

1 BEFORE THE EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 DCCRG AND FUTUREWISE,

4 Petitioners,

5
6 v.

7 DOUGLAS COUNTY,

8 Respondent.

9
10 LARRY WITTE, WITTE ORCHARDS, INC.,
11 COLUMBIA PRIDE FRUIT STORAGE AND
12 NORTHERN FRUIT CO., INC.

13
14 Intervenors
15

Case No. 09-1-0011

FINAL DECISION AND ORDER

16
17 **I. SYNOPSIS**

18 On July 21, 2009, Douglas County Coalition for Responsible Government (DCCRG)¹ and
19 Futurewise (Petitioners) filed a Petition for Review (PFR) with the Eastern Washington
20 Growth Management Hearings Board (Board). With this PFR, the Petitioners challenge
21 Douglas County's (County) adoption of Ordinance No. TLS 09-03-22D, entitled
22 Amendments to the Douglas County Countywide Comprehensive Plan and DCC Title 18;
23 and Ordinance No. TLS 09-04-24C, entitled Amendments to the Greater East Wenatchee
24 Comprehensive Plan, which amended the County's and East Wenatchee's Comprehensive
25 Plans. The Petitioners claim the County de-designated two areas of agricultural land of
26 long-term commercial significance (Ag land) which continue to meet both the Growth
27 Management Act's (GMA) and the County's criteria for agricultural resource land
28 designation. With this Final Decision and Order (FDO), the Board finds the County's action
29 violated the GMA's requirement to maintain and enhance agricultural lands of long-term
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¹ Douglas County Coalition for Responsible Government.
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1 commercial significance (RCW 36.70A.020(8)), failed to designate Ag land (RCW
2 36.70A.170(1)), and failed to consider all the factors outlined in the County's criteria (RCW
3 36.70A.170(2)).

4
5 The Petitioners also claim the County expanded the East Wenatchee Urban Growth Area
6 (UGA) without evidence in the Record establishing additional urban land is necessary to
7 accommodate the County's adopted Office of Financial Management (OFM) 20-year
8 population projection. With this FDO, the Board finds the County's action violated the GMA's
9 goals to contain urban development to urban areas (RCW 36.70A.020(1)), reduce sprawl
10 (RCW 36.70A.170(2)), and requirements to designate urban growth areas based on the
11 OFM's 20-year population projection (RCW 36.70A.110).
12

13 14 **II. PROCEDURAL BACKGROUND**

15 Petition for Review

16 On July 20, 2009, Petitioners filed a PFR with the Board challenging Douglas County's
17 adoption of Ordinance Nos. TLS 09-03-22D and TLS 09-04-24C. The PFR set forth three
18 issues for the Board's review.
19

20 Intervention

21 On August 5, 2009, the Board received a Motion to Intervene from Larry Witte, Alan Witte,
22 Witte Orchards Inc., A&L Orchards, Columbia Pride Fruit Storage, and Northern Fruit
23 Company Inc. (collectively, Intervenors). With its August 20, 2009 Prehearing Order, the
24 Board granted the motion and allowed Intervenors to submit briefing and argument in
25 support of Douglas County.
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28 Hearing on the Merits

29 The Hearing on the Merits (HOM) was held on December 8, 2009, in East Wenatchee,
30 Washington. Board members John Roskelley, Joyce Mulliken and Ray Paoella were
31 present; Board Member John Roskelley presiding. The Petitioners were represented by
32

1 Robert Beattey; the County was represented by Steve Clem; and Intervenors were
2 represented by Charles Zimmerman and Julie Norton.

3
4 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,
5 AND STANDARD OF REVIEW**

6 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and
7 amendments to them, are presumed valid upon adoption.² This presumption creates a high
8 threshold for challengers as the burden is on the petitioners to demonstrate that any action
9 taken by the County is not in compliance with the GMA.³

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11 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating
12 noncompliant plans and development regulations.⁴ The scope of the Board's review is
13 limited to determining whether the County has achieved compliance with the GMA only with
14 respect to those issues presented in a timely petition for review.⁵ The GMA directs that the
15 Board, after full consideration of the petition, shall determine whether there is compliance
16 with the requirements of the GMA.⁶ The Board shall find compliance unless it determines
17 that the County's action is clearly erroneous in view of the entire Record before the Board
18 and in light of the goals and requirements of the GMA.⁷ In order to find the County's action
19 clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake
20 has been committed."⁸

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25 ² RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
26 development regulations] comprehensive plans and development regulations, and amendments thereto,
27 adopted under this chapter are presumed valid upon adoption.

28 ³ RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the
29 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
30 chapter is not in compliance with the requirements of this chapter.

31 ⁴ RCW 36.70A.280, RCW 36.70A.302.

32 ⁵ RCW 36.70A.290(1)

⁶ RCW 36.70A.320(3)

⁷ RCW 36.70A.320(3)

⁸ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

1 In reviewing the planning decisions of cities and counties, the Board is instructed to
2 recognize “the broad range of discretion that may be exercised by counties and cities” and
3 to “grant deference to counties and cities in how they plan for growth.”⁹ However, the
4 County’s actions are not boundless; their actions must be consistent with the goals and
5 requirements of the GMA.¹⁰
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7 Thus, the burden is on the Petitioners to overcome the presumption of validity and
8 demonstrate that the challenged action taken by the County is clearly erroneous in light of
9 the goals and requirements of the GMA.
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11 **IV. BOARD JURISDICTION**

12 The Board finds that the PFR was timely filed, pursuant to RCW 36.70A.290(2). The Board
13 finds that the Petitioners have standing to appear before the Board, pursuant to RCW
14 36.70A.280(2). The Board finds that it has jurisdiction over the subject matter of the petition
15 pursuant to RCW 36.70A.280(1).
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17 **V. PRELIMINARY MATTERS**

18 The Petitioners filed three issues with the Board with the original petition for review (PFR).
19 In the Petitioners’ Hearing on the Merits brief, filed November 3, 2009, Petitioners withdrew
20 Issue No. 3.¹¹ The Board and parties acknowledge the withdrawal of the issue.
21
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24 ⁹ RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be
25 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
26 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
27 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
28 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
29 while this chapter requires local planning to take place within a framework of state goals and requirements, the
30 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
31 implementing a county's or city's future rests with that community.

32 ¹⁰ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a “critical review” and is a “more intense standard of review” than the arbitrary and
capricious standard. *Id.* at 435, Fn.8.

¹¹ Petitioners’ HOM Brief, at 14

1 **VI. ISSUES AND DISCUSSION**

2 ***The Challenged Action***

3
4 **Ordinance No. TLS 09-03-22D – Amendments to the Douglas County Countywide**
5 **Comprehensive Plan and DCC Title 18**

6 By adopting Ordinance No. TLS 09-03-22D, the County de-designated hundreds of acres of
7 agricultural land of long-term commercial significance (Ag land) previously designated
8 Agricultural Commercial 10 (AC-10) and re-designated these acres to Rural Resource 5
9 (RR-5). Approximately 148 of those acres are of concern to the Petitioners.
10

11 The following issue, as set forth in the Board’s Prehearing Order, challenges Douglas
12 County’s adoption of Ordinance No. TLS 09-03-22D:
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14 **Issue No. 1:** Does Douglas County’s de-designation of agricultural land,
15 expansion of Urban Growth Areas into agricultural land, rezones, and
16 development regulation amendments violate RCW 36.70A.020 (1-2, 5, 8-10,
17 12), 36.70A.040, 36.70A.050, 36.70A.060, 36.70A.070, 36.70A.110,
18 36.70A.130, 36.70A.170, and 36.70A.177?

19 Applicable Law:

20 Those GMA statutes mentioned under Issue No. 1, specifically those listed below, and the
21 following WACs:
22

23 RCW 36.70A.020(8) Natural resource industries. Maintain and enhance
24 natural resource-based industries, including...agricultural...industries.
25 Encourage the conservation of productive...agricultural lands...

26 RCW 36.70A.050(3) Guidelines to classify agriculture... (3) The guidelines
27 under subsection (1) of this section shall be minimum guidelines that apply to
28 all jurisdictions, but also allow for regional differences that exist in Washington
29 State. The intent of these guidelines is to assist counties and cities in
30 designating the classification of agricultural lands...under RCW 36.70A.170.

31 RCW 36.70A.170(1) Natural resource lands and critical areas – Designations.
32 (1) On or before September 1, 1991, each county, and each city, shall
designate where appropriate:

1 (a) Agricultural lands that are not already characterized by urban growth
2 and that have a long-term significance for the commercial production of food
3 or other agricultural products.

4 WAC 365-190-040, which emphasizes that land use planning is a dynamic
5 process and a jurisdiction's procedures for designation should provide a
6 rational and predictable basis for accommodating change. These changes
7 should be based on consistency with one or more of the following criteria:

- 8 (i) Change in circumstances pertaining to the comprehensive plan or public
9 policy.
10 (ii) A change in circumstances beyond the control of the landowner
11 pertaining to the subject property.
12 (iii) An error in designation.
13 (iv) New information on natural resource land or critical area status.

14 WAC 365-190-050, which requires counties and cities to use the eight classes
15 in the land-capability classification system of the U.S. Department of
16 Agriculture Soil Conservation Service's handbook when classifying agricultural
17 lands of long-term significance. The categories incorporate consideration of
18 the growing capacity, productivity and soil composition of the land. In addition,
19 counties and cities shall also consider the combined effects of proximity to
20 population areas and the possibility of more intense uses of the land as
21 indicated by:

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

Positions of the Parties:

Petitioners:

The Petitioners claim the GMA requires local governments to conserve Ag land. According to Petitioners, Douglas County, by adopting Ordinance No. TLS 09-03-22D, violated the

1 GMA by de-designating Ag land that continues to meet both the GMA's and the County's
2 criteria for Ag land designation.

3
4 The Petitioners contend Ag land must be conserved and excluded from urban growth
5 areas,¹² and cite to many GMA statutes, including RCW 36.70A.020(8), which requires the
6 maintenance and enhancement of natural resources; RCW 36.70A.170(1), which requires
7 local governments to identify Ag land; and RCW 36.70A.060, which requires the
8 conservation of Ag land.¹³ In addition, Petitioners cite to numerous cases involving Ag land,
9 including *Lewis County v. WWGMHB*,¹⁴ (*Lewis County*) where the Supreme Court
10 established a three-part test for identifying Ag land; *Manke Lumber Co. v. Diehl*,¹⁵ where the
11 Appeals Court defined "long-term commercial significance; and *Yakima County v.*
12 *EWGMHB*,¹⁶ where the Appeals Court stipulated that the criteria for Ag lands are used for
13 designation, re-designation, and de-designation of natural resource lands.¹⁷
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16 The Petitioners claim the acres in question were previously designated as Ag land, and this
17 proves the County followed a reasoned process and considered the GMA's mandate and
18 the tests set forth by the Supreme Court when the Ag land was originally designated. The
19 Petitioners also contend there have been no substantive changes requiring reconsideration
20 or a change in the nature of these lands with respect to the analysis and factors set out in
21 *Lewis County*.¹⁸
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24 According to Petitioners, the Washington Administrative Code (WAC) sets out criteria for
25 determining whether land has long-term commercial significance, which the County
26 "appears to have elected not to follow...,"¹⁹ ²⁰ The Petitioners contend the Douglas County
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28
29 ¹² Petitioners' HOM Brief, at 4 (citing *Friends of Skagit County v. Skagit County*, WWGMHB Case No. 95-2-
0075, FDO (Jan. 22, 1996), at 8; *King County*, 142 Wn.2d 543, 562).

30 ¹³ Petitioners' HOM Brief 4-6.

31 ¹⁴ *Lewis County v. WWGMHB*; 157 Wn.2d 488, 502 (2006).

32 ¹⁵ *Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 805, (1998).

¹⁶ *Yakima County v. EWGMHB*; 146 Wn. App. 679, 688 (2008).

¹⁷ Petitioners' HOM Brief, at 5-6.

¹⁸ *Lewis County*, 157 Wn.2d at 502.

¹⁹ *Id.* at 6.

1 Countywide Comprehensive Plan (DCCCP) sets out eight criteria for the designation of Ag
2 land and at least one of the criteria requires compliance for the land to be designated Ag
3 land. The Petitioners claim criteria No. 1 (soil classification) and criteria No. 6 (WAC 365-
4 190-050 criteria), meet the County's Comprehensive Plan (CP) designation criteria.²¹ The
5 Petitioners also claim the land was in agricultural production as of December 31, 1995,
6 which also qualifies the land as Ag land under that criterion in the DCCCP.²²
7

8 The Petitioners contend the Intervenors' Certified Professional Soil scientist, Dr. Glen Klock,
9 is accurate, in-line with the Department of Agriculture's analysis, and his conclusions prove
10 the soil in some portions of the de-designated acreage is Type III.²³ With this information,
11 the Petitioners believe only the non-class II and III soils that do not meet one of the other
12 criteria can be de-designated, not the areas which meet the County's criteria, and refer to
13 DCCCP provision 5.2.2.A.8.²⁴
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16 To end, the Petitioners claim the Ag land in question includes land which continues to
17 qualify under the DCCCP as Ag land and the de-designations are non-compliant with the
18 GMA's mandate to conserve Ag land.²⁵
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20 Respondent Douglas County:

21 The County cites to the Supreme Court's decision in *Lewis County*, and the Court's
22 subsequent confirmation of that decision in *City of Arlington v. CPSGMHB (Arlington)*.²⁶
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27 ²⁰ The Supreme Court in *Lewis County* has held that local governments may consider the factors in WAC 365-
28 190-050(1) in determining which lands have long-term commercial significance (see footnote 16 as well).

29 ²¹ Petitioners HOM brief at 8.

30 ²² Id. at 9.

31 ²³ Petitioners use numerical numbers, but for this order, the Board will use Roman numerals for soil
32 classification to be consistent with all the parties' briefs and the Dept. of Agriculture.

²⁴ Id. at 10.

²⁵ Id. at 10.

²⁶ *City of Arlington v. CPSGMHB*; 164 Wn.2d 768 (2008). Board decision invalidating de-designation of
agricultural lands reversed, based on failure of the Board to consider entire record before the county, to
impose burden of proof on the challenging party, and to give deference to the county's decision.

1 The County details the Board of County Commissioner's (BOCC) de-designation of the Ag
2 land based upon six factors, which are listed in the brief, and believe the County's findings
3 and conclusions are supported by the Record.²⁷ The County also asserts that with respect
4 to the middle 80 acres of de-designated land, the Record shows that Class III soils are
5 present on only 25% of the land, but are low grade Class IIIe in the remaining 75%. The
6 County concedes there are Class III soils present in the de-designated lands, that some of
7 these lands have been in agricultural production, and the middle 80 acres is within an
8 irrigation district, but these factors are not dispositive.²⁸

10
11 The County contends the de-designation action was limited in scope and considered
12 numerous factors based upon the entire Record before the BOCC. According to the County,
13 the majority of the land is not in agriculture production or devoted to agriculture, does not
14 contain favorable soil types, has steep terrain with unfavorable environmental conditions,
15 has poor growing capacity and productivity, and are in close proximity to a UGA. The
16 County believes because of the material in the Record the GMA requires the Board to defer
17 to the County's decision.²⁹

19 Intervenors:

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21 According to the Intervenors, the County's de-designation of Ag land did not violate the
22 GMA because the Record before the BOCC clearly demonstrated that the subject property
23 failed to meet the definition and purposes of Ag land. They also cite to *Lewis County* as the
24 applicable analysis and definition of agricultural land for GMA purposes which confirms a
25 three-part test.³⁰

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27 The Intervenors own approximately 80 acres of property de-designated by the County from
28 Ag-10 to RR-5. They claim the original designation was made prior to the County's GIS

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32 ²⁷ Exhibit 77 at 840-843, Staff report, pp. 25-29; Exhibit 88, Ogden Murphy Wallace submittal (2-27-2009).

²⁸ *Lewis County*, pg. 505, where the court said, "...the GMA is not intended to trap anyone in economic failure..."

²⁹ Respondent's HOM brief at 7.

³⁰ Intervenors Brief For HOM at 4.

1 technology and recent soil data confirms the USDA Survey is inaccurate as it relates to this
2 property.³¹ The Intervenor hired Dr. Glen Klock, a certified professional soil scientist, and
3 he confirmed the majority of the Intervenor's property is not suited for agricultural uses
4 because of Class IV soils.³² Dr. Klock determined that less than 1% of the soil was Class III
5 or better, and 25% of the soil on the Intervenor's property was Class IIIe to IVe.³³ He
6 concluded 75% of the property is difficult to farm and unfit for agricultural operations.³⁴ In
7 addition, the Intervenor hired Joseph Wiggs, a licensed agricultural consultant, who came
8 to the same conclusions as Dr. Klock and confirmed the soil characteristics and terrain are
9 inefficient for nutrient and water retention, and vulnerable to strong winds and winter
10 weather conditions.³⁵

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13 The Intervenor contends the property is within critical areas and contains geologically
14 hazardous terrain. In addition, the property is near the Rock Island Urban Growth Area,
15 thereby creating a buffer between urban and Ag land. Given the new information from Dr.
16 Klock and GIS technology, the Intervenor claims the County now believes the de-
17 designated property did not include Class I – III soils.³⁶

18
19 The Intervenor asserts the County used "sound criteria and procedures to re-designate the
20 subject property"³⁷ and followed WAC 365-190-050(1). The Intervenor contends *Lewis*
21 *County* held that counties may consider the development-related factors in WAC 365-190-
22 050(1), but do not require such consideration.³⁸ According to the Intervenor, the BOCC
23 considered the soil classification, water availability, agricultural production, and relationship
24 to the UGA. In addition, the Intervenor contends the County's CP also has a variety of
25 criteria which may be used to designate agricultural land, specifically Section 5.2.2, which
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29 ³¹ Id.

30 ³² Id. at 5.

31 ³³ Id. at 6.

32 ³⁴ Id. at 7; IR 88, Exhibits A & B.

³⁵ Id., IR 88, Exhibit C.

³⁶ Intervenor's brief at 18-19.

³⁷ Id. at 19.

³⁸ *Lewis County v. WWGMHB*; 157 Wn.2d 488, 502, 139 P.3d 1096, 1103 (2006).

1 says, "...one or more criteria may be used to assist in the designation of agricultural land
2 under this chapter."³⁹ The Intervenor's contend that just as all the criteria set forth in Section
3 5.2.2 are not required to designate, it follows that all of the criteria do not need to be
4 disproved to de-designate.⁴⁰ The Intervenor's also claim that many of the same purposes for
5 farming are permitted in both zoning designations. WAC 365-190-040 indicates that "an
6 error in designation" and new information on natural resource land or critical area status" are
7 criteria that fit the County's reasons to de-designate.⁴¹

9
10 The Intervenor's claim substantial deference should be given to the County's decision
11 because the (County) Staff Report specifically recommended approval of the de-designation
12 and the BOCC accepted those recommendations, although the Planning Commission voted
13 to deny the change in zoning.⁴²

14
15 Petitioners' Reply:

16 The Petitioners' contend that *Arlington* requires only that the Board not dismiss evidence
17 from an interested party, not that such evidence be treated as dispositive. The Petitioners
18 claim the Board should note Dr. Klock's evidence and the relevance of his conclusions to
19 the issues in this case, which are designation and protection of Ag land. The Petitioners do
20 not contest his conclusion that "the land in question has greater monetary value as
21 something other than agricultural resource land."⁴³ As the Supreme Court observed,
22 however, "if land owner intent were the controlling factor, local jurisdictions would be
23 powerless to preserve natural resource lands."⁴⁴ According to the Petitioners, *Arlington*
24 counsels that the Board is not obliged to rely solely or overly upon evidence generated at
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31 ³⁹ Douglas County Countywide Comprehensive Plan, pg. 5-2.
32 ⁴⁰ Intervenor's brief at 12.
⁴¹ Id.
⁴² Intervenor's Brief at 15-16 (citing to *Arlington*, 164 Wn.2d at 782).
⁴³ Petitioners' Reply Brief at 2.
⁴⁴ Id. (citing *City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 52 (1998)).

1 the behest of an interested party, but that the Board must consider all evidence in the
2 Record.⁴⁵

3
4 **Board Analysis and Findings**

5 This issue concerns the de-designation of agricultural lands of long-term commercial
6 significance, a procedure occurring frequently in our agriculture-based counties as land
7 owners seek alternatives to farming the land for a variety of reasons. During its amendment
8 process, Douglas County initially sought to remove approximately 1,210 acres from Ag land
9 by adopting Ordinance TLS 09-03-22D, which changed the zoning from agricultural land
10 (AC-10) to rural (RR-5).
11

12 Although the County de-designated three parcels being used for a land fill, two County
13 mineral pit sites, and an adjoining residential node, Futurewise contests only certain parcels
14 (two areas) of approximately 148 acres within the “East Unit Agricultural Land Study”, and
15 base their argument on the fact that the parcels still meet the GMA’s criteria for Ag land, and
16 the County failed to follow the WAC criteria and its own criteria to de-designate.
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18
19 The “East Unit Agricultural Land Study” is a package of proposed amendments which
20 includes changes in designation of Ag land and corresponding map change amendments.
21 The County proposed de-designating from AC-10 to RR-5 the following areas: 1. The area
22 adjacent to Pangborn Airport; 2. the area of steep slopes adjacent to Rock Island; 3. the
23 area north and east of Batterman Road; and 4. the area around Tea Cup. The County
24 described these areas as follows:⁴⁶
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26
27 **Table 1**

Area	Description
Pangborn Airport	<ul style="list-style-type: none">• 150 acres• Average and median parcels sizes of 6.23 acre

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32 ⁴⁵ Id. at 3.

⁴⁶ Petitioner’s HOM brief, Exhi
bit 77, pp. 2-3.

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	<ul style="list-style-type: none"> and 6.94 acres respectively • Parcels owned by airport or the Ports of Chelan & Douglas County • 63 acres have Type 3 soils, only 9 acres in current agricultural production • 31.5 acres within Airport Zones 1, 3, and 5 • Critical areas (steep slopes) • 9 acres in current agricultural production • All parcels in Greater E. Wenatchee Irrigation District
Rock Island Steep Slopes	<ul style="list-style-type: none"> • 12 parcels totaling 316 acres (271.79 proposed for removal from AC-10 designation) • Average and median parcel sizes of 26.34 acres and 19.98 acres respectively • Each of the 12 parcels is at least partially designated as a critical area – steep slope • Removal from AC-10 would remove significant blocks of Ag land meeting designation criteria • Includes 80 acre County mineral resource site • All parcels are within the irrigation district • For AG-10 parcels, majority of acreage does not have Type 1 to 3 soils • Klock study found only about 20-25% of area would support cultivated agriculture based on soils • Majority of AG-10 acreage is not in agriculture production
Batterman Road	<ul style="list-style-type: none"> • 56 parcels totaling 654 acres • Average and median parcel sizes of 12.34 acres and 9.08 acres • Land is located north and east of Batterman Rd. except for 3 parcels (69 acres total) that are west/south of Batterman • Waste Management owns a 152 acre parcel for landfill/landfill expansion and another 106 acre parcel which includes existing landfill (lists as Dryland Agriculture) • 30 acre County mineral resource site • Large areas not in production and not characterized with Types 1 to 3 soils • Small node of subdivided parcels, average 1.8 acres • Landfill and residential node is located on farmland

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	<p>of statewide significance</p> <ul style="list-style-type: none"> Majority of parcels are not in agricultural production and not characterized with Types 1 to 3 soils. The 3 parcels south of Batterman are characterized with Type 1 to 3 soils and are typically orchards With exception of 3 parcels south/west of Batterman, all parcels in G. East Wenatchee Irrigation District Waste Management owns 106.11 acre parcel, which includes existing landfill and proposed expansion area for regional landfill (see 258 acres above)
<p>Others – Teacut/Split Parcel</p>	<p>Rock Island Teacup</p> <ul style="list-style-type: none"> 90 acres located above/overlooks Rock Island Teacup 5 parcels w/ 4 parcels at 20 acres and 1 parcel at 10 acres A portion is steep canyon but also has flatter land <p>Split Parcel</p> <ul style="list-style-type: none"> 10 acres of a 20 acre parcel Split of AG-10 and RR-5; adjacent to RR-5 land

The County Staff Report⁴⁷ requested by the BOCC detailed a review of the lands within these areas and recommended a new land use designation and zoning district. Staff considered the following criteria in their review:

- Land use designation and zoning district map changes to address errors and changes in land use. In this section, staff reiterates the guidelines provided by WAC 365-190-040(2)(g) for designation of Ag land, but recognize that de-designation procedures have not been developed for Douglas County.⁴⁸
- Establishment of a new land use designation and zoning district providing a greater range of rural densities that are consistent with the rural character of the County: Rural Resource-10, RR-10. Staff details the recommended changes to its CP to improve its land use designation system with the addition of RR-10.⁴⁹

⁴⁷ Petitioners' Exhibit No. 77

⁴⁸ Douglas County Code, Title 14, establishes a procedural process for the consideration of amendments to the DCCP, consistent with procedures established under RCW 36.70B.

⁴⁹ Id. at 28.

- 1 3. New policy guidance for rural lands addressing the transitional role that rural lands
2 can serve for irrigated agricultural lands and UGA. Staff proposes two new County-
3 wide Planning Policies.⁵⁰
- 4 4. Suggested amendments to RR-5, land use designation and zoning district. Here staff
5 proposes amendments to adjust for the RR-10 designation and rural policies.⁵¹
- 6 5. Additional policy guidance for clustering in agricultural lands/implementation
7 standards. Staff recommends changes that would establish rural densities that would
8 not be allowed to be located in the irrigated Ag land of a development. Changes are
9 suggested to Agricultural Lands Policy A-12 and County Code 18.16.046
10 Clustering.⁵²
- 11 6. Recommendation that clustering policy components in the agricultural resource lands
12 section be referenced in the rural lands element. Here staff recommends specific
13 guidance for clustering policies and criteria, in particular Rural Development Policy
14 RD-11.⁵³

15 Staff then proposed Findings to support the “East Unit Agricultural Land Study” proposal
16 after detailing WACs, RCWs, and DCCCP policies applicable to agricultural land, rural land,
17 and development within the County, including WAC 365-190-050; RCWs 36.70A.070(5)(b)
18 and (c)(v), .177, .030(2) and (10); and DCCCP R-1, R-3, R-7, RD-1, RD-2, RD-8, A-1, A-3,
19 and A-6. It isn’t until Finding No. 20 in the Staff Report that the Board finds references to the
20 actual parcels involved in the de-designation.

21 In other words, even though the Staff Report does an adequate job of detailing the areas
22 being changed from AC-10 to RR-5, their analysis does not follow a process as required by
23 the GMA and the County’s own CP, nor is the report detailed enough for this Board to
24 determine whether many of the parcels in question, specifically in the central and eastern
25 block of de-designated lands, should be de-designated. There may indeed be “an error in
26 designation” and new information on natural resource land or critical area status”⁵⁴ as the
27 Staff Report claims, but the County still has to follow a process and de-designate only those
28 lands that no longer fit one or more of the criteria for Ag land.

29
30 ⁵⁰ New policies for transitional areas adjacent to Ag land, and a rural policy for transitional areas adjacent to
31 UGAs.

32 ⁵¹ Id. at 30.

⁵² Id. at 30-31.

⁵³ Id. at 32.

⁵⁴ WAC 365-190-040(2)(g).

1 The Board has previously held that when de-designating Ag land, the jurisdiction shall
2 consider the same criteria used to designate Ag land.⁵⁵ The GMA, through RCW
3 36.70A.020(8), .060, and .170, mandates the conservation of agricultural lands by:⁵⁶

- 4
- 5 1. Designating agricultural lands of long-term commercial significance;
- 6 2. Assuring the conservation of agricultural land;
- 7 3. Assuring that the use of adjacent lands does not interfere with their continued use for
8 agricultural purposes;
- 9 4. Conserving agricultural land in order to maintain and enhance the agricultural
10 industry;
- 11 5. Discouraging incompatible uses.

12 The Supreme Court in *Lewis County* set forth the proper definition of agricultural land as
13 follows:⁵⁷

14 We hold that agricultural land is land:

- 15 a. not already characterized by urban growth;
- 16 b. that is *primarily devoted to*⁵⁸ the commercial production of agricultural
17 products enumerated in RCW 36.70A.030(2), including land in areas used
18 or capable of being used for production based on land characteristics, and
- 19 c. that has *long-term commercial significance*⁵⁹ for agricultural production, as
20 indicated by soil, growing capacity, productivity, and whether it is near
21 population areas or vulnerable to more intense uses.

22 At least some of the de-designated parcels in the East Unit Agricultural Land Study conform
23 to all three of the criteria which the Court used to define agricultural land. The Record shows
24 none of the parcels are characterized by urban growth; many of the parcels are primarily
25 devoted to the commercial production of agricultural products, including those in irrigated
26 orchard production; and some of the parcels have soils, growing capacity and productivity

27
28 ⁵⁵ *Kittitas County Conservation, et al v. Kittitas County*, EWGMB Case No. 07-1-0004c, at 17 (Feb. 4, 2009);
29 *Kittitas Conservation v. Kittitas County*, EWGMHB Case No. 07-1-0004c, FDO, at 33 (Aug. 20, 2007).

30 ⁵⁶ *King County v. CPSGMHB*, 142 Wn.2d 543, 588 (2000).

31 ⁵⁷ *Lewis County*, 157 Wn.2d at 502.

32 ⁵⁸ *Redmond*, 136 Wn.2d at 53, where “primarily devoted to” is defined as land in an area where the land is
actually used or capable of being used for agricultural production.

⁵⁹ RCW 36.70A.030(10)(b) lists the five factors that need to be assessed to determine the economic viability of
the property. They are: 1. growing capacity; 2. productivity; 3. soil composition; 4. proximity to population
areas; and 5. the possibility of more intense uses of the land.

1 that reflect long-term commercial significance, especially those that are irrigated. In addition,
2 the properties are close to two major population areas,⁶⁰ and vulnerable to more intense
3 uses. Given these last two development issues, the County should have considered all the
4 criteria in WAC 365-190-050(1) to evaluate these development-related impacts.

5
6 The GMA does not assign or dictate how much weight to give each of the WAC factors.
7 Therefore, a jurisdiction has discretion regarding how to apply them.⁶¹ But the jurisdictions
8 are still required to consider the factors.

9
10 It's worth putting down in table form what the County did to determine de-designation of the
11 various Ag land areas, but first it's important to look at the County's factors and WAC
12 criteria.

13
14 The County's CP at Section 5.2.2 specifies the factors originally considered to identify its Ag
15 land. According to the County, these factors are not prioritized and one or more criteria may
16 be utilized to assist in the designation of Ag land.⁶² In addition, the County has established
17 two categories of Ag land, Dryland and Irrigated. Both have their own criteria as listed
18 below:

19
20 **A. Dryland Agricultural Land:** Lands generally used for the cultivation of row crops
21 such as wheat, barley and other similar crops; livestock production; and livestock
22 grazing.

23 Criteria:

- 24 1. Land that contains soil characteristics of Class I, II, or III as classified and
25 defined by the U.S. Soil Conservation Service's (SCS) Capability Class
26 Classification System;
27 2. Land identified as lands of State-wide importance;
28 3. Lands classified as having a total rangeland vegetation production of greater
29 than or equal to 800 lbs of dry weight per acre;
30 4. Land has been utilized for grazing in the commercial production of livestock
31 within the last twenty years;
32 5. Land that was currently in agricultural use, as of December 31, 1995;

⁶⁰ East Wenatchee and Wenatchee.

⁶¹ Lewis County, 157 Wn.2d at 502-503.

⁶² Board emphasis.

- 1 6. Criteria set forth in WAC 365-190-050, which includes, but is not limited to,
2 predominant parcel size, and land use settlement patterns;
3 7. Land currently enrolled within an agriculture conservation program such as the
4 Conservation Reserve Program (CRP) Conservation Reserve Enhancement
5 Program (CREP), etc.; **and/or**
6 8. Lands that have been divided for recreation purposes or into a combination of
7 lots, tracts or parcels less than 20 acres in size should not be designated as
8 agriculture, except as otherwise necessary to support agricultural operations, e.g.
9 family farm support divisions, ag-to-ag transfer.

9 **B. Irrigated or Irrigated Agricultural Land:** Irrigated lands generally used for the
10 production of hard and soft fruit products, vegetables, and grain crops such as
11 hay, grass, silage, etc.

12 Criteria:

- 13 1. Land meets one or more of the classification criteria set forth in A. above, **and**
14 2. Land that lies within an irrigation district such as the Greater Wenatchee
15 Irrigation District and currently receives irrigation water; and/or
16 3. Land that receives irrigation water from a private irrigation system or
17 groundwater well supply.

18 In addition, the County's CP has policies addressing the need to preserve, enhance, and
19 maintain agricultural land outside of UGAs.

20
21 Policy 5.2.3-A.1:

22 The County will encourage the retention of agricultural lands of long-term
23 commercial significance, including rangelands ...

24
25 Policy 5.2.3-A.6:

26 Designate "commercially significant agricultural resource lands" based on the
27 US Soil Conservation Service classification for farmland, identified lands of
28 statewide important, and other guidelines.

29 In Section 5.2.4 Implementation, the County notes:

30
31 Land classified as agricultural lands of long-term commercial significance
32 consider many factors including the growing capacity, productivity and soil
composition; predominant parcel size, adjacent land uses and land use
compatibility.

1 Under RCW 36.70A.170(2), the GMA mandates that “in making the designations required by
 2 this section, counties shall consider the guidelines established pursuant to RCW
 3 36.70A.050,”⁶³ which are those factors listed under WAC 365-190-050(1). The County has
 4 its own criteria for designation as previously listed under its DCCP Section 5.2.2, which
 5 includes “criteria set forth in WAC 365-190-050.”⁶⁴ Therefore, the Board will look at the
 6 criteria listed and determine whether the Board of County Commissioners considered the
 7 factors in the County’s established Ag land designation criteria, including those listed under
 8 WAC 365-190-050.⁶⁵

10
 11 **Table 2**

Dryland Criteria	Futurewise	County Record	Intervenor
Soil characteristics	<ul style="list-style-type: none"> • Central and eastern block of de-designated land and land south/west of Batterman Rd. have Type 3 soil (if irrigated) – Cashmere fine sandy loam and Pogue loam • These soils are of unique importance and capable of production of high-value food and fiber crops • Central parcels (Intervenors) – Dr. Klock noted 25% is Type 3 but his 	<ul style="list-style-type: none"> • New technology showed majority of soils are not Class 1 to 3 • “Middle 80 acres” may be 25% Class 3 but are low grade Class 3e with 75% “highly unfit” 	<ul style="list-style-type: none"> • Dr. Klock, Soil Scientist, confirmed majority of Intervenor’s 80 acres contained Class 4 or higher soils (i.e. Class 5) in some areas and 75% of Western 40 acres was Class 3e • On eastern 40 acres, land was low Class 3e or high Class 4e • Dr. Klocks conclusions – as to 80 acres: 20 acres Class 3e-4e, 13.2 acres Class 4e-5e; 56.7 acres Class 3e

32 ⁶³ RCW 36.70A.170(2).

⁶⁴ DCCP Section 5.2.2 A. Dryland Agricultural Land, Criteria No. 6.

⁶⁵ The Board notes that “referenced” doesn’t necessarily mean “considered”.

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	<p>conclusion was based on a non-criteria factor of cash flow and didn't analyze alternative agricultural uses</p> <ul style="list-style-type: none"> • Types 1-3 soils exist on 2 of eastern parcels, w/ 55% of each parcel • County's soil map shows areas with Type 2 and 3 soils which is consistent w/ USDA Soil Survey 		
Lands of State-wide importance		Area north and east of Batterman Road has a portion identified as farmland of statewide significance	
Lands with vegetation production \geq 800 lbs of dry weight per acre		No reference in Record	
Land utilized for grazing within 20 years		No reference in Record	
Land currently in Ag use as of 12/31/1995	<ul style="list-style-type: none"> • Soil maps/aerial photos show that some areas are currently used for agriculture • Confirmed by Staff Report which concedes 	<ul style="list-style-type: none"> • Majority of land is not in agricultural production • Majority of land is not "primarily devoted" • A 106 acre 	<ul style="list-style-type: none"> • Majority is not in orchard production or other agricultural production

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	<p>although not in production, some portion of the land is/has been</p> <ul style="list-style-type: none"> • 1994 aerial demonstrates agricultural use 	<p>parcel owned by Waste Management is under Dryland Ag designation</p>	
Criteria set forth in WAC 365-190-050	See chart below		
Lands in CRP or CREP		No reference in Record	
Lands in parcels less than 20 acres		Staff Report details total acreage of study areas and average and median parcel sizes. Areas vary, but generally are larger than 20 acres.	
Irrigated Criteria			
Land meets one or more of the criteria above		Staff Report acknowledges the majority of the areas have Class 3 or better soils, but many parcels are Class IIIe.	
Land lies with irrigation district and currently receives water		Staff Report claims all parcels in the East Unit Ag Land Study areas are in an irrigation district	
Land irrigated from private system or well		Not applicable	

WAC 365-190-050(1) Considerations

WAC Criteria	County Considered or Referenced in Record	County Comment

1	The availability of public facilities	Areas are served with public roads; Public land fill within study area; no other facilities mentioned.	Staff Report at 3
2			
3			
4			
5	Tax status	All parcels have AG-10 zoning, but no mention of tax status in Staff Report.	None
6			
7			
8	The availability of public services	All parcels within the GEW Irrigation District.	Staff Report at 2-3
9			
10	Relationship or proximity to urban growth areas	Protected Ag Land by buffering from UGA with Rural land category.	Staff Report at 39
11			
12			
13	Predominant parcel size	Considered in Record. Average and median given.	Staff Report at 2-3
14			
15			
16	Land use settlement patterns and their compatibility with agricultural practices	Considered in Record in discussion concerning Rural vs. Ag land.	Staff Report at 28
17			
18			
19			
20	Intensity of nearby land uses	Considered in Record	Staff Report at 27
21			
22	History of land development permits issued nearby	Not mentioned	
23			
24			
25	Land values under alternative uses	Referenced in Record. Rural land uses and densities.	Staff Report at 27
26			
27	Proximity of markets	Referenced in Record. Three parcels are within ½ mile of Rock Island UGA	Staff Report at 27
28			
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32			

The Board recognizes that acreage owned by the County for a gravel pit site and that area owned by Waste Management for an expansion of its landfill is not at question here. The

1 parcels that are relevant and specific to the Board's decision are the approximately 148
2 acres in the central and eastern designated parcels.

3
4 As can be seen from Tables 1 & 2, the areas in question, particularly the central and
5 eastern block of de-designated lands and some parcels north and east of Batterman Road
6 have one or more of the classification criteria to retain at least some of the parcels as Ag
7 land, including: 1. Class II or III soils; 2. some acreage designated Farmland of Statewide
8 significance; 3. some have parcel sizes 20 acres or greater; 4. all are located within an
9 irrigation district; and 5. some parcels are currently in agricultural production.

10
11 The County's Record shows that under the *Lewis County* criteria some⁶⁶ of the parcels
12 qualify for Ag land designation because they're not urban in nature; the acreage is primarily
13 devoted to commercial agriculture;⁶⁷ and the land, based on Class II and III soils (if
14 irrigated), productivity and other criteria, has long-term commercial significance. However,
15 the County's decision was not supported by substantial evidence in the Record, and the
16 County did not apply the correct definition of Ag land when de-designating the entire 148
17 acres. Therefore, the County's decision to de-designate some of the parcels was clearly
18 erroneous in light of the entire Record before the Board and in light of the goals and
19 requirements of the GMA.
20
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22 Dr. Klock and the County did an excellent job of separating appropriate Ag land through soil
23 and site characteristics and GIS layering, especially on the Witte property. As much as 75%
24 of the acreage on the Witte property in question has steep slopes, hazardous areas, and
25 critical areas. But the County de-designated Ag land on the Witte property and large parcels
26 elsewhere that still qualify for agricultural land of long-term commercial significance as
27 defined by the GMA, the courts, and the County's own CP factors. The Board believes that
28 not only has GIS technology improved methodology for designating or de-designating Ag
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⁶⁶ The Record is unclear as to which specific parcels fit the criteria.

⁶⁷ Primarily devoted to is defined as "is being used or capable of being used."

1 land, this technology also enables counties to do a better job of de-designating Ag land
2 without the shotgun approach shown here.

3
4 **Conclusion:**

5 The Board concludes the Petitioners have carried their burden of proof in demonstrating the
6 County's action in adopting Ordinance No. TLS 09-03-22D violated RCW 36.70A.020(8) for
7 failing to maintain and enhance agricultural industries and encourage the conservation of
8 productive agricultural lands; RCW 36.70A.170(1) for failure to designate Agricultural lands
9 of long-term significance for the commercial production of food and other agricultural
10 products; and RCW 36.70A.170(2) for failure to consider all the guidelines established
11 pursuant to RCW 36.70A.050. The Board finds the County's action is clearly erroneous in
12 light of the entire Record before the Board and in light of the goals and requirements of the
13 GMA.
14

15
16 **UGA Expansion**

17
18 **Issue No. 2:** Does Douglas County's expansion of the East Wenatchee
19 Urban Growth Area by adoption of Ordinance No. TLS 09-04-24C, without
20 evidence in the record establishing that any enlargement or the size of the
21 enlargement adopted is necessary to accommodate the County's adopted
22 population forecast, violate RCW 36.70A.020(1), RCW 36.70A.020(2), RCW
23 36.70A.110, and RCW 36.70A.130?

24 Applicable Law:

25 RCW 36.70A.020(1). Urban growth. Encourage development in urban areas
26 where adequate public facilities and services exist or can be provided in an
27 efficient manner.

28 RCW 36.70A.020(2). Reduce sprawl. Reduce the inappropriate conversion of
29 undeveloped land into sprawling, low-density development.

30 (In Relevant Part) RCW 36.70A.110. Urban Growth Areas. (1) Each county
31 that is required or chooses to plan under RCW [36.70A.040](#) shall designate an
32 urban growth area or areas within which urban growth shall be encouraged
and outside of which growth can occur only if it not urban in nature.

1 (2) Based upon the growth management population projection made for the
2 county by the office of financial management, the county and each city within
3 the county shall include areas and densities sufficient to permit the urban
4 growth that is projected to occur in the county or city for the succeeding
5 twenty-year period...

6 (In Relevant Part) RCW 36.70A.130. Comprehensive Plans. (1)(a) Each
7 comprehensive land use plan and development regulations shall be subject to
8 continuing review and evaluation by the county or city that adopted them.
9 Except as otherwise provided, a county or city shall take legislative action to
10 review and, if needed, revise its comprehensive land use plan and
11 development regulations to ensure the plan and regulations comply with the
12 requirements of this chapter according to the time periods specified in
13 subsection (4) of this section.

12 ***Positions of the Parties:***

13 Petitioners Brief:

14 The Petitioners challenge the County's entire UGA expansion with the exception of that
15 portion contained in Grid T23 R20.⁶⁸ The Petitioners claim the County's expansion of the
16 East Wenatchee UGA is not necessary to accommodate its projected population growth and
17 cites to RCW 36.70A.110 and RCW 36.70A.115 and their recent amendments; the Supreme
18 Court's decision in *Thurston County v. WWGMHB (Thurston County)*,⁶⁹ and two Hearings
19 Board cases, *Futurewise v. Skagit County*⁷⁰ (WWGMHB), and *Bremerton et al. v. Kitsap*
20 *County*⁷¹ (CPSGMHB).
21

22
23 According to the Petitioners, the Greater East Wenatchee Area Comprehensive Plan
24 (GEWACP) concluded that the "existing East Wenatchee Urban Growth Area contains
25 significantly more land than is needed to accommodate planned growth through 2022."⁷²
26 The Petitioners contend the County's own analysis estimated 368 acres is not needed to
27
28

29
30 _____
31 ⁶⁸ Petitioners' HOM, tab 146, IR 146. See Map of Amendments.

31 ⁶⁹ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 352 (2008)

32 ⁷⁰ *Futurewise v. Skagit County*, WWGMHB Case No. 05-2-0012, FDO (Sept. 21, 2005) p. 18.

⁷¹ *Bremerton et al. v. Kitsap County*, CPSGMHB Case No. 95-3-0039c, FDO (Oct. 6, 1995) p. 19.

⁷² City of East Wenatchee and Douglas County, Greater East Wenatchee Area DP Douglas County, Washington p. A-4 (May 9, 2007).

1 accommodate planned residential growth, and the land in question remains available for
2 industrial development at the option of the land owner.⁷³

3
4 The Petitioners claim the Record makes it clear there is no correlation between the
5 expansion of the UGA, planned growth, and the industrial area, but it is being expanded
6 under a policy which was “adopted to allow for the addition of properties to the PISA⁷⁴
7 without having to conduct other detailed studies, such as land consumption, need forecasts,
8 infrastructure inventories, etc.”⁷⁵ The Petitioners contend this type of expansion is prohibited
9 by *Thurston County* and is not consistent with the WWGMHB’s holding in *Skagit County*.⁷⁶
10 In addition, the Petitioners point to the County’s Staff Report which acknowledges the
11 Douglas County Regional Council had not adopted revised OFM projections.⁷⁷ Therefore,
12 the Petitioners claim because there is more than sufficient land to accommodate OFM-
13 projected growth, the UGA expansion is non-compliant with the GMA.
14

15
16 Respondent:

17 The County argues that Pangborn Industrial Service Area (PISA) is part of the County’s CP,
18 not part of the GEWACP or the City’s UGA. According to the County, the Petitioners are
19 challenging the expansion in the Fancher Heights near East Wenatchee, as adopted in
20 Ordinance No. TLS 09-04-24C, which involves two parcels, one totaling 23.8 acres, and
21 another totaling 38 acres.⁷⁸ These parcels were included in the Greater East Wenatchee
22 Area UGA from 1996 to 2003, but were removed in a map amendment in 2003. The County
23 states the return of these 61.8 acres to the UGA is a matter of “equity” to the property
24 owners, “based upon the manner the properties had been removed.”⁷⁹ The City of East
25 Wenatchee approved the expansion of its UGA to include these parcels, while the Douglas
26
27

28
29 ⁷³ Petitioners’ HOM, tab 77, IR 77, Staff Report at 23.

30 ⁷⁴ Pangborn Industrial Service Area.

31 ⁷⁵ Id.

32 ⁷⁶ Supra n. 60.

⁷⁷ Id.

⁷⁸ Respondent’s HOM brief, IR 146 at p. 1341, Ord. no. TLS 09-04-24C, Findings of Fact 7 & 8, p. 4, and Exhibit B, 2009 East Wenatchee UGB and Map Amendments.

⁷⁹ Id., IR 92 at pp. 959-961 and IR 140 at p. 1277.

1 County Planning Commission recommended approval of only a part of the proposed
2 expansion.

3
4 Intervenors deferred to the County's briefing on this Issue.⁸⁰

5
6 Petitioners Reply:

7 The Petitioners argue that an "UGA designation cannot exceed the amount of land
8 necessary to accommodate the urban growth projected by OFM, plus a reasonable land
9 market supply factor."⁸¹ According to the Petitioners, the County's UGA is already oversized
10 (see reference to GEWAPC analysis above), so added land for equity would require
11 removal of other acreage already in the UGA.
12

13 ***Board Analysis and Findings:***

14 As a preliminary matter, due to its relevance to this proceeding, the Board takes official
15 notice, pursuant to 242-02-660(4), of the Douglas County County-wide Comprehensive Plan
16 in its entirety, which incorporates by reference the Greater East Wenatchee Area
17 Comprehensive Plan (GEWACP). The GEWACP represents an integrated vision of the
18 County and the City of East Wenatchee and seeks to jointly plan for growth and
19 development within the UGA.
20

21
22 As a background, the City of East Wenatchee adopted Ordinance No. 2009-02, which
23 recommended the County amend the UGA boundary, despite a previous recommendation
24 by the City's Planning Commission to table the potential revisions until an up-dated OFM
25 population forecast is adopted and more recent environmental documents are prepared. In
26 conjunction with a variety of map changes, the City recommendations included a group of
27 three tax parcels known as the "Witte & Columbia Pride Cold Storage Properties" (18.54
28 acres), and a smaller group of properties known as the "North Plateau Properties" (4.81
29 acres). A third group of parcels known as the "Modified Map Amendment" properties were
30
31

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⁸⁰ Intervenor's Brief, at 18.

⁸¹ *Thurston County*, 164 Wn.2d at 352.

1 subsequently added to the amendment upon request from the BOCC (61.8 acres) and were
2 to be included based on “an issue of equity”⁸².

3
4 After review of the Douglas County Planning Commission recommendations, the BOCC
5 “rejected the Planning Commission recommendation for amendments to the Urban Growth
6 Boundary and to the Witte Orchards, Inc. fruit packaging facility”⁸³ and changed the UGA
7 boundary by adding all of the City’s recommended properties with the adoption of
8 Ordinance No. TLS 09-04-24C.
9

10 The question for the Board is whether the UGA is oversized. The City’s Supplemental Staff
11 Report⁸⁴ to the East Wenatchee Planning Commission was lacking detail and analysis in its
12 examination of the City’s need for an expanded UGA. In fact, there wasn’t anything in the
13 Record to indicate any analysis was done. Basically, City staff explained that the required
14 State Environmental Policy Act (SEPA) under RCW 43.21C was completed and a
15 Determination of Non-significance was issued, with no comments received. In addition, staff
16 indicated they followed RCW 36.70A.106 and notified the Department of Community, Trade
17 and Economic Development (CTED, now Commerce) and did not receive any comments
18 regarding the proposed amendment.⁸⁵ Subsequent to this non-response, staff
19 recommended approval of the proposed CP amendments to the Planning Commission. In
20 addition, there was nothing in the City’s Findings of Fact that indicated the City was in need
21 of additional urban area.
22
23

24
25 This same lack of information and supporting analysis for expansion of the UGA was
26 repeated at the County level and, in fact, the County Transportation & Land Services Staff
27 suggested to the County PC that “[C]iting findings and conclusions of the City will provide
28 support for action by the (County’s) Planning Commission.”⁸⁶ Similar to the City’s Planning
29

30
31 _____
32 ⁸² Respondent’s HOM brief, tab 92, letter from BOCC to City of East Wenatchee.

⁸³ Petitioners’ HOM brief, tab 146, p. 7.

⁸⁴ Respondent’s HOM brief, tab 114, Supplemental Staff Report.

⁸⁵ Id. at p. 1.

⁸⁶ Id., n. 70, IR 114, Douglas County Transportation and Land Services Memo to PC.

1 Commission, however, the County's Planning Commission recommended denial of the
2 "Modified Map Amendment" properties, but recommended inclusion of the North Plateau
3 and Witte Orchard properties. By adopting Ordinance No. TLS 09-04-24C, the BOCC chose
4 to modify the Planning Commission's recommendation and include all the properties,
5 including the "Modified Map Amendment" properties.
6

7 For additional information concerning the need for expanding the UGA, the Board looked at
8 the GEWACP.⁸⁷ The GEWACP is a detailed document, as required by the GMA, to help the
9 City and County jointly plan for the impacts of growth over a 20-year period, in this case
10 from 2002 to 2022, within the unincorporated areas. The Board notes several key
11 comments within the plan. The first is a broad statement that indicates the City is fully aware
12 of the need to plan and use the OFM population projection to do so:
13

14 The Growth Management Act requires counties to adopt a twenty year
15 population projection from a projection range provided by the Office of
16 Financial Management for planning purposes. This population projection is
17 the basis upon which comprehensive plans are developed. The Act also
18 requires that plans focus the majority of the population growth towards the
19 urban growth areas where services and public facilities can be provided
20 more efficiently.⁸⁸

21 After a thorough analysis using the OFM's high population projection,⁸⁹ allowing for a 25%
22 market factor and a 25% Roads and Public Uses factor,⁹⁰ calculating underdeveloped land,
23 and hazardous, critical, or right-of-way acreage, the City came up with the following
24 conclusion:
25

26
27
28 ⁸⁷ GEWACP amendments adopted Jan.8, 2008 for years 2002-2022.

29 ⁸⁸ GEWACP at 3-1.

30 ⁸⁹ The annual growth rate in the East Wenatchee UGA has been approximately 2% per year since 1990.
31 GEWACP 3-2. The City is planning for 14,660 additional residents over the 20-year period, which results in a
32 need for approximately 5,639 housing units or a net land need of 1,269 acres. After adjustment for the public
purposes, roads, and market factor, the City calculates it needs 1,982 acres to accommodate the projected
growth.

⁹⁰ The Board notes that these factors are on the high end and, in conjunction with the use of the High OFM
population projection, allow a substantial increase in size for the City's UGA, despite the fact that the sewer
district does not anticipate serving 1691 acres of the UGA in the planning period contrary to CP Goal UG-1.

1 In 2003 the County and the City of East Wenatchee performed a residential
2 land capacity analysis (See Appendix A). This analysis indicates that the
3 current urban growth area is sufficient to meet the residential needs of East
4 Wenatchee for the planning period.⁹¹

5 The East Wenatchee UGA is comprised of 7,799 acres.⁹² According to the CP,
6 approximately 3,840 acres or 50% of the total land base in the UGA is developed for
7 residential, multi-family, commercial, industrial, parks/open space, schools and semi-
8 public/utilities.⁹³ If we break down this last figure, 2,784 acres are designated Residential,
9 751 acres are designated Commercial, and 407 are designated Industrial.⁹⁴ In addition,
10 there are 1,719 acres of underdeveloped land, 975 acres of vacant land, and 1,021 acres of
11 hazardous, critical area, or right-of-way. The City, after analyzing its needs for the 20-year
12 period, concluded the following:

14 Summarizing the above analysis, the necessary acreage to accommodate
15 the planned residential growth is 1,982 acres. The estimated land available
16 for residential development is 2,350 acres. This difference identifies an
17 excess land capacity of 368 acres above what is necessary to
18 accommodate the planned residential growth.⁹⁵

19 The statistics derived from this analysis indicate that the existing East
20 Wenatchee Urban Growth Area contains significantly more land than is
21 needed to accommodate planned growth through 2022. A sufficient amount
22 of housing unit capacity exists on the land within the urban growth
23 boundary.⁹⁶

24 The GEWACP is not as detailed for commercial land needs as it is for residential.
25 However, the GEWACP does state that there is approximately 751 acres of land currently
26 designated for commercial purposes, but only 273 acres are currently being used for that
27

28 _____
29 ⁹¹ GEWACP at 2-3 (Board emphasis).

30 ⁹² Id. at 3-10.

31 ⁹³ Id. at 3-5.

32 ⁹⁴ The Board notes that the figures quoted from the CP do not seem to add up consistently. For instance, the acres for residential, commercial and industrial come to 3942 acres and this is without “parks/open space, schools, and sem-public/utilities.”

⁹⁵ Id. at A-4 (Appendix).

⁹⁶ Id.

1 purpose.⁹⁷ According to the GEWACP, most of the land designated commercial is being
2 used for orchard agriculture (174 acres) and residential (106 acres), with 138 acres
3 vacant.⁹⁸ The GEWACP goes on to note:⁹⁹

4 The land use ratios that were adopted ... indicate that 10% of the land area in
5 the UGA should be designated for commercial purposes ... According to the
6 analysis that was completed in 2003 the actual land designated for
7 commercial use was slight less than 10% of the UGA and was deficient by
8 approximately 40 acres. It is intended that this update would correct that
9 deficiency by designating additional land for commercial purposes.

10 If the GEWACP is correct that an additional 40 acres is needed for commercial, then the
11 City should be able to justify adding the Witte Orchard properties.

12
13 Thus, in order to comply with the GMA and its stated duty, Douglas County is required to
14 ensure the East Wenatchee UGA is the appropriate size in relationship to OFM population
15 projections. As noted above, there is nothing in the Record indicating Douglas County
16 performed the necessary supporting analysis, whether for residential or commercial land
17 needs. Expansion of an UGA is done through a process, not arbitrarily designated because
18 of current use or "equity". In the end, however, it is the County's responsibility to do the
19 analysis of the amendments, base its decisions on both an updated land quantity analysis
20 and capital facilities plan, and designate new UGAs based on the evidence. All three boards
21 have held that this responsibility lies with the counties.¹⁰⁰
22
23

24 ⁹⁷ GEWACP, Page 3-10

25 ⁹⁸ GEWACP, Page 3-10

26 ⁹⁹ GEWACP, Page 3-10

27 ¹⁰⁰ *Wenatchee v. Chelan County*, EWGMHB Case No. 08-1-0015, FDO (March 6, 2009)([T]he GMA places the
28 responsibility of designating a UGA solely on Chelan County. Cities have no power, in and of themselves, to
29 delineate UGAs); *KCC, et al v. Kittitas County*, EWGMH Case No. 07-1-0004c, Compliance Order (Feb. 24,
30 2009) (It is Kittitas County's duty to size a UGA, not the City of Kittitas). See *Western Cases - Harader et al v.*
31 *City of Winlock*, WWGMHB Case No. 06-2-0007, FDO (Aug 30, 2006) (City has no ability or duty under the
32 GMA to set or alter UGA boundaries); *Wells v. Whatcom County*, WWGMHB Case No. 97-2-0030 FDO (Nov.
5, 1997)(County not a city has responsibility for UGA boundary); *Building Association of Washington v. Clark*
County, WWGMHB Case No. 04-2-0038c Amended FDO (November 23, 2005)(Ultimate responsibility is
County's, this includes boundary and assumptions). See *Central Puget Sound Case - Hensley v. Snohomish*
County, CPSGMHB Case No. 96-3-0031, FDO (Feb. 25, 1997)(Cities propose and consult on UGAs but have
no designation authority); *AFT v. Arlington*, CPSGMHB Case No. 95-3-0056, FDO (Feb. 13, 1996)(County has
duty to establish UGA, a City's role is to consult).

1 **Conclusion:**

2 The Board concludes the Petitioners have carried their burden of proof in demonstrating the
3 County's action in adopting Ordinance No. TLS 09-04-24C violates RCW 36.70A.020(1),
4 RCW 36.70A.020(2), and RCW 36.70A.110, by failing to contain urban growth in urban
5 areas, reduce sprawl, and appropriately size the UGA to accommodate the projected 20-
6 year growth as denoted by OFM population projections. Therefore, the County's decision is
7 clearly erroneous in light of the entire Record before the Board and in light of the goals and
8 requirements of the GMA.
9

10
11 The Petitioners failed to brief RCW 36.70A.130, so this argument is deemed abandoned.

12
13 **Invalidity:**

14 Applicable Law

15 RCW 36.70A.302, in relevant part, provides:

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

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

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

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

27 The following GMA Planning Goals are relevant to this issue:¹⁰¹

28 RCW 36.70A.020(1) – Urban Growth

29 RCW 36.70A.020(2) – Reducing Sprawl

30 RCW 36.70A.020(8) – Natural Resource Industries

31 **Positions of the Parties:**

32

¹⁰¹ The Board finds that RCW 36.70A.020 goals (9), (10), and (12) were not briefed.

1 In addition to finding non-compliance, the Petitioners believe that the adoption of
2 Ordinances TLS 09-03-22D and TLS 09-04-24C substantially interfere with RCW
3 36.70A.020(1) Urban growth, RCW 36.70A.020(2) Reduce sprawl, and RCW 36.70A.020(8)
4 Natural resource industries, and ask the Board to impose invalidity.

5
6 Neither the Respondents or the Intervenors addressed invalidity.

7
8 ***Board Analysis and Findings***

9 A determination of Invalidity may be entered when a Board makes a finding of
10 noncompliance and includes a determination, supported by findings of fact and conclusions
11 of law that the continued validity of part or parts of the plan or regulation would substantially
12 interfere with the fulfillment of the goals of this chapter.¹⁰²

13
14 ***Conclusion***

15 With this Final Decision and Order, the Board makes a finding of non-compliance and
16 issues an order of remand under RCW 36.70A.300.

17
18
19 The Board finds that Douglas County's adoption of Ordinance TLS 09-03-22D fails to
20 comply with RCW 36.70A.020(8) and RCW 36.70A.170(1), and Ordinance TLS 09-04-24C
21 fails to comply with RCW 36.70A.020(1) and (2), and RCW 36.70A.110.

22
23 The Board finds and determines that the continued validity of Ordinances TLS 09-03-22D
24 and Ordinance TLS 09-04-24C does not substantially interfere with the fulfillment of the
25 goals of this chapter. Compliance can be achieved in a timely manner without interfering
26 with the GMA's goals. The request for a determination of invalidity is, therefore, DENIED.
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¹⁰² RCW 36.70A.302(1).
FINAL DECISION AND ORDER
Case No. 09-1-0011
January 19, 2010
Page 33 of 35

1 **VII. ORDER**

2 Based on the foregoing, the County is ordered to bring its Comprehensive Plan into
3 compliance with the Growth Management Act within 120 days. The following schedule for
4 compliance, briefing and hearing shall apply:
5

6 Item	Date Due
7 Compliance Due on identified areas of noncompliance	July 19, 2010
8 Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	August 9, 2010
9 Objections to a Finding of Compliance	August 30, 2010
10 Response to Objections	September 13, 2010
11 Compliance Hearing 12 Call (360) 407-3780 and use pin 874665#	September 21, 2010 @ 13 10:00 AM

14 If the County takes the required legislative action prior to the deadline set forth in this Order,
15 the County may file a motion with the Board requesting an adjustment to this compliance
16 schedule.
17

18 So ORDERED this 19th day of January 2010.
19

20 _____
21 John Roskelley, Board Member

22 _____
23 Joyce Mulliken, Board Member

24 _____
25 Raymond L. Paoella, Board Member
26

27
28
29 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

30
31 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
32 **mailing of this Order to file a petition for reconsideration. Petitions for**
reconsideration shall follow the format set out in WAC 242-02-832. The original and
three copies of the petition for reconsideration, together with any argument in

1 support thereof, should be filed by mailing, faxing or delivering the document directly
2 to the Board, with a copy to all other parties of record and their representatives.
3 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
4 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
5 filing a petition for judicial review.

6 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
7 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
8 judicial review may be instituted by filing a petition in superior court according to the
9 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
10 Enforcement. The petition for judicial review of this Order shall be filed with the
11 appropriate court and served on the Board, the Office of the Attorney General, and all
12 parties within thirty days after service of the final order, as provided in RCW
13 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
14 but service on the Board means actual receipt of the document at the Board office
15 within thirty days after service of the final order.

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Service. This Order was served on you the day it was deposited in the United States
mail. RCW 34.05.010(19).

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