

Schroader, Kathy



From: David McDonald <david@mcdonaldpc.com>
Sent: Wednesday, March 23, 2016 8 58 AM
To: Orjiako, Oliver
Cc: Tilton, Rebecca, Schroader, Kathy, Olson, Julie (Councilor)
Subject: Ag Lands/MRCS
Attachments: MRCS Ag Lands GMA decisions Development-Types- pdf

Dr. Orjiako.

While reviewing information about appropriate agricultural land designations, I came across this document on the MRCS website. Since Councilor Olson has expressed an interest in this type of issue, I thought I would share it with her. Given that, I thought I should also request that it be made a part of the CP update record. I have copied Ms Tilton and Ms Schroader.

Thank you, and your staff, for your continued great work.

Best Regards,

David T. McDonald



Agricultural Lands - Laws, Regulations, and Court Decisions

Introduction

The focus of this page is on Washington laws related to agricultural lands and on selected court and Growth Management Hearings Board decisions. The federal Farmland Protection Policy Act (http://www.nrcs.usda.gov/wps/portal/nrcs/detail/?ss=16&navtype=BROWSEBYSUBJECT&cid=nrcs143_008275&navid=100170000000000&pnavid=100000000000000&20Protection%20Policy%20Act%20%20NRCs) (FPPA), 7 U.S.C. 4201, is intended to minimize the impact of federal programs on the conversion of farmland to nonagricultural uses by addressing the compatibility of federal programs with state, local, and private programs and policies to protect farmland.

Washington State Laws and Administrative Regulations

These statutes and regulations relate to agricultural land uses, agricultural marketing, and farmland protection.

- Farmland Information Center's Farmland Protections Statute Database for Washington State (<http://www.farmlandinfo.org/state/washington>) - State statutes and local ordinances
- Title 15 RCW (<http://app.leg.wa.gov/rcw/default.aspx?cite=15>) - Agriculture and Marketing - Specific laws related to agricultural products, marketing, agricultural commodity boards and commissions
 - Ch. 15.64 RCW (<http://app.leg.wa.gov/rcw/default.aspx?cite=15.64>) - Farm Marketing
 - Ch. 15.66 RCW (<http://app.leg.wa.gov/rcw/default.aspx?cite=15.66>) - Washington State Agricultural Commodity Commissions
 - Ch. 15.92 RCW (<http://app.leg.wa.gov/rcw/default.aspx?cite=15.92>) - Center for Sustaining Agriculture and Natural Resources - Establishes center at Washington State University
- Growth Management Act
 - RCW 36.70A.030 (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.70A.030>)(2) - Definitions
 - RCW 36.70A.040 (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.70A.040>) - Requires cities and counties planning under GMA to designate agricultural lands and adopt development regulations conserving designated agricultural lands
 - RCW 36.70A.050 (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.70A.050>) - Guidelines to classify agriculture, forest and mineral lands and critical areas
 - RCW 36.70A.060 (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.70A.060>) - Development regulations to assure conservation of agricultural and other natural resource lands
 - RCW 36.70A.170 (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.70A.170>) - Requires designation of agricultural lands with long-term significance for the commercial production of food or other agricultural products
 - RCW 36.70A.177 (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.70A.177>) - Agricultural lands - Innovative zoning techniques - Accessory uses
- RCW 7.48.300 (<http://app.leg.wa.gov/rcw/default.aspx?cite=7.48.300>) - 310 (<http://app.leg.wa.gov/rcw/default.aspx?cite=7.48.310>) - Nuisances - Agricultural activities and forest practices - Presumed reasonable and not a nuisance (Right to Farm)
- Ch. 43.362 RCW (<http://app.leg.wa.gov/rcw/default.aspx?cite=43.362>) - Regional Transfer of Development Rights Program

- [RCW 64.04.130](http://app.leg.wa.gov/rcw/default.aspx?cite=64.04.130) (<http://app.leg.wa.gov/rcw/default.aspx?cite=64.04.130>) - Conservation easement
- [Ch. 84.34 RCW](http://app.leg.wa.gov/rcw/default.aspx?cite=84.34) (<http://app.leg.wa.gov/rcw/default.aspx?cite=84.34>) - Open Space, Agricultural, Timber Lands - Current Use - Conservation Futures
- [Ch. 89.08 RCW](http://app.leg.wa.gov/rcw/default.aspx?cite=89.08) (<http://app.leg.wa.gov/rcw/default.aspx?cite=89.08>) - Conservation Districts
- [Ch. 89.10 RCW](http://app.leg.wa.gov/rcw/default.aspx?cite=89.10) (<http://app.leg.wa.gov/rcw/default.aspx?cite=89.10>) - Farmland Preservation
- [Ch. 365-190 WAC](http://app.leg.wa.gov/wac/default.aspx?cite=365-190) (<http://app.leg.wa.gov/wac/default.aspx?cite=365-190>) - Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas
- [WAC 365-196-480](http://app.leg.wa.gov/wac/default.aspx?cite=365-196-480) (<http://app.leg.wa.gov/wac/default.aspx?cite=365-196-480>) - Natural resource lands
- [WAC 365-196-815](http://app.leg.wa.gov/wac/default.aspx?cite=365-196-815) (<http://app.leg.wa.gov/wac/default.aspx?cite=365-196-815>) - Regulations specifically required by the act Addresses conservation of natural resource lands
- [Ch. 458-30 WAC](http://app.leg.wa.gov/wac/default.aspx?cite=458-30) (<http://app.leg.wa.gov/wac/default.aspx?cite=458-30>) - Open Space Taxation Act Rules

Growth Management Hearings Board Decisions

The three regional Growth Management Hearings Boards were consolidated into a single board in 2010. This section includes links to the hearings board digests, including decisions related to agricultural lands.

- [Digest of Decisions July 2011 – April 2014](http://www.gmhb.wa.gov/Pages/Documents/2010-2014JointDigestApril2014.pdf) (<http://www.gmhb.wa.gov/Pages/Documents/2010-2014JointDigestApril2014.pdf>) - See listings by keyword under "Agricultural Lands"
- Central Puget Sound Growth Management Hearings Board [Digest of Decisions](http://www.gmhb.wa.gov/Documents/Digest_CPS_2009_Edition_010.pdf) (http://www.gmhb.wa.gov/Documents/Digest_CPS_2009_Edition_010.pdf), 10th Edition, 1992-2009 - See listings by keyword under "Agricultural Lands"
- Western Washington Growth Management Hearings Board [Digest of Decisions](http://www.gmhb.wa.gov/Documents/Digest_WW_2009_Edition_005.pdf), (http://www.gmhb.wa.gov/Documents/Digest_WW_2009_Edition_005.pdf) 5th Edition, Through 08/15/2009 - See listings by keyword under "Agricultural Lands"
- Eastern Washington Growth Management Hearings Board [Digest of Decisions](http://www.gmhb.wa.gov/Documents/Digest_EW_03-31-2009_Edition_006.pdf) (http://www.gmhb.wa.gov/Documents/Digest_EW_03-31-2009_Edition_006.pdf), 1992 through 03/15/2009 - See listings by keyword under "Agricultural Lands"

Selected Court Decisions

- [Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.](http://courts.mrsc.org/mc/courts/zsupreme/172wn2d/172wn2d0144.htm) (<http://courts.mrsc.org/mc/courts/zsupreme/172wn2d/172wn2d0144.htm>), 172 Wn 2d 144 (2011)
From headnote: A zoning technique that allows nonfarm uses on designated agricultural lands constitutes an impermissible "innovative zoning technique" within the meaning of RCW 36.70A.177 of the Growth Management Act. The innovative zoning techniques allowed by RCW 36.70A.177 should be designed to conserve agricultural lands and encourage the agricultural economy. Despite the allowance for innovative zoning techniques under RCW 36.70A.177, the Growth Management Act requires that agricultural lands be protected.
- [Clark County v. West Wash. Growth Mgmt. Hearings Bd.](http://courts.mrsc.org/mc/courts/zappellate/161wnapp/161wnapp0204.htm) (<http://courts.mrsc.org/mc/courts/zappellate/161wnapp/161wnapp0204.htm>) 161 Wn App 204 (2011), [vacated in part](http://courts.mrsc.org/mc/courts/zsupreme/177wn2d/177wn2d0136.htm) (<http://courts.mrsc.org/mc/courts/zsupreme/177wn2d/177wn2d0136.htm>), 177 Wn 2d 136 (2013)
A challenge was brought against the county's determination that certain agricultural properties were no longer agricultural lands of long-term commercial significance (ALLTCS). The court of appeals concluded that the county committed error in dedesignating certain parcels from ALLTCS status. Where a county has designated a land area as ALLTCS and the designation has been confirmed by a growth management hearings board as being consistent with the goals and requirements of the GMA, the county may not remove the designation if the land area continues to meet the definition of "agricultural land" under the GMA. Absent a showing that the original designation was erroneous and improperly confirmed by the hearings board or that a substantial change in the land area has occurred since the original designation, the original designation should remain. The 2013 state supreme court review of this decision resulted in the court vacating a separate part of the court of appeals decision.

- *Feil v. Eastern Wash. Growth Mgmt. Hearings Bd*
(<http://courts.mrsc.org/mc/courts/zappellate/153wnapp/153wnapp0394.htm>). 153 Wn. App. 394 (2009)
The state sought to place a bike/pedestrian trail through an area devoted to agricultural uses. To accomplish the placement, the state applied for approval under the county's recreational overlay district. Adjacent orchardists objected and appealed. The orchardists objected to the overlay district and raised a number of legal and factual challenges to the county commissioners' decision to approve the overlay. The court concluded, however, that the recreational overlay district was not an amendment to the county's comprehensive plan and that, even if it was, any challenge to the comprehensive plan came too late. The court further concluded that the recreational overlay district did not run afoul of state statutes that encourage the preservation of agricultural land. And it concluded that the decision to permit the overlay was amply supported by the findings of the commissioners, including those they adopted from the hearing examiner. Affirmed by the Supreme Court.
- *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd*
(<http://courts.mrsc.org/mc/courts/zsupreme/164wn2d/164wn2d0768.htm>). 164 Wn.2d 768 (2008)
The state supreme court affirmed an earlier court of appeals decision, and adopted the decision as its own. The court upheld Snohomish County's amendment of its comprehensive plan, concluding that the area in question was properly redesignated from agricultural to urban commercial.
- *Thurston County v. Western Washington Growth Management Hearings Board*
(<http://courts.mrsc.org/mc/courts/zsupreme/164wn2d/164wn2d0329.htm>) 164 Wn.2d 329 (2008)
A party may challenge a county's failure to revise a comprehensive plan only with respect to those provisions that are directly affected by new or recently amended GMA provisions, meaning those provisions related to mandatory elements of a comprehensive plan that have been adopted or substantively amended since the previous comprehensive plan was adopted or updated, following a seven-year update. If a county fails to revise its comprehensive plan to comply with new or amended GMA requirements, a party must be able to challenge the comprehensive plan or GMA amendments. A board should not reject urban densities based on a bright-line rule for maximum rural densities, but must consider local circumstances and whether these densities are not characterized by urban growth and preserve rural character. The GMA does not dictate a specific manner of achieving a variety of rural densities.
- *Futurewise v. Central Puget Sound Growth Management Hearings Board*
(<http://courts.mrsc.org/mc/courts/zappellate/141wnapp/141wnapp0202.htm>). 141 Wn. App. 202 (2007)
Pierce County, when amending its comprehensive plan, amended the plan to exclude land parcels less than five acres from lands designated as agricultural lands of long-term commercial significance. The county's decision was based upon the argument that soil sampling for smaller parcels was not reliable and upon the predominant size of farms within the county. Futurewise challenged the county's designations. On appeal, the court concluded that the county could categorize land by size but that it erred in determining that a minimum five-acre parcel size correlated to soil sample accuracy. Nevertheless, the court agreed with the county's actions based upon the county's reliance on reports of the predominant parcel size of a small farms. The predominant size of farms, the court concluded, was instructive on determining whether land has "long-term commercial significance" for agriculture.
- *Lewis County v. Western Washington Growth Management Hearings Board*
(<http://courts.mrsc.org/mc/courts/zsupreme/157Wn2d/157Wn2d0488.htm>) 157 Wn.2d 488 (2006)
In determining whether the county had adequately designated agricultural land, the court provided the following definition of agricultural land: "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." The court also added that counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance. The court further found that it was not "clearly erroneous" for the county to weigh the industry's anticipated land needs above all else. The court further found that it was clearly erroneous for the county to exclude from designated agricultural lands up to five acres on every farm (for farm centers and

farm homes), without regard to soil, productivity or other specified factors in each farm area. The court upheld a decision by the hearings board that county development regulations allowing certain non-farm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands.

- *City of Redmond v. Central Puget Sound Growth Management Hearings Board*
(<http://courts.mrsc.org/mc/courts/zappellate/116wnapp/116wnappQQ48.htm>), 116 Wn App 48 (2003)
When reviewing a challenge to a zoning ordinance, a growth management hearings board must presume the comprehensive plans and development regulations are valid and the challenger has the burden of establishing otherwise. Because the land at issue in this case was never property designated for agricultural use, consequently, the urban recreational designation established by the city is valid.
- *King County v. Central Puget Sound Growth Management Hearings Board*
(<http://courts.mrsc.org/mc/courts/zsupreme/142wn2d/142wn2dO543.htm>), 142 Wn 2d 543 (2000)
1997 amendments to King County's comprehensive plan and zoning code, which allow active recreational uses on properties located within a designated agricultural area, do not qualify for innovative zoning techniques under RCW 36 70A 177 and therefore violate the Growth Management Act.
- *City of Redmond v. Central Puget Sound Growth Management Hearings Board*
(<http://courts.mrsc.org/mc/courts/zsupreme/136wn2d/136wn2dOQ38.htm>), 136 Wn 2d 38 (1998)
Unless a municipality has first enacted a transfer or purchase of development rights program, the municipality may not designate land within an urban growth area as agricultural.

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