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4 **State of Washington**
5 **GROWTH MANAGEMENT HEARINGS BOARD**
6 **FOR EASTERN WASHINGTON**

7 WENAS CITIZENS ASSOCIATION et al.,

Case No. 02-1-0008

8 Petitioner,

ORDER ON REMAND

9 v.

10 YAKIMA COUNTY,

11 Respondent,

12 JIM CATON,

13 Intervenor.
14

15 **I. SUMMARY OF DECISION**

16 The majority of the Eastern Washington Growth Management Hearings Board
17 (Board) has determined that Wenas Citizens Association and Brent Brune (Petitioners) have
18 carried their burden of proof and find that Yakima County (Respondent) has failed to
19 preserve agricultural lands of long-term significance and is out of compliance with the
20 Growth Management Act.

21 The Final Decision and Order for this case was issued October 4, 2002. It was
22 appealed by the Respondent and Intervenor to the Yakima County Superior Court and
23 subsequently reversed. After a motion for reconsideration was denied, the Petitioners filed
24 an appeal to the Court of Appeals, which upheld the lower courts decision, but remanded
25 the case back to the Board for further proceedings consistent with the decision.
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1 The Court of Appeals found the Board improperly shifted the burden of proof to the
2 County and the Catons (Intervenors) and the Board erroneously applied a heightened
3 standard of review to the decision to re-designate the land.

4 The Hearings Boards are charged by statute with adjudicating the Growth
5 Management Act (GMA) compliance and, when necessary, with invalidating Comprehensive
6 Plans and development regulations. *King County v. Central Puget Sound Growth*
7 *Management Hearings Board*, 142 Wn.2d 543, 552 (2000), citing RCW 36.70A. A Board
8 "shall find compliance unless it determines that the action by the state agency, county, or
9 city is clearly erroneous in view of the entire record before the Board and in light of the
10 goals and requirements of [the GMA]." RCW 36.70A.320(3). To find an action "clearly
11 erroneous," the Board must be "left with the firm and definite conviction that a mistake has
12 been committed." *King County*, 142 Wn2d at 552.

13 While the Board is required to presume validity of a county's Comprehensive Plan
14 amendments, *King County*, 142 Wn2d at 561, the Board must only defer where policy
15 choices are consistent with the GMA. *Thurston County v. Cooper Point Association*, 148
16 Wn2d 1, 14 (2002).

17 The Board finds from a reevaluation of the record that the Petitioners have shown
18 the Caton's land meets the Growth Management Act's definition of agricultural land and the
19 County did not meet its own criteria for amending resource designations in Plan 2015, as
20 set forth in Yakima County Code 16B.10.040.

21 The Board concludes that the record lacks any evidence in the following areas: (1)
22 an error in the original designation of the land as agricultural resource lands of long-term
23 commercial significance; the absence of an obvious mapping error; evidence that the lands
24 in question are not agricultural resource lands; or the change to residential low-density rural
25 lots is needed.

26 The Board recognizes the great need to preserve the Agricultural Resource lands of
Washington, yet the actions of the County are presumed valid and the Petitioners have the

1 burden of proving by clear, cogent and convincing evidence that the actions of the County
2 are clearly erroneous in view of the entire record before the Board and in light of the goals
3 and requirements of the Growth Management Act (GMA). For the Board to find the County's
4 action clearly erroneous, the Board must be left with the "firm and definite conviction that a
5 mistake had been made." The Petitioners have provided clear, cogent and convincing
6 evidence that Yakima County is out of compliance with the GMA.

7 **II. PROCEDURAL HISTORY**

8 On April 9, 2002, WENAS CITIZENS ASSOCIATION, by and through its attorney,
9 David Mann, filed a Petition for Review.

10 On May 29, 2002, Petitioner's filed their Motion to Supplement or Amend the Record.

11 On May 29, 2002, Respondent filed Respondent's Motion to Dismiss for Lack of
12 Standing.

13 On June 17, 2002, Petitioners filed their Voluntary Dismissal of all Issues Pertaining
14 to the Yakima County ZON 01-12. The Board issued an Amended Order of Dismissal on
15 June 24, 2002, dismissing ZON 01-12.

16 On June 25, 2002, the Board held a telephonic Motions Hearing in the above
17 referenced matter. All parties were present and represented. On June 27, 2002, the Board
18 issued its Motions Order.

19 On September 23, 2002, the Board found the County's actions were clearly
20 erroneous and did not comply with the GMA and they were found out of compliance for
21 failure to properly designate and preserve their Agricultural Resource Lands.

22 The Catons and Yakima County appealed this matter to the Superior Court, which
23 reversed the Board's decision on September 6, 2003, and reinstated the amendment.

24 The Petitioners appealed this decision to the Court of Appeals, which remanded the
25 decision to the Hearings Board on December 2, 2004, for further proceedings consistent
26 with their opinion.

1 **III. FACTS OF CASE**

2 Yakima County adopted its Comprehensive Plan (Plan 2015) on May 20, 1997. The
3 Plan designated the Caton property as Agricultural Resource lands of long-term commercial
4 significance. This designation limited division of this land to parcels of not less than 40
5 acres.

6 The property currently has a single-family home site, vacant land, and a demolition
7 waste landfill. There are several soil types--none of which are classified as "prime farmland"
8 (defined as land of prime soils with annual moisture (rainfall or irrigation) that meets USDA
9 Soil Survey criteria. *USDA Soil Survey*, CC16, p. 142.) The County's mapping criteria
10 requires only that the property "may" contain prime soils in order to be classified as
11 Agricultural Resource lands. The property has no current water rights and is not within an
12 irrigation district. From 1986 through 1997, 795 acres of the Caton property were enrolled
13 in the Federal Conservation Reserve Program.

14 In 2001, the Catons applied for an amendment to the Yakima County Comprehensive
15 Plan 2015. They initially sought to change the designation of 1,770 acres from Agricultural
16 Resource to Rural Self-Sufficient. On October 24, 2001, the Catons' modified their
17 application and asked to change the designation of only 1,086 acres of the 1,770 original
18 acres. The modification also sought to change the zoning of the 1,086 acres from
19 Agricultural to Valley Rural--a change that would reduce the minimum lot size from 40 acres
20 to 5 acres.

21 The Yakima planning department staff recommended denying the amendment. While
22 staff did not believe the subject property was appropriately designated Agricultural
23 Resource, it also did not think a Rural Self-Sufficient designation and Valley Rural zoning
24 was the proper land use designation and zoning for this property.

25 Claiming the amendment better implemented Plan 2015 and corrected an obvious
26 mapping error, the Planning Commission (PC) recommended to the Board of County
Commissioners (BOCC) that the Caton property be designated Rural Self-Sufficient and,

1 rather than a 5-acre minimum as allowed in the Valley Rural zone, they voted to
2 recommend a 10-acre minimum, indicating in their discussion a 5-acre minimum was too
3 dense a development and inappropriate for the area. *PC meeting minutes*, Nov. 7, 2001,
4 pg. 29. They also requested that all roads be built to county road standards.

5 The County Commissioners approved the amendment and redesignated the 1,086
6 acres from Agricultural Resource to Rural Self-Sufficient (Valley Rural) with the adoption of
7 ZON 01-14 on February 5, 2002. The BOCC did not accept the planning staff's concerns or
8 the Planning Commission's minimum lot recommendation. The BOCC changes allowed
subdivisions with lot sizes as small as five acres on the Caton property.

9 **IV. REMAND FROM COURT OF APPEALS**

10 On December 2, 2004, the Washington State Court of Appeals, in *Yakima County v.*
11 *E. Wash. Growth Mgmt. Hearings Bd.*, 2004 WL 2750786 (Wash. Ct. App., Div. 32004),
12 remanded this matter to the Eastern Washington Growth Management Hearings Board
13 (Board).

14 The Court of Appeals (Court) first determined whether or not the Board applied the
15 proper standard of review. In reviewing a municipality's actions, the Board must presume
16 the comprehensive plan and ensuing regulations are valid. *City of Redmond v. Cet. Puget*
17 *Sound Growth Management Hearings Board*. 116 Wn.App. 48, 55, 65 P.3d 337 review
18 denied, 150 Wn.2d 1007 (2003). The party petitioning the Board has the burden to show
19 noncompliance and the Board must find compliance unless the action is clearly erroneous.
20 The Court found that the Board erred by shifting the burden of proof to the County and the
21 Cantons. The Board was required to presume the Comprehensive Plan and ensuing
regulations were valid. *City of Redmond*, 116 Wn.App. at 58.

22 The Court of Appeals also found that the Board erred by applying "heightened
23 scrutiny" to this case by citing a Central Puget Sound Hearings Board decision, which
24 Division One of the Court of Appeals rejected. That Appeals Court found the Central Puget
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1 Sound Hearings Board was in error by applying "heightened scrutiny" to the decision to re-
2 designate the land. *City of Redmond*, 116 Wn.App. at 58.

3 In addition, the Court found that the Board failed to apply the particular facts in this
4 case to the definition of 'agricultural land.' The Board's decision focused on the element of
5 whether the land was 'primarily devoted to' agricultural purposes, and decided the petition
6 solely on that element. Thus, it did not address the issue of 'long-term commercial
7 significance for agricultural production.' The Board must evaluate the growing capacity,
8 productivity and soil composition, proximity to population areas, and the possibility of more
9 intense uses of the land in question before it decides the area must be designated
10 'agricultural land.' The Court also found that the Board had not analyzed the facts in relation
11 to the criteria for the County amending Plan 2015. Because the Board made no factual
12 findings regarding any of the criteria, the Board's conclusion is not supported, nor could it
13 be sustained. The Board must analyze the facts in relation to the criteria for the County
amending Plan 2015.

14 Finally, the Court of Appeals decided that, "Whether the amendment complied with
15 the GMA, however, is a matter within the Board's discretion. Accordingly, the Yakima
16 County Superior Court should have remanded this matter to the Board, unless doing so is
impracticable or would cause delay." Yakima, supra p. 4.

17 The Board was directed by the Court of Appeals to consider whether the Caton's
18 property meets the statutory definition of agricultural land and complies with the GMA. The
19 Board must properly apply the correct burden of proof and the presumption that the
20 County's amendment is valid; analyze how the facts of this case apply to the two elements
21 of the statutory definition of agricultural lands of long-term commercial significance; and,
22 analyze the facts in relation to the criteria for the County amending Plan 20015.

23 **V. FINDINGS OF FACT**

- 24 1. In 1982, the subject property, consisting of 1086 acres, was zoned
25 Exclusive Agriculture by Yakima County.

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2. In 1997, the subject property was given the designation of Agriculture Resource land by Yakima County's GMA Comprehensive Plan, known as Plan 2015.
3. The subject property is taxed at a lower rate in a category for open space, farm and agricultural land pursuant to RCW 84.34.020.
4. The subject property is currently being used commercially for grazing cattle and has historically been used for this activity.
5. The property has excellent soils for dry land farming, including Cowiche loam, considered "prime" when irrigated and located on land with slopes of 0-5%.
6. The property: (1) has soils that can produce in the top 30 percent of county-wide rangeland production values (yield) during favorable precipitation years (1,200 lbs. per acre) and normal precipitation years (800 lbs. per acre), and within the top 19% of county-wide rangeland production values during unfavorable precipitation years (over 400 lbs. per acre).
7. Some of the soils on the Caton property ranked in the top 7.4% and top 1.5% in Yakima County for range land production.
8. The property has soils that have a high available water capacity and the effective rooting depth is 60 inches or more, which is ideal for agricultural production.
9. The property of 1086 acres, as now configured without the steeper slopes, is farmable for grass hay and winter wheat with summer fallow, as was historically farmed.
10. The property has been historically dry land wheat farmed by the Catons.
11. The property has been planted in natural vegetation and the Catons were paid annually for eleven years by the U.S.D.A. under the CRP program.

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12. The property is isolated outside of the nearest established Urban Growth Area, the City of Naches (pop. 643), by approximately two miles. It is surrounded by rural lands designated Agricultural Resource.
13. A portion of the subject property, 794.9 acres, was enrolled in the Conservation Reserve Program (CRP) from 1986 to 1997. The purpose of the plan participation was soil protection. CRP establishes compensation rates based upon soil in a classification. Based upon the map unit symbols (Soil Units 26, 98, and 27) and compensation rate for each, the Caton property was in the medium compensation rate for soil rental rates. Evidence submitted by Brian D. Miller, Nov. 14, 2002, Soil/Payment Rate Table for CRP Bid Caps.
14. On February 5, 2002, the Board of County Commissioners adopted Ordinance 1-2002, changing the designation of the subject property from Agricultural Resource to Rural Self-Sufficient, and adopted Amendment ZON 01-14, rezoning the property from Agricultural to Valley Rural.
15. The land capability classification for each soil map unit of the subject property indicates that the Caton property has limitations that reduce the choice of crops. (Capability classes III, IV and VII.), but does not eliminate others. There are no "prime" farmland soils on the site, as defined and established by the land-capability classification system of the USDA Soil Conservation Service.
16. The property's Cowiche soils are, according to the Respondent's brief, "not suited to the crop or the crop is generally not grown on the soil", in reference to winter wheat, alfalfa, corn, asparagus or distillate mint, although historically the land was wheat farmed and produced 36 bushels per acre.
17. The property has no water rights and does not lie within an irrigation district, although according to well driller, Vernon Rank, who drilled six (6) wells adjacent to the properties, confirmed that the aquifer "is substantial, for any amount of homes that the Catons or anyone else want to build." (PC 59).

1 **VI. STANDARD OF REVIEW**

2 The Board is charged with adjudicating GMA compliance and, when necessary, with
3 invalidating noncompliant comprehensive plans and development regulations." *King County*
4 *v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000)
5 (citing RCW 36.70A.280, .302). The Board shall find compliance unless it determines that
6 the action by the state agency, county, or city is clearly erroneous in view of the entire
7 record before the Board and in light of the goals and requirements of [the GMA]." *Id.*
8 (quoting RCW 36.70A.320(3)). An action is "clearly erroneous" if the Board is "left with the
9 firm and definite conviction that a mistake has been committed." *Id.*, (quoting *Dep't of*
10 *Ecology v. Pub. Util. Dist. No. 1121* Wn.2d 179, 201, 849 P.2d 646 (1993), *aff'd*, 511 U.S.
11 700, 114 S. Ct. 1900, 128 L. Ed. 2d 716 (1994)).

12 **VII. LEGAL ISSUES AND DISCUSSION**

13 **A. The Court of Appeals directed the Board to determine how the facts of this**
14 **case apply to the two elements of the statutory definition of agricultural lands of**
15 **long-term commercial significance.**

16 **Petitioners' Position:**

17 The Petitioners contend the property that is the subject of this appeal is Agricultural
18 Resource land of long-term commercial significance. They contend that Agricultural
19 Resource lands do not have to be "prime" farmland soils to qualify. To require such would
20 eliminate a significant portion of Yakima County's Agricultural Resource lands. Even if the
21 subject lands would not qualify as "prime" farm land, as reported by the USDA Soil Survey,
22 the land underlying much of the Caton property contains "prime" soils and the land should
23 be considered "prime" productive dry land and rangeland. The Petitioners contend the
24 record demonstrates that this land falls within the top 30% of countywide rangeland
25 production during favorable and normal years and within the top 19% of countywide
26 rangeland production values during unfavorable years. (Wes Hazen testimony, tapes CC20).
They contend that this evidence demonstrates clearly the subject property is capable of
long-term commercial production.

1 The Petitioners further contend that the soil survey descriptions of the predominant
2 soils on the Caton property prove these soils are quite extensive in their use for agriculture.
3 [CC16 (Soil Survey), pp. 29-31].

4 The Petitioner contends also that, while the County did not determine that the soil
5 underlying the Caton Property has the growing capacity and productivity composition for
6 long-term commercial production, the Planning Commission did. The Planning Commission
7 focused their attention on the productivity of the underlying soils. The Transcripts appear to
8 the Petitioners to show a consensus among the Planning Commissioners that the Caton's
9 soils were fine. (See Transcripts of November 7, 2001 Planning Commission meeting, tape
1, pp. 2-4; also Tape 2 at p. 22.)

10 The Petitioner then addresses the question of whether the Caton property is
11 "devoted to commercial production." They contend that, while its current use may be
12 considered, it is not determinative. They contend that the most important inquiry is whether
13 the land is capable of long-term commercial production. They believe there is substantial
14 evidence in the record supporting a finding that the Caton property had been and was still
15 capable of being used for commercial agricultural production. They point out that the land
16 had historically been dry land farmed for wheat, with an average bushel rate of 36 bushels
17 per acre, a slight bit better than the County's overall 35 bushels per acre. (PC39 at 3.)
18 Currently, the Petitioners argue, the property is being used for grazing – an agricultural use.
(PC49.) It is also currently being assessed and taxed as agricultural land. (CC13.)
19 Furthermore, a substantial portion of the property, 795 acres, was in the Conservation
20 Reserve Program from 1986 to 1997 bringing in an annual compensation based upon soil
21 productivity classifications prepared by USDA – Soil Conservation Service, plus cost-share
22 assistance for up to 50 percent of the participant's costs in establishing approved
23 conservation practices. According to Brian Miller, County Executive Director of the USDA –
24 Farm Service Agency, the 2000 Approved Soil/Payment Rate Table indicates the

1 compensation rate for the Caton property (Soil Units 26, 98 and 27), if enrolled, would be
2 \$41.77 per acre. (Declaration of Brian Miller, Nov. 14, 2002.)

3 The Petitioners contend the subject property meets Yakima County's criteria for
4 "Agricultural Resource" designation. The Petitioner listed the criteria in Plan 2015: (1) the
5 Cowiche soils on the Caton property, but at 8 – 15% and 15 – 30% slope, are the same
6 soils designated as "prime farmland" with slopes of between 0 – 5%. Regardless, it is
7 excellent soil for the production of rangeland grasses. (2) The Caton property was
8 historically zoned exclusive agricultural. (3) While not within a irrigation district, the lands
9 are certainly where "dry land farming, pasture or grazing, outside of irrigation districts,
10 predominates." (4) Until very recently, the property was enrolled in one of the current use
11 assessment programs. 5) The property is located outside of an established urban growth
12 area.

12 **Respondent's Position:**

13 Yakima County, the Respondent, believes the Petitioners have not carried their burden
14 of proof. They contend that the Board must apply the facts in the Record to the definition of
15 Agricultural Land set forth in RCW 36.70A.030(2) and implementing WACs. The County
16 contends that its previous briefing and the Record support the County's conclusion that the
17 Caton property is not agricultural land of long-term significance under the GMA statutory
18 definition.

19 The County pointed out that, in accessing the property's compliance with the
20 Agricultural Resource mapping criteria contained in Plan 2015, the planning staff concluded:

21 The property does not have the characteristics of viable agricultural lands of
22 long-term commercial significance. The current comprehensive plan
23 designation of Agriculture is inappropriate for this area. However, as
24 discussed in 1997, the Agriculture Resource designation does provide more
25 options than the Rural Remote designation. (CC1 at 5.)
26

1 In accessing the properties compliance with the mapping criteria for Rural Self-
2 sufficient areas contained in Plan 2015, the planning staff again concluded that the
3 Agricultural Resource designation for the property was inappropriate:

4 The proposal was not consistent with the Agricultural Resource designation,
5 but is even less consistent with the Rural Self-Sufficient designation. (CC1, at
6 6.)

7 The County goes on to reject the Petitioner's claim that the subject land be
8 reclassified as "prime productive dry land and rangeland soils". They contend this is based
9 upon the subjective opinions of Mr. Green and Mr. Hazen. The County believes that this
10 kind of speculation is useless as a tool for designating agricultural resource lands. The
11 County believes the Caton property should be judged on its own merits. The County
12 contends the property has poor soil, no water and difficult terrain for farming. In light of the
13 presumption of validity, the Board must afford ZON 01-14 and the deference due Yakima
14 County in designating and protecting its natural resource lands of significance. The County
15 believes the Board cannot conclude that the County's action was clearly erroneous. Site
16 includes steep slopes and highly erodible soil. The land is not within an irrigation district or
17 served by irrigation water.

18 **Intervenor's Position:**

19 The Intervenor points out the factors that led to the conclusion that re-designation
20 was appropriate under applicable law. Among the factors they contend support the re-
21 designation were the following:

- 22 1. Caton property fails to meet USDA Soil Survey criteria for "prime
23 farmland".
- 24 2. Soil Survey – Table 5 indicates the property is not suited for the
25 production of any commercial crop.
- 26 3. The property is not within an irrigation district or served by irrigation
water. Annual precipitation will not support dry land farming. No

1 evidence exists that this land is commercially viable with or without
2 water.

3 4. Site includes steep slopes and highly erodible soil and these factors
4 present severe limitations on commercial farming of the property.

5 5. An inert landfill is located on the central portion of the property.

6 6. Current and former owners testified that the property is not viable for
7 commercial farming operations. There is no dry land farming in the
8 immediate vicinity.

9 7. The Intervenors claim the re-designation received unanimous support
10 from adjoining municipality; school, fire and special use district; and
11 adjoining property owners. They claim no agency objections were
12 received during the planning process.

13 8. They further claim that re-designation was supported by the
14 Department of Natural Resources.

15 9. There are sixty soil map units that produce a greater yield per acres of
16 winter wheat than the Caton property.

17 10. Dry land farming is not predominate in the area.

18 11. Rangeland cattle operations are not feasible on the site. (PC 14.)

19 The Intervenor contends that the Petitioners have not listed a single commercial crop
20 suitable for commercial production on the Caton property. They believe that no credible
21 independent evidence exists to support the proposition that this property is commercially
22 productive agricultural lands. The arguments made by the Petitioners are directly refuted by
23 Soil Survey – Table 5.

24 The Intervenor believes that the review is not de novo, but recognizes that the local
25 jurisdiction is vested with authority to weigh and evaluate evidence, determine credibility of
26 witnesses and apply statutory and legal standards to an application. They state that Wenas
Citizens Association offers only a difference of opinion and that alone is insufficient to

1 overcome the presumption of validity and satisfy the required burden of proof. There is no
2 challenge in this case to legal standards applied by Yakima County, just a disagreement as
3 to the conclusions reached.

4 **Discussion:**

5 Yakima County is required to designate and conserve agricultural resource lands
6 within their jurisdiction.

7 RCW 36.70A.020(8) requires Counties to:

8 Maintain and enhance natural resource – based industries, including
9 productive timber, agricultural, fisheries industries. Encourage the
10 conservation of productive forestlands and productive agricultural lands, and
11 discourage incompatible uses.

12 In order to meet this goal, GMA planning counties were required, by September 1,
13 1991, to designate:

14 (a) Agricultural lands that are not already characterized by urban growth
15 and that have long-term significance for the commercial production of
16 food or other agricultural products;

17 RCW 36.70A.170(1)(a).

18 RCW 36.70A.060(1) Mandates, **once these lands are designated they must**
19 **further be protected:**

20 [e]ach county ... shall adopt development regulations ... to assure the
21 conservation of agriculture, forest, and mineral resource lands designated
22 under RCW 36.70A.170. ... Such regulations shall assure that the use of lands
23 adjacent to agricultural, forest or mineral resource lands shall not interfere
24 with the continued use ... of these designated lands for the production of
25 food, agricultural products, or timber ...

26 The Washington Supreme Court has summarized these three provisions as follows:

**[w]hen read together, RCW 36.70A.020(8), RCW 36.70A.060(1) and
RCW 36.70A.170 evidence a legislative mandate for the conservation
of agricultural land. King County v. Central Puget Sound Growth
Management Hearings Board, 142 Wn.2d 543, 562 (2000).**

1 The Supreme Court's summary in *King County*, was premised on a lengthy review of
2 the plain language of the GMA and its legislative history.

3 In seeking to address the problem of growth management in our state, the
4 Legislature paid particular attention to agricultural lands. One of the 13
5 planning goals of the GMA addresses natural resource industries: "Maintain
6 and enhance natural resource-based industries, including productive timber,
7 agricultural, and fisheries industries. Encourage the conservation of productive
8 forest lands and productive agricultural lands, and discourage incompatible
9 uses." RCW 36.70A.020(8). The purpose is to "assure the conservation" of
these lands. RCW 36.70A.060(1). A more recent indication of the Legislature's
concern for preserving agricultural lands is a new section the Legislature
added in its 1997 amendments to the GMA, RCW 36.70A.177, which urges
employment of "innovative zoning techniques" to conserve agricultural lands.

10 The GMA set aside special lands it refers to as "natural resource lands," which
11 include agricultural, forest, and mineral resource lands. "Natural resource
12 lands are protected not for the sake of their ecological role but to ensure the
13 viability of the resource-based industries that depend on them. Allowing
14 conversion of resource lands to other uses or allowing incompatible uses
15 nearby impairs the viability of the resource industry." Richard L. Settle &
16 Charles G. Gavigan, *The Growth Management Revolution in Washington: Past,*
17 *Present, and Future*, 16 U. Puget Sound L. REV. 867, 907 (1993).

18 *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d
19 38, 47-48 (1998). See also *Williams v. Kittitas County*, EWGMHB No. 95-1-0009 (Order of
20 Noncompliance, November 6, 1998); *Grant County Association of Realtors v. Grant County*,
21 *EWGMHB* No. 99-1-0018 (FDO, May 23, 2000).

22 Thus, there can be no dispute that the GMA mandates counties to take action to
23 conserve their agricultural lands. As this Board has found before, local governments are
24 required to "make efforts to include, rather than exclude, agricultural lands, preserving
25 those parcels for future natural resource-based industries." *Grant County*. *Supra*.

26 The Board, in its earlier decision looked at three factors in its determination that the
property was agricultural land that had long-term commercial significance: (1) the type of
soil, (2) the potential for irrigation or water, and (3) the current use. (The Board

1 incorporates these findings from it's FDO into this Order, with the exception of *City of*
2 *Redmond*, 116 Wn.App. at 58). These were considered when it determined that Yakima
3 County erred in concluding the Caton property was not agricultural land of long-term
4 commercial significance. But the Court of Appeals found that the Board did not apply the
5 particular facts in this case to the definition of "agricultural land." We will do so here.

6 With regard to the proper definition of "agricultural land," the Legislature specifically
7 provided for two elements to the definition of "agricultural lands" under GMA. 1. Whether
8 the land was "primarily devoted to" agricultural purposes, and 2. its "long-term commercial
9 significance for agricultural production." Under the statutory definition of this second
10 element, the Court found that the Board must evaluate growing capacity, productivity, and
11 soil composition, proximity to population areas, and the possibility of more intense uses of
12 the land in question before the area could be designated "agricultural land." *City of*
Redmond, 136 Wn.2d at 53-54.

13 Plan 2015 initially designated the Caton property as agricultural. RCW 36.70A.030(2)
14 defines "agriculture land" as:

15 Land primarily devoted to the commercial production of horticultural,
16 viticultural, floricultural, dairy, apiary, vegetable, or animal products or of
17 berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise
18 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.

19 "'Long-term commercial significance' includes the growing capacity,
20 productivity, and soil composition of the land for long-term commercial
21 production, in consideration with the land's proximity to population areas, and
22 the possibility of more intense uses of the land." *City of Redmond*, 136 Wn.2d
at 49 (citing RCW 36.70A.030(10)).

23 Taken in part, the Board looks first at the evidence for 'growing capacity' of the
24 Caton properties. The Petitioner provided evidence that the property: (1) has soils that can
25 produce in the top 30 percent of county-wide rangeland production values (yield) during

1 favorable precipitation years (1,200 lbs. per acre), and normal precipitation years (800 lbs.
2 per acre), and within the top 19% of county-wide rangeland production values during
3 unfavorable precipitation years (over 400 lbs. per acre). (PC71, CC5, CC6); Some of the
4 soils on the Caton property ranked in the top 7.4% and top 1.5% in range land production.
5 (Hazen testimony at 6); (2) has soils that have a high available water capacity and the
6 effective rooting depth is 60 inches or more, which is ideal for agricultural production. (Soil
7 Survey, CC16, pp. 29-31).

8 Concerning soils, the Board found the property: (1) has excellent soils (Cowiche
9 loam) for dry land farming. They don't have to be 'prime' to be productive, although these
10 same soils on 0-5% slopes with irrigation are defined as 'prime farmland' by the U.S.D.A.
11 (2) the property of 1086 acres, as now configured without the steeper slopes, is farmable
12 for grass hay and winter wheat with summer fallow, as historically farmed. (Planning
13 Commission tapes, 10/24/01.)

14 Concerning 'productivity', the Board found evidence that the property: (1) has been
15 historically dry land wheat farmed by the Catons. (PC39 at 3.) The record shows an average
16 of 36 bushels per acre per year, one bushel higher than the U.S.D.A. soil survey average.
17 (Planning Commission tapes, 10/24/01; U.S.D.A. Soil Survey, CC Exhibit 16); (2) has
18 historically been used to graze cattle for market (no profit/expense statement available in
19 the record or number of animal units per acre grazed on the property). (PC49); (3) and has
20 been planted in natural vegetation and the Catons paid annually for eleven years by the
21 U.S.D.A. under the CRP program.

22 Concerning the proximity of population areas and more intense uses of the land, the
23 Board found the evidence substantial in that the property is isolated outside of an
24 established Urban Growth Area, the City of Naches (pop. 643), by approximately two miles.
25 It is surrounded by rural lands designated Agricultural Resource. The land is suited for
26 farming and grazing, which historically has been done throughout the area.

1 Yakima County staff determined that the Caton land was not consistent with the
2 Agricultural Resource Designation when it was originally designated in 1997 and when
3 reexamined upon the request of Caton in 2001, but the Staff was also reluctant to
4 designate the property as Rural Self-Sufficient in their recommendation on the first
5 application submitted by the Catons to re-designate 1,770 acres:

6 This proposal is NOT consistent with the intent and purpose of the Rural Self-
7 Sufficient Designation. The land and surrounding area is characterized by
8 expanses of vacant land with limited or non-existent access. The topography
9 is varied, in places reaching slopes of 50-70 percent and greater. Provision of
10 facilities (fire, Sheriff, school) and services (water, septic) for Valley Rural
11 development (potentially 350 homes) has not been fully confirmed. (CC1 at 3-
12 4 quoting Plan 2015.)

13 County staff was just as adamant with the new proposal:

14 The proposal was not consistent with the Agricultural Resource designation,
15 **but is even less consistent with the Rural Self-Sufficient designation.**
16 (CC1, at 6.)

17 Of course, the property can be used for a more intensive use, such as development,
18 as the applicant has requested. But, as the Washington Supreme Court has confirmed:

19 First, if current use were a criterion, GMA comprehensive plans would not be
20 plans at all, but mere inventories of current land use. The GMA goal of
21 maintaining and enhancing natural resource lands would have no force; it
22 would be subordinate to each individual landowner's current use of the land.
23 The Legislature intended the land use planning process of GMA to be area-
24 wide in scope when it required development of specific plans for natural
25 resource lands and, later, comprehensive plans.

26 **Second, if landowner intent were the controlling factor, local
jurisdictions would be powerless to preserve natural resource lands.**

Presumably, in the case of agricultural lands, it will always be financially more
lucrative to develop such land for uses more intense than agriculture.

Although some owners of agricultural land may wish to preserve it as such for
personal reasons, most...will seek to develop their land to maximize their
return. **If the designation of such land as agricultural depends on the
intent of the landowner as to how he or she wishes to use it, the**

1 **GMA is powerless to prevent the loss of natural resource land.** All a
2 land speculator would have to do is buy agricultural land, take it out of
3 production, and ask the controlling jurisdiction to amend its comprehensive
4 plan to remove the "agricultural land" designation. Under the Board's
interpretation, the controlling jurisdiction would have no choice but to do so,
because the land is no longer used for agricultural purposes.

5 *Redmond v. Growth Hearings Bd.*, 136 Wn.2d 38, 52-53 (1998); *Williams v. Kittitas County*,
6 *EWGMHB* No. 95-1-0009 (Order of Noncompliance, November 6, 1998).

7 The Board notes the Caton property has been in the Conservation Reserve Program
8 (CRP) from 1986 to 1997. This is through the Farm Service Agency with the USDA. The CRP
9 is a voluntary program that offers annual payments, incentive payments and annual
10 maintenance payments for certain activities, and cost-share assistance to establish
11 approved cover on eligible cropland. The program encourages farmers to plant long-term
12 resource-conserving covers to improve soil, water, and wildlife resources. To be eligible for
placement in the CRP land must be:

- 13 ▪ **Cropland** that is planted or considered planted to an agricultural
14 commodity 2 of the 5 most recent crop years (including field margins)
15 and which is physically and legally capable of being planted in a normal
manner to an agricultural commodity; or
- 16 ▪ Marginal pastureland that is either:
 - 17 ▪ Certain acreage enrolled in the Water Bank Program; or
 - Suitable for use as a riparian buffer to be planted to trees.

18 Landowner's offers for CRP contracts are ranked according to the Environmental
19 Benefits Index (EBI). Contrary to the Intervenor's contention, the fact that the property did
20 not rank high enough on the environmental benefit index for re-enrollment in the CRP, does
21 not support the argument that these are not agricultural resource lands. This ranking would
22 only mean the land was not environmentally sensitive enough to meet the enrollment
23 criteria. It could still be excellent farmland. The Board further notes this same land has
24 been included under the beneficial taxation designation authorized under RCW 84.34.020.

1 The Catons in their application for re-designation misstate the facts when the County
2 asked; "Has the site been used for Agriculture? If so, describe." The Catons state, "Yes, the
3 property was used for dry land farming 18 years ago." The Respondent states the Catons
4 have not sold the property since its designation in 1997, and have not farmed it.
5 (Respondent's Brief p. 14.) The County must recognize that enrollment in the CRP is an
6 agricultural use. The owners cannot sign up for a federal government program, to preserve
7 land for future agricultural use, get paid to not farm the land, and later say it is not
8 agricultural land. This land must be planted with cover crops so that the land may be
9 protected. The landowner is paid for this action.

10 While reclamation water does not serve this land, this Board has found in several
11 cases that agricultural land of long-term significance does not have to be irrigated lands.
12 This Board has stated that junior water rights and non-irrigated lands can still be
13 agricultural resource lands.

14 The Board also finds it needs to correct several of the Intervenors' "factors" listed
15 above. In particular, factors #3, #4, #7 and #11.

16 Under factor #3, the Intervenors indicate, "Annual precipitation will not support dry
17 land farming. No evidence exists that this land is commercially viable with or without
18 water." The Record, thus the evidence, shows that the Caton property had a yield of 36
19 bushels per acre, which is a commercially viable crop. This harvest rate is without irrigation.
20 The Record also shows the Catons received an annual payment per acre for rangeland
21 under the CRP program and grazed the land with cattle.

22 Under factor #4, the Intervenors claim the "site includes steep slopes". This is
23 probably correct, but the original application, which included 1,770 acres, was reduced to
24 1,086 acres to remove the steep slopes, thus addressing much of the Health District's
25 concerns for septic systems (PC65) and opening most of the agricultural land for
26 development.

1 Under factor #7, the Intervenors claim that the "re-designation" received unanimous
2 support from adjoining municipality, school, fire, etc. No agency objections were received
3 during the planning process. The Record indicates differently. The Naches Valley School
4 District did not "support" the development. Rather they detailed the need for more
5 classroom space, gymnasium facilities, cafeteria space, athletic fields, playgrounds and
6 parking spaces. They would also need to add additional buses. The school district letter
7 goes on to say, "There presently is no funding available to provide for the above needs
8 without having the voters of the district approve an increased tax levy or a bond issue."
(PC51).

9 In addition, the Department of Fish and Wildlife wrote in their letter (PC57), "Based
10 on the information WDFW has on this area and the likely progression of development this
11 proposed re-zone would encourage, WDFW strongly urges denial of this re-zone request."
12 In requesting this denial, the WDFW also stated that, "Granting this re-zone request would
13 clearly be inconsistent with the goals and policies of the Yakima County Comprehensive
14 Plan."

15 Also in the Record, the Yakima Public Works Transportation Planner, Alan Adolf,
16 indicated under item 3 in his letter (PC66) that "3. Yakima county Public Works has
17 operational concerns at ..." and detailed four different road areas or intersections. Nowhere
18 in his letter did it say the Public Works Department "supports" the re-designation.

19 Under factor #11, the Intervenors claim "Rangeland cattle operations are not
feasible on the site". The Record indicates cattle have been grazed on the property.

20 **Conclusion:**

21 The Petitioners have carried their burden of proof, proving that the Caton property
22 meets the statutory definition of 'agricultural lands of long-term commercial significance'
23 and the majority of the Board finds that the actions of the County are clearly erroneous.
24 The County improperly redesignated the Caton property by removing it from agricultural
25 lands of long-term commercial significance designation. By this action the County violated

1 the GMA and did not properly designate and protect Agricultural Lands of long-term
2 significance.

3 **B. Did Yakima County meet its criteria for amending Plan 2015 for a change in**
4 **the designation of property?**

5 **Petitioner's Position:**

6 The Petitioners contend ZON 01-14 does not meet Yakima County's Criteria for
7 Amending Resource Designations. The Petitioners cite Yakima County Code (YCC), which
8 requires:

- 9 (e) To change a resource designation, the plan map amendment must do
10 one of the following:
11 (i) Respond to a substantial change in conditions beyond the
12 property owner's control applicable to the area within which the subject
13 property lies; or
14 (ii) Better implement applicable comprehensive plan policies than
15 the current map designation; or
16 (iii) Correct an obvious mapping error; or
17 (iv) Address an identified deficiency in the plan.

18 The Petitioners claim there is no evidence, findings or conclusions in the record that
19 support a substantial change in conditions (Board emphasis). They contend that the
20 Planning Commission used two flawed criteria (numbered below) to determine that
21 YCC(e)(i) satisfied a change in designation.

22 (1) Drought in the area of the property. Planning Commission member Larry West
23 stated, "The only change in condition beyond the owner's control that I can think of is
24 basically we had a drought – we've had a drought or we have had drought years. That's the
25 only condition – changing condition on the property." This statement partially drove the
26 Planning Commission's decision to determine there had been a change of conditions.
(Planning Commission minutes, Tape 2, Side A, pp. 2-3.

The Petitioners provided evidence through Mr. Hazen's testimony and charts based
on Yakima's weather station data (Hazen testimony, CC10) that the overall moisture (snow

1 and rainfall) in the area has been greater in recent years than in the past. This science-
2 based record refutes Mr. West's hearsay argument concerning a perceived drought.

3 (2) Community growth. In addition, in reference to the Planning Commission's
4 criteria of a "need for community growth in the Naches area" (ibid, p. 10), spurred on by
5 letters of support by the City of Naches and a number of the areas neighbors, residents and
6 businesses, the Petitioners again reference *City of Redmond*, 136 Wn2d at 52-53. The
7 Planning Commission based their final decision on a change of circumstances on a
8 "subjective kind of need." Petitioner's attorney wrote, "Relying on the landowner's intent or
9 desire, or for that matter, the surrounding community's intent or desire for use of the
10 property, has been soundly rejected." (Petitioners' Brief on Remand.)

11 The Petitioners further claim that there is no evidence in the record the amendment
12 "better implement[s] applicable Comprehensive Plan policies than the current map
13 designation."

14 Discussion at the Planning Commission meeting indicates the Commission members
15 were using the same criteria for both YCC(e)(i) and (e)(ii). (PC minutes, Tape 2, Side A, pp.
16 13-21.) The PC, according to the transcripts, discussed inadequate rainfall, removing
17 development pressure off irrigated lands, personal property rights (PC minutes, p. 17) and
18 the impact of the decision on neighboring lands. The Petitioner contends none of these
19 issues better implement applicable Comprehensive Plan policies nor can they be considered
20 substantial in re-designating the land from Agricultural Resource to Rural Self-Sufficient.

21 The County and Intervenors claim the Caton land is better suited to be divided up
22 into smaller acreage lots, thus reducing pressure on more productive farmland to be
23 converted. Petitioners contend that, again, this is not the intent of the GMA in regards to
24 agricultural lands. *City of Redmond*, 136 Wn2d at 52-53. The Caton land is designated
25 Agricultural Resource, is currently grazed, is in a lower agricultural tax bracket, has been
26 used for the Conservation Reserve Program and historically wheat farmed. It has been
productive and, if farmed in the future, productive again. As stated in *City of Redmond*,

1 there will always be the potential, such as small lot development, for a more economical
2 use for productive farmland other than farming. But the land must meet certain state and
3 local criteria for a map change, which the Caton property fails to do so.

4 The Petitioners listed the concerns of the County staff about the ability of this
5 property to be served as one of the criteria where Yakima County Code 16B.10.040(1) was
6 not satisfied. (Preliminary Staff Report, p. 7d.)

7 The Catons argued that a County decision in 2000 to re-designate 1840 acres of
8 property in the Wenas Valley from Rural Self-Sufficient to Rural Remote created the need
9 for more Rural Self-Sufficient property. (Caton Brief at 33.) The Petitioners claim the County
10 removed a net total of 2,139 acres from its Agricultural Resource areas between 1998 and
11 2001. At the same time, the County added a net total of 303 acres to its Rural Transitional
12 designation and 1,976 acres to its Rural Self-Sufficient designation. In 1997, the County
13 estimated a need to disperse an additional 5,500 people into its rural lands by the year
14 2015. (Plan 2015, p. VII-R-9.) Plan 2015 concluded that there was more than adequate
15 space in the existing rural lands to accommodate this anticipated growth. In fact, the
16 number that can be accommodated was calculated to be 23,430 people, over four times the
17 necessary rural capacity needed. This negates the contention of the County that more
18 buildable lands were needed.

19 Criteria (iii) and (iv) were briefly discussed by the Planning Commission (PC).
20 Although the County contends it was a mapping error and the Agricultural Resource
21 designation was put on the property to afford the Catons more flexibility, the PC meeting
22 minutes indicate that during the Comprehensive Plan discussions in 1997, the PC was
23 considering a Rural Remote designation for the Caton land and finally decided to give the
24 land the Agricultural Resource designation. Designating the land Rural Self-Sufficient was
25 not considered because of the properties rural character and surrounding properties.
26 Criteria (iv), a deficiency in the plan, was not considered as a viable criteria by the PC and,
therefore, not applicable.

1 **Respondent's Position:**

2 The County contends the Planning Commission found the Caton application met the
3 criteria for amending resource land designations. They say the Planning Commission
4 specifically found the proposed amendment better implements the Comprehensive Plan
5 than the current resource land designation and that the amendment corrects an obvious
6 mapping error. In support of this contention, the County and the Intervenor (the property
7 owner) argue that the land has not been farmed for the past twenty years and has no
8 water rights for irrigation. They claim the land is better suited to be divided into small-
9 acreage lots, thus reducing pressure on conversion of more productive farmland to
residential uses.

10 The County believes the Petitioners do not address the Planning Commission
11 findings, but rather rely on the staff report written prior to the modified application. The
12 Planning Commission found the modified application significant, particularly in addressing
13 the suitability of the property for onsite sewage disposal.

14 The County states that, following the modified application, Larry Finster of the
15 Yakima Health District submitted a new letter addressing onsite sewage disposal issues and
16 finding that there are several sites for building and placing septic tank drain fields.

17 The County also points out that the Planning Commission found the land has
18 reasonable all weather access to established county roads. Adam Adolf, the Yakima County
19 Public Works Department of Transportation Planner submitted a revised memorandum to
20 the Planning Commission as a result of the modified application making such a finding. The
21 County believes a detailed study need not be undertaken in advance of a non-project
22 action, such as the Comprehensive Plan amendment. Issues such as access, adequacy of
23 onsite sewage disposal, and availability of potable water are addressed at the project stage
24 during the process of preliminary plat approval under RCW 58.17.110. The assessment of
25 the potable water requirements of any proposed development can be made after a specific
26 project is submitted.

1 The County contends that the fact the Catons did not appeal the 1997
2 Comprehensive Plan designation of the property does not preclude treating the designation
3 as a mapping error subject to correction under the County ordinance. They state that both
4 the County ordinance, as well as, WAC 365-190-040(g) allows resource land designations to
5 be amended to correct an error in designation.

6 The County also contends the record is that the 1997, designation, at least in the
7 opinion of the planning staff, was not to conserve true agricultural lands of long-term
8 commercial significance, but rather to afford the Catons more flexibility in the use of the
9 property. The County further states all during the processing of the Caton application,
10 planning staff, the Planning Commission, and the County Commissioners were all convinced
11 that the agricultural resource designation was inappropriate. (Respondent's Brief p.14.)

12 The County contends that, having concluded the Caton property is not agricultural
13 land of long-term commercial significance, there are no cumulative impacts associated with
14 its re-designation. They believe the designations made by the County should be changed to
15 reflect reality.

16 They also contend the County has re-designated a net 2,139 acres of agricultural
17 resource land since the initial adoption of Plan 2015 of the 1997 designation and this
18 number represents significantly less than one percent of the approximately one-quarter
19 million acres which the County has designated as agricultural resource lands. The County
20 further states that, other than the Caton property, the facts and circumstances surrounding
21 those applications are not before the Board.

22 The County contends there is no serious argument that the re-designation of these
23 properties has caused the County's inventory of agricultural resource lands to fall below the
24 "critical mass" necessary to sustain Yakima County's agricultural industry. They believe
25 there is no showing or argument that the re-designation of the Caton property, which has
26 not been farmed in nearly 20 years, has negatively impacted the County's agricultural
economy.

1 **Intervenor's Position:**

2 The Intervenor contends the Planning Commission found the re-designation of the
3 subject property to Rural Self-Sufficient (RSS) would tend to preserve existing prime
4 farmlands by relieving pressure for conversion of irrigated farmland located on the valley
5 floors.

6 The Intervenor states YCC 16B.10.040(1) and WAC 365-190-040(g) recognize
7 separate circumstances under which it is appropriate to amend a resource designation and
8 Amendment ZON 01-14 meets Yakima County's Criteria for amending resource
9 designations. The Planning Commission and Board of County Commissioners both found
10 that the record contained sufficient facts to support a change in the resource designations
11 because of a change in circumstances or conditions. WAC 365-190-040(g)(i) recognizes that
12 a change in circumstance may pertain to the Comprehensive Plan or public policy. The need
13 for additional housing, increases in tax base, and support of commercial business and
14 community activities were among the benefits.

15 The Intervenor contends Yakima County determined the Rural Self-Sufficient land
16 use designation better implements applicable Comprehensive Plan policies and
17 consideration of the mapping criteria for Rural Self-Sufficient is appropriate under the
18 circumstances. They believe the Caton property meets all the mapping criteria established
19 by Plan 2015 for Rural Self-Sufficient land use designation, and the fact that the property
20 may be "assessed as farm, forest or open space" is not determinative of the designation
21 regarding resource land of long-term commercial significance.

22 The Intervenor provided well records for six (6) wells located on properties adjacent
23 to the Caton property. The wells had an average depth of approximately 500 feet and a
24 static water level of between 250 feet and 600 feet. Vernon L. Rank, the well driller,
25 confirmed that the aquifer "is substantial, for any amount of homes that the Catons or
26 anyone else wants to build." The Intervenor also points out the property is located within a
fire district and within 5 road miles of a fire station.

1 The Intervenor states Yakima County Public Works confirmed there is sufficient
2 capacity on the road to meet the needs and requirement of a change associated with the
3 re-designation of the property.

4 Further the Intervenor states the Planning Commission and Board of County
5 Commissioners concluded there was a mistake in the mapping of the Caton property as
6 Agricultural Resource. The analysis applied was based upon the review and application of
7 mapping criteria established in Plan 2015.

8 The Intervenor argues the prior designation was given as an accommodation to allow
9 more flexibility in the division of the property. It was not, however, a deliberation based
10 upon the strict application of mapping criteria. The Intervenor states all lands that had been
11 historically designated either General Agricultural or Exclusive Agricultural was designated in
12 the Comprehensive Plan as Agricultural Resource lands. As a result of the original
13 designation process, the annual review mechanism has regularly focused upon the site-
14 specific consideration of resource designations based upon mapping criteria contained in
15 Plan 2015, and the annual amendment process has served as a vehicle for correction of
16 prior erroneous determinations.

17 The Intervenor claims the Petitioner has not shown that the total land area receiving
18 agricultural designation cannot serve to meet the requirements of Goal 8; has not
19 described, quantified or otherwise characterized the agricultural industry in Yakima County
20 impacted by the re-designation; and has not shown why the re-designation negatively
21 impairs the industry.

22 **Discussion:**

23 The Petitioner has shown through expert testimony, relevant facts, court decisions,
24 and state and local laws and ordinances that the County has erred in designating the Caton
25 property as Rural Self-Sufficient with a zone change to Valley Rural. The Record contains
26 sufficient evidence that Rural Self-Sufficient is an inappropriate designation and a
conversion of agricultural resource lands of long-term commercial significance to small-lot

1 development, which is a violation of RCW's 36.70A.020(2), 36.70A.020(8) and
2 36.70A.060(1). The Record also shows that the Yakima County planning staff was
3 uncomfortable with the Rural Self-Sufficient designation (Preliminary Staff Report, Staff
4 Comment under Resource Designation Criteria, p. 7):

5 *Staff Comment: The applicant has provided no information, nor identified any*
6 *mapping errors or deficiencies to support the aforementioned items (a-d). It*
7 *appears that none of the above circumstances exist on the properties*
8 *identified in this proposal, however the property should receive consideration*
9 *for being removed from the Agricultural Resource designation and being*
10 *redesigned as Remote/Extremely Limited Development.*

11 And, in addition, that the Planning Commission deliberations indicate confusion as to what
12 constitutes a (1) substantial change of conditions, (2) better implements applicable
13 Comprehensive Plan policies or (3) corrects an obvious mapping error. The PC was also
14 uncomfortable with the Valley Rural zone change. Discussion among the PC went from
15 recommending to the County Commissioners a 20-acre minimum to a 10 acre minimum, a
16 recommendation which was finally adopted by the PC and sent to the County
17 Commissioners. The Commissioners ignored the PC's recommendation of a 10-acre
18 minimum and adopted the Valley Rural zoning without any restrictions, which allows a 5-
19 acre minimum lot size.

20 The Planning Commission also discussed the consequences of changing the Caton
21 property to Rural Self-Sufficient from Agricultural Resource (Transcripts PC4, 9-10), which in
22 their opinion was in direct conflict with YCC 16B.10.040(1)(g), which states, "The proposed
23 plan map amendment will not prematurely cause the need for nor increase the pressure for
24 additional plan map amendments in the surrounding area."

25 The Record did not include the County Commissioners discussion, if any, concerning
26 adoption of the Rural Self-Sufficient designation and Valley Rural zoning. Only the staff's
Findings of Fact and Decision are available, which doesn't clarify whether or not the County
Commissioners used the flawed rationale of the PC in their final decision.

1 Even though the Record provides evidence that the County may not have properly
2 designated the Caton property and a correction may have been needed, the fact remains
3 the property has been historically designated Exclusive Agriculture, then through the
4 intensive Comprehensive Plan process in 1997, to Agricultural Resource. The PC minutes
5 reflect that during the original process of developing the Comprehensive Plan, the Catons
6 property was considered for Rural Remote, which requires a 40 acre minimum, but the PC
7 designated it Agricultural Resource to, "give(s) more of an option for the Kaytons (sic) if its
8 Ag Resource land than it would be if it were Rural Remote." PC minutes, Tape 1, Side B, pp.
9 11-12. The Record does not show evidence of a change in the circumstances in the
10 agricultural and local community.

10 **Conclusion:**

11 The County's re-designation of the Caton's property from Agricultural Resource to
12 Rural Self-Sufficient, with a zone change to Valley Rural does not fit into one of the four
13 basis for re-designation required by the County's Code.

14 The GMA requires a long-term view, preserving land suitable for agricultural
15 production by future generations, even if the current owner prefers to not use the land for
16 production. The Board does not view the action of the County as complying with GMA goals
17 to reduce sprawl and preserve the agricultural industry in Yakima County.

18 The County is found out of compliance with the GMA on this issue. The majority of
19 the Board believes the County's action is clearly erroneous and is left with the firm and
20 definite conviction that a mistake has been committed.

20 **VIII. CONCLUSIONS OF LAW**

- 21 1. The Petitioners have participation standing, pursuant to RCW
22 36.70A.280(2) and (4), to pursue their appeal on the issues presented
23 to the Board.
24 2. Agricultural Resource lands are required to be designated and
25 protected, RCW 36.70A.060(1).
26

- 1 3. The Caton lands, the subject lands, are Agricultural Resource lands and
2 must be designated as such in Plan 2015.
- 3 4. Yakima County has failed to meet its criteria for amending Plan 2015
4 for a change in the designation of property, YCC(e).
- 5 5. Yakima County is out of compliance for its failure to properly designate
6 and preserve their Agricultural Resource Lands. The property meets the
7 statutory definition of 'agricultural lands of long-term commercial
8 significance'. The actions of the County are clearly erroneous.
- 9 6. The County improperly redesignated the Caton property by removing it
10 from agricultural lands of long-term commercial significance
11 designation. By this action the County violated the GMA and did not
12 properly designate and protect Agricultural Lands of long-term
13 significance.

IX. ORDER

- 14 1. The majority of the Board finds that the actions of the County are
15 clearly erroneous. The County improperly redesignated the Caton
16 property by removing it from agricultural lands of long-term commercial
17 significance designation. By this action the County violated the GMA
18 and did not properly designate and preserve Agricultural Lands of long-
19 term significance.
- 20 2. The Board remands Yakima County Ordinance 1-2002 and ZON 01-14
21 to the County with directions to take appropriate legislative actions to
22 bring themselves into compliance with the goals and requirements of
23 the Act as so ordered by the Board on November 4, 2002.

24 Yakima County must take the appropriate legislative action to bring
25 themselves into compliance with this Order by **June 20, 2005, 60 days** from the
26 date issued.

- 1 ❖ The County shall file with the Board **by June 27, 2005, an original and**
2 **four copies** of a Statement of Action Taken to Comply (SATC) with the GMA,
3 as interpreted and set forth in the Board's Final Order. The SATC shall attach
4 copies of legislation enacted in order to comply. The County shall
5 simultaneously serve a copy to the SATC, with attachments, on the Petitioner
6 and Intervenor. By this same date, the County shall file a "Remand Index,"
7 listing the procedures and materials considered in taking the remand action.
- 8 ❖ By no later than **July 11, 2005**, the Petitioner shall file with the Board an
9 **original and four copies** of Comments and legal arguments on the County's
10 SATC. Petitioner shall simultaneously serve a copy of its Comments and legal
11 arguments on the County and Intervenor.
- 12 ❖ By no later than **July 25, 2005**, the County and Intervenor shall file with the
13 Board an **original and four copies** of their Response to Comments and legal
14 arguments. The Respondent and Intervenor shall simultaneously serve a copy
15 of such Response on Petitioner.
- 16 ❖ By no later than **August 1, 2005**, the Petitioner shall file with the Board an
17 **original and four copies** of their Reply to Comments and legal arguments.
18 The Petitioner shall serve a copy of its brief on the Respondent and
19 Intervenor.
- 20 ❖ Pursuant to RCW 36.70A.330(1) the Board hereby schedules a telephonic
21 Compliance Hearing for **August 10, 2005, at 10:00 a.m.** The parties will
22 call **360-357-2903 followed by 12593 and the # sign.** Ports are
23 reserved for Mr. Mann, Mr. Austin, and Mr. Carmody.

24 If the County takes legislative compliance actions prior to the date set forth in this
25 Order, it may file a motion with the Board requesting an adjustment to this compliance
26 schedule.

1 Pursuant to RCW 36.70A.300(5) and RCW 34.05.542(2), this is a Final
2 Order for purposes of appeal. Any appeal of this Order shall be served in person
3 on the Board by the 30th day. Pursuant to WAC 242-02-832, a motion for
4 reconsideration may be filed within ten days of service of this Order.

5 SO ORDERED this 20th day of April 2005.

6 EASTERN WASHINGTON GROWTH MANAGEMENT
7 HEARINGS BOARD

8 _____
9 Judy Wall, Board Member

10 _____
11 John Roskelley, Board Member

12
13 **DISSENT:** The undersigned respectfully dissents.

14
15
16 _____
17 Dennis Dellwo, Board Member