question pending before us with regard to parcels CA–1, CB, and RB–2 is whether the Growth Board had jurisdiction to enter findings and conclusions on these three parcels. Implicit is a question of the legitimacy of the annexations, as evidenced by arguments that any determinations made by the Growth Board or this court would be pointless because the County has no authority over annexed lands. To evaluate whether any issue on these three parcels is moot or whether the Growth Board committed an error of law, as the County contends, we must first determine what effect, if any, the annexations had on the Growth Board's jurisdiction to determine GMA compliance for parcels CA–1, CB, and RB–2.

¶ 23 When addressing the merits of our jurisdictional questions, the parties argue in their consolidated response that statutory authority allows city and county governments to take action on issues that are under review by the Growth Board. Specifically, the parties cite RCW 36.70A.300(4), .320(1), and former RCW 36.70A.302(2) (1997) for support. RCW 36.70A.320(1) states that "comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption." RCW 36.70A.300(4) states that, "[u]nless the [Growth B]oard makes a determination of invalidity ., 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." The parties also cite to statutory language that a Growth Board "determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the [Growth B]oard's order by the city or county." Former RCW 36.70A.302(2) (emphasis added). The parties contend that these cited statutes allow cities to take legislative actions, including annexing land, in reliance on a county's decisions until the Growth Board determines that the county's planning decisions are noncompliant or invalid under the GMA.

¶ 24 The parties' arguments are unpersuasive. For the reasons we explain below, challenged County legislative actions pending review are not final and no party may act in reliance on them. In this case, the city of ordinances purporting to annex land in parcels CA–1, CB, and RB–2 did not deprive the Growth Board of jurisdiction over the challenge to the County's actions. Accordingly, here the Growth Board did not err by entering findings and conclusions related to parcels CA–1, CB, and RB–2 in its final order after Camas and Ridgefield purported to annex parts of these parcels.

¶ 25 We review statutory construction de novo. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wash.2d 169, 175, 4 P.3d 123 (2000). When the plain language of a statute is unambiguous, we construe the provision as written. Bravo v. Dolsen Cos., 125 Wash.2d 745, 752, 888 P.2d 147 (1995). But, in undertaking a plain language analysis, we avoid a reading that results in "unlikely, absurd, or strained consequences" because we presume that the legislature did not intend an absurd result. Cannon v. Dep't of Licensing, 147 Wash.2d 41, 57, 50 P.3d 627 (2002). We evaluate the plain meaning of a statutory provision from the ordinary meaning of the language used in the statute, as well as from the context of the statute in which that provision is found and the statutory scheme as a whole. Wash. Pub. Ports Ass'n v. Dep't of Revenue, 148 Wash.2d 637, 645, 62 P.3d 462 (2003).

¶ 26 The parties misinterpret RCW 36.70A.320(1). This statute addresses the burdens, presumptions, and standards that govern the review of a county action by the Growth Board. The purpose of the Growth Board's review is to determine the legitimacy of a county's actions that have been timely challenged. Although RCW 36.70A.320(1) creates a presumption of validity of the county's actions that must be applied by the Growth Board during its review, the statute does not create a presumption of validity such that other entities can act in reliance on challenged land use decisions before the Growth Board and/or appellate court terminates its review. A presumption of validity on review is just that—a rebuttable presumption that the County's decision is correct; but the County's timely challenged actions are not

effective until review of the relevant issues is terminated.

¶ 27 The parties' reliance on RCW 36.70A.300(4) is also misplaced. This subsection of the statute addresses only the effect of Growth Board decisions "during the period of remand." RCW 36.70A.300(4) (emphasis added). During the Growth Board's initial review of the County's decisions, nothing has been remanded to the County for its further consideration. Accordingly, this statute does not apply.

¶ 28 Likewise, former RCW 36.70A.302(2) does not support the parties' argument. This statute states that Growth Board decisions are prospective in effect and do not "extinguish rights that vested under state or local law before receipt of the [Growth B]oard's order by the city or county." Former RCW 36.70A.302(2) (emphasis added). Here, the cities' rights to annex the lands purportedly added to their UGAs had not yet vested under state law. County decisions related to the GMA that are timely challenged and pending review before the Growth Board and/or an appellate court are not final and cannot be relied on until either (1) the Growth Board's final order is not appealed or (2) the county's decisions are affirmed and a final order or mandated opinion is filed by a court sitting in its appellate capacity.

¶ 29 Under the parties' interpretation of RCW 36.70A.300(4), .320(1), and former RCW 36.70A.302(2), the GMA would be unenforceable. The parties' interpretation would allow a county to incorporate any land into a UGA regardless of whether it satisfies the GMA's requirements; draw out the appeal at the Growth Board level until a city could pass an ordinance annexing the property; and then moot out any challenges by citing the county's lack of authority over the lands or argue, as it did here, that the annexation deprived the Growth Board of jurisdiction to review its decision to include the property in the UGA. The legislature did not intend to permit counties to evade review of their GMA planning decisions in his manner, and the GMA's statutory scheme does not allow them to do so.

¶ 30 Accordingly, we hold that Camas's and Ridgefield's annexations did not deprive the Growth Board of jurisdiction to review the validity of the County's actions dedesignating parcels CA–1, CB, and RB–2 and including them in the cities' UGAs. We address this issue only in relation to the County's challenge to the Growth Board's jurisdiction, and ours, to review its dedesignation/UGA decisions. We hold only that the Camas and Ridgefield annexation ordinances did not deprive the Growth Board or this court of jurisdiction over the appeal of parcels CA–1, CB, and RB–2 in this case. We reject the County's argument that the Growth Board lacked authority to enter noncompliance findings related to parcels CA–1, CB, and RB–2 and that it committed an error of law when entering its findings on these parcels. Accordingly, we hold that the Growth Board had authority to enter findings regarding these parcels.[15]

¶ 31 Finally, in its amicus curiae brief, Camas argues that it is a necessary party to the consideration of any questions involving the validity of the annexations and that it was never properly joined to these proceedings. CR 19. A necessary party is one that "claims an interest relating to the subject of the action" and whose absence from the case may "impair or impede his ability to protect that interest." CR 19(a)(2). We are not insensitive to the cities' concerns and limit our holding only to the Growth Board's authority to enter findings regarding the validity of the County's decisions relating to these parcels.

The Impact of County Actions On Issues Pending Review

¶ 32 Also on June 1, 2010, we asked the parties to address whether the County could enact ordinances and whether the Growth Board could enter orders on matters pending appeal in this court. According to the parties' consolidated response, the County apparently decided to accept the superior court's decision affirming the Growth Board's decisions with regard to parcels BC and VB. While this case was pending review before this court, the County passed an ordinance removing parcels BC and VB from UGAs and redesignating them as ALLTCS. In the same ordinance, the County also removed from UGAs those parts of parcels CA–1 and RB–2 that were not included in the cities' annexation ordinances and redesignated them as ALLTCS.

¶ 33 Although a superior court lacks authority to enter an order that modifies the judgment or decision appealed without permission from this court, RAP 7.2(e),[16] this limitation does not appear to extend to or prohibit a legislative body from taking a valid legislative action. Here, the County withdrew its prior efforts to incorporate parcels BC, VB, and parts of CA–1 and RB–2 into UGAs and returned these lands to their original ALLTCS designation status. Although the County's original dedesignation decisions regarding these lands were subject to our review via Karpinski's appeal from the superior court's decision, the County has the burden to prove that the Growth Board erred under the APA. RCW 34.05.570(1)(a). By the nature of its legislative action, the County effectively conceded that the Growth Board did not err in its decisions related to these lands. And because the Growth Board subsequently removed its noncompliance findings with regard to these lands, there is no longer any error presented for our review or any remedy for us to provide.[17] Accordingly, any issues related to parcels BC, VB, and the parts of parcels CA–1 and RB–2 that were redesignated ALLTCS are now moot.

Propriety of Appellate Review of the County's GMA Decisions Affirmed By The Growth Board But Not Appealed

¶ 34 In our June 1, 2010 order relating to jurisdiction, we also asked the parties to clarify whether the notice of appeal included the propriety of the Growth Board's decision approving the County's dedesignation of eight parcels (i.e., parcels BB, LA, LC, RB–1, RC, VC, VE, and WA) from ALLTCS status. The Growth Board ruled that the County's decisions on these eight parcels were compliant with the GMA and Karpinski did not cross-appeal these decisions to the superior court. Although the Growth Board addressed all 19 parcels in a single decision, the parties agree that the notice of appeal did not include any issues related to the Growth Board's decisions affirming the eight aforementioned parcels. Accordingly, we do not address any issues related to parcels BB, LA, LC, RB–1, RC, VC, VE, and WA.

II.

¶ 35 We next address the land specific arguments related to parcels LB–1, LB–2, LE, VA, VA–2, and WB. The Growth Board determined that the County's decisions dedesignating these parcels from ALLTCS status and incorporating them into UGAs were noncompliant with the GMA. We affirm the Growth Board's decisions for parcels LB–1, LB–2, and LE, but remand to the Growth Board for further consideration on parcels VA, VA–2, and WB.

Standard of Review and Burden of Proof in GMA Cases

¶ 36 The GMA provides counties with broad discretion to develop comprehensive plans. Soccer Fields, 142 Wash.2d at 561, 14 P.3d 133. A county's discretion, however, "is bounded . by the goals and requirements of the GMA." Soccer Fields, 142 Wash.2d at 561, 14 P.3d 133. The GMA's goals include encouraging development in areas already characterized by urban development; reducing sprawl; encouraging economic development; maintaining and enhancing natural resource-based industries, such as the agricultural industry; conserving agricultural lands; and retaining open spaces including increasing access to natural resource lands. RCW 36.70A.020(1), (2), (5), (8), (9).

¶ 37 The Growth Board is charged with determining whether county decisions comply with GMA requirements. Former RCW 36.70A.280 (2003); RCW 36.70A.320(3); Lewis County, 157 Wash.2d at 497, 139 P.3d 1096. In carrying out its duties, the Growth Board can either (1) remand noncompliant decisions and ordinances to the county so it can bring them into compliance with the GMA or (2) invalidate part or all of the county's noncompliant comprehensive plan and/or development regulations. RCW 36.70A.300(3); former RCW 36.70A.302(1) (1997); Lewis County, 157 Wash.2d at 498 n. 7, 139 P.3d 1096.

¶ 38 The legislature specifically intended the Growth Board " 'to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of' the GMA." Lewis County, 157 Wash.2d at 498, 139 P.3d 1096 (quoting former RCW 36.70A.3201 (1997)). According, at the Growth Board's level of review, a county's comprehensive plan and/or regulations are "presumed valid upon adoption." RCW 36.70A.320(1). This statutory deference requires that the Growth Board " 'shall find compliance' unless it determines that a county action 'is clearly erroneous in view of the entire record before the [Growth B]oard and in light of the [GMA's] goals and requirements.' " Lewis County, 157 Wash.2d at 497, 139 P.3d 1096 (quoting RCW 36.70A.320(3)); see also RCW 36.70A.320(2) (stating that a challenger has the burden to demonstrate that a county's action is not GMA-compliant). A county's action is "clearly erroneous" if the Growth Board has a "firm and definite conviction that a mistake has been committed." Thurston County v. W. Wash. Growth Mgmt. Hearings Bd., 164 Wash.2d 329, 340–41, 190 P.3d 38 (2008) (internal quotation marks omitted) (quoting Lewis County, 157 Wash.2d at 497, 139 P.3d 1096).

¶ 39 The APA governs judicial review of board actions, including the Growth Boards'. Thurston County, 164 Wash.2d at 341, 190 P.3d 38; see also RCW 36.70A.300(5). "The burden of demonstrating the invalidity of [an] agency action is on the party asserting invalidity," here the County and the other interveners. RCW 34.05.570(1)(a) (emphasis added); Thurston County, 164 Wash.2d at 341, 190 P.3d 38. On appeal, we sit in the same position as the superior court and apply the APA review standards directly to the record before the agency. Soccer Fields, 142 Wash.2d at 553, 14 P.3d 133 (quoting Redmond, 136 Wash.2d at 45, 959 P.2d 1091). In addition, like the Growth Board, we defer to the county's planning action unless the action is "clearly erroneous." Brinnon Grp. v. Jefferson County, 159 Wash.App. 446, 465, 245 P.3d 789 (2011); see RCW 36.70A.320(3); former RCW 36.70A.3201; Quadrant Corp. v. Cent. Growth Mgmt. Hearings Bd., 154 Wash.2d 224, 238, 110 P.3d 1132 (2005).

¶ 40 Under the APA, we grant relief from an agency's order after an adjudicative proceeding if we determine, in relevant part, that

(d) [t]he agency has erroneously interpreted or applied the law; [or]

(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.

RCW 34.05.570(3).[18]

¶ 41 We review a Growth Board's "legal conclusions de novo, giving substantial weight to its interpretation of the statutes it administers" and its "findings of facts for substantial evidence." Manke Lumber Co. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 113 Wash.App. 615, 622, 53 P.3d 1011 (2002), review denied, 148 Wash.2d 1017, 64 P.3d 649 (2003); see also Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd., 161 Wash.2d 415, 424, 166 P.3d 1198 (2007); Lewis County, 157 Wash.2d at 498, 139 P.3d 1096. Substantial evidence is " 'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.' " Soccer Fields, 142 Wash.2d at 553, 14 P.3d 133 (quoting Callecod v. Wash. State Patrol, 84 Wash.App. 663, 673, 929 P.2d 510, review denied, 132 Wash.2d 1004, 939 P.2d 215 (1997)).

The GMA Definition and History of the Term "Agricultural Lands of Long–Term Commercial Significance" (ALLTCS)

¶ 42 By September 1, 1991, certain counties were required 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.' " Lewis County, 157 Wash.2d at 498–99, 139 P.3d 1096 (quoting RCW 36.70A.170(1)(a)). Additionally, counties were mandated to develop regulations " 'to assure the conservation of' " designated agricultural lands. Lewis County, 157 Wash.2d at 499, 139 P.3d 1096 (quoting RCW 36.70A.060(1)(a)). The purpose was clear: to curtail sprawl, to preserve critical resource lands, and to ensure the continued viability of local food production.

¶ 43 Our Supreme Court summarized the working definition of "agricultural land" under the GMA as

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 [former] WAC 365–190–050(1) [(1991)] in determining which lands have long-term commercial significance.

Lewis County, 157 Wash.2d at 502, 139 P.3d 1096.[19]

¶ 44 Despite our Supreme Court's permissive language suggesting that counties "may consider the development-related factors enumerated in [former] WAC 365–190–050(1)," Lewis County, 157 Wash.2d at 502, 139 P.3d 1096 (emphasis added), when addressing the third prong of the Lewis County test to determine if land has long-term significance for agricultural production, the regulation actually requires counties to consider the 10 factors:

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

(a) The availability of public facilities;

(b) Tax status;

(c) The availability of public services;

(d) Relationship or proximity to urban growth areas;

(e) Predominant parcel size;

(f) Land use settlement patterns and their compatibility with agricultural practices;

(g) Intensity of nearby land uses;

(h) History of land development permits issued nearby;

(i) Land values under alternative uses; and

(j) Proximity of markets.

Former WAC 365–190–050 (emphasis added).[20] The GMA and WAC do not prioritize these 10 factors

and a county has discretion regarding their application. Lewis County, 157 Wash.2d at 502 n. 11, 139 P.3d 1096. Additionally, our Supreme Court has suggested that counties cannot consider additional other factors to the detriment of the GMA's stated goals and requirements. See Lewis County, 157 Wash.2d at 506 n. 16, 139 P.3d 1096 ("[A]lthough . counties may consider factors besides those specifically enumerated in RCW 36.70A.030(10) in evaluating whether agricultural land has long-term commercial . significance, that is not what happened here. Rather, Lewis County simply decided to serve its own goal . instead of meeting the GMA's specific land designation requirements.").

¶ 45 The Growth Board previously gave deference to the County's 2004 designation of these lands as ALLTCS. See Bldg. Assoc. of Clark Cnty., No. 04–2–0038c, 2005 WL 3392958. We evaluate whether a dedesignation of agricultural land was clearly erroneous by determining whether the property in question continues to meet the GMA definition of "agricultural land" as defined in Lewis County.[21] See Yakima County v E Wash. Growth Mgmt. Hearings Bd., 146 Wash.App. 679, 688–89, 192 P.3d 12 (2008). The County's contention that the Growth Board is required to give its 2007 dedesignation deference over its 2004 designation is unpersuasive. The County designated these parcels as ALLTCS in its 2004 comprehensive plan that 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. Moreover, under such ever-changing regulations, the GMA goal of planning, maintaining, and conserving agricultural lands could never be achieved. See RCW 36.70A.020(8); Soccer Fields, 142 Wash.2d at 558, 14 P.3d 133.

The Growth Board's Required Deference to the County

¶ 46 As another preliminary matter, the County argues that the Growth Board committed an error of law by failing to defer to the County's current land characterizations to the derogation of its prior long-term land designations. Specifically, the County asserts that the Growth Board substituted its own judgment based on its improper independent evaluation of the evidence rather than deferring to the County's decisions, as required by RCW 36.70A.320(1) and former RCW 36.70A.3201. The County contends that the Growth Board exceeded its authority by reevaluating all the evidence in the record to determine whether the County committed a clear error. We disagree.

¶ 47 The Growth Board's function is to determine whether the County complied with the GMA. Former RCW 36.70A.280; RCW 36.70A.320(3); Lewis County, 157 Wash.2d at 497, 139 P.3d 1096. In order to determine compliance, the Growth Board must review the County's actions and decide whether they are "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) (emphasis added). The County has not persuaded us that the Growth Board committed an error of law by exceeding its authority in its review of the County's dedesignation decisions. RCW 34.05.570(1)(a).

¶ 48 In order for the Growth Board to review Karpinski's challenge to the County's dedesignation decisions, it had to review all of the evidence in the record, review the statutory and regulatory factors in the Lewis County test, and determine whether the County erred in 2007 when applying the test to the parcels. To fulfill its statutory obligation of determining whether a county committed clear error, a Growth Board must review the evidence but not reweigh it. Once the Growth Board determines that the County committed a clear error, it owes no deference to the County's decisions, which rests on the identified error, and acts in accord with its statutory duty when entering findings of noncompliance and/or invalidity. RCW 36.70A.300, .302, .320(3). Accordingly, insofar as the County argues that the Growth Board committed a legal error by reviewing all the evidence rather than just the portion of the record that the County put forth as supporting its decisions, the County's claim fails.

¶ 49 Moreover, the County's argument that the Growth Board is compelled to consider only the portion of the evidentiary record highlighted by the County and is precluded from considering the entire evidentiary record is inconsistent with the concept of appellate review. If the Growth Board were required to automatically accept a county's land characterization without the context of the entire record, there is, in effect, no full review of the county's decisions. When engaging in a statutory construction analysis, we avoid a construction that results in "unlikely, absurd, or strained consequences" because we presume that the legislative body did not intend absurd results. Cannon, 147 Wash.2d at 57, 50 P.3d 627. Under the County's argument, the Growth Board can consider only a county's final decisions and/or evidence that a county puts forward as supporting its decision, and the Growth Board must reject any contradictory evidence and/or not examine the reasons underlying a county's decisions. But the Growth Board has both the duty and the authority to review a county's reasons supporting its decisions to determine if whether a county followed the GMA and whether a county's decisions are consistent with the GMA's goals and objectives. See RCW 36.70A.320(3). Otherwise a county could simply ignore overwhelming evidence that contradicts its preferred planning option and articulate a decision that, on its face, appears consistent with the GMA but lacks evidentiary support.

¶ 50 In addition, the County's argument would render meaningless the plain language of the Growth Board's mandate to determine GMA compliance "in view of the entire record before the board." RCW 36.70A.320(3) (emphasis added). We interpret and construe statutes so as to give effect to all statutory language and not render any part meaningless or superfluous. Whatcom County v. City of Bellingham, 128 Wash.2d 537, 546, 909 P.2d 1303 (1996). Under the County's interpretation, a county would have unfettered discretion and authority to make planning decisions that facially comply with the GMA but are based on policies inconsistent with the GMA. The County's interpretation is inconsistent with a proper application of the rules of statutory construction and would effectively eviscerate the duties the legislature requires the Growth Board to perform.

¶ 51 In addition, the County's argument misstates the Growth Board's standard of review by conflating it with the appellate court's standard of review. The County asserts that if substantial evidence supports its decisions, the Growth Board must find that the County complied with the GMA. Resp't MacDonald Living Trust Br. at 7 (stating, "[T]he Growth Board was required to find the County's action in compliance unless the Growth Board found substantial evidence in the record that the County's action was clearly erroneous in view of the entire record.") (emphasis added). But a Board's finding of clear error is not grounded in whether substantial evidence supports the County's decisions; the correct standard is whether, after having reviewed the entire record in light of the goals and purposes of the GMA, the Growth Board has a " 'firm and definite conviction that a mistake has been committed.' " Soccer Fields, 142 Wash.2d at 552, 14 P.3d 133 (quoting Dep't of Ecology v. Pub. Util. Dist. No. 1, 121 Wash.2d 179, 201, 849 P.2d 646 (1993), aff'd, 511 U.S. 700, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994)). The Growth Board could find both that substantial evidence supports the County's decisions and that the County's decisions contradict the goals and purposes of the GMA such that the Growth Board has a firm and definite conviction that the County made a mistake.

¶ 52 Accordingly, the County's claim that the Growth Board committed an error of law when it did not defer to the County's 2007 decisions—which were inconsistent with the County's 2004 decisions to which the Growth Board had previously deferred—rests on a misinterpretation of statutes. The GMA does not preclude the Growth Board from reviewing the entire record when making a determination of GMA compliance. And the correct standard for the Growth Board to apply is whether it has a firm and definite conviction that the County made a mistake. We turn now to a review of the individual parcels and whether the Growth Board committed an error of law when finding the County made clear errors in its planning decisions.

La Center Parcels LB–1, LB–2, LE 22

¶ 53 Next, we address the County's argument that the Growth Board erred in finding that parcels LB–1, LB–2, and LE did not comply with the GMA because the Growth Board (1) failed to consider evidence supporting La Center's position and (2) failed to enter findings of fact that showed it considered fully all the Lewis County factors. Our review of the record shows that the Growth Board considered all the Lewis County factors and correctly determined that the County committed a clear error in deciding to dedesignate these lands. The County ignored overwhelming evidence showing that these parcels were ALLTCS in 2004 and remained so in 2007. Substantial evidence supports each part of the Growth Board's application of the Lewis County analysis, as well as the ultimate GMA noncompliance finding. The Growth Board properly determined that the County erred in 2007 when it dedesignated parcels LB–1, LB–2, and LE from ALLTCS status and incorporated them into the La Center UGA.

¶ 54 First, we reiterate that the County designated La Center parcels LB–1, LB–2, and LE as ALLTCS in 2004. The record supports the Growth Board's determination that ALLTCS remained the correct designation for the property in 2007. The challenged La Center parcels meet the definition of ALLTCS based on the County's own Lewis County matrix information. The evidence that the County considered in its matrix overwhelmingly indicates that these parcels remain ALLTCS and that, in dedesignating them, the County incorrectly ignored the vast majority of the evidence in favor of its desire to further economic development for the City of La Center.

¶ 55 Specifically, the matrix indicates that parcels LB–1, LB–2, and LE all (1) lack water and sewer lines in their borders; (2) are not adjacent to the then existing boundary of the La Center UGA; [3] (3) are described as having mostly rural land uses such as open fields, forested land, and rural residential; (4) are next to land characterized by rural land uses; and (5) lack any urban development permits in their vicinity. In addition, parcel LB–1 is described as containing 56.58 percent prime agriculture soils with 83.79 percent of the parcel's land currently in an agricultural/farm use program. Parcels LB–2 and LE have 80 percent and 78.69 percent prime agricultural soils, respectively, although these parcels currently have only 12 percent and 0 percent of the land currently in an agricultural/farm use program. Based on the overwhelming evidence that these parcels are still ALLTCS, the Growth Board correctly identified that the County committed clear error when dedesignating parcels LB–1, LB–2, and LE from ALLTCS status.

¶ 56 Because the Lewis County test has three prongs that must be satisfied for land to be dedesignated

as ALLTCS, we briefly evaluate each in reviewing whether the Growth Board correctly concluded that the County erred when it dedesignated these parcels. Yakima County, 146 Wash.App. at 688–89, 192 P.3d 12. Put differently, just because the County may have committed clear error in its application of one prong of the test does not mean that the County's overall dedesignation decision for a particular parcel was clear error because the County may have correctly determined that the land failed a different prong of the test.

¶ 57 The first Lewis County prong requires a determination of whether the land is characterized by "urban growth." 157 Wash.2d at 502, 139 P.3d 1096. The Growth Board's finding of fact 43 states in part, "Areas LB–1, LB–2, and LE while near the La Center's UGA are not areas of the UGA characterized by urban growth." 2 CP at 339. The County concedes that it has never challenged this finding of fact.[24] Unchallenged findings are verities on appeal. Manke, 113 Wash.App. at 628, 53 P.3d 1011.

¶ 58 Moreover, even if we were to review it, substantial evidence supports finding of fact 43. The GMA defines "urban growth" as "typically requir[ing] urban governmental services." Former RCW 36.70A.030(18) (2005). "Urban governmental services" include a variety of "public services and public facilities." Former RCW 36.70A.030(20) (2005) (listing examples of "urban governmental services," including storm and sanitary sewers, water, street cleaning, fire and police protection, public transit, and other public utilities). The GMA also defines "[c]haracterized by urban growth" as "land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth." Former RCW 36.70A.030(18).

¶ 59 All the evidence in the County's matrix belies a conclusion that parcels LB–1, LB–2, and LE are characterized by urban growth. The second column of the County's matrix, which addresses the first Lewis County test prong, notes only the size of the parcel and that there are no sewer or water lines in the parcels. And, elsewhere in the matrix, the County describes each of these parcels as containing mostly "open fields, forested land, and rural residential" land uses, that there are no urban development permits within the vicinity of these parcels, and that the parcels are not adjacent to any existing UGAs. AR at 2242–43. Accordingly, substantial evidence supports a finding that parcels LB–1, LB–2, and LE do not contain urban growth and are not near lands containing urban growth.[25] The Growth Board correctly concluded that the County committed clear error when assessing the urban growth characteristics of these parcels because the evidence does not support it.

¶ 60 The second Lewis County prong requires a determination of the commercial productivity of the land or the land's capability of being commercially productive. 157 Wash.2d at 502, 139 P.3d 1096. This factor requires an assessment of whether "the land is actually used or capable of being used for agricultural production." Redmond, 136 Wash.2d at 53, 959 P.2d 1091. Further, "neither current use nor landowner intent of a particular parcel is conclusive for purposes of this element." Redmond, 136 Wash.2d at 53, 959 P.2d 1091. The Growth Board's finding of fact 43 states in part, "All areas[, LB–1, LB–2, and LE,] are capable of being farmed." 2 CP at 339. The County did not challenge finding of fact 43 and, therefore, it is a verity on appeal. Manke, 113 Wash.App. at 628, 53 P.3d 1011. Moreover, on appeal, the County concedes that "there is substantial evidence in the record that these areas have soils suitable for agriculture." Resp't La Center Br. at 4. Accordingly, substantial evidence supports that parcels LB–1, LB–2, and LE are lands that are able to be farmed. The Growth Board correctly concluded that the County committed clear error when it evaluated the farming capabilities of these parcels.[26]

¶ 61 The final Lewis County prong requires a determination of the "long-term commercial significance" for agricultural production of the parcels. 157 Wash.2d at 502, 139 P.3d 1096. This prong requires considering soil composition, proximity to population areas, the possibility of more intense uses of the land, and the 10 factors in former WAC 365–190–050(1). See RCW 36.70A.030(2), (10); Lewis County, 157 Wash.2d at 502, 139 P.3d 1096. This is the main prong that the County challenges, alleging that the Growth Board did not adequately consider all the factors in light of minimal findings of fact entered related to this prong.

¶ 62 Although the County is correct that the Growth Board did not enter specific findings of fact related to each of the WAC factors, the record shows that the Growth Board adequately considered all aspects of the third Lewis County test prong. In its final decision, the Growth Board outlined the various arguments the parties presented regarding the WAC factors, evidencing that the Growth Board did not overlook disputes about any of them. In the analysis section of its final order, the Growth Board mentioned "other WAC factors" but stated that "[t]he [County]'s reason for de-designating these areas is that they border [Interstate–5 (I–5)] therefore present[ing] a unique economic development opportunity for La Center. The [County]'s desire to further economic development can not outweigh its duty to designate and conserve agricultural lands." 2 CP at 328. The County's clearly stated reasons for dedesignating these parcels were beliefs that (1) the parcels had a "special value" (AR at 24080) that provided more economic benefit to La Center as developed land than it would as agricultural land and (2) the lands would help "diversify the La Center economy." AR at 15.[27]

¶ 63 Although neither the GMA nor WAC prioritize the WAC factors, the Growth Board correctly determined that the County committed clear error because it focused almost exclusively on diversifying La Center's economy and other economic considerations while ignoring the other WAC factors and local agricultural needs. Our Supreme Court previously suggested that economic considerations cannot be outcome determinative because "[p]resumably, in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture." Redmond, 136 Wash.2d at 52, 959 P.2d 1091.

¶ 64 Moreover, the County's overtly heavy reliance on economic factors when deciding whether land has long-term agricultural commercial significance runs afoul of several of the GMA's planning goals—namely, the County's duty to "designate and conserve agricultural lands." Soccer Fields, 142 Wash.2d at 558, 14 P.3d 133 (analyzing the GMA's "Natural resource industries" planning goal—RCW 36.70A.020(8)). In addition, the County's emphasis on economic factors violates RCW 36.70A.020(5), which requires counties to "[e]ncourage economic development . within the capacities of the state's natural resources, public services, and public facilities." (Emphasis added.) The Growth Board correctly concluded that the County committed clear error in its analysis of the Lewis County test's third prong when the County appeared to overtly ignore the goals of the GMA by focusing on economic factors.

¶ 65 In addition, we note that the economic factors on which the County relied when making its decisions were speculative in nature. At the time, part of parcel LB–2 was subject to a pending request for federal trust holding status by the recently federally-recognized Cowlitz Indian Tribe. The County believed that the land would be taken into trust and that the tribe would then build a casino on the land, which in turn would destroy the agricultural nature of the surrounding land. The County believed that because the land would soon be developed by the tribe anyway, development should be allowed on other agricultural lands in and around parcel LB–2 and the I–5 area. At the time of the County's decision, the possible approval of the pending trust application and the possible building of a casino were too attenuated to support the County's position. Allowing the County to begin developing the land in 2007 based on the Cowlitz Tribe's speculative development plans, which could take years to overcome multiple legal hurdles, could have resulted in the inappropriate conversion of agricultural land pursuant to the GMA if the Cowlitz Tribe's speculative development plans fell through. Perhaps in the future, the circumstances of the land will have changed such that the land in and around parcel LB–2 no longer qualifies as ALLTCS under the Lewis County test. But when the County made its decision under the then existing circumstances as we understand them, and in light of the deference to the 2004 ALLTCS land designations, the parcels continued to meet the requirements of the Lewis County test.[28]

¶ 66 Moreover, to the extent that the County believes that the "only logical place" for economic growth of the city is an expansion of the UGA to the I–5 corridor, their belief lacks support in the law. AR at 2370. Under the GMA, the "logical place" for expansion and growth is to build higher within the UGA, not to expand it. See RCW 36.70A.020(2) (stating that a goal of the GMA is to "[r]educe the inappropriate conversion of undeveloped land into sprawling, low-density development") (emphasis omitted).

¶ 67 We also reject the County's position that the Growth Board erred by focusing on the La Center parcels' soil type and relationship to the existing La Center UGA. The Growth Board's decision cited a variety of reasons supporting its finding that the County committed clear error. Of particular noteworthiness, the Growth Board emphasized a lack of urban growth on the parcels themselves as well as the surrounding lands. Only part of the Growth Board's analysis included soil characteristics and proximity to the existing La Center UGA.

¶ 68 In addition, the case law the County relies on does not support its assertion that the Growth Board incorrectly determined that these parcels are not adjacent to areas characterized by urban growth. The County citing City of Arlington v. Central Puget Sound Growth Management Hearings Board, 164 Wash.2d 768, 193 P.3d 1077 (2008), argues that because the parcels are adjacent to the I–5 highway, they are adjacent to areas characterized by urban growth. But in Arlington, our Supreme Court held that an area called "Island Crossing" could be incorporated into a UGA for two separate reasons: (1) The land's proximity to an I–5 interchange allowed the land to be properly considered as proximate to urban growth, and (2) the Island Crossing land had an adjacent border to the existing Arlington UGA. 164 Wash.2d at 790–91, 193 P.3d 1077 (emphasis added). Here, the parcels have no adjacent borders with the former La Center UGA boundary and, although they are near I–5, the parcels themselves and surrounding lands completely lack any urban growth. The Arlington test is not satisfied by mere proximity to the I–5 corridor and does not support the County's claim.

¶ 69 Accordingly, having correctly concluded that the County committed clear error in its analysis of the Lewis County test, the Growth Board did not commit an error of law by failing to defer to the County's dedesignation decisions for parcels LB–1, LB–2, and LE. In addition, based on its review of the totality of all the evidence before it, substantial evidence supports the Growth Board's conclusion that parcels LB–1, LB–2, and LE meet all three prongs of the Lewis County test and are ALLTCS. We discern no error and affirm the Growth Board's decision that the evidence does not support the County's dedesignation of

parcels LB–1, LB–2, and LE from their ALLTCS status.

Vancouver Parcels VA and VA–2 29

¶ 70 The County argues that the Growth Board erred when entering finding of fact 32, stating that parcels VA and VA–2 are "near the UGA but are not near areas characterized by urban growth or adjacent to areas characterized by urban growth." 2 CP at 337. In effect, the County argues that the Growth Board erred when reviewing the County's assessment of the first Lewis County prong. We agree and remand to the Growth Board for reconsideration of its decision on parcels VA and VA–2.

¶ 71 The GMA defines "[c]haracterized by urban growth" as referring to "land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth." Former RCW 36.70A.030(18) (emphasis added). "Urban growth" is defined in part 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" and that "[w]hen allowed to spread over wide areas, urban growth typically requires urban governmental services." Former RCW 36.70A.030(18). "Urban governmental services" are "public services and public facilities . including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas." Former RCW 36.70A.030(20).

¶ 72 Under the first prong of the Lewis County test, the statutory definition of "urban growth" requires an assessment of the overall context of the land's relationship to the surrounding land—not just an evaluation of the land itself. See former RCW 36.70A.030(18); Lewis County, 157 Wash.2d at 502, 139 P.3d 1096. Parcels VA and VA–2 lie within a small area of land that is quickly being encroached on by two separate UGAs—the Vancouver UGA and the Battleground UGA. These parcels' relative proximity to all the development occurring in both UGAs, but particularly the Vancouver UGA, belies the Growth Board's conclusion that the VA and VA–2 parcels are not characterized by urban growth. It appears that the Growth Board's determination that the County committed clear error in the dedesignation of these parcels was based on an error in the Growth Board's application of the statutory definition of "characterized by urban growth" in the first Lewis County prong. Accordingly, we remand to the Growth Board its decisions regarding parcels VA and VA–2 for further consideration.[30]

Washougal Parcel WB 31

¶ 73 For parcel WB, the County argues that substantial evidence does not support part of finding of fact 40 and that the Growth Board failed to properly apply the Lewis County test by not considering all the WAC factors. Substantial evidence supports the challenged portion of finding of fact 40. But the record does not show that the Growth Board considered all of the WAC factors. Accordingly, we remand to the Growth Board its decision on parcel WB for further consideration.

¶ 74 The County assigns error to finding of fact 40 insomuch as the Growth Board stated, "[Area WB] is not adjacent to the UGA." 2 CP at 338. The County asserts that the matrix indicates that the WB parcel's "SW tip [is] adjacent to [a] UGA" rather than stating that parcel WB is not adjacent to the Washougal UGA. Resp't MacDonald Living Trust Suppl. Br. at 3. The County's matrix does not contain the asserted language and actually states that parcel WB is "[n]ot adjacent to [the] Washougal UGA." AR at 2247. Moreover, a review of the Washougal UGA map attached to the County's matrix reveals that parcel WB does not touch the former Washougal UGA boundary. Accordingly, substantial evidence supports the Growth Board's finding that parcel WB is not adjacent to the Washougal UGA.

¶ 75 Next, we review the third prong of the Lewis County test, the only prong that the County assigned error to, to determine whether the Growth Board adequately reviewed all the statutory and regulatory factors when making its noncompliance finding. Our review of the Growth Board's analysis of the WB parcel reveals that the Growth Board failed to make an adequate record of its consideration of most of the WAC factors. The Growth Board's analysis and finding of fact 40, the only formal finding specific to parcel WB, discusses soil characteristics, tax base expansion benefits, and adjacency of the parcel to the existing UGA. But the record does not show that the Growth Board considered all the WAC factors in its review such that it could have had a "firm and definite conviction" that the County made a mistake in its dedesignation decision insofar as the County made its decision based on the third Lewis County test prong. Soccer Fields, 142 Wash.2d at 552, 14 P.3d 133. Accordingly, we remand the Growth Board's decision for parcel WB to the Growth Board for further consideration.[32]

Conclusion

¶ 76 Our opinion resolves the issues in this case with three major holdings in addition to our evaluation of the parcel-specific analysis of the Growth Board's actions. First, county GMA planning decisions are not final when they have been appealed and have an unresolved legal status. Second, although a county's

legislative body and the Growth Board can take actions that affect issues currently pending for review in this court, its actions may moot issues pending review. And, third, we affirm the Growth Board's ability to review challenged county GMA planning decisions in light of all the evidence in the record. In accordance with this opinion, we remand to the Growth Board for further consideration on parcels VA, VA–2, and WB while affirming the Growth Board in all other challenged aspects.

FOOTNOTES

1. This opinion refers to the 19 parcels using the County's original planning designation names. The parcel names included the nearby urban growth area to which the County intended to add the parcel. The 19 parcels are City of Battle Ground parcels BB and BC; City of Camas parcels CA–1 and CB; City of La Center parcels LA, LB–1, LB–2, LC, and LE; City of Ridgefield parcels RB–1, RB–2, and RC; City of Vancouver parcels VA, VA–2, VB, VC, and VE; and City of Washougal parcels WA and WB.

2. Former RCW 36.70A.130(1), (3) (2006). We note that under former RCW 36.70A.130(1)(c), counties may simultaneously review comprehensive plan land use elements and UGA boundaries.

3. As of July 1, 2010, the three regional Growth Management Hearings Boards were consolidated into a single statewide board composed of seven appointed members who are then constituted into three-member panels to hear cases. Laws of 2010, ch. 211, §§ 4–5, 18.

4. This case involves multiple interveners with interests in specific land areas. For ease to the reader, in this opinion we attribute almost all of the respondent parties' actions to the County. But we discuss and attribute actions to the intervening parties, as necessary, in clarifying footnotes.

5. Lewis County established "Soccer Fields " as a short form for 142 Wash.2d 543, 14 P.3d 133. Lewis County, 157 Wash.2d at 497, 139 P.3d 1096.

6. The parties asserted on appeal only that the Growth Board, and by extension this court, did not have the authority to review the County's decisions on these parcels because the County no longer had jurisdiction over them.

7. At oral argument, the County suggested that the 2004 comprehensive plan included in the record was never finalized. Our review of previous Growth Board decisions does not support this claim. Although there previously were challenges to parts of the 2004 comprehensive plan, the Growth Board ultimately found all the challenged portions compliant with the GMA. Bldg. Assoc. of Clark Cnty., et al., v. Clark County, et at., No. 04–2–0038c, 2005 WL 3392958, at *32 (W. Wash. Growth Mgmt. Hr'gs Bd., Nov. 23, 2005).

8. Karpinski also challenged the County's environmental review and public participation processes. The Growth Board found that these processes contained no clearly erroneous errors. Karpinski did not cross-appeal these Growth Board determinations for review to the superior court and, thus, these issues are not part of this appeal.

9. Although the Growth Board's procedural history of this case lists the Growth Board's hearing date as April 1, 2008, the transcript of the hearing in the administrative record indicates that the hearing occurred on April 8, 2008.

10. Our review of the entire record reveals that the matrix is an accurate summation of the County's considerations and deliberations concerning the 19 parcels. The County's staff essentially read the matrix information for each parcel over the course of several County commissioner meetings. The commissioners made comments that were later included in the last column on the matrix under the heading "[Board of County Commissioners] Deliberation/Decision." AR at 2241–47.

11. The Growth Board's amended order did not substantively differ from its original order. The amended final order corrected "clerical and grammatical errors," deleted duplicative portions in the original order, and renumbered the Growth Board's findings. 2 Clerk's Papers (CP) at 263.

12. Technically, La Center filed the appeal to the superior court, noting that the Growth Board reversed the County on 10 different parcels—neglecting to include parcel BC in its list—and challenging only issues related to La Center parcels. The other parties in this appeal then joined La Center's appeal, and all the parties, including Karpinski, limited their arguments to the Growth Board's noncompliance/invalidity findings of the 11 reversed parcels.

13. The parties' stipulation and the superior court's order did not explicitly identify parcel CA–1 by name; instead, the stipulation and order referenced "the GM Camas property" and the reversal of the Growth Board "with respect to GM Camas, LLC." AR at 3277–78. In its June 12, 2009 order, the superior court identified the subject matter of the stipulation as parcel CA–1.

14. Although the County's arguments do not relate to any of its assigned errors on appeal, RAP 1.2(a) permits liberal interpretation of the rules to promote justice and facilitate a decision on the merits. We exercise this discretion and consider the County's argument as an allegation that the Growth Board committed an error of law pursuant to RCW 34.05.570(3)(d) of the APA when entering noncompliance findings for parcels CA–1, CB, and RB–2. In light of the arguments contained in the administrative record that were presented to the superior court and Growth Board regarding the jurisdictional effect of the annexations, and the County's appellate arguments that issues for parcels CA–1, CB, and RB–2 are now moot, the nature of the challenge is clear in the briefing. See Daughtry v. Jet Aeration Co., 91 Wash.2d 704, 709–10, 592 P.2d 631 (1979) (Reviewing the merits of a challenge on appeal, despite a failure to strictly comply with RAP 10.3, where the nature of the challenge was "perfectly clear[ ] and the challenged finding is set forth in the appellate brief."); Hitchcock v. Dep't of Ret. Sys., 39 Wash.App. 67, 72 n. 3, 692 P.2d 834 (1984) (Reviewing the merits of a challenge to a finding on appeal, despite technical violations of RAP 10.3 where the nature of the challenge was clear and the challenge to the finding extensively discussed in the appellate briefing.), review denied, 103 Wash.2d 1025 (1985).

15. In our June 1, 2010 order relating to jurisdiction, we asked the parties about possible misrepresentations made to the superior court regarding the parcel CA–1 annexation. In light of our analysis of issues related to parcel CA–1, a discussion and resolution of any misrepresentations is unnecessary.

16. RAP 7.2(e) states in relevant part, "If [a] trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision."

17. RCW 36.70A.330 arguably requires the Growth Board to review a county's progress toward achieving compliance and to enter an order removing its original findings of noncompliance despite any pending review by this court. After entering a finding of noncompliance and allowing the County time to come into compliance with the GMA, "the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter. The board shall issue any order necessary to make adjustments to the compliance schedule and set additional hearings as provided in subsection (5) of this section." RCW 36.70A.330(1)-(2) (emphasis added). We note that this practice makes determining whether a Growth Board's order is final for purposes of appeal under RAP 2.1(a)(1), as opposed to discretionary review under RAP 2.1(a)(2), problematic. In addition, to the extent that the ruling appealed is no longer the final ruling (in effect), an opinion from this court could turn out to be an advisory opinion in violation of To–Ro Trade Shows v. Collins, 144 Wash.2d 403, 416, 27 P.3d 1149 (2001), cert. denied, 535 U.S. 931, 122 S.Ct. 1304, 152 L.Ed.2d 215 (2002), and Commonwealth Ins. Co. of Am. v. Grays Harbor County, 120 Wash.App. 232, 245, 84 P.3d 304 (2004) (citing Wash. Beauty Coll., Inc. v. Huse, 195 Wash. 160, 164, 80 P.2d 403 (1938)).

18. On appeal, no party clearly identifies the portions of the APA that they rely on in their assignments of error. But RAP 1.2(a) permits liberal interpretation of the rules and allows appellate review despite technical violations where proper assignment of error is lacking but the nature of the challenge is clear and the challenged findings are set forth in the party's brief. Green River Cmty. Coll. Dist. 10 v. Higher Ed. Pers. Bd., 107 Wash.2d 427, 431, 730 P.2d 653 (1986). Here, it is quite clear from the briefing that the two issues on appeal are whether the Growth Board correctly interpreted and applied the GMA and whether substantial evidence supports various parts of the Growth Board's final decision and order.

19. Our Supreme Court evaluated two statutes when developing the Lewis County definition of "agricultural land":RCW 36.70A.030(2), which reads:"Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.(emphasis added) andRCW 36.70A.030(10), which reads:"Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.As evidenced by this case, since Lewis County some counties and the Growth Board have used the term ALLTCS to describe lands rather than using the term "agricultural lands." Because long-term commercial significance is part of the working definition of "agricultural lands," "agricultural lands" and ALLTCS are synonymous terms.

20. Moreover, in this instance, the County incorporated the WAC factors in its comprehensive plan as the approach used to analyze whether lands qualify as ALLTCS.

21. We note that even though a county's comprehensive plan amendments are presumed valid upon adoption, under RCW 36.70A.320(1), a county's previous determinations and designations of land are still relevant to the analysis. A significant goal of the GMA is to identify, maintain, enhance, and conserve agricultural lands. See RCW 36.70A.020(8); Soccer Fields, 142 Wash.2d at 558, 14 P.3d 133. This goal

suggests there is relevance of a county's previous designation of land as ALLTCS because otherwise there would be no way for a county to maintain and conserve these lands over time. But under the GMA it is unclear, and the legislature may want to consider and provide direction on, what weight a county should give to prior agricultural designations during subsequent comprehensive plan reviews. Based on the goals of maintaining and conserving agricultural lands, it appears the proper weight is deference to the original designation. See RCW 36.70A.020(8); Soccer Fields, 142 Wash.2d at 558, 14 P.3d 133; see Yakima County v. E. Wash. Growth Mgmt. Hearings Bd., 146 Wash.App. 679, 688–89, 192 P.3d 12 (2008).

22. In this section of the opinion, we attribute to the County all arguments presented by La Center and the County for ease to the reader.

23. Although the matrix indicates that parcel LB–1's eastern boundary was adjacent to the then existing La Center UGA, a map of the parcel attached to the matrix belies this characterization.

24. La Center indicated in a supplemental brief that it did not challenge finding of fact 46 in its appeal to the superior court or to this court. When the Growth Board filed its amended final decision deleting duplicative portions, the numbering of its factual findings changed. Finding of fact 46 in the May 14, 2008 final order became finding of fact 43 in the amended June 3, 2008 final order.

25. In its briefing, La Center argues that these parcels are characterized by urban growth because water is located two miles away and La Center's waste management plant has confirmed it has the capacity to serve these parcels. La Center provides no citations to the record to support this factual assertion. Though the County discussed sewer capacity during its preliminary discussions about the La Center parcels, the discussions appear to reference information contained outside the record. But because La Center did not challenge finding of fact 43, it is a verity and arguments about evidence conflicting with this finding are irrelevant.

26. It appears that the County relied on an individual County commissioner's belief in the difficulties in obtaining water rights or accessing water for farming on these parcels. We could not find anything in the record to support the commissioner's opinion that it would be hard to get water and/or water rights to these parcels. The County commissioner merely states this belief, which in and of itself does not constitute substantial evidence supporting the County's decision.

27. Also, La Center's mayor stated in a letter to the County commissioners, "[T]he City's objective in the current UGA expansion has been to urbanize the I–5 Junction as part of the City's incorporated area in an effort to diversify the City's economic base." AR at 1817.

28. On January 12, 2011, La Center filed a motion requesting that we take judicial notice of the United States Department of the Interior's December 2010 decision to approve the Cowlitz Tribe's fee-to-trust application of approximately 152 of the 245 acres in parcel LB–2. The Department of Interior's approval allows the tribe to establish a reservation and indicates the land is eligible for gaming under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721. But that La Center and the County three years ago accurately predicted the approval of the trust application does not change our analysis. We, and the Growth Board, must consider the evidence and circumstances of the land at the time of the County's decision to determine whether the County complied with the GMA when making its land use decisions. Otherwise, the County might have improperly developed the land should its speculative predications have failed to come to fruition. Moreover, even though the Cowlitz Tribe's federal trust request has now been approved, the possible building of a casino is still too attenuated to support the County's 2007 dedesignation decision. Among other practical considerations, financing to build the infrastructure of the reservation, let alone the intended casino, is unknown. And the effects of the recent economic recession may very well bring about delay or abandonment of some or all of the tribe's development plans, even plans that are desirable and were created with good faith intentions to complete. The possibility of building a casino and the impact on the surrounding agricultural productivity of the land was too speculative in 2007 to support the County's decisions, and it remains speculative even under the present circumstances. And even if the sewer and projected infrastructure materializes, they might serve only the tribal trust lands.

29. In this section, we attribute all arguments presented by Renaissance Homes, which has interest in the VA parcel, and the County to the County for ease to the reader. Also, the parties acknowledge a scrivener's error in the administrative record on the Vancouver West Map attached to the County's matrix where parcel "VA–1" should be labeled "VA–2."

30. Because we remand on these grounds, we need not consider other arguments such as a challenge to finding of fact 33 regarding the adequacy of the Growth Board's evaluation of the WAC factors for the VA and VA–2 parcels.

31. In this section, we attribute to the County all arguments presented by MacDonald Living Trust and the County for ease to the reader. We note that the record is not clear whether MacDonald owns all of or

only a portion of parcel WB.

32. Because of the basis for our remand, we need not address arguments that parcel WB should be dedesignated and incorporated into the Washougal UGA to ensure that enough land is available for development to accommodate expected population growth.

QUINN–BRINTNALL, J.

We concur: ARMSTRONG, P.J., and HUNT, J.