

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

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| RICHARD L. GRUBB, |) | |
| |) | Case No. 00-3-0004 |
| |) | |
| Petitioner, |) | FINAL DECISION AND ORDER |
| |) | |
| v. |) | |
| |) | |
| CITY OF REDMOND, |) | |
| |) | |
| Respondent. |) | |
| |) | |
| |) | |
| |) | |

I. PROCEDURAL HISTORY

On February 14, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Richard L. Grubb (**Grubb** or **Petitioner**). Petitioner challenges Ordinance 2050 (the **Ordinance**) of the City of Redmond (**Redmond** or the **City**) which amends the City Comprehensive Plan. The grounds for the challenge are that the City has violated its own Ordinance 1917 by passing Ordinance 2050. Petitioner also alleges that Ordinance 2050 is in non-compliance with several provisions of the Growth Management Act (**GMA** or the **Act**). The matter was assigned Case No. 00-3-0004 and captioned *Grubb v. City of Redmond* (short case title is **Grubb**).

On February 24, 2000, the Board issued a Notice of Hearing in this matter.

On March 15, 2000, the Board conducted a Prehearing Conference in the conference room of the Financial Center, 1215 Fourth Ave., Seattle. The Respondent submitted his Document Index at this time.

On March 16, 2000, the Board issued a “Prehearing Order” which set forth the legal issues in this case and established dates for the Hearing on the Merits as well as the submittal of motions and briefs.

On March 17, 2000, the Respondent submitted a Revised Document Index.

On March 21, 2000, the Board received the Petitioner's Preliminary Exhibit List.

On March 24, 2000, the Board received the Respondent's Preliminary Exhibit List and the Second Revised Document List.

On May 17, 2000, the Board received the Petitioner's "Prehearing Brief" (**Petitioner's PHB**).

On June 5, 2000, the Board received the "City of Redmond's Hearing Brief" (**City's Brief**).

On June 12, 2000, the Board received the "Petitioner's Reply Brief" (**Petitioner's Reply**).

On Thursday, June 15, 2000, beginning at 10:00 a.m., the Board conducted the Hearing on the Merits in room 1022 of the Financial Center, 1215 Fourth Ave., Seattle. Present for the Board were Edward G. McGuire, Joseph W. Tovar and Lois H. North, presiding officer. Representing the City was James E. Haney. Petitioner Richard L. Grubb represented himself *pro se*. Also in attendance was Tim Trohimovich, Comprehensive Planning Manager for the City of Redmond. Court reporting services were provided by Robert Lewis of Tacoma, Washington. No witnesses testified.

During the course of the hearing, it became apparent that some of the land use information contained in the briefs in tabular and narrative format would be more useful if displayed in graphic format. At the conclusion of the hearing, the presiding officer directed the City to prepare four maps illustrating the 1995 and 1999 actual land use as well as the current plan and zoning designations for the portions of Redmond and adjacent King County area in question. The City was directed to create these maps, review them with Petitioner for his comment, and to submit them to the Board after the hearing.

II. POST HEARING EXHIBITS

On June 29, 2000, the Board received the originals and four copies each of the four maps from the City of Redmond, as requested by the Board at the Hearing on the Merits. The base map for these post-hearing exhibits, all created with the City's geographic information system, and dated June 22, 2000, shows parcel lines and streets, and the Sammamish River. Many of the parcels in the North Sammamish River Area are labeled by business or property owner name. The geographic scope and scale of all four maps is the same, bound by approximately NE 95th St. on the south, NE 128th on the north, 138th Ave NE on the west, and 160th Ave NE on the east.

The four maps are labeled as follows: PHE-1, which is titled in the legend as "Redmond Comprehensive Plan" and "King County Comprehensive Plan," uses a variety of colors to show

land use designations, including a Kelly green to show “urban recreation” for the North Sammamish Valley area; PHE-2, which is listed in the legend as “Zoning,” uses colors to show various land use districts, including a Kelly green and notation of “UR” for Urban Recreation on the North Sammamish Valley Area; PHE-3 is labeled “1995 Existing Land Use” and shows the Willows Run Golf Course in a pale green to connote recreation, King County 60 Acre Park in Kelly green to connote “Park”, the Cosmos property and Benaroya Property in light orange to connote “Vacant,” and the Muller Farm in brown to connote “Vacant/Plowed;” PHE-4 is labeled “1995 Existing Land Use” and shows the Willows Run Golf Course original 18 hole course with light green, and the subsequent expansion areas with light orange to connote “vacant.” The Benaroya and Cosmos properties are also shown on this map as “Vacant” while the Muller Farm property is shown as “Agriculture.”

III. FINDINGS OF FACT

1. The Sammamish River Valley extends from the center of the City of Redmond to the City of Woodinville. Soils in the valley are identified as Class II, using the classification system adopted by the U.S. Soil Conservation Service. The soils of the Sammamish Valley are classified as “prime agricultural soils” by the U.S. Soil Conservation Service. *Benaroya et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, Final Decision and Order (Mar. 25, 1996), Finding of Fact 1, at 2. (***Benaroya FDO***).
2. The Benaroya property was acquired by the Benaroya Company in 1969, two years after it was originally zoned Agriculture by the City of Redmond. Finding of Fact 6, *Benaroya FDO*, at 3.
3. Since the 1960’s, the City of Redmond has zoned the land in the Northern Sammamish Valley as agriculture. Petitioner’s PHB, at 4.
4. The term “Northern Sammamish Valley” used herein refers to the portion of the Sammamish River Valley within the city limits of Redmond and which is currently designated “urban recreation” in the Redmond comprehensive plan. Ex. PHE-1.
5. The lands immediately north of the Northern Sammamish Valley are in unincorporated King County and have a King County Comprehensive Plan designation of “Agriculture”. Ex. PFE-1.
6. “Agricultural Production District” (**APD**) is the King County zoning designation for agricultural resource lands designated pursuant to the mandates of RCW 36.70A.170 and .060.
7. The Northern Sammamish Valley is bifurcated by the Sammamish River. The two most northerly parcels in Redmond are west of the River and north of NE 116th Street.

These are the “Benaroya” parcel and the “Muller” Farm. Redmond’s most northerly parcel east of the River is the “King County 60 Acre Park.” Ex. PFE-1.

8. The Benaroya parcel is 32 acres in size. The Muller farm parcel is 37 acres in size. Petitioner Reply, at 6.

9. The Benaroya parcel is bordered on its northern and eastern sides by the “Muller Farm” property, which is deed restricted to agricultural and open space uses. The portion of the Muller Farm that is north of the Benaroya parcel is in unincorporated King County and designated “Agriculture” and is deed restricted to agriculture and open space uses. The portion of the Muller Farm that is within the City of Redmond lies east of the Benaroya parcel. Both the Benaroya and the Muller Farm parcel are currently designated “Urban Recreation.” Ex. PHE-1.

10. The City of Redmond reaffirmed the agricultural designation and zoning of its Northern Sammamish Valley when, pursuant to RCW 36.70A, the Growth Management Act, it adopted its Comprehensive Plan on July 18, 1995. Ordinance 1847.

11. The City had not adopted a Transfer of Development Rights (**TDR**) program, as of the [July 18, 1995] date of the adoption of the Plan. At the hearing on the merits, the City stated that it had adopted a TDR program the previous evening, Tuesday, January 30, 1996. Finding of Fact 24, *Benaroya* FDO, at 7.

12. On March 25, 1996 the Board issued its Final Decision and Order in the Benaroya case. Among other things, the FDO directed the City to change its agricultural lands designations to be consistent with the requirements of the Act. *Benaroya* FDO, at 38.

13. On December 10, 1996, the Redmond City Council changed the agricultural designation and zoning in the Northern Sammamish Valley to Interim Urban Recreation. Ordinance 1917.

14. Section 10 of Ordinance 1917 provided that the area designated Agriculture in the City of Redmond Comprehensive Plan (Ordinance 1847), shall be automatically redesignated as Agriculture upon a favorable ruling by a court of competent jurisdiction, that the City’s definition of agricultural lands in *Benaroya, et al v. City of Redmond* (CPSGMHB Consolidated Case No. 95-3-0072; Final Decision and Order; March 25, 1996), and in *City of Redmond v. CPSGMHB, et al.* (Case No. 96-2-15468-7SEA), was correct. Ordinance 1917, at 4-5.

15. On March 13, 1997 the Board issued a Finding of Compliance, indicating the City’s remand actions regarding agricultural designations, were in compliance with the

Board's FDO and requirements of the Act. *Benaroya et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, Finding of Compliance (Mar. 13, 1997) at 6-9 and 16.

16. On August 6, 1998 the Supreme Court of the State of Washington reversed the Board and ruled that the City's interpretation of the definition of agricultural lands is correct (Exhibit 173 of Respondent's Brief; Attachment III of Petitioner's PFR; Case No. 96-2-15468-7SEA).

17. On December 31, 1998 the Board issued an Order on Remand from Washington Supreme Court addressing the Court's directions. *Benaroya, et al., v. City of Redmond*, CPSGMHB Case No. 95-3-0072c, Order on Remand from Washington Supreme Court (Dec. 31, 1998).

18. The Redmond Development Code (**RDC**), as amended by Ordinances 1873 and 1901, has provisions for a Transfer of Development Rights. Chapter 20C.20A RDC, is entitled "Agriculture Regulations and Transfer of Development Rights." Ex. 2, Petitioner's PHB.

19. On December 14, 1999, the Redmond City Council passed Ordinance 2050, amending its Comprehensive Plan to make the Urban Recreation Designation permanent for the Northern Sammamish Valley. Ex. 4, Ordinance 2050.

IV. STANDARD OF REVIEW

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board "shall find compliance with the Act, unless it determines that the [City's] action[s] are **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the [GMA]." RCW 36.70A.320 (3). For the Board to find the City's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

V. LEGAL ISSUES

A. Legal Issue 1

In adopting Ordinance 2050, amending its Comprehensive Plan, did the City of Redmond fail to comply with RCW 36.70A.130, RCW 36.70A.020(8), RCW 36.70A.0060, RCW 36.70A.170,

1. Discussion

a. Positions of the Parties

Grubb asserts that the GMA attaches great importance to the preservation of natural resource lands, including agricultural lands. He quotes at length the Supreme Court of the State of Washington in *Redmond v. CPSGMHB*, 136 Wn.2d 38. The Court refers to “the significance afforded preservation of agricultural lands under the GMA” Petitioner’s PHB, at 3, quoting the *Redmond* Court. The primacy of agricultural lands, he argues, is evidenced by the court’s words:

The significance of agricultural land preservation in the GMA can be seen in the very timing of key actions mandated in the statute. *Id.*, at 47.

Petitioner makes the point that the City has not repudiated the central concept that drove it to defend its agricultural designations for the area all the way to the Supreme Court. “Since the Respondent’s Brief offers no rebuttal to the conservation imperative, it can be concluded that the Respondent agrees that the Act has such an imperative.” Petitioner’s Reply, at 2.

Grubb describes as “disingenuous” the City’s contention that it is fulfilling its obligation under the Act by allowing agricultural uses in the Urban Recreation zone. First, he argues, when other uses are allowed and if they do occur, the land is not available for agriculture. Secondly, other uses, in this case ball fields and playfields, are likely to have requirements such as parking, bathrooms and spectator areas that will not only be incompatible with agricultural uses, but could very well be detrimental to the productive capability of the soil. Petitioner’s PHB, at 7.

The City makes a number of arguments in defense of its actions. It argues that “The land designated urban recreation and open space by Ordinance 2050 no longer qualifies for protection as agricultural land and the designation does not violate the agricultural policies of the GMA.” City’s Brief, at 7. It argues that the land designated Urban Recreation and Open Space is no longer primarily devoted to commercial agriculture and no longer has long-term commercial significance.

In order for the land to qualify as “agricultural land” within the meaning of the GMA, two prerequisites must be met. *First*, the land must be “primarily devoted to the commercial production of agricultural products”. *Second*, the land must have “long-term commercial significance for agricultural production.” Both of these prerequisites must be met before land can be designated as agricultural lands under the GMA.

The City maintains that the lands designated Urban Recreation and Open Space no longer meet the first criteria – “primarily devoted to the commercial production of agricultural products”. Since the adoption of Ordinance 1917 in December 1996, the Northern Sammamish Valley has been designated and zoned Urban Recreation and Open Space, not Agriculture. During the three years that this interim Urban Recreation and Open Space designation has been in effect, 80.3% of all the land in the area is being used, or planned for use as recreational property. The area is no longer capable of being used for agricultural production. City’s Brief, at 10. Furthermore, the Cosmos property, which is vacant, is isolated from the lands in the area actually used for farming and it has access only through upland property zoned for residential uses. *Id.*, at 16.

The City argues that the land designated Urban Recreation and Open Space no longer has long-term commercial significance for agricultural production. The Act defines “Long-term commercial significance” in RCW 36.70A.030(10):

‘Long-term commercial significance’ includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land’s proximity to population areas, and the possibility of more intense uses of the land.

The City then quotes the Department of Community Trade and Economic Development regulations (WAC 365-190-050(1)) for classifying agricultural lands of long-term significance.

When both the statutory definition and the factors set forth in the Department’s regulation^[1] are considered, it is apparent that the Northern Sammamish Valley no longer has long-term commercial significance for agricultural production.

The City included a table illustrating that at least 74% of the soils within the Redmond Northern Sammamish Valley are currently covered over by non-agricultural uses. City’s Brief, Table 1, at.6. With respect to proximity to population areas and the intensity of nearby land uses (RCW 36.70A.030(2); WAC 365-190-050(1)(g)), the City argues that the Northern Sammamish Valley is virtually surrounded by population centers and intense urban uses. The record does reflect that to the west of the Northern Sammamish Valley, 1.336 million square feet of office and manufacturing space is under construction or permitted. City’s Brief, at 15. Redmond argued that the possibility of more intense uses at some time is high and the Valley’s potential for viable commercial agriculture is very low.

Since the Northern Sammamish Valley is no longer “primarily devoted to” commercial agriculture and is no longer of “long-term commercial significance” for agricultural production, the City argues that its designation of the Northern Sammamish Valley for Urban Recreation does not violate the agricultural policies of the GMA and fulfills the GMA’s recreation and open space goals. City’s Brief, at 18.

b. Analysis

A case of first impression

This is a case of first impression for the Board. It is the first GMA challenge arising from the action of a local government to remove the agricultural resource land designation that it had previously adopted. The permanence of agricultural resource lands designations have been discussed only peripherally in prior Board and court decisions, and never settled as a matter of law. In order to answer Legal Issue No. 1 in this case, the Board must first address and resolve this threshold question – can lands that have been designated pursuant to RCW 36.70A.170(1)(a) and regulated pursuant to RCW 36.70A.060(1) be “de-designated” and, if so, under what conditions?

The Growth Management Act’s Agricultural Conservation Imperative

The GMA’s provisions for the conservation of natural resource lands, including agricultural lands, constitute one of the Act’s most important and most directive mandates. The Board has previously commented on the importance of the Act’s provisions for resource lands and the significance of its sequence ^[2] in the mandated adoption of GMA documents:

Two of the Act’s most powerful organizing concepts to combat sprawl are the identification and conservation of resource lands and the protection of critical areas (see RCW 36.70A.060 and .170) and the subsequent setting of urban growth areas (UGAs) to accommodate urban growth (see RCW 36.70A.110). It is significant that the Act required cities and counties to identify and conserve resource lands before the date that the IUGAs [interim urban growth areas] had to be adopted. This sequence illustrates a fundamental axiom of growth management: “the land speaks first.” *Bremerton, et al, v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, Final Decision and Order, October 6, 1995, at 31. (Emphasis added).

With respect to agricultural resource lands specifically, the Board has previously articulated the Act’s provisions as an **agricultural conservation imperative**. In *Green Valley*, ^[3] the Board scrutinized the inter-play between the Act’s resource lands planning goal (RCW 36.70A.020(8)), the requirement to designate agricultural resource lands (RCW 36.70A.170(1)(a)) and the requirement to adopt development regulations to conserve agricultural resource lands (RCW 36.70A.060(1)). ^[4] The Board held:

RCW 36.70A.020(8), .060, and .170, when read together, create an agricultural

conservation imperative that imposes an affirmative duty on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. *Green Valley*, at 16. Emphasis added.

The Board recognized that pressures to convert agricultural lands to urban uses would come not only from the private sector, but the public sector as well. As in the instant case, the local government in *Green Valley*, sought to permit urban recreational use (specifically playfields) on lands that had previously been designated as agricultural resource lands. The Board examined and rejected the argument that the discretion that the GMA affords to local governments to “balance the goals of the Act” somehow elevates recreational uses to an equal GMA footing with agricultural uses. The Board stated:

The location-specific and directive duty of RCW 36.70A.020(8), .060 and .170 to designate and conserve agricultural lands clearly trumps the non-directive, non-site specific guidance and inventory requirements for open space and recreation of .020 (9), .150 and .160. *Green Valley*, at 17.

Thus, the Board has interpreted the Act to acknowledge the paramount importance of the designation, conservation and protection of agricultural lands. It is a duty local governments should not take lightly.

GMA provisions for amending policies and designations

The City correctly points out that GMA plans are dynamic, rather than static, documents. The Board has previously described the dynamic nature of planning under the GMA as “iterative and interactive.”^[5] RCW 36.70A.130^[6] requires local governments to periodically review and, as appropriate, update their plans. Likewise, in the Central Puget Sound region, the counties and cities have an additional duty, pursuant to RCW 36.70A.215, to monitor the availability of “buildable lands” and to take necessary actions to maintain an adequate land supply to accommodate growth. These actions presumably would include amendments to various planning documents, including urban growth area designations, and revised population and employment allocations to cities via county-wide planning policies. Such actions might, in turn, require amendments to city comprehensive plans.

Although both RCW 36.70A.130 and .215 require counties and cities to systematically review their comprehensive plans, and to take action to amend them where appropriate, neither provision requires that amendment actually occur. Significantly, neither .130 nor .215 make explicit mention of reviewing or amending agricultural resource lands designations. More significantly, neither .170 nor .060 describe a process or criteria to amend or “de-designate” agricultural lands.

Does the lack of an explicit GMA mention, much less mandate, to review and amend prior agricultural lands designations mean that ag lands may never be “de-designated”? For the reasons and circumstances discussed below, the Board answers in the negative.

Once lands are designated as agricultural lands they are not necessarily destined to be agricultural lands forever. This is not license for local governments to “de-designate” agricultural resource lands where it may simply be locally popular or politically convenient. “De-designation” of agricultural lands is a serious matter with potentially very long-term consequences. Such de-designation may only occur if the record shows demonstrable and conclusive evidence that the Act’s definitions and criteria for designation are no longer met. The documentation of changed conditions that prohibit the continued designation, conservation and protection of agricultural lands would need to be specific and rigorous. If such a de-designation action were challenged, it would be subject to heightened scrutiny by the Board.

Two statutory criteria for designation of Agricultural Conservation Lands

The Board agrees with the City that there are two criteria for local governments to designate lands as agricultural resource lands. The first is the requirement that the land be “devoted to” agricultural usage. The second is that the land must have “long-term commercial significance” for agriculture.

1. “Devoted to”

The Board need not revisit whether the lands in question were devoted to agriculture. This issue was decided by the Supreme Court. To quote the Court:

We hold land is “devoted to” agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production. *Redmond v. CPSGMHB*, 136 Wn.2d 38, at 53.

The soil attributes of the area have not been changed. The lands in the Northern Sammamish Valley were previously zoned for agriculture and are capable of being used for agricultural production.

2. “Lands of long-term commercial significance”

The Board now turns to the second criteria, namely the “long-term commercial significance” of the land as agriculture.

‘Long-term commercial significance’ includes the growing capacity, productivity,

and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land. RCW 36.70A.030(10).

By parsing this definition, we see that there are two components. The first addresses the viability of the lands as a function of its intrinsic attributes, i.e., “growing capacity” and “productivity” which in turn are largely a function of the suitability of the soils for growing agricultural products. The second involves consideration of off-site factors and some degree of judgment about how those factors affect the long-term viability of agriculture. Crucial to the meaning of this second part of the definition is the meaning of the word “land.”

As to the first component, no argument was offered that these lands do not have “growing capacity, productivity, and soil composition” necessary to support long-term commercial production. The soils in the Sammamish Valley are “prime agricultural soils” (Finding of Fact 1). The City itself, by virtue of designating these lands as agricultural, first in 1968 and then again in 1995 pursuant to this specific definition under the GMA, has made this judgment. The City did not argue that these lands no longer have prime soils or that there were other attributes of the land itself that preclude its productivity.

The heart of the dispute in this case focuses on the second component of the definition of “long-term commercial significance”. Redmond argues that the lands of the Northern Sammamish Valley are no longer significant (i.e., viable) because of its “proximity to population areas” and the “possibility of more intense uses of the land.” To evaluate arguments and facts cited by the City, we must answer two questions; 1) what tangible changes have actually occurred, and 2) which parcels of land do those changes affect? It’s one thing to argue that placing a building or a golf course is a changed physical circumstance that makes agriculture untenable long-term *on a particular parcel*. It’s something quite different to argue that placing a building or golf course on Parcel A, B and C makes agriculture untenable long-term on Parcel E.

The City argues that the time for agriculture in the Northern Sammamish Valley has passed, because physical improvements have been made in the interim between 1995 and 1999. It points to the expansion of the Willows Run Golf Course to 45 holes, the erection of the Overlake Christian Church and the residential development surrounding the Valley View and Cosmos parcels. Grubb argues that there are nearly 90 acres in the Northern Sammamish Valley currently available and capable of agricultural production, including Benaroya’s 32 acres and the Muller farm’s 37 acres. Petitioner’s Reply, at 6, citing the City’s Brief, Table 1, at 6. These parcels are noted on the 1999 Land Use Map Exhibit as “vacant” and “vacant/plowed.”^[7] The Board agrees with Grubb with respect to the Benaroya and the Muller parcels. The Board agrees with the City with respect to the rest of the Northern Sammamish Valley, including the Cosmos, Valley View, and Willows Run Golf Course properties.

Willows Run Golf Course and Cosmos/Valley View parcels

The Board concludes that Redmond has made a persuasive argument that events have overtaken the Willows Run, Valley View and Cosmos parcels so as to make them appropriate candidates for de-designation. Redmond's conclusion that these properties no longer have long-term commercial significance is reasonable and supportable. Even if lands have prime soils, and have been historically farmed, it does not follow that they must remain designated as agricultural resource lands if a significant physical change has occurred to destroy the long-term viability of *those parcels* as agricultural land. Likewise, the fact that the Valley View and Cosmos parcels are surrounded by incompatible residential uses and is severed from any connection with a larger pattern of agricultural land makes them also untenable long-term as commercial agriculture. The City has presented facts that demonstrably and conclusively show that these parcels no longer meet the GMA's definition of "long-term commercial significance". The City's designation of these lands as urban recreation (UR) was not **clearly erroneous**.

Benaroya and Muller Farm parcels

The City over-reaches when it argues that changes to the Willows Run parcels make the entirety of the Northern Sammamish Valley agriculture untenable, unviable or otherwise not capable of "long-term commercial significance." It is instructive to note that the City uses the term "Northern Sammamish Valley" to describe the areas for which it argues the time of agricultural designation is past and the future is "urban recreation." From Redmond's perspective, these lands are simply those in the northern part of the City. However, stepping back from this narrow vision, we see a different picture. The properties in the "Northern Sammamish Valley" are, in fact, the *southerly portion* of the much larger lands of the Sammamish River Valley. Thus, when Redmond argues that 80% of the "Northern Sammamish Valley" is irrevocably committed to non-agricultural uses, it is actually talking only about the relatively small piece of a much bigger picture – a picture that is overwhelmingly agricultural.

In a GMA context, Redmond's error was to construe "the lands" as simply those properties within the Redmond city limits. The term "lands" in the definition of "long-term commercial significance" means more than an individual parcel- it means the patterns of contiguous parcels, regardless of jurisdictional boundaries, that are "devoted to" agriculture. In the instant case, that means the designation of the Benaroya and Muller properties must be made in the context of the immediately adjacent agricultural lands of King County's agricultural production district. Significantly, there is no dispute that the King County agricultural production district of the Sammamish River Valley, of which the Benaroya and Muller parcels are visually, functionally and effectively a part, has "long-term commercial significance."^[8]

In contrast to their separation from neighboring properties on the east, west, and south, these parcels are immediately contiguous to the County's agricultural production district (**APD**) to the north. This context, and the overall pattern of agricultural land use in the Sammamish River Valley, underscores Redmond's error in de-designating the Benaroya and Muller parcels.

The City's de-designation of the Benaroya and Muller parcels from agriculture resource lands to (permanent) urban recreation is not justified by the physical changes since 1995 that the City points to. No development has occurred on these lands, nor are there vested permits to develop them. Unlike the Cosmos parcel on the east side of the river, the Benaroya and Muller parcels are not surrounded by new and conflicting non-agriculture land uses. They are separated from the "60 acres park" to the east by the Sammamish River, and separated from the Willows Run Golf Course to the south by NE 116th St. They are separated by a major arterial (Willows Road) from the business park zoned hillside to the west. No evidence or argument was presented that either golf course or business park development is an incompatible adjacent land use that would make agriculture non-viable. [\[9\]](#)

Petitioner Grubb has met the burden of proof. Redmond has failed to point to facts to justify removing the Benaroya and Muller Farm parcels from agricultural designation. These are not the last untenable vestiges of an isolated agricultural district; rather, they are continuous to the Sammamish River Valley agricultural production district, a much larger pattern of agricultural land use with long-term commercial significance. The City was **clearly erroneous** in its decision to remove the agricultural resource designation from the Benaroya and Muller parcels and designate them (permanently) urban recreation - UR.

2. Conclusion re: Legal Issue 1

With the exception of the Benaroya and Muller parcels, Petitioner has failed to carry his burden of showing how the City's action did not comply with the requirements of the GMA. The City has presented demonstrable and conclusive evidence of changed circumstances to justify its de-designation of agricultural resource lands in the "Northern Sammamish Valley." The Board finds that the City is in compliance with the goals and requirements of the GMA, except for the Benaroya and Muller parcels. With regard to the Benaroya and Muller parcels, the Board finds that Petitioner has shown that the City's action did not comply with the requirements of the Act. The City has failed to point to facts to justify removing these parcels from an agricultural designation. *The Board will remand this portion of the City's Plan with directions to re-designate these parcels with appropriate land use designations and development regulations to comply with the goals and requirements of the GMA as interpreted herein*

B. Legal Issue 2

In not invoking the “savings and revival clause” of the City of Redmond Ordinance 1917 (Section 10), amending its Comprehensive Plan, did the City fail to comply with RCW 36.70A.020(8), .060, .170 and .177(1)?

1. Discussion

Positions of the Parties

Grubb alleges that it was a reversal of stated intentions when the City, upon having its definition of agricultural lands upheld by a court of competent jurisdiction, failed to redesignate the lands as such in its Comprehensive Plan. He argues that the City has failed in its affirmative obligation and duty under the GMA to maintain and enhance natural resource-based industries, and it has failed to conserve productive agricultural lands by giving primacy to other uses that are very likely incompatible with agriculture and most certainly do not enhance the natural resource industry. Petitioner’s Brief, at 11. Grubb asks that the Urban Recreation designation and zone be declared invalid and prior policies and provisions of the City’s Comprehensive Plan be revived.

The City argues that the Petitioner seems to believe that once an Agricultural designation is established, it can never be changed. It argues that a comprehensive plan is not a static document because all plans are “subject to continuing review and evaluation” by the adopting local government. City’s Brief, at 21, quoting RCW 36.70A.130(1). The circumstances in the Northern Sammamish Valley changed significantly between the time of adoption of the 1995 Plan and the time of the City’s 1999 Comprehensive Plan update encapsulated in Ordinance 2050. The City asks that the petition be denied and that Ordinance 2050 be upheld. The City argues that the Valley has been lost to agriculture due to recreational development during the pendency of the City’s appeals. City’s Brief, at 22.

b. Analysis

The Petitioner has failed to carry his burden of showing that the City’s failure to take legislative action to invoke the “saving and revival clause” of Ordinance 1917 constituted a violation of the requirements of the GMA.

2. Conclusion re: Legal Issue 2

Grubb has not carried his burden of proof to show that, by not invoking the “savings and revival clause” of the City of Redmond Ordinance 1917 (Section 10), amending its Comprehensive Plan, the City has failed to comply with RCW 36.70A.020(8), RCW 36.70A.060, RCW 36.70A.170, and RCW 36.70A.177(1).

VI. INVALIDITY

The Board has found the City's urban recreation designation, as it pertains to the Benaroya and Muller parcels, does not comply with the requirements of RCW 36.70A.060 and .170. RCW 36.70A.302 provides:

(1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

(2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

RCW 36.70A.020(8) provides:

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.

The Board finds that the City's de-designation of the Benaroya and Muller parcels from agricultural to (permanent) urban recreational (UR) was **clearly erroneous** and does not maintain and enhance the agricultural industry, does not encourage the conservation of productive agricultural lands and does not discourage incompatible uses. Therefore, the Board determines and concludes that the continued validity of that part of Ordinance 2050 that designates the Benaroya and Muller parcels for "urban recreation" would substantially interfere with the fulfillment of RCW 36.70A.020(8). **Therefore, pursuant to the authority conferred by RCW 36.70A.300(2), the Board enters a determination of invalidity for that part of Redmond's Plan that designates the Benaroya and Muller farm parcels as urban recreation (UR),**

including all (UR) implementing development regulations that pertain to the Benaroya and Muller parcels.

VII. ORDER

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board orders:

- City of Redmond Ordinance 2050 is in compliance with the goals and requirements of the Growth Management Act, except for the Urban Recreation land use designation and the associated “UR” zoning designation assigned to the Benaroya and Muller parcels in the North Sammamish Valley area.
- The Board finds that the City’s action de-designating the Benaroya and Muller parcels from “agricultural” and designating them “urban recreation” was **clearly erroneous**.
- The Board has determined that the continued validity of the “Urban Recreation” land use designation and zoning for the Benaroya and Muller parcels would substantially interfere with the fulfillment of RCW 36.70A.020(8). Pursuant to RCW 36.70A.300(1)(b), the Board enters a **determination of invalidity** as to the part of Ordinance 2050 which designates the Benaroya and Muller parcels for urban recreation.
- The Board **remands** Ordinance 2050 with direction to the City to take the necessary legislative actions to comply with the GMA as set forth and interpreted by this Final Decision and Order by no later than **4:00 p.m. on January 10, 2001**.
- By no later than **4:00 p.m. on January 17, 2001**, the City shall file with the Board an original and four copies of a Statement of Actions Taken to Comply with this Final Decision and Order (the **SATC**) and shall simultaneously serve a copy on Petitioner.
- By no later than **4:00 p.m. on January 24, 2001** or seven calendar days after the City submits its SATC, whichever comes first, the Petitioner may file with the Board an original and four copies of its Memorandum in Response to the SATC, and shall simultaneously serve a copy on the City.

Pursuant to RCW 36.70A.330(1), the Board gives Notice of Compliance Hearing in this matter to be held at **10 a.m. on February 1, 2001** in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. In the event that the City files its SATC earlier than November 30, 2000, the Board will issue an Order amending the date for the Compliance Hearing.

So ORDERED this 11th day of August, 2000

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

[\[1\]](#) WAC 365-190-050(1) provides:

In classifying agricultural lands of long-term significance for production of food or other agricultural products, counties and cities shall use the land-capability classification system or the United States Department of Agriculture Soil Conservation Service as defined in Agricultural Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in publishing soil surveys. These categories incorporate consideration of the growing capacity, productivity and soil composition of the land. Counties and cities shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

- (a) The availability of public facilities;
- (b) Tax status;
- (c) The availability of public services;
- (d) Relationship or proximity to urban growth areas;
- (e) Predominant parcel size;
- (f) Land use settlement patterns and their compatibility with agricultural practices;
- (g) Intensity of nearby land uses;
- (h) History of land development permits issued nearby;
- (i) Land values under alternative uses; and
- (j) Proximity of markets.

[2] The September 1, 1991 deadline for adoption of agricultural lands regulations preceded the deadlines for adoption of the other major components of GMA's planning regime: county-wide planning policies (1992): interim urban growth areas (1993), comprehensive plans, final urban growth areas and development regulations (1994).

[3] *Green Valley, et al., v. King County, et al.*, CPSGMHB Case No. 98-3-0008c, Final Decision and Order, July 29, 1998.

[4] RCW 36.70A.020(8) provides:

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 ones. Emphasis added.

RCW 36.70A.170(1)(a) provides:

On or before September 1, 1991, each county, and each city, shall designate where appropriate: (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products; . . . Emphasis added.

RCW 36.70A.060(1) provides in pertinent part:

Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170 . . . Emphasis added.

[5] In *City of Edmonds, et al, v. Snohomish County*, CPSGMHB Case No. 93-3-0005c, Final Decision and Order, October 4, 1993, the Board stated:

[T]he nature of growth management planning under GMA is similarly **interactive and iterative** in nature, with specific steps along the way specifically noted for future review and adjustments. *Edmonds*, at 18, footnote omitted. Bold emphasis in original

[6] RCW 36.70A.130 provides in pertinent part:

(1) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Not later than September 1, 2002,

and at least every five years thereafter, a county or city shall take action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure that the plan and regulations are complying with the requirements of this chapter. The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section . . .

. . .

(3) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas. The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215. Emphasis added.

[7]

As to the Benaroya parcel specifically, the Board notes that the City purchased it for recreational purposes before it then took the challenged action to permanently designate the entire “Northern Sammamish Valley” for urban recreation. Redmond’s “landowner intent” was obviously contrary to the continued devotion of this land to agricultural uses. However, as noted above, the Supreme Court has clarified that landowner intent does not control whether land is “devoted to” agricultural use.

[8]

The Board has previously construed a similar broader context for the meaning of the word “lands:”

For purposes of determining if a proposed use constitutes impermissible urban growth or permissible rural growth, the Board will consider “such lands” to refer not to an individual parcel, but rather to the *land use pattern* in the immediate vicinity *Vashon-Maury*, CPSGMHB Case No. 95-3-0008c, October 23, 1995, at 68.

[9]

To the contrary, Redmond effectively made this determination with respect to the hillside business park designation in 1995. At that time, the City designated agriculture east of Willows Road notwithstanding the business park zoning to the west.