



Civil Division

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BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

JOHN KARPINSKI, CLARK COUNTY NATURAL  
RESOURCES COUNCIL and FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent,

and

GM CAMAS, LLC ; JOHNSTON DAIRY, et al and  
MACDONALD PROPERTIES, DARYL GERMANN,  
CURT GUSTAFSON, T3G, LLC, HINTON  
DEVELOPMENT CORPORATION; BUILDING  
INDUSTRY ASSOCIATION OF CLARK COUNTY,  
CITY OF LA CENTER, AND BIRCHWOOD FARMS,  
LLC

Intervenors.

Case No. 07-2-0027

**FINAL DECISION AND  
ORDER ON REMAND  
[AREAS WB, VA, and VA-2]**

**SYNOPSIS**

On remand from the Court of Appeals, Division II, the Board reviewed the challenges to Clark County's decision to de-designate three areas of previously designated Agricultural Land of Long Term Commercial Significance (ALLTCS). The Board concludes the Court of Appeals has decided the question of whether Areas VA and VA-2 were characterized by urban growth. As a result, the Board's prior Order finding to the contrary is reversed.

The Court's remand decision also directed the Board to further consider whether Area WB has long-term commercial significance for agricultural production based on the factors set forth in former WAC 365-190-050(1). Pursuant to that analysis, the Board

1 concludes Area WB has long-term commercial significance for agricultural production The  
2 Board's prior Order is affirmed in that regard Findings and conclusions in the June 3, 2008  
3 Amended Final Decision and Order addressing the de-designation decision of Area WB are  
4 supplemented as set forth below.

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6 I.

7 The Board held a Remand Hearing in Vancouver, Washington on February 4, 2013,  
8 attended by members Nina Carter, Margaret Pageler and William Roehl, with Roehl  
9 presiding John Karpinski, Clark County Natural Resources Council and Futurewise  
10 (Petitioners) were represented by Tim Trohimovich Christine M. Cook represented Clark  
11 County (County), Randall B. Printz appeared on behalf of Intervenor MacDonald Properties,  
12 LeAnne M. Bremer on behalf of Intervenor Birchwood Farms LLC, and James D. Howsley  
13 on behalf of Intervenor Holt Homes, Inc  
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16 II. PROCEDURAL BACKGROUND

17 This matter returned to the Board following appeals arising from entry of the Board's  
18 Final Decision and Order (FDO) and Amended FDO (AFDO) on May 14 and June 3, 2008,  
19 respectively. The case began with Petitioners' challenge of Clark County's Ordinance 2007-  
20 09-13<sup>1</sup> which de-designated 19 areas of previously designated ALLTCS, consisting of 4,351  
21 acres, and added that acreage to the urban growth areas (UGAs) of various Clark County  
22 cities.<sup>2</sup> The de-designation decision occurred less than three years after the adoption of the  
23 County's 2004 Growth Management Act (GMA) update which included the designation of  
24 those areas as ALLTCS.<sup>3</sup> Of the 19 areas, the Board found the decision to de-designate 11  
25 of them failed to comply with the GMA as they were not characterized by urban growth.<sup>4</sup>  
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31 <sup>1</sup> Adopted on September 25, 2007

32 <sup>2</sup> Counties may simultaneously review comprehensive plan land use elements and UGA boundaries RCW 36  
70A 130

<sup>3</sup> Adopted September 7, 2004

<sup>4</sup> Amended Final Decision and Order, June 3, 2008, p. 3 The original FDO was entered on May 14, 2008, but  
was amended primarily to correct clerical and grammatical errors

1 The County's appeal of the Board's decision to the Clark County Superior Court  
2 resulted in a ruling which affirmed the Board in part and reversed it in part <sup>5</sup> The parties then  
3 appealed in turn to the Court of Appeals, Division II.<sup>6</sup> The Court of Appeals remanded three  
4 of the eleven areas<sup>7</sup> found non-compliant by the Board and affirmed the Board as to the  
5 others. Ultimately, the Washington Supreme Court granted review in part, considering only  
6 an issue involving the Court of Appeals' consideration of the validity of cities' decisions to  
7 annex lands while a challenge was pending before the Board.<sup>8</sup> The Supreme Court's action  
8 was to vacate a portion of the Court of Appeals decision, a portion which has no bearing on  
9 the issues before the Board pursuant to the remand order.<sup>9</sup>

11 The end result of the appellate process was the remand of a limited number of  
12 issues. Most recently, the Clark County Superior Court entered an order remanding the  
13 matter to the Board.<sup>10</sup>

15 **III. JURISDICTION, STANDARD OF REVIEW,  
16 AND SCOPE OF REMAND**

17 **Jurisdiction**

19 The Board found in its FDOs that it had jurisdiction in these proceedings<sup>11</sup> and no  
20 issue has been raised challenging that finding.

22 **Standard of Review**

23 In *Swinomish Indian Tribal Community v. W. Wash. Growth Mgmt. Hearings Bd.*,<sup>12</sup>  
24 the Supreme Court summarized the Board's standard of review.

27 <sup>5</sup> Clark County Superior Court Cause No. 08-2-03625-5  
28 <sup>6</sup> *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 254 P.3d 862 (2011)  
29 <sup>7</sup> The appeal of the Board's decision challenged only 11 of the 19 de-designated areas.  
30 <sup>8</sup> *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 177 Wn.2d 136, 298 P.3d 704 (2013)  
31 <sup>9</sup> *Id.* at 148. "We vacate the Court of Appeals' opinion insofar as it relates to the Annexed Lands [Camas Areas  
32 CB and CA-1 as well as Ridgefield RB-2]. All claims related to the Annexed Lands were resolved below, were not raised on appeal, remained separate and distinct from the claims and issues actually raised on appeal, and should not have been addressed."  
<sup>10</sup> Clark County Superior Court Cause No. 08-2-03625-5, Agreed Order Remanding the Case to the Growth Management Hearings Board, dated July 29, 2013.  
<sup>11</sup> Conclusion of Law A, AFDO at p. 77.  
<sup>12</sup> 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007) (internal case citations omitted).

1 The Board "shall find compliance unless it determines that the action by the  
2 [county] is clearly erroneous in view of the entire record before the board and  
3 in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). An  
4 action is "clearly erroneous" if the Board is "left with the firm and definite  
5 conviction that a mistake has been committed." "Comprehensive plans and  
6 development regulations [under the GMA] are presumed valid upon  
7 adoption." RCW 36.70A.320(1). Although RCW 36.70A.3201 requires the  
8 Board to give deference to a [jurisdiction], the [jurisdiction's] actions must be  
9 consistent with the goals and requirements of the GMA.

10 As to the degree of deference to be granted under the clearly erroneous standard,  
11 the *Swinomish* Court stated:<sup>13</sup>

12 The amount [of deference] is neither unlimited nor does it approximate a  
13 rubber stamp. It requires the Board to give the [county's] actions a "critical  
14 review" and is a "more intense standard of review" than the arbitrary and  
15 capricious standard.

16 The Court of Appeals in *Suquamish Tribe v. Central Puget Sound Growth  
17 Management Hearings Board*, observed:<sup>14</sup>

18 The GMA affords broad discretion to local governments in planning for  
19 growth, bounded only by the GMA's goals and requirements.<sup>15</sup> Boards must  
20 afford a county's actions great deference so long as the action complies with  
21 the GMA and is not clearly erroneous. . . .<sup>16</sup> A board must presume that a  
22 county's action is valid, leaving the challenger to meet the burden of  
23 establishing invalidity.<sup>17</sup>

24 The Board took note of the following observation included in the Court of Appeals  
25 decision remanding this matter and shares the concerns expressed:

26 The County's contention that the Growth Board is required to give its 2007  
27 de-designation deference over its 2004 designation is unpersuasive. The  
28 County designated these parcels as ALLTCS in its 2004 comprehensive  
29 plan, which it intended to follow for 20 years. Absent a showing that this  
30 designation was both erroneous in 2004 and improperly confirmed by the

31 <sup>13</sup> *Id.* at 435, n. 8 (internal citations omitted).

32 <sup>14</sup> 156 Wn.App. 743, 759, 235 P.3d 812 (2010).

<sup>15</sup> *Id.*, citing *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000) and *Thurston County v. Cooper Point Ass'n*, 148 Wn. 2d 1, 13-15, 57 P.3d 1156 (2002).

<sup>16</sup> *Id.* at 760, citing RCW 36.70A.320(2), and *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497, 139 P.3 1096 (2006).

<sup>17</sup> *Id.* citing RCW 36.70A.302(2) and *City of Redmond v. CPSGMHB*, 116 Wn.App. 48, 55, 65 P.3d 337 (2003).

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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.<sup>18</sup>

That comment was followed by a footnote suggesting legislative guidance in that regard might be appropriate.<sup>19</sup> Notwithstanding the Court's observation regarding deference to a prior but recent ALLTCS designation decision, the Court's reference to legislative clarification leads the Board to conclude that the presumption of validity and deference to County action in the 2007 de-designation decision, as well as placement of the burden of proof on the Petitioners, is applicable to this remand proceeding.

Holt Homes argues the Board is required to defer to the County's de-designation decision. It argues the Board, in its initial decision, improperly found the County's de-designation decision noncompliant " . . . based on its own independent analysis."<sup>20</sup> "The GMHB cannot substitute its own judgment of the facts against the WAC factors, rather, the GMHB must give deference to the County."<sup>21</sup> Holt argues the Board of County Commissioners (BOCC) is the finder of fact and not the Board although Holt acknowledges the Board may substitute its judgment if it concludes the action was clearly erroneous. It then contends both the Superior Court and the Court of Appeals "considered the evidence"

<sup>18</sup> *Clark County v W Wash Growth Mgmt Hearings Bd*, 161 Wn App 204 at 234

<sup>19</sup> 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 Wn 2d at 558. 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 Wn 2d at 558, see *Yakima County v E Wash Growth Mgmt Hearings Bd*, 146 Wn App 679, 688-89, 192 P 3d 12 (2008) " 161 Wn App 204 at 234, n 21

<sup>20</sup> Intervenor Holt Homes, Inc 's Hearing Brief at 5, 6

<sup>21</sup> *Id* at 5

1 and concluded Area VA was "characterized by urban growth," that no commercial  
2 agricultural lands [are] within the area, and that the infrastructure is available "<sup>22</sup>

3 The County echoes some of Holt's argument with the statement that "[t]he Board  
4 should defer to the County's planning decisions that VA and VA-2 were appropriate  
5 additions when looking at the Vancouver UGA as a whole. That decision belonged to the  
6 County and is not for the petitioners or the Board to reweigh."<sup>23</sup>

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8 The Board is fully cognizant of the directive set out in RCW 36 70A.320(3) whereby  
9 the Board must find a jurisdiction's actions compliant absent a showing such action was  
10 clearly erroneous. The Board also appreciates it is not the trier of fact. Having said that, the  
11 Board also understands jurisdictions' actions must be in "compliance with the requirements  
12 of [the GMA]" <sup>24</sup>

13 However, the Board rejects any implication it is limited to considering only such  
14 evidence as may support a jurisdiction's decision. To the contrary, the Board is required to  
15 reach a decision "in view of the entire record before the board and in light of the goals and  
16 requirements of this chapter." RCW 36 70A 320(3)

17  
18 The Supreme Court recently clarified its *Arlington*<sup>25</sup> decision in *Kittitas County v E*  
19 *Wash Growth Mgmt Hearings Bd.*<sup>26</sup> when it stated

20 Petitioners argue that, under *City of Arlington*, the mere presence of  
21 evidence supporting a county decision as comporting with the GMA entitles  
22 that county to board deference. While the issue of proper deference  
23 pervades each question, Petitioners' argument and the significance of proper  
24 deference to our standard of review in GMA cases compel us to clarify the  
25 rule at the outset.

26 In *City of Arlington*, this court held that boards must consider anecdotal  
27 evidence and where, **within the constraints of the GMA**, more than one  
28 appropriate planning choice exists, boards must defer to a county's  
29 discretion. 164 Wn.2d at 788. Petitioners, however, take the rule in *City of*  
30 *Arlington* to the extreme point of eliminating any evaluative role for boards.

31 <sup>22</sup> *Id.* at 6.

32 <sup>23</sup> Clark County's Brief on Remand at 4

<sup>24</sup> RCW 36 70A 320

<sup>25</sup> *City of Arlington v Central Puget Sound Growth Mgmt Hearings Bd.*, 164 Wn 2d 768, 193 P 3d 1077 (2008).

<sup>26</sup> 172 Wn 2d 144, 155, 256 P 3d 1193 (2011)

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The legislature granted authority to three boards to adjudicate issues of GMA compliance Former RCW 36 70A 250 (1994), .280(1)(a) (2003) While county actions are presumed compliant unless and until a petitioner brings forth evidence that persuades a board that the action is clearly erroneous, RCW 36 70A 320(3), deference to counties remains "bounded . . . by the goals and requirements of the GMA," *King County*, 142 Wn 2d at 561. The deference boards must give "is neither unlimited nor does it approximate a rubber stamp" *Swinomish Indian Tribal Cmty. v W Wash Growth Mgmt Hearings Bd.*, 161 Wn 2d 415, 435, n 8, 166 P.3d 1198 (2007) (Emphasis added)

The Board did not improperly disregard evidence presented by the County. The Board was required to review all evidence supporting the County's decisions, which it did.

Counties may not cite to *any* fact or opinion and then call for absolute deference Boards must be able to look to evidence and at least evaluate its relevance To clarify, *City of Arlington* stands for the fact that boards must consider anecdotal evidence provided by counties and defer to local planning decisions as between different planning choices that are compliant with the GMA **It does not mean that counties may point to any evidence and demand unbounded deference (emphasis added).**<sup>27</sup>

Division III of the Court of Appeals commented on the *Kittitas* decision in its *Yakima County v. E. Wash. Growth Mgmt. Hearings Bd* opinion.<sup>28</sup>

In *Kittitas County* the court addressed the extent to which a growth board must defer to the counties' local planning processes The petitioners in *Kittitas County* argued that "the mere presence of evidence supporting a county decision as comports with the GMA entitles that county to board deference " Finding this extreme stance would eliminate a growth board's evaluative role, the court concluded growth boards must consider anecdotal evidence provided by counties and **defer to the counties' discretion when, within the constraints of the GMA, more than one appropriate planning choice exists (citations omitted, emphasis added)**<sup>29</sup>

Clark County raised similar objections in its appeal of this matter, arguing the Board had "exceeded its authority by reevaluating all the evidence in the record "<sup>30</sup> The Court rejected that argument, referencing RCW 36.70A.320(3) and stated "The County has not

<sup>27</sup> *Kittitas County* at 157.

<sup>28</sup> *Yakima County v E Wash Growth Mgmt Hearings Bd* , 168 Wn App 680, 279 P 3d 434 (2012)

<sup>29</sup> *Id* at 691

<sup>30</sup> *Clark County v W Wash Growth Mgmt Hearings Bd* , 161 Wn App 204 at 235

1 persuaded us that the Growth Board committed an error of law by exceeding its authority in  
2 its review of the County's de-designation decisions "<sup>31</sup>

3 While granting Clark County the deference to which it is entitled by the GMA, the  
4 Board will consider the "entire record before the Board" "in light of the goals and  
5 requirements of the [GMA]."  
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7 **Scope of Remand**

8 The issues before the Board pursuant to the remand involve three areas de-  
9 designated with the adoption of Ordinance 2007-09-13 and added to the urban growth  
10 areas of Vancouver and Washougal. Those areas have been referred to throughout these  
11 proceedings as Vancouver VA, Vancouver VA-2<sup>32</sup> and Washougal WB. The Board framed  
12 the remand issues as set forth below.<sup>33</sup>  
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14  
15 Issue. In the adoption of Ordinance 2007-09-13 as it applies to those areas  
16 identified as Vancouver VA, Vancouver VA-2 and Washougal WB

- 17 a Did Clark County violate RCW 36.70A.020(8), 36 70A 050(3), 36 70A.070, (1),  
18 (3), and 36.70A.170(1) & (2) in Ordinance No. 2007-09-13 by de-designating  
19 agricultural land in violation of RCW 36 70A 170, in violation of RCW  
20 36 70A 050(3) and WAC 365-190-050, and in violation of the County's own  
21 criteria for designating agricultural land contained within the comprehensive  
22 plan and the GMA's requirements for internal consistency in RCW  
23 36 70A 070?
- 24 b. Did Clark County violate RCW 36.70A.020 (1-2, 8-10, 12), 36 70A 060,  
25 36.70A 110(1) & (3) in Ordinance No. 2007-09-13 by including land within  
26 Urban Growth Areas that is not characterized by urban growth, should be  
27 designated as agricultural land, and is adjacent to agricultural land?  
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31 <sup>31</sup> *Id*

32 <sup>32</sup> Maps included in Ex 6605 incorrectly referred to this area as VA-1

33 <sup>33</sup> Order Setting Briefing and Hearing Schedule on Remand, September 19, 2013, p 3 No objection to the completeness or accuracy of the issue statements was raised by any party See WAC 242-03-545 That fact was confirmed by all counsel at the commencement of the remand hearing



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#### IV. DISCUSSION

##### Agricultural Lands

One of the primary goals of the Growth Management Act is the maintenance of agricultural lands and the agricultural industry. RCW 36 70A 020(8) is the natural resource industries goal.

**Maintain and enhance** natural resource-based industries, including . . . agricultural . . . industries Encourage the conservation of productive . . . agricultural lands, and discourage incompatible uses. (emphasis added)

Those counties initially required to comply with the GMA were mandated to designate agricultural lands on or before September 1, 1991<sup>34</sup> That designation requirement preceded the directive to adopt comprehensive plans and establish urban growth areas "The significance of agricultural land preservation in the GMA can be seen in the very timing of key actions mandated in the statute."<sup>35</sup>

The Supreme Court stated in *City of Redmond*.

Natural resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses by allowing incompatible uses nearby impairs the viability of the resource industry<sup>36</sup>

The definition of agricultural land is found at RCW 36.70A 030(2)

"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 . . . finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production

"Long-term commercial significance" is then defined by RCW 36.70A 030(10):

"Long-term commercial significance " includes the growing capacity, productivity, and soil composition of the land for long-term commercial

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<sup>34</sup> RCW 36 70A 170(1)(a)

<sup>35</sup> *City of Redmond v Central Puget Sound Growth Mgmt Hearings Bd* , 136 Wn 2d 38, 959 P 2d 1091 (1998)

<sup>36</sup> *City of Redmond*, 116 Wn App 48 at 47, quoting Richard L. Settle and Charles G. Gavigan, *The Growth Management Revolution in Washington Past, Present, and Future*, 16 U Puget Sound L Review 1141, 1145 (1993)

1 production, in consideration with the land's proximity to population areas, and  
2 the possibility of more intense uses of the land

3 The *City of Redmond* court specifically addressed the "devoted to" language used in  
4 RCW 36.70A 030(2):

5 We hold land is "devoted to" agricultural use under RCW 36 70A.030 if it is in  
6 an area where the land is actually used or capable of being used for  
7 agricultural production. . . While the land use on the particular parcel and  
8 the owner's intended use for the land may be considered along with other  
9 factors in the determination of whether a parcel is in an area primarily  
10 devoted to commercial agricultural production, neither current use nor  
11 landowner intent of a particular parcel is conclusive for purposes of this  
12 element of the statutory definition<sup>37</sup>

13 Once agricultural lands have been designated under RCW 36.70A 170, RCW  
14 36 70A 060(1) directed counties to adopt development regulations to "assure the  
15 conservation of agricultural lands " Notwithstanding the mandate to designate and conserve  
16 agricultural lands, the courts and the boards have concluded the GMA does not require that  
17 such lands remain designated in perpetuity. The Act, however, fails to delineate how a  
18 county should determine that designated agriculture lands should be de-designated. In its  
19 decision remanding this matter to the Board, the Court of Appeals set forth the "three  
20 prongs that must be satisfied for land to be de-designated as ALLTCS,"<sup>38</sup> citing the  
21 Washington Supreme Court in *Lewis County v Western Wash Growth Mgmt Hearings*  
22 *Board*<sup>39</sup> Those "prongs," as restated by the Court of Appeals, are

23 1 A determination of whether the land is characterized by "urban growth,"  
24  
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27 <sup>37</sup> *City of Redmond*, 136 Wn 2d at 53

28 <sup>38</sup> Three prongs must be satisfied to designate such lands, to de-designate, one would presume the failure to  
29 meet any one of the prongs would justify de-designation. A decision to de-designate ALLTCS requires  
30 consideration of the same criteria applicable to designation. "We evaluate whether a de-designation of  
31 agricultural land was clearly erroneous by determining whether the property in question continues to meet the  
32 GMA definition of 'agricultural land' as defined in *Lewis County v W Wash Growth Mgmt*  
*Hearings Bd*, 161 Wn App at 234 (2011), See also *Kittitas County Conservation v Kittitas County*, Case No  
07-1-0004c, Compliance Order at 17 (Feb 4, 2009), *Kittitas Conservation v Kittitas County*, Case No 07-1-  
0004c, FDO, at 33 (Aug 20, 2007), *CCNRC v Clark County*, Case No 09-2-0002, FDO at 23 (Aug 10, 2009),  
*Orton Farms v Pierce County*, Case No 04-3-0007c, FDO, at 37 (July 9, 2012)

<sup>39</sup> 157 Wn 2d 488 (2006)

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- 2. A determination of the commercial productivity of the land or the land's capability of being commercially productive <sup>40</sup> (The Court observed that "[t]his factor requires an assessment of whether "the land is actually used or capable of being used for agricultural production," citing *City of Redmond*<sup>41</sup>),<sup>42</sup>
- 3. A determination of the "long-term commercial significance" for agricultural production of the parcels. The Court stated this determination requires consideration of 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).<sup>43</sup>

**WASHOUGAL WB**

That portion of the Court of Appeals' decision remanding area WB to the Board found fault in the Board's failure to document its consideration of all of the WAC factors required to be addressed under the *Lewis County* third prong: whether the land has "long-term commercial significance" for agricultural production <sup>44</sup> This prong requires consideration of 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). *Lewis County*, 157 Wn 2d at 502.

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 <sup>45</sup>

<sup>40</sup> Both *City of Redmond*, 136 Wn 2d at 53, and *Lewis County*, 157 Wn 2d at 502, specifically held land was "devoted to" agricultural use under RCW 36 70A 030 if it is in an area where the land is actually used or capable of being used for agricultural production. However, the Court of Appeals in its remand decision, after first quoting *Lewis County's* second prong at p. 231, then restated the prong to exclude consideration of the area within which the land is located, focusing solely on the land itself. "The second *Lewis County* prong requires a determination of the commercial productivity of the land or the land's capability of being commercially productive." 161 Wn App at 240

<sup>41</sup> 136 Wn 2d at 53 (1998)

<sup>42</sup> *Clark County v W Wash Growth Mgmt Hearings Bd*, 161 Wn App at 241 (2011)

<sup>43</sup> *Id* at 242

<sup>44</sup> In regards to the Supreme Court's use of the word "may" in *Lewis County* in reference to the WAC 365-190-050 factors, the Court of Appeals decision remanding this matter to the Board stated "Despite our Supreme Court's permissive language suggesting that counties 'may' consider the development-related factors enumerated in [former] WAC 365-190-050(1),' (citation omitted), 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." 161 Wn App at 232 (emphasis added)

<sup>45</sup> *Clark County v W Wash Growth Mgmt Hearings Bd*, 161 Wn App at 248

1 Our review of the Growth Board's analysis of the WB parcel reveals that the  
2 Growth Board failed to make an adequate record of its consideration of most  
3 of the WAC factors. The Growth Board's analysis and finding of fact 40,<sup>46</sup> the  
4 only formal finding specific to parcel WB, discusses soil characteristics, tax  
5 base expansion benefits, and adjacency of the parcel to the existing UGA  
6 But the record does not show that the Growth Board considered all the WAC  
7 factors in its review such that it could have had a "firm and definite  
8 conviction" that the County made a mistake in its de-designation decision  
9 insofar as the County made its decision based on the third *Lewis County* test  
10 prong.<sup>47</sup>

11 Reconsideration of the de-designation of Area WB therefore requires the Board to  
12 review the proposal in light of WAC 365-190-050,<sup>48</sup> the "minimum guidelines" for  
13 designating agricultural lands.<sup>49</sup>

14 WAC 365-190-050 in effect at the time of the County's de-designation decision  
15 included the following factors to be considered

- 16 (1) In classifying agricultural lands of long-term significance for the  
17 production of food or other agricultural products, counties and cities shall use  
18 the land-capability classification system of the United States Department of  
19 Agriculture Soil Conservation Service as defined in Agriculture Handbook No.  
20 210. These eight classes are incorporated by the United States Department  
21 of Agriculture into map units described in published soil surveys. These  
22 categories incorporate consideration of the growing capacity, productivity and  
23 soil composition of the land. Counties and cities shall also consider the  
24 combined effects of proximity to population areas and the possibility of more  
25 intense uses of the land as indicated by
- 26 (a) The availability of public facilities,
  - 27 (b) Tax status;
  - 28 (c) The availability of public services,
  - 29 (d) Relationship or proximity to urban growth areas,
  - 30 (e) Predominant parcel size,
  - 31 (f) Land use settlement patterns and their compatibility with agricultural  
32 practices,

<sup>46</sup> Finding of Fact 40 "In Area WB, the County's Matrix describes the land as having 82% prime agricultural soils. Most soils appear to be Class I and II. The Matrix also says that it is to be brought into the area to provide tax base for the Battle Ground School District. The area is not adjacent to the UGA and no permits for development are nearby."

<sup>47</sup> *Clark County v W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. at 248.

<sup>48</sup> WAC 365-190-050 was amended effective 12/3/10. The Board applies the rule in effect in 2007.

<sup>49</sup> The Board, and the courts as shown by the remand decision, has found the same rules apply to de-designation as apply to designation.

- 1 (g) Intensity of nearby land uses,
- 2 (h) History of land development permits issued nearby;
- 3 (i) Land values under alternative uses, and
- 4 (j) Proximity of markets.

5 The Board will consider each of those factors in turn

6 **Growing Capacity, Productivity, Soil Composition**

7 The Matrix prepared by Clark County staff indicates 82% of Area WB is made up of  
 8 prime soils, and that approximately 6% of the area is critical areas <sup>50</sup> The prime soils include  
 9 80% Hesson clay loam (0 to 8% slope) (HcB), capability class II, while 10% is Hesson clay  
 10 loam (20 to 30% slope) (HcD), capability class III <sup>51</sup> The remainder, all sloped forested land,  
 11 is capability class IV (HcE) which is similar to HcB with the difference being a thinner soil  
 12 layer <sup>52</sup>

13  
 14 Intervenor MacDonald Properties argues the fact Area WB lacks a water right  
 15 supports the conclusion the Area is not of long-term commercial significance However, as  
 16 noted by the Petitioners, such a lack is taken into account by the USDA in classifying soils <sup>53</sup>  
 17 HcB soil, which makes up 80% of Area WB, is classified as Clark County prime farmland by  
 18 the USDA's Natural Resource Conservation Service <sup>54</sup> In addition, a significant percentage  
 19 of Clark County's farms were not irrigated as recently as 2002 <sup>55</sup> The County's decision  
 20 appears to have been based, in part, on the opinion of one Commissioner that a lack of a  
 21  
 22  
 23  
 24

25 <sup>50</sup> Ex 6605, Attachment A, p 7 Ex 6605 is entitled *July 5 and August 14, 2007 BOCC Tentative Land Use*  
 26 *Map Agricultural Analysis Deliberation and Decision* This document, referred to as the Matrix, included  
 27 information and analysis of the statutory and regulatory factors for determining whether land qualifies as  
 28 ALLTCS and applied those factors to each of the 19 parcels the County considered for de-designation

29 <sup>51</sup> Ex 5837, p 4

30 <sup>52</sup> *Id*

31 <sup>53</sup> Prime farmlands have the " soil quality, growing season, and moisture supply needed to economically  
 32 produce sustained high yields of crops Prime farmlands have an adequate and dependable water supply  
from precipitation or irrigation " (emphasis supplied) 7 CFR 657 5 (a) (1)

<sup>54</sup> Ex 6634B, p 1

<sup>55</sup> Ex 6634A, *Washington State and County Data Volume 1, Geographic Area Series - Part 47, Chapter 2*  
 County Level Data, Table 10 Irrigation 2002 and 1997 p 253 (June 2004), Ex 6548, Clark County  
 Community Planning Report, May 21, 2007, p 29, noted in 2002 there were 70,694 acres of Clark County land  
 in farms and that only 4,752 acres were irrigated

1 water right rendered the soils less than prime,<sup>56</sup> notwithstanding the fact the NRCS prime  
2 soil classification system takes water into consideration. That opinion echoes the Court of  
3 Appeals observation in regards the same argument related to La Center's de-designated  
4 areas<sup>57</sup>

5  
6 **WAC Factors**

7 **a. The availability of public facilities**

8 Public facilities are defined by RCW 36 70A 030(12) [and WAC 365-190-030(16)] as  
9 including streets, roads, highways, sidewalks, street and road lighting systems, traffic  
10 signals, domestic water systems, storm and sanitary sewer systems, parks and recreational  
11 facilities, and schools Area WB has no water or sewer lines and the maps fail to show any  
12 in the vicinity<sup>58</sup> The record establishes sewer and water service as well as storm water  
13 facilities are one to two miles from Area WB, although they would be available by extension  
14 from the Washougal city limits<sup>59</sup> There are no structures in Area WB<sup>60</sup> There is no  
15 evidence in the Record of other public facilities with the exception of the roads bordering  
16 portions of the area.  
17

18  
19 **b. Tax status**

20 The entire area (116 acres), consisting of two parcels, is assessed and taxed at  
21 agricultural/farm current use under chapter 84.34 RCW.<sup>61</sup> Some agricultural production is  
22

23  
24 <sup>56</sup> Ex 6606, p 42 " and as I said before I think them [sic] are only prime ag if you could ever get water up  
25 there and you can't for ag so I would pretty well bring that out for any long-term viability of farming and "

26 <sup>57</sup> *Clark County v W Wash Growth Mgmt Hearings Bd*, 161 Wn App at 241, n 26 "It appears that the  
27 County relied on an individual county commissioner's belief in the difficulties in obtaining water rights or  
28 accessing water for farming on these parcels We could not find anything in the record to support the  
29 commissioner's opinion that it would be hard to get water and/or water rights to these parcels The county  
30 commissioner merely states this belief, which in and of itself does not constitute substantial evidence  
31 supporting the County's decision "

32 <sup>58</sup> Ex 5837, p 8 "Sanitary sewer, storm water, and potable water lines would be constructed and connected  
33 to existing services which are available within the city boundary of Washougal "

<sup>59</sup> Ex 5837, p 8

<sup>60</sup> Ex 6606, p 39, lines 2-3

<sup>61</sup> Ex 6605, p 7, Ex 5837, p 3, The legislative declaration included in Chapter 84 34 RCW states "The  
legislature hereby declares that it is in the best interest of the state to maintain, preserve, conserve and  
otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops,  
and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-

1 required to qualify and remain in the current use "farm/ag" taxation program of chapter  
2 84.34 RCW. See RCW 84 34.020(2)

3  
4 **c. The availability of public services:**

5 Public services are defined by RCW 36 70A 030(13) [and WAC 365-190-030(17)] as  
6 including fire protection and suppression, law enforcement, public health, education,  
7 recreation, environmental protection, and other governmental services. There are no public  
8 facilities or services set forth on the Matrix  
9

10 **d. Relation or proximity to urban growth areas:**

11 Area WB lies either one-quarter or one-half mile to the North and East of  
12 Washougal's 2004 UGA boundary<sup>62</sup> and between one to two miles from the Washougal city  
13 limits<sup>63</sup> If merely being within one-quarter mile of a UGA boundary justifies de-designation  
14 of ALLTCS, there is nothing to prevent the inexorable loss of fertile farmland. This  
15 expansion of the UGA followed by its urbanization will lead to the identical argument being  
16 made to justify further expansion as the nearby ALLTCS land will then be found to be  
17 adjacent or in proximity to urban growth.<sup>64</sup> As the Court of Appeals stated "Under the GMA,  
18 the 'logical place' for expansion and growth is to build higher within the UGA, not to expand  
19 it "<sup>65</sup>  
20  
21

22 **e. Predominant parcel size:**

23 The two parcels in Area WB, one of 37 acres and the other of 79 acres, are in single  
24 ownership, an average of 58 acres<sup>66</sup> Clark County's farms averaged 44 acres in 2002<sup>67</sup>  
25  
26  
27

28 being of the state and its citizens. The legislature further declares that assessment practices must be so  
29 designed as to permit the continued availability of open space lands for these purposes, and it is the intent of  
30 this chapter so to provide. The legislature further declares its intent that farm and agricultural lands shall be  
31 valued on the basis of their value for use as authorized by section 11 of Article VII of the Constitution of the  
32 state of Washington "

<sup>62</sup> Ex 5837, pp 3 and 8  
<sup>63</sup> *Id*, p 8  
<sup>64</sup> *Friends of Pierce County v Pierce County*, GMHB Case No 12-3-0002c, FDO p 51(July 9, 2012)  
<sup>65</sup> 161 Wn App at 244  
<sup>66</sup> Ex 6605, p 7, Ex 5837, p 2

1 **f. Land use settlement patterns and compatibility with agricultural practices:**

2 The Matrix indicates the two parcels include no structures, open fields and a portion  
3 of forested land while the surrounding land includes open fields, forested land and rural  
4 residential.<sup>68</sup> Properties nearby include a mix of rural residences with some properties  
5 having tracts of hay and pasture, and some cattle/horse grazing.<sup>69</sup> A larger parcel abutting  
6 the southwest border of Area WB is in hay production or pasture grazing. Two small  
7 parcels to the North are devoted to Christmas trees and rural residential use.<sup>70</sup> There are  
8 two parcels of 20 and 40 acres adjoining WB which are in timber/forestry. Six smaller  
9 properties are devoted to residential use and are between two and one-half and five  
10 acres.<sup>71</sup> Some properties to the West, Northeast and South are in agricultural zoning  
11 although other parcels to the North, West and East are zoned Rural.<sup>72</sup>

14 **g. Intensity of nearby land uses:**

15 The surrounding area is essentially undeveloped and rural in nature: "open fields,  
16 forested land and rural residential."<sup>73</sup> Aerial photographs in the record are illustrative of the  
17 character of the area.<sup>74</sup>

20 **h. History of land development permits issued nearby:**

21 There has been no urban development in the area according to Clark County staff  
22 analysis: "No urban development permits within the vicinity."<sup>75</sup>

24 **i. Land values under alternative uses:**

25 Land values would clearly be higher if taken out of agriculture, rezoned, and added to  
26 the Washougal UGA.<sup>76</sup> The County envisioned the WB area being developed as an  
27

28 <sup>67</sup> Ex 6634, 2002 Census of Agriculture, Washington State and County Data, Volume 1, Geographic Area  
29 Series, Part 47 (June, 2004), p 238

30 <sup>68</sup> Ex 6605, p 7

31 <sup>69</sup> Ex 5837, p 3

32 <sup>70</sup> *Id*

<sup>71</sup> *Id* at 4

<sup>72</sup> *Id*

<sup>73</sup> Ex 6605, p 7

<sup>74</sup> Ex 6634A includes two such photographs

<sup>75</sup> Ex 6605, Attachment A, p 7



1 "Employment Center/Business Park."<sup>77</sup> The Board has previously noted the mere potential  
2 for de-designation may drive up land values. As the Amici Farm Organizations<sup>78</sup> observed  
3 in a recent Pierce County Growth Management Hearings Board decision

4 *Amici* acknowledge zoning controls are not a *sufficient* guarantee that land  
5 will remain available for farming, but land use designations and the political  
6 will to enforce them are certainly a *necessary* condition for the industry's  
7 stability. *Amici* point out it is the "*flexibility of zoning laws*" that inflates land  
8 values and destabilizes the farm industry. *Amici* argue the Orton Junction  
9 de-designation of ARL and RF lands not only paves over 182 acres of prime  
10 farm lands but sends a signal to other farmers that zoning will not long  
11 protect them from urbanization, particularly if mere urban adjacency  
12 becomes the overriding factor in the de-designation analysis<sup>79</sup>

13 **j. Proximity to markets:**

14 One of the aims of the GMA is to "preserve agricultural land near our urban centers  
15 so that freshly grown food would be readily available to urban residents and the next  
16 generation could see food production and be disabused of the notion that food grows on  
17 supermarket shelves"<sup>80</sup> In this matter, the nearest town is Washougal, which is between  
18 one and two miles distant. Additionally, the major metropolitan markets of Vancouver and  
19 Portland are nearby.

20 Based on the discussion and findings above, the Board finds and concludes Area  
21 WB has long-term commercial significance for agricultural production, the *Lewis County*  
22 third prong. The Board's conclusion is based on consideration of the soil, growing capacity,  
23 and productivity, together with consideration of the factors set out in WAC 365-190-050(1).  
24 Eighty-two percent of Area WB is prime farmland. It therefore has the "soil quality, growing  
25 season, and moisture supply needed to economically produce sustained high yields of  
26  
27

28  
29 <sup>76</sup> See the *City of Redmond* decision where the Court observed "Presumably, in the case of agricultural land,  
30 it will always be financially more lucrative to develop such land for uses more intense than agriculture." *City of*  
*Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn 2d at 52.

31 <sup>77</sup> Ex 6605, Attachment A, p. 7

32 <sup>78</sup> Washington Sustainable Food and Farming Network, Cascade Harvest Coalition, Organically Grown  
Company, Tilth Producers, Terra Organics, Tahoma Farms, Let Us Farm, Washington State Farmers Market  
Association, and Charlie's Produce

<sup>79</sup> *Friends of Pierce County v. Pierce County*, GMHB Case No. 12-3-0002c, FDO, p. 54 (July 9, 2012)

<sup>80</sup> *City of Redmond*, 136 Wn 2d at 58

1 crops " In considering the WAC 365-190-050(1) factors, the Board finds and concludes  
2 Area WB lacks public facilities and services with the exception of being adjacent to a rural  
3 road, it is not located near an existing UGA, it is comprised of two large parcels, there is no  
4 evidence of incompatibility with agricultural practices, nearby uses are of low intensity, no  
5 land development has taken place in the area, and it is in close proximity to markets for  
6 agricultural products The fact land values would be higher if the Area was de-designated is  
7 the only factor supporting de-designation.  
8

9 Beyond the considerations referenced above, the Board notes the County's focus on  
10 economic opportunities in regards to Area WB as reflected in the BOCC [Board of County  
11 Commissioners] Deliberation/Decision column of the Matrix, the Final Environmental Impact  
12 Statement, Volume II, as well as a staff report

13 The low percentage of critical land and high percentage of prime ag soils  
14 only provide good farm land when there is access to water. There is no  
15 access to water in this sub area <sup>81</sup>

16 The area would serve a higher purpose if converted to employment land  
17 which would increase the tax base for the City It would also benefit the  
18 School District to assist in providing a better education for the children in the  
19 Washougal School District.

20 It was determined that this area be de-designated from agricultural use and  
21 brought into the UGB [urban growth boundary] as Employment  
22 Center/Business Park <sup>82</sup>

23 The Washougal UGA would expand to the northwest and northeast corners  
24 of the existing UGA and city limits for a mix of residential low-density,  
25 medium density, and high density uses A large area of employment  
26 center/business park would be added east of SE Lawton and SE Jennings  
27 road. <sup>83</sup>  
28  
29  
30

31 <sup>81</sup> While the comment regarding a lack of irrigation water appears to be accurate, the observation that the Area  
32 would only be good farmland dependent on access to water appears to be false. See the discussion above  
regarding Soils.

<sup>82</sup> Ex 6605, p 7

<sup>83</sup> Ex 2812-2813, p 21

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It was determined that both these sub-areas **would serve a higher purpose** as employment land, which would create more jobs, increase the tax base for the City and the benefit the School District<sup>84</sup> (emphasis added)

Elevating economic factors in regards to Area WB above the GMA goal to maintain and enhance agricultural lands and the agricultural industry reflects the same failing the Court of Appeals noted in discussing the La Center de-designated areas LB-1, LB-2, and LE. As the Court stated there

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 Wn 2d at 558 (analyzing the GMA's "[n]atural 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).<sup>85</sup>

**Conclusion**

Having considered the Briefs of the parties, oral argument, and having reviewed the entire record, and based on the discussion and findings above, the Board concludes the action of Clark County in de-designating Area WB was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of chapter 36 70A RCW. The Board concludes the County committed clear error in its analysis of the *Lewis County* test's third prong, that prong focusing on the long-term commercial significance of agricultural land. The Board finds and concludes the de-designation of Area WB failed to comply with RCW 36 70A 020(8) and RCW 36 70A 170

**VANCOUVER VA AND VANCOUVER VA-2**

In remanding this matter to the Board, the Court of Appeals stated

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

<sup>84</sup> Ex 6605, *20-Year Comprehensive Growth Management Plan 2004-2024*, Issue Paper # 7, p 4  
<sup>85</sup> *Clark County v W Wash Growth Mgml Hearings Bd*, 161 Wn App at 243

1 to the Growth Board for reconsideration of its decision on parcels VA and  
2 VA-2<sup>86</sup>

3 In addition, the Court stated

4 These parcels' relative proximity to all the development occurring in both  
5 UGAs, but particularly the Vancouver UGA, belies the Growth Board's  
6 conclusion that the VA and VA-2 parcels are not characterized by urban  
7 growth. It appears that the Growth Board's determination that the County  
8 committed clear error in the de-designation of these parcels was based on an  
9 error in the Growth Board's application of the statutory definition of  
10 "characterized by urban growth" in the first *Lewis County* prong. Accordingly,  
11 we remand to the Growth Board its decisions regarding parcels VA and VA-2  
12 for further consideration<sup>87</sup>

13 The parties disagree on the appropriate interpretation of the Court's remand directive  
14 The County and Intervenor suggest the court has decided the question of whether Areas  
15 VA and VA-2 are "characterized by urban growth" while Petitioners argue the question was  
16 returned to the Board for "reconsideration" or "further consideration." However, the fact all  
17 the parties briefed and argued the issue of whether Areas VA and VA-2 were "characterized  
18 by urban growth" illustrates they were unsure of the Court's intent

19 Based on the Board's review of the Court's decision, it concludes the matter has  
20 been decided Areas VA and VA-2 have been determined by the Court of Appeals to be  
21 "characterized by urban growth," the *Lewis County* first prong The Board bases that  
22 determination, in part, on the Court's use of the words "belies the Growth Board's  
23 conclusion"<sup>88</sup> The Court also employed the word "belies" in discussion of the de-  
24 designation of Areas LB-1, LB-2, and LE "All the evidence in the County's matrix belies a  
25 conclusion that parcels LB-1, LB-2, and LE are characterized by urban growth" The Court  
26 followed that observation with a statement that the Board correctly concluded the County  
27 erred in assessing the urban growth characteristics of the LaCenter parcels<sup>89</sup> There is little  
28  
29  
30

31 <sup>86</sup> *Id* at 246

32 <sup>87</sup> *Id* at 247

<sup>88</sup> Oxford Dictionary (American English) (US) fail to fulfill or justify (a claim or expectation), betray,  
[http://www.oxforddictionaries.com/us/definition/american\\_english/belie](http://www.oxforddictionaries.com/us/definition/american_english/belie)

<sup>89</sup> *Clark County v W Wash Growth Mgmt Hearings Bd*, 161 Wn App at 247

1 room to argue use of the word "belies" in the contexts employed by the Court leads to any  
2 other result

3 An additional factor supporting the Board's conclusion that the issue has been  
4 decided is the Court's decision to not consider other arguments challenging the Board's  
5 conclusions "Because we remand on these grounds, we need not consider other  
6 arguments such as a challenge to finding of fact 33 regarding the adequacy of the Growth  
7 Board's evaluation of the WAC factors for the VA and VA-2 parcels."<sup>90</sup>

8 Having reached that conclusion however, in light of previous appellate decisions  
9 directing the Board to consider all issues,<sup>91</sup> the likelihood this matter may once again be  
10 considered by the appellate courts, and the fact all parties briefed and argued the second  
11 and third *Lewis County* prongs, the Board deems it appropriate to address them As  
12 enunciated by the *Lewis County* court, they are  
13

- 14
- 15 2. Whether the land is primarily devoted to the commercial production of  
16 agricultural products enumerated in RCW 36 70A 030(2), including land  
17 in areas used or capable of being used for production based on land  
18 characteristics;<sup>92</sup>
  - 19 3 Whether the land has long-term commercial significance for agricultural  
20 production, as indicated by soil, growing capacity, productivity, and  
21 whether it is near population areas or vulnerable to more intense uses  
22 Counties may [in actuality, are "required to"] consider the development-  
23 related factors enumerated in WAC 365-190-050(1)

24 **Prong 2:**

25 This Prong requires consideration of whether land is primarily devoted to the  
26 commercial production of agricultural products, "including land in areas used or capable of  
27 use in agricultural production based on land characteristics " Land is so devoted if it is in an

28  
29 <sup>90</sup> *Id* , n 30 "Because we remand on these grounds, we need not consider other arguments such as a  
30 challenge to finding of fact 33 regarding the adequacy of the Growth Board's evaluation of the WAC factors for  
31 the VA and VA-2 parcels "

31 <sup>91</sup> See *Suquamish Tribe v Central Puget Sound Growth Mgmt Hearings Bd* , 156 Wn App at 778 Board  
32 had failed to decide all the issues presented for review "based on an erroneous legal conclusion that leads [the  
board] to either not decide or to inadequately decide an issue "

<sup>92</sup> See also *City of Redmond v Central Puget Sound Growth Mgmt Hearings Bd* , 136 Wn 2d at 53 We hold  
land is 'devoted to' agricultural use under RCW 36 70A 030 if it is in an area where the land is actually used or  
capable of being used for agricultural production "

1 area used or capable of being used for agricultural production<sup>93</sup> It is clear that both Areas  
2 VA and VA-2 have soils suitable for agriculture The Court of Appeals observation of the  
3 Board's conclusion when addressing Prong 2 in regards to the La Center Areas (LB-1, LB-2,  
4 and LE) provides guidance "All areas are capable of being farmed." In that regard, a  
5 comparison of the percentages of prime soils on the La Center areas with those on VA and  
6 VA-2 is noteworthy:

7 VA-86%, VA-2-59%  
8 LB-1-57%; LB-2-80%, LE-79%

9  
10 The percentages of prime soils in the Vancouver areas exceed those in the La Center  
11 areas

12 Additionally, both VA and VA-2 are located within "areas used or capable of being  
13 used" for agricultural production Not only were these areas designated as ALLTCS less  
14 than three years prior, additional lands to the southwest and northeast were so designated  
15 with several hundreds of acres to the Northeast remaining as designated agricultural lands  
16 following adoption of the Ordinance challenged in this matter The areas are described on  
17 the Matrix as being characterized by open fields, forested land, interspersed residences and  
18 farm buildings (VA), open fields, rural residential, farm buildings (VA-2) Similarly, nearby  
19 land uses are described for both areas as rural residential, open fields and forest land.<sup>94</sup>

20  
21 Holt Homes argues it has no intent nor does it currently use its portion of these areas  
22 for agricultural production Both Holt Homes and Birchwood Farms referred to the  
23 Globalwise, Inc<sup>95</sup> report which indicates there are no commercial farms within either of  
24 these areas.<sup>96</sup> However, the Supreme Court addressed the issue of landowner intent in the  
25 *City of Redmond* decision:

26  
27 there are compelling reasons against concluding the Legislature intended  
28 current use or landowner intent to control the designation of natural resource  
29 lands under the GMA. First, if current use were a criterion, GMA

30  
31 <sup>93</sup> *City of Redmond*, 136 Wn 2d at 53, and *Lewis County*, 157 Wn 2d at 502

32 <sup>94</sup> Ex 6605, p 5

<sup>95</sup> Ex 6548, *Analysis of the Agricultural Economic Trends and Conditions in Clark County, Washington*, April 16, 2007

<sup>96</sup> Intervenor Holt Homes, Inc 's Hearing Brief at 10, Intervenor-Respondent Birchwood Farms, LLC's Respondent's Brief at 10

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comprehensive plans would not be plans at all, but mere inventories of current land use. The GMA goal of maintaining and enhancing natural resource lands would have no force; it would be subordinate to each individual landowner's current use of the land.

. . . if landowner intent were the controlling factor, local jurisdictions would be powerless to preserve natural resource lands. Presumably, in the case of agricultural land, it will always be financially more lucrative to develop such land for uses more intense than agriculture.<sup>97</sup>

The Board finds and concludes Areas VA and VA-2 constitute land in areas used or capable of being used for agricultural production based on land characteristics.

**Prong 3:  
Growing Capacity, Productivity, Soil Composition**

Eighty-six percent of Area VA has prime agricultural soil while VA-2 has 59%. Prime farmland is described by the Code of Federal Regulations as "land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops."<sup>98</sup>

While the County and Intervenor argue physical constraints affect both areas, they acknowledge these areas have high quality farm soils.<sup>99</sup> Physical constraints, such as the presence of wetlands referenced by Intervenor, existed when these areas were first designated as ALLTCS and, furthermore, would not affect use of the areas as agricultural land.

**VA and VA-2 – WAC Factors**

**a. The availability of public facilities:**

Public facilities are defined by RCW 36 70A 030(12) and WAC 365-190-030(16) as including streets, roads, highways, sidewalks, street and road lighting systems, traffic

<sup>97</sup> *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn 2d at 52

<sup>98</sup> 7 CFR Ch. VI Part 657, Section 657.5(a)

<sup>99</sup> Clark County's Brief on Remand at 8, Intervenor Holt Homes, Inc.'s Hearing Brief at 10, Intervenor-Respondent Birchwood Farms, LLC's Respondent's Brief at 11

1 signals, domestic water systems, storm and sanitary sewer systems, parks and recreational  
2 facilities, and schools. A map shows a water line at the southern edge of Area VA, however  
3 it does not appear there is any public water service provided to VA.<sup>100</sup> Nor does the map  
4 indicate any water lines near Area VA-2. There are no sewer lines near either area. NE  
5 179<sup>th</sup> abuts the southern edge of Area VA and NE 50<sup>th</sup> lies along the eastern boundary of  
6 both areas. NE 179<sup>th</sup> abutting VA is a two-lane principal arterial while NE 50<sup>th</sup> abutting VA-2  
7 is a two-lane rural minor collector with shoulders.<sup>101</sup> The Matrix mentions no other public  
8 facilities in the area.

9  
10 Birchwood Farms points to information in the Record that water and sewer service  
11 can be made available to these areas.<sup>102</sup> Both Birchwood Farms and Holt Homes also  
12 argue the County has plans to improve the adjacent roads although no timeline for such  
13 work appears in the Record.

14  
15 The information addressing the availability of utility services as well as future road  
16 improvements appears to be speculative. It is clear that at the time of the County's decision  
17 to de-designate these areas, the only public facilities were the water lines adjacent to VA,  
18 NE 179<sup>th</sup> and NE 50<sup>th</sup>.

19  
20 **b. Tax status.**

21  
22 Forty percent of the land in VA is enrolled in the current use taxation program  
23 (chapter 84.34 RCW) while none of the land in VA-2 is so enrolled. Some agricultural  
24 production is required to qualify and remain in the current use agricultural taxation program  
25 of chapter 84.34 RCW. See RCW 84.34.020(2).

26  
27 **c. The availability of public services:**

28 Public services are defined by RCW 36.70A.030(13) and WAC 365-190-030(17) as  
29 including fire protection and suppression, law enforcement, public health, education,  
30 recreation, environmental protection, and other governmental services. Any such services  
31

32  
<sup>100</sup> Ex 6605, Map titled *Comprehensive Growth Management Plan NW Vancouver UGA –Map 1*

<sup>101</sup> Ex B attached to Intervenor Holt Homes' Hearing Brief

<sup>102</sup> Ex 5306, letter from Olson Engineering, Inc. dated October 26, 2005



1 would be provided to Areas VA and VA-2 by Clark County as the areas are within the  
2 unincorporated portion of the County The Matrix makes no specific reference to any public  
3 services/facilities in the area (with the exception of the water line bordering VA) Clark  
4 County asserts there is a school within two miles of VA-2 and it references the water line  
5 adjacent to VA, at a distance of one-half mile.<sup>103</sup>  
6

7 **d. Relation or proximity to urban growth areas:**

8 Areas VA and VA-2 are adjacent to each other with the latter lying to the north. Prior  
9 to the expansion of the UGA boundary in 2007, these areas were a significant but  
10 indeterminate distance (based on the Record) from the nearest boundary of the Vancouver  
11 UGA and approximately two miles from the Battle Ground UGA The city limits of Vancouver  
12 and Battle Ground lie beyond the UGA boundaries  
13

14 Birchwood Farms and Holt Homes point to a Washington State University facility and  
15 Legacy Hospital, describing them as "nearby;" and Holt argues the area surrounding VA is  
16 "intensely urbanizing "<sup>104</sup> The Petitioners estimate the WSU facility is nearly one mile from  
17 Area VA while Legacy Hospital is estimated to be more than two miles <sup>105</sup> Those distances  
18 were not refuted although Intervenor argued at the Hearing on the Merits that the northern  
19 boundary of the WSU real property was much nearer.  
20

21  
22 **e. Predominant parcel size:**

23 Area VA totals 125 acres <sup>106</sup> Nearly all of that acreage is owned by Intervenor Holt  
24 Homes and Birchwood Farms <sup>107</sup> The four parcels in Area VA vary from 11 to 75 acres <sup>108</sup>  
25 The median parcel size is 31.25 acres VA-2 is 23 acres made up of three parcels ranging in  
26  
27  
28  
29

30 <sup>103</sup> Clark County's Brief on Remand at 8

31 <sup>104</sup> Intervenor Holt Homes, Inc 's Hearing Brief at 13, Intervenor-Respondent Birchwood Farms, LLC's  
Respondent's Brief at 13

32 <sup>105</sup> Petitioners' Reply Brief at 17

<sup>106</sup> Ex 6605, p 7

<sup>107</sup> Ex 246, p. 1 and Ex 250, p 2

<sup>108</sup> Ex 6605, p 7

1 size from approximately 1 to 18 acres. Clark County's farms averaged 44 acres in 2002 and  
2 there were 471 farms of between one and nine acres located in the County that year.<sup>109</sup>

3  
4 **f. Land use settlement patterns and compatibility with agricultural practices:**

5 As set forth above, the land uses of the area surrounding both VA and VA-2 consist  
6 of rural residential, open fields, and forested land<sup>110</sup> There is no evidence in the Record that  
7 indicates concerns regarding compatibility with agricultural practices.

8  
9 **g. Intensity of nearby land uses:**

10 The surrounding development is of low intensity (rural residential, open fields, and  
11 forested land<sup>111</sup>) including land designated as ALLTCS<sup>112</sup> The nearest more intense  
12 development includes the aforementioned WSU facility, a subdivision to the Southwest, and  
13 a freeway interchange to the West. None of those could be characterized as "nearby"  
14 although actual distances cannot be discerned from the Record. The aerial photographs of  
15 the Northwest Vancouver area included with Exhibit 6634A provide the best information in  
16 that regard

17  
18  
19 **h. History of land development permits issued nearby:**

20 Urban development in the area did not exist according to the Matrix "No urban  
21 development permits in process within the vicinity" of the two subareas<sup>113</sup>

22  
23 **i. Land values under alternative uses:**

24 Land values would clearly be higher if taken out of agriculture, rezoned, and added to  
25 the Vancouver UGA See discussion of this factor in the Board's analysis of Area WB  
26  
27  
28  
29

30 <sup>109</sup> Ex 6634, *2002 Census of Agriculture, Washington State and County Data*, Volume 1, Geographic Area  
31 Series, Part 47 (June, 2004), p 238

<sup>110</sup> Ex 6605, p 7

32 <sup>111</sup> Ex 6605, Attachment A July 5, 2007, and August 14, 2007, BOCC Tentative Land Use Map Agricultural  
Analysis Deliberation and Decision, p 5 (10/9/2007)

<sup>112</sup> Ex 6605, Map entitled *NW Vancouver UGA-Map1*

<sup>113</sup> Ex 6605, p 7

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**J. Proximity to markets:**

The nearest markets for agricultural products are Vancouver, Battle Ground, and, for Area VA-2, Ridgefield

The Board acknowledges jurisdictions have discretion when considering de-designation of natural resource lands including whether an area has long-term commercial significance for agricultural production. Lewis County's Prong 3 requires analysis of the soil, growing capacity, productivity, and whether the property is near population areas or vulnerable to more intense uses. The latter have been referred to as the development related factors of WAC 365-190-050(1). In this matter, based on the discussion and findings above, the Board finds and concludes Areas VA and VA-2 have long-term commercial significance for agricultural production. That conclusion is based on consideration of the soil, growing capacity, and productivity, as well as consideration of the WAC 365-190-050(1) factors. Both areas include significant areas of prime farmland. They have the "soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops." As to the WAC 365-190-050(1) factors, the Board finds and concludes: VA and VA-2 lack significant public facilities and services, were not located near then-existing UGAs, are made up primarily of large parcel/ownership sizes, there is no evidence of incompatibility with agricultural practices, nearby uses are of low intensity, there has been no land development in the area, and they are in close proximity to markets for agricultural products. The sole WAC factor militating in favor of de-designation is the fact land values would be higher should that decision be made.

**ORDER**

Based upon the decision of the Court of Appeals in *Clark County v W Wash Growth Mgmt Hearings Board*, 161 Wn App 204, review of the briefs and exhibits submitted by the parties, the entire record, the GMA, prior Board orders and case law, and having considered the arguments of the parties and having deliberated on the matter, the Board **ORDERS**

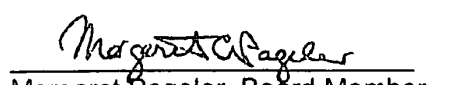
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1. The Petitioners are unable to meet their burden of proof to establish violations involving Areas VA and VA-2 as that question was addressed and resolved by the decision of the Court of Appeals;
2. The Petitioners have met their burden of proof to establish Clark County failed to comply with 36.70A.050(3) and 36 70A.170(1) & (2) in de-designating Area WB. Because that decision was not adopted in compliance with the GMA, the portion of Clark County Ordinance 2007-09-13 de-designating Area WB was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA;
3. The Board found and concluded in the Amended Final Decision and Order that the action of Clark County in de-designating Area WB substantially interfered with RCW 36 70A 020(8) and invalidated that portion of Ordinance No. 2007-09-13 as it pertained to Area WB.<sup>114</sup> The Board affirms and continues that determination of Invalidity with this Order
4. Findings and Conclusions in the June 3, 2008, Amended Final Decision and Order addressing the question of whether Area WB had long term commercial significance for agricultural production are supplemented as set forth in the body of this Order

Entered this 11<sup>th</sup> day of March, 2014

  
William Roehl, Board Member

  
Nina Carter, Board Member

  
Margaret Pageler, Board Member

<sup>114</sup> Amended Final Decision and Order, p 72 (June 3, 2008)

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**Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.5<sup>115</sup>**

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<sup>115</sup> Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order WAC 242-03-830(1), -840 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050 See RCW 36.70A.300(5) and WAC 242-03-970 It is incumbent upon the parties to review all applicable statutes and rules The staff of the Growth Management Hearings Board is not authorized to provide legal advice

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**BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION**

Case No 07-2-0027

John Karpinski, Clark County Natural Resources Council and Futurewise  
v Clark County, et al

**DECLARATION OF SERVICE**

I, LYNN TRUONG, under penalty of perjury under the laws of the State of Washington, declare as follows

I am the Office Assistant for the Growth Management Hearings Board On the date indicated below a copy of the FINAL DECISION AND ORDER ON REMAND [AREAS WB, VA, AND VA-2] in the above-entitled case was sent to the following through the United States postal mail service.

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DATED this 11th day of March, 2014

  
Lynn Truong, Office Assistant