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

7 FUTUREWISE and CITIZENS FOR GOOD
8 GOVERNANCE,

9 Petitioner,

10 v.

11 WALLA WALLA COUNTY,

12 Respondent.

Case No. 05-1-0001

FINAL DECISION AND ORDER

13
14 **I. SYNOPSIS**

15 On December 27, 2004, Walla Walla County (the County) adopted Ordinance No. 308
16 and Resolution No. 04360. Resolution No. 04360 amends Walla Walla County's
17 Comprehensive Plan's agricultural policies to allow cluster development in all but the
18 Exclusive Agriculture zone. Ordinance No. 308 adopts development regulations for
19 clustering on agricultural resource lands. (Chapter 17.31).

20 The Growth Management Hearings Board (the Board) is asked to determine whether
21 Walla Walla County's changes to their Comprehensive Plan and its regulations comply with
22 the requirements of RCW 36.70A.177 and RCW 36.70A.020(1), RCW 36.70A.020(2), RCW
23 36.70A.020(8) and RCW 36.70A.060. While the Board acknowledges the County's
24 authorization of clusters upon agricultural resource lands is allowed by the GMA, the Board
25 finds there are several areas in which the County's actions are clearly erroneous and out of
26 compliance.

1 Futurewise and Citizens for Good Governance (Petitioners) challenged the County's
2 new policies, Ordinance No. 308 and Resolution No. 04360, contending these changes to
3 the Comprehensive Plan failed to limit the clusters to poor soil or soil that was unsuited for
4 agricultural purposes and were not appropriately limited in lot or cluster density. The
5 Petitioners contend these failures violate the GMA, disrupt farming and will not aid in the
6 preservation of the farming industry.

7 The County believes they shouldn't have to limit the lots to poor soil and that they
8 have properly protected the agricultural land through density neutral zoning. The County
9 ordinance limits clustering in all agricultural zones to a maximum of 12 units per parcel,
10 except in the Agriculture Residential-10 zone, meaning agricultural lands zoned 1 lot per 10
11 acres, where the density of the clusters are only limited by the size of the parcel. The
12 ordinance also requires a right to farm covenant, which must be recorded with the land
13 division. In addition, there must be a buffer space of a minimum of 50 feet from the
14 adjacent resource parcel to any dwelling in the cluster development and notification of
15 agricultural activities must be contained on all final plats. The County believes clustering will
16 go far towards permanently preserving large tracts of land for farming.

17 The Board finds the County is statutorily authorized to permit clusters in areas
18 designated as agricultural lands of long-term commercial significance under RCW
19 36.70A.170. Clustering is permitted as an innovative zoning technique which is designed to
20 conserve agricultural lands and encourage the agricultural economy under RCW
21 36.70A.177(2)(b).

22 However, the Board finds the County failed to comply with the GMA in several areas.

23 First, Walla Walla County failed to limit the number of clusters that can be located in
24 the same area. Under the present status, clusters associated with various parcels may be in
25 close proximity, with the real possibility of inappropriate densities in agricultural resource
26 lands. Therefore, the density allowed can become urban, interfering with the agricultural
industry in that area and result in the County's failure to protect and preserve the
agricultural industry.

1 Second, the County failed to limit the number of clustered lots per parcel in the
2 Agriculture Residential-10 zone. Without a limit, inappropriately large clusters are permitted
3 to exist on these agricultural resource lands.

4 Finally, the County has done nothing to insure that these clusters are located upon
5 poor soils or soils unsuited for agricultural uses. RCW 36.70A.177(1) requires
6 nonagricultural uses be limited to lands with poor soils or soils otherwise not suitable for
7 agricultural purposes. While the stated purpose of the County's changes which permit
8 clusters is to protect and encourage agriculture in Walla Walla County, clustering, as
9 authorized here, has the potential of removing large tracts of prime farmland or agricultural
land of long term significance from future use.

10 The Petitioners have carried their burden of proof and the Board finds the County's
11 actions clearly erroneous and out of compliance for their failure to protect agricultural
12 resource lands in the following ways:

- 13 1. By authorizing clustering on AR 1/10 parcels without limiting the
14 number of lots;
- 15 2. By failing to prohibit adjacent clusters;
- 16 3. By having no requirement that these clusters be upon lands with poor
17 soil or soil unsuited for agricultural purposes.

18 The Board further finds the provisions authorizing clustering in AR 1/10 to be invalid.
19 These provisions allow clustering in agricultural areas near cities, where clustering is most
20 likely to occur, without a limit to the number of clustered lots. They also remove large
21 blocks of agricultural lands, replacing them with urban densities. This substantially
interferes with Goals 2 and 8 of the Act and is found invalid under RCW 36.70.300 (2)(a).

22 II. PROCEDURAL HISTORY

23 On February 25, 2005, FUTUREWISE and CITIZENS FOR GOOD GOVERNANCE, by
24 and through their representatives, John Zilavy and Jeff Eustis, filed a Petition for Review.

25 On March 25, 2005, the Board held a telephonic Prehearing conference. Present
26 were, Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley.

1 Present for Petitioners were John Zilavy, Jeff Eustis, and Nancy Ball. Present for Respondent
2 was Chuck Maduell, and Scott Bauer.

3 On April 1, 2005, the Board issued its Prehearing Order.

4 On July 14, 2005, the Board held the Hearing on the Merits in Walla Walla with all
5 the parties present. Present were, Dennis Dellwo, Presiding Officer, and Board Members
6 Judy Wall and John Roskelley. Present for Petitioners was Jeff Eustis. Present for
7 Respondent was Chuck Maduell, and Scott Bauer.

8 On July 14, 2005, upon the County's request for the Board to take official notice of
9 portions of the County's Comprehensive Plan, Ordinance No. 264 and Resolution No. 2118
10 and an e-mail dated January 21, 2005 from Jon Miland, the Board agreed to take notice as
11 is appropriate.

12 On July 14, 2005, upon motion of the Petitioners, the Board allowed the admission of
13 exhibits 1, 2, 3 and 4 as part of the record. The Board will give such documents appropriate
14 weight.

15 On July 14, 2005, the Board authorized the Petitioners to use Exhibit 35, certain
16 aerial photographs, as illustrative exhibits, such exhibit is not to be included in the Record
17 before the Board. The County's motion to strike such exhibit is denied.

18 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF** 19 **REVIEW**

20 Comprehensive plans and development regulations (and amendments thereto)
21 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
22 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioners to
23 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
24 the Act.

25 The Hearings Board will grant deference to counties and cities in how they plan
26 under Growth Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated,
"local discretion is bounded, however, by the goals and requirements of the GMA." *King
County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561,

1 14 P.2d 133 (2000). It has been further recognized that “[c]onsistent with *King County*, and
2 notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly
3 when it foregoes deference to a . . . plan that is not ‘consistent with the requirements and
4 goals of the GMA.” *Thurston County v. Cooper Point Association*, 108 Wn. App. 429, 444, 31
5 P.3d 28 (2001).

6 Pursuant to RCW 36.70A.320(3) we “shall find compliance unless [we] determine
7 that the action by [Jefferson County] is clearly erroneous in view of the entire record before
8 the Board and in light of the goals and requirements of [the GMA].” In order to find the
9 County’s action clearly erroneous, we must be “left with the firm and definite conviction that
10 a mistake has been made.” *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,
201, 849 P.2d 646 (1993).

11 The Hearings Board has jurisdiction over the subject matter of the Petition for
12 Review. RCW 36.70A.280(1)(a).

13 **IV. STATEMENT OF LEGAL ISSUES**

14 **ISSUES 1 and 2:** Does adoption of Resolution No. 04360, and Ordinance 308 amending
15 the Comprehensive Plan and development regulations to allow cluster development on
16 agricultural lands of long term significance, fail to comply with RCW 36.70A.020(1), RCW
17 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.060 and RCW 36.70A.177 when the
18 cluster development is allowed on approximately 97% of the County’s agricultural lands of
19 long term significance and is allowed at densities too high to conserve farmland and
20 encourage the agricultural industry and without regard to the quality of soils?

21 **DISCUSSION AND ANALYSIS:**

22 **STATEMENT OF FACTS:**

23 Walla Walla County opted to plan under the Growth Management Act (GMA) on
24 October 30, 1990, and was therefore required to plan pursuant to RCW 36.70A.040. Walla
25 Walla County adopted its initial Comprehensive Plan on May 15, 2001, designating 727,039
26 acres as agricultural land of long-term commercial significance. This represents
approximately 93% of the County’s land. The County divided its agricultural land into four
zones (with minimum acreage per unit):

1 Exclusive Agriculture/120 acres: 21,094 acres.

2 Primary Agriculture/40 acres: 679,491 acres.

3 General Agriculture/20 acres: 837 acres.

4 Agriculture Residential/10 acres: 25,617 acres.

5 On December 27, 2004, Walla Walla County adopted Ordinance No. 308 and
6 Resolution No. 04360. Resolution No. 04360 amends the Comprehensive Plan agriculture
7 policies to allow cluster development in all but the Exclusive Agriculture zone. Ordinance
8 No. 308 adopts development regulations for clustering on agricultural land. (Chapter 17.31).

9 The development regulations found in Ordinance No. 308 provide as follows:

10 1. Clustering is allowed in all agricultural designations except *Exclusive*
11 *Agriculture*.

12 2. Development is only allowed at the density permitted by the assigned
13 zoning.

14 3. The minimum land area needed for clustering in each zone is

- 15 a. AG-40: 80 acres.
16 b. AG-20: 40 acres.
17 c. AG-10: 20 acres.

18 4. Cluster development lot width shall be a minimum of 150 feet.

19 5. At least 70% of the overall development site shall be maintained and
20 preserved for agricultural use.

21 6. There is no limit to the number of clustered parcels in the AG-10 zone,
22 so long as the underlying overall density is met (i.e., 400 acres could
23 accommodate a cluster development of 40 units).

24 7. No clustered parcel shall exceed 3 acres and the average lot size in the
25 cluster development shall not exceed 2 acres.

26 Clustering is allowed, under the challenged enactments, on all but 21,000 acres of
the County's agricultural land of long-term commercial significance.

1 **The Parties' Positions:**

2 The Petitioners contend that Walla Walla County Zoning, which now allows cluster
3 development on agricultural land, interferes with the County's obligation under the GMA to
4 conserve agricultural land and encourage the agricultural industry. The challenged actions
5 allegedly fail to comply with the GMA in several ways. First, with a single limited exception,
6 cluster development is allowed across the board in the agricultural zones without regard to
7 the statutory directive to encourage clustering only on land with poor soils or otherwise
8 unsuited for agricultural production. (RCW 36.70A.177(1)).

9 Second, the maximum number of clustered units the enactments explicitly allow is
10 too high for agricultural land. Two of the three designated agricultural zones allow a
11 maximum number of 12 units per cluster. The third agricultural zone sets no maximum and
12 an unlimited number of units are allowed.

13 Third, each cluster is allowed to consume 30% of the farmland in the affected area.

14 Finally, the potential exists for the creation of clusters that contain many more units
15 than the stated maximum of 12.

16 The Petitioners contend that the enactments challenged will potentially result in a
17 patchwork of large cluster developments that fail to conserve agricultural land and are
18 incompatible with agricultural production. The enactments, therefore, act to discourage the
19 viability of the agricultural economy.

20 The Petitioners gave an example of Agriculture Residential-10 clustering, which
21 would yield a total of 35 lots up to an average of two acres in size with no limitation that
22 the lots be sited on either poor soils or lands unsuitable for agriculture and assuming the
23 availability of sufficient water. Additionally, Petitioners contend these 35 lots may be
24 distributed around the host parcel in up to four separate groupings or clusters of about nine
25 lots each.

26 Examples of clustering on the other Agriculture Zone lots were given showing that
more than the 12 lots could be developed depending upon the configuration of the parcels.

1 The Respondent, Walla Walla County, contends that the purpose of the clustering
2 policies is to direct where such residential use may occur to better preserve and protect
3 designated agricultural lands. In their opinion, clustering will not encourage or allow more
4 growth beyond the maximum residential density previously approved by the Eastern
5 Washington Growth Management Hearings Board. The County contends that, contrary to
6 the Petitioners' "conclusory and unsupported allegations", Walla Walla County's clustering
7 provisions are designed to conserve agricultural lands and encourage the agricultural
8 economy consistent with the goals and requirements of the GMA.

9 The County points out that the changes maintain the current residential densities of
10 the underlying agricultural zoning and would result in less overall residential densities on
11 agricultural lands in the County than could be achieved through traditional subdivision of
12 such lands under current large lot zoning.

13 The County contends they have complied with the requirements listed in the
14 Washington State Supreme Court in King County v. Central Puget Sound Growth
15 Management Hearings Board, 142 Wn.2d 543, 558, 14 P.2d 133 (2000). (See Board's
16 discussion below). The requirements listed by the County are 1) to designate agricultural
17 lands of long term commercial significance; 2) to assure the conservation of agricultural
18 land; 3) to assure that the use of adjacent lands does not interfere with their continued use
19 for agricultural purposes; 4) to conserve agricultural land in order to maintain and enhance
20 the agricultural industry; and 5) to discourage incompatible uses.

21 The County further contends that RCW 36.70A.177 does not require that clustered
22 development be limited to lands with poor soils or otherwise not suitable for agricultural
23 purposes. They believe that requirement applies only to proposed innovative zoning
24 techniques that would "encourage nonagricultural uses."

25 **Board Analysis:**

26 In the case cited below, the Washington State Supreme Court made it clear that the
GMA includes an agricultural protection mandate. The Washington Supreme Court has
summarized their conclusion as follows:

1 [w]hen read together, RCW 36.70A020(8), RCW 36.70A.060(1) and
2 RCW 36.70A.170 evidence a legislative mandate for the conservation of
3 agricultural land....

4 In seeking to address the problem of growth management in our state, the
5 Legislature paid particular attention to agricultural lands. One of the 13
6 planning goals of the GMA addresses natural resource industries: "Maintain
7 and enhance natural resource-based industries, including productive timber,
8 agricultural, and fisheries industries. Encourage the conservation of productive
9 forest lands and productive agricultural lands, and discourage incompatible
10 uses." RCW 6.70A.020(8). The purpose is to "assure the conservation" of
11 these lands. RCW 6.70A.060(1). A more recent indication of the Legislature's
12 concern for preserving agricultural lands is a new section the Legislature
13 added in its 1997 amendments to the GMA, RCW 36.70A.177, which urges
14 employment of "innovative zoning techniques" to conserve agricultural lands.

15 The GMA set aside special lands it refers to as "natural resource lands," which
16 include agricultural, forest, and mineral resource lands. "Natural resource
17 lands are protected not for the sake of their ecological role but to ensure the
18 viability of the resource-based industries that depend on them. Allowing
19 conversion of resource lands to other uses or allowing incompatible uses
20 nearby impairs the viability of the resource industry." Richard L. Settle &
21 Charles G. Gavigan, *The Growth Management Revolution in Washington: Past,
22 Present, and Future*, 16 U. Puget Sound L. REV. 867, 907 (1993). (*City of
23 Redmond v. Central Puget Sound Growth Management Hearings Board*, 136
24 Wn.2d 38, 47-48 (1998)).

25 *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d
26 543, 562 (2000).

27 The Washington State Supreme Court decision cited above, finding the GMA's
28 agricultural conservation mandate dealt with the specific issue of whether or not a
29 recreational use on agricultural resource lands complied with RCW 36.70A.177. RCW
30 36.70A.177, is also at issue in this case. Specifically, whether or not the County's new
31 policies and regulations allowing cluster development on agricultural resource lands of long
32 term commercial significance complies with this statute.

33 RCW 36.70A.177 reads in relevant part:

1 **Agricultural lands -- Innovative zoning techniques -- Accessory uses.**

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

8 (2) Innovative zoning techniques a county or city may consider include, but
9 are not limited to:

10 (b) Cluster zoning, which allows new development on one portion of
11 the land, leaving the remainder in agricultural or open space uses;

12 The Board has a serious concern about the potential impact of clusters on the
13 viability of the remainder of agricultural land. If cluster development patterns are going to
14 work, the density in the cluster cannot cause a drastic change in the character of the
15 surrounding area and the remaining farmland has to be large enough to accommodate a
16 true commercial farming operation.

17 There are two key issues in this case with respect to compliance with this statute and
18 the overall GMA agriculture conservation mandate. The first issue is whether the new
19 cluster regulations and policies comply with the GMA when they make no reference to
20 restricting or encouraging location of clustering to land with poor soil or lands otherwise
21 unsuited for agriculture.

22 The GMA, in RCW 36.70A.177(1), requires that non-agricultural uses be on poor soils
23 or soils not suited for farming. In the County's newly adopted amendments allowing
24 clustering on Agricultural Resource lands, the County makes no mention of the soils upon
25 which the clusters would be located. It is clear clusters are non-agricultural uses and must
26 be located upon poor soils.

 In this context, note the Washington State Supreme Court's finding that:

 The statute encourages counties to limit innovative techniques 'to lands with
 poor soils or otherwise not suitable for agricultural purposes.' The trial court
 found this requirement 'discretionary' rather than 'mandatory' because the
 statute uses the word 'should.' This interpretation misplaces the discretion.

1 The word 'should' applies to 'encourage nonagricultural uses.' The phrase
2 'limited to lands with poor soils' is a qualifying phrase for 'nonagricultural
3 uses.' The discretion is applied to 'encouraging nonagricultural uses,' not to
4 the land eligible for such encouraged uses. Read logically, this phrase means
5 that the County may encourage nonagricultural uses where the soils are poor or
6 the land is unsuitable for agriculture. It should not be read that the County
7 may encourage nonagricultural uses whether or not the soils are poor or
8 unsuitable for agriculture. The evidence does not support a finding that the
9 subject properties have poor soils or are otherwise not suitable for agricultural
10 purposes. Therefore, the properties in this case do not qualify for 'innovative
11 zoning techniques. *Id at p. 560-561.*

12 We are also able to look at our sister Board's decision where this same limitation was
13 considered:

14 We have the benefit of the Supreme Court's interpretation of the GMA
15 provision allowing "innovative zoning techniques" in agricultural lands, to
16 guide us with respect to clustering provisions such as this one. In that case
17 [*King County*], the Supreme Court noted that the use of the approved listed
18 techniques was not unlimited – they may be used *for the purpose of*
19 conserving agricultural lands and encouraging the agricultural economy.
20 Clustering is a permitted technique, provided it ensures that new residences
21 are sited on soils that are poor and unsuitable for agricultural purposes.
22 Panesko v. Lewis County WWGMHB 00-2-0031c, February 13, 2004.

23 Residential clustering on the scale allowed by the new ordinances is clearly a non-
24 agricultural use within the meaning of the statute. It is clear from Exhibit A of Ordinance
25 No. 308, 17.31.060, Q and R, that clusters and their buildings are non-farm development,
26 requiring buffers and setbacks. In order to comply with the GMA, clustering policies and
regulations must encourage such clusters on land with poor soil. Walla Walla County
regulations do not limit or encourage the location of cluster development in such a manner.

It was interesting to note that Walla Walla County Ordinance No. 264,
Comprehensive Plan – Findings of Fact, 05-15-01, one of the documents admitted into the
record at the request of the County, has a section dealing with Clustering, Section 17.4.

17.4.1 The Board of County Commissioners find that protection of Rural Lands will
be served by allowing clustering, with limitations. Clustering will be allowed

1 only on the Agricultural Lands that are not as productive based on the
2 varying soil quality and local rainfall patterns.

3 17.4.2 The clustering policy is intended to provide an incentive to place residential
4 use on the least productive lands, while at the same time allowing limited
5 growth in a manner compatible with rural family living patterns, where
6 commonly multiple generations may reside and work on the large family-
7 owned tracts, and is consistent with the economies of farming, the cost of
8 production, and uncertainties of fluctuating consumer demands, and the
9 preservations of private property rights. Clustering makes it possible to
10 concentrate dwellings and support infrastructure, while still farming the
11 excess acreage not used for the residences.

12 17.4.3 A farmer's most important resource is their land. Farmers manage this
13 resource to optimize continued agricultural uses; but sometimes economies
14 require using land to manage the debt associated with farming, including
15 selling off small tracts. Clustering enhances a farmer's ability to survive in
16 down markets, thus this policy supports the ultimate preservation of long-
17 term agricultural use. (Our emphasis provided).

18 The findings above adopted by the County in 2001, go much further than the
19 clustering chapter, Chapter 17.31, added most recently. The County must direct the
20 landowner to locate these clusters upon poor soils, the soil and location least productive
21 and less likely to reduce the land available for farming. Clusters should not remove quality
22 soils from agricultural uses.

23 Because the County has failed to restrict clustering to poor soils, the County's action
24 is clearly erroneous and has not complied with the GMA.

25 The second issue is whether cluster developments with a stated maximum of 12
26 units in two zones and no maximum in one zone complies with the statutory requirement
27 that clustering must *conserve* agricultural land and *encourage* the agriculture economy. The
28 Board has concerns about the potential in AR-10 for much higher than 12 dwelling units to
29 be clustered on agricultural lands. The sizeable concentration of residences on agricultural
30 lands create impacts on agriculture and create a demand for "urban-type services" that
31 would conflict with the agricultural economy.

32 Further, RCW 36.70A.060(1) requires that adjacent uses will remain compatible with
33 agriculture. The failure to limit the size of the clusters in Agriculture Residential-10 and

1 failure to limit or prohibit the location of clusters adjacent to one another does not conserve
2 agriculture. It raises the clear possibility of urban densities on Resource lands and violates
3 the GMA. This is a failure to encourage the agricultural economy and conserve farmland. As
4 the size of an agricultural development project increases, it takes on urban characteristics
5 and increases the demand for urban governmental services.

6 We find nothing in the GMA that would allow clustering in agricultural resource lands
7 to the degree that it results in a village or LAMIRD. See Smith v. Lewis County, WWGMHB
8 Case No. 98-2-0011c, FDO, April 5, 1999. Uncapped clusters characteristically lead to a
9 demand for urban governmental services. The clusters need reasonable caps so as to
10 preclude clusters of such magnitude that they demand urban services. Unreasonable
11 clustering without limit occurs both for property zoned AR-10 and where there is no limit to
12 the adjacent location of clusters.

13 While Walla Walla County's policies contain a unit cap in some zones, the Western
14 Board's conclusions in *Smith v. Lewis County*, above, are worth restatement:

15 As the size of a rural development project increases, the demand for urban
16 governmental services inevitably increases. Likewise, as the size of a project
17 site increases, the more likely it is that it will exhibit the characteristics of
18 urban growth. Id.

19 It is clear to the Board that having no limit on Agricultural Residential-10 clustering
20 density or allowing the "clustering" of clusters is clearly erroneous. Until limits are placed
21 upon all clusters and the "clustering" of clusters, the Board must find the County's actions
22 clearly erroneous and out of compliance with the GMA.

23 **Conclusions:**

24 The Board finds that the Petitioners have carried their burden of proof and that the
25 County's actions are clearly erroneous due to the following reasons:

- 26 1. Failure to limit the number of clusters in Agricultural Residential-10
parcels;

VI. FINDINGS OF FACT

1. Walla Walla County is a county located East of the crest of the Cascade Mountains. Walla Walla County opted to plan under the GMA on October 30, 1990, and is therefore required to plan pursuant to RCW 36.70A.040.
2. Petitioners are a non-profit organization that participated in the adoption of Resolution 04360 and Ordinance 308 in writing and through testimony. Petitioner raised the matters addressed in its Petition for Review to the County in its participation below.
3. The County adopted resolution 04360 and Ordinance 308 on December 27, 2004.
4. Petitioners filed their petition of Resolution 04360 and Ordinance 308 on February 25, 2005.
5. Resolution 04360 and Ordinance 308 authorizes clustering in Agriculture Resource lands with the exception of Exclusive Agriculture.
6. Resolution 04360 and Ordinance 308 limits the number of clustered lots to 12 in AG-40 and AG-20. There is no limit to the number of clustered lots in the AG-10 zone.
7. Resolution 04360 and Ordinance 308 does not limit the number of co-sited clusters.
8. Resolution 04360 and Ordinance 308 does not limit the types of soil that the clusters are to be located upon.
9. Clusters from a variety of parcels can be placed in the same vicinity, thus causing a high concentration of residential lots with undesirable effects upon farming in that area.
10. The location of too many lots in a cluster or group of clusters can have the effect of increasing the demand for urban services and can adversely impact the remaining farm land and the agricultural industry in that area.

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VII. CONCLUSIONS OF LAW

- A. This Board has jurisdiction over the parties to this action.
- B. This Board has jurisdiction over the subject matter of this action.
- C. Petitioner has standing to raise the issues in its Petition for Review.
- D. The Petition for Review in this case was timely filed.
- E. Clusters upon Agricultural Resource Lands are non-agricultural uses.
- F. Resolution 04360 and Ordinance 308 fail to comply with RCW 36.70A.177 in that such non-agricultural uses are not limited to poor soils or soils unsuited for agricultural purposes.
- G. Resolution 04360 and Ordinance 308 fail to comply with RCW 36.70A.177 and RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.020(8) and RCW 36.70A.060 in that the number of lots in a cluster located in AR-10 is not limited and could be urban in density.
- H. Resolution 04360 and Ordinance 308 fail to comply with RCW 36.70A.177 and RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.020(8) and RCW 36.70A.060 in that there is no limit to the co-location of clusters in adjoining parcels.

VIII. INVALIDITY FINDINGS OF FACT

Pursuant to RCW 36.70A.300 (2)(a)

The Board incorporates the Findings of Fact above and add the following:

- 1) RCW 36.70A.020(2) states:
"Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development."
- 2) RCW 36.70A.020(8) states:
"Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses."

1 3) Goal 8 is not met if the County's development regulations fail to
2 adequately protect the designated lands from conflicting uses.

3 4) In order to maintain and enhance natural resource based industries,
4 densities within designated agricultural resource areas must not interfere with
5 the primary use of those lands for the production of food, other agricultural
6 products, or fiber. Unlimited new lots of 1, 2 and 3 acres in AR-10 threaten
7 continued use and existence of such lands for resource production.

8 5) The County's lack of a limit on the number of lots clustered per parcel
9 in the AR-10 zoned agricultural land, located primarily around the City of Walla
10 Walla, allows the wholesale removal of agricultural lands from agricultural use
11 and would discourage agricultural activity on the remaining portion of the
12 parcel.

13 6) Any Finding of Fact which is more properly a Conclusion of Law shall be
14 deemed a Conclusion of Law.

IX. CONCLUSIONS OF LAW

Pursuant to RCW 36.70A.300 (2)(a)

- 15 1. The Board has jurisdiction over the parties and subject matter of this
16 case.
- 17 2. The Board finds that the authorization of clustering upon agricultural
18 lands zoned AR-10, without limiting the number of lots, substantially
19 interferes with the fulfillment of Goals 2 and 8 of the Growth
20 Management Act.
- 21 3. When applied to designated agricultural lands, those portions of
22 Resolution 04360 and Ordinance 308 which allow clusters to be located
23 in AR-10 zoning, without limit on their number of lots, are invalid under
24 RCW 36.70.300.

X. ORDER

- 25 1. The Board finds that the Petitioners have carried their burden of proof
26 and that the County's actions are clearly erroneous and out of

1 compliance in their failure to limit the number of clusters in Agricultural
2 Residential-10 parcels, failure to limit or prohibit the location of clusters
3 adjacent to one another and the County's failure to require the
4 authorized clusters to be located upon poorer soils or soils unsuited for
5 agriculture.

6 2. In addition, the Board finds those portions of Resolution 04360 and
7 Ordinance 308, which allow clusters to be located in AR-10 zoning
8 without a limit to the number of lots, to be invalid under RCW
9 36.70.300.

10 3. Walla Wall County must take the appropriate legislative action to bring
11 themselves into compliance with this Order by February 6, 2006, 180
12 days from the date issued. The following schedule for compliance,
13 briefing and hearing shall apply:

14 Compliance Due	February 6, 2006.
15 Statement of Action Taken to 16 Comply (County to file and serve on 17 all parties)	February 13, 2006.
18 Petitioners' Objections to a Finding 19 of Compliance Due	February 27, 2006.
20 County's Response Due	March 13, 2006
21 Petitioners' Optional Reply Brief Due	March 20, 2006
22 Telephonic Compliance Hearing. 23 Parties will call: 360-709-4803 24 followed by 522784 and the # sign. 25 Ports are reserved from Mr. Zilavy, 26 Mr. Eustis, Mr. Bauer, and Mr. Reynolds.	March 27, 2006, at 10:00 a.m.

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

30 **Pursuant to RCW 36.70A.300(5) and RCW 34.05.542(2), this is a Final**
31 **Order for purposes of appeal. Any appeal of this Order shall be served in person**

1 on the Board by the 30th day. Pursuant to WAC 242-02-832, a motion for
2 reconsideration may be filed within ten days of service of this Order.

3 **SO ORDERED** this 10th day of August 2005.

4 EASTERN WASHINGTON GROWTH MANAGEMENT
5 HEARINGS BOARD

6
7 _____
8 Dennis Dellwo, Board Member

9
10 _____
11 Judy Wall, Board Member

12
13 _____
14 John Roskelley, Board Member