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2 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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4 JOHN KARPINSKI, CLARK COUNTY NATURAL  
5 RESOURCES COUNCIL and FUTUREWISE,

Case No. 07-2-0027

6 Petitioners,

**ORDER GRANTING LIMITED STAY  
OF COMPLIANCE PROCEEDINGS**

7  
8 v.

9 CLARK COUNTY,

10 Respondent,

11  
12 And

13  
14 GM CAMAS, L.L.C., JOHNSTON DAIRY, et al and  
15 MACDONALD PROPERTIES, DARYL GERMANN,  
16 CURT GUSTAFSON, T3G, LLC, HINTON  
17 DEVELOPMENT CORPORATION, BUILDING  
18 INDUSTRY ASSOCIATION OF CLARK COUNTY  
AND CITY OF LA CENTER,

19 Interveners.  
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22 THIS Matter comes before the Board on Clark County's request for a stay in proceedings in  
23 relation to some of the issues previously addressed by the Board.<sup>1</sup> The Petitioners filed a  
24 response stating they had no objection to a stay providing invalidity was maintained<sup>2</sup>

25 By this order the Board grants a stay of the compliance proceedings, and maintains its  
26 determination of Invalidity in regards the following areas of agricultural lands which the  
27 County de-designated and added to the urban growth areas of various Clark County cities:

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29 LB-1 La Center

30 LB-2 La Center  
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<sup>1</sup> Clark County's Compliance Report filed July 20, 2009.

<sup>2</sup> Petitioners Response to SATC filed July 30, 2009.

1 LE La Center  
2 VA Vancouver  
3 VA-2 Vancouver  
4 WB Washougal  
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## 6 I. PROCEDURAL HISTORY

7 The Petitioners challenged Clark County's adoption of Ordinance No. 2007-09-13  
8 (Ordinance), an update to the County's 20-Year Comprehensive Growth Management  
9 Plan.<sup>3</sup> On June 3, 2008 the Board issued an Amended Final Decision and Order (AFDO) by  
10 which it found the Ordinance's de-designation of numerous agricultural areas, which were  
11 then added to the urban growth areas of various Clark County cities, failed to comply with  
12 the GMA. Because the County's non-compliant action substantially interfered with the  
13 fulfillment of the GMA's goals, the Board issued a Determination of Invalidity. The Board's  
14 decision was appealed to the Clark County Superior Court.<sup>4</sup>  
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17 Since Clark County did not seek a stay of the compliance proceedings during the pendency  
18 of its court appeal, the Board entered an Order Finding Continuing Noncompliance and  
19 Invalidity on January 8, 2009 which required the County to achieve compliance by July 7,  
20 2009, report on its compliance actions by July 17, 2009, and scheduled a compliance  
21 hearing for September 2, 2009.<sup>5</sup>  
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24 In June 2009, the Superior Court, among other rulings, reversed the AFDO with respect to  
25 the following areas: CB, LB-1, LB-2, LE, VA, VA-2, and WB.<sup>6</sup> The Petitioners filed a notice  
26 of appeal to the Court of Appeals dated July 2, 2009. Clark County filed a notice of appeal  
27 on July 13, 2009.  
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30 <sup>3</sup> Petition for Review filed November 16, 2007.

31 <sup>4</sup> Consolidated Case No. 08-2-03625-5.

32 <sup>5</sup> The Board notes that the County's Compliance Report was filed on July 20, 2009, three days after it was  
required to have been filed, and that fails to set forth any compliance actions.

<sup>6</sup> Order Dated June 12, 2009.

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2 **II. DISCUSSION OF THE ISSUES**

3 In its Compliance Report, Clark County refers to de-designated areas CA-1, CB, and RB-2  
4 and states that the first two areas were annexed by the City of Camas and that RB-2 was  
5 mostly annexed by the City of Ridgefield. Clark County requests that the Board now find  
6 these areas compliant and valid. Petitioners agree that a finding of compliance would be  
7 appropriate except in the case of those portions of RB-2 not annexed by Ridgefield. The  
8 Board will address Clark County's request at the September 2, 2009 compliance hearing.  
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11 The Board notes that the annexation of CA-1 and CB by the City of Camas proceeded  
12 despite the pendency of appeal before the Board.<sup>7</sup> However, the fact of annexation does  
13 impact Clark County's authority over these lands and the Board's Determination of Invalidity  
14 issued with the AFDO does not act in a retrospective manner.<sup>8</sup> Therefore, as the Superior  
15 Court noted, the Petitioners' appeal of Clark County's actions in regards to these annexed  
16 lands has been rendered moot. Although Clark County requests a finding of compliance,  
17 the Superior Court did not rule that the Board erred in finding the County non-compliant;  
18 rather, the Court ruled that the issue was rendered moot because of the annexation and the  
19 transfer of governance. Thus, the Board's non-compliant holding in the AFDO is still valid.  
20 It is the lack of County jurisdiction that precludes action to achieve compliance and,  
21 because the County has no ability to act, it will be excused under these unique  
22 circumstances from taking legislative action to achieve compliance with the GMA.  
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25 The de-designation of two other areas, BC and VB, were also appealed to the Superior  
26 Court, which upheld the Board's decision. Compliance with the Board's prior orders will  
27 proceed in regards these two areas and the portion of RB-2 not annexed by Ridgefield.  
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32 <sup>7</sup> RCW 35.13.005.

<sup>8</sup> RCW 36.70A.302(2).

1 There is no provision in the Boards' Rules of Practice and Procedure (Ch. 242-02 WAC) for  
2 the issuance of stays. However, the GMA provides that the Administrative Procedure Act  
3 (APA), RCW 34.05, governs practice and procedure before the boards unless it conflicts  
4 with specific provisions of the GMA:

5 All proceedings before the board, any of its members, or a hearing examiner  
6 appointed by the board shall be conducted in accordance with such  
7 administrative rules of practice and procedure as the boards jointly prescribe. All  
8 three boards shall jointly meet to develop and adopt joint rules of practice and  
9 procedure, including rules regarding expeditious and summary disposition of  
10 appeals. The boards shall publish such rules and decisions they render and  
11 arrange for the reasonable distribution of the rules and decisions. **Except as it  
12 conflicts with specific provisions of this chapter, the administrative  
13 procedure act, chapter 34.05 RCW, and specifically including the  
14 provisions of RCW 34.05.455 governing ex parte communications, shall  
15 govern the practice and procedure of the boards.**

14 RCW 36.70A.270(7)(emphasis added).

15 Although the GMA does not directly authorize the Board to issue stays, the APA provisions  
16 apply to the practice and procedure of the boards. RCW 34.05.550 authorizes issuance of  
17 stays. RCW 34.05.550(1) provides:

18 Unless precluded by law, the agency may grant a stay, in whole or in part, or  
19 other temporary remedy.  
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21 This provision of the APA is limited to those actions where there is no direct conflict with the  
22 law; here, the GMA. The Board finds there is no direct conflict and issuance of a stay is a  
23 remedy available to the Board.  
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25 Appeals are currently pending in Division II of the Court of Appeals in regards to the areas  
26 where the Court reversed the Board. Based on the conflicting nature of the holdings, it  
27 would be wasteful of County resources for the Board to require the County to pursue  
28 legislative action to achieve compliance at this time. Therefore, we find that the granting of  
29 a stay is the appropriate remedy in this case.  
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**III. ORDER**

The Board GRANTS a stay of its Amended Final Decision and Order and Order Finding Continuing Noncompliance until sixty (60) days subsequent to a final decision of the appellate courts. The stay shall affect only the following areas and the Board's previous findings of invalidity shall be continued until further order of the Board:

- LB-1, La Center;
- LB-2, La Center;
- LE, La Center;
- VA, Vancouver;
- VA-2, Vancouver;
- WB, Washougal.

Dated this 6<sup>th</sup> day of August, 2009.

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William Roehl, Board Member

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James McNamara, Board Member

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Nina Carter, Board Member