October 29, 2008

Kittitas County Board of Commissioners

Mr. Mark McClain
Mr. Alan Crankovich
Ms. Linda Huber
205 West 5th Ave, Suite 108
Ellensburg, WA 98926

Dear Chairman McClain and Commissioners Crankovich and Huber:

On behalf of American Forest Land Company ("AFLC"), I write to briefly comment on the ongoing efforts by the County to comply with the portions of the Final Determination and Order issued by the Eastern Washington Growth Management Hearings Board ("Growth Board") on August 20, 2007 (No. 07-1-0004c) ("2007 FDO") not subject to a judicial stay. Specifically, these comments are offered in support of the efforts and recommendations by the Forest Lands Advisory Committee ("FLAC") to develop criteria, standards, and guidelines for the designation and redesignation of Commercial Forest Lands ("CFL") that fully comply with the Growth Management Act ("GMA").

I. Background

On December 11, 2006, Kittitas County enacted Ordinance 2006-63, which amended the County's existing Comprehensive Plan. Futurewise, Kittitas County Conservation Coalition, and RIDGE (collectively, "Futurewise"), along with the State's Department of Community, Trade, and Development ("CTED"), appealed the ordinance to the Growth Board. On August 20, 2007, the Growth Board issued the 2007 Order, finding Ordinance 2006-63 to be GMA-noncompliant.

The County and others, including AFLC, are now before the Court of Appeals challenging some, but not all, of the issues found GMA non-compliant in the 2007 Order. As a result, the 2007 Order obligates the County to come into GMA compliance for those issues not appealed and judicially stayed. As part of this compliance effort, the FLAC developed and recommended...
criteria for the designation and redesignation of CFL in the County. These criteria were adopted by the Commissioners on May 14, 2008.

After another challenge by Futurewise, the Growth Board issued a First Order Re: Compliance on August 7, 2008 ("2008 Order") finding, in part, the County's new CFL criteria GMA-noncompliant. The Growth Board decided the criteria did not properly track the mandatory nature of some of the GMA criteria for designating CFL and that some of the criteria for redesignating such lands fell outside the permissible scope of the GMA. The additional further revisions now recommended by the FLAC directly address and correct the deficiencies identified by the Growth Board in its 2008 Order.¹

II. The revisions reflect the current directions from the Washington Supreme Court.

The FLAC's CFL criteria have been revised via the instructions of Growth Board in its 2008 Order. Further guiding the revisions is the recent case of City of Arlington v. Cent. Puget Sound Mgmt. Hearings Bd., --- P.3d ---, 2008 WL 4512849 (Wash. Oct.9, 2008).² In City of Arlington, the Washington Supreme Court upheld Snohomish County's redesignation of 110 acres of commercial agricultural resource lands to urban and general commercial.³ In so doing, the Court was instructive on the approach to designating resource lands, and the process of redesignating such lands. Specifically, the Court found that when designating resource lands, counties must look to the criteria found in the GMA, as well as the relevant factors in the WAC. For redesignations of resource lands, the Court held that counties must essentially reconsider the designation criteria for which the land was originally designated, and have sufficient evidence in the record to show why the land designation for the specific land at issue is no longer appropriate. The Court held, however, that counties have great discretion to make such land use changes, and to decide under which circumstances such changes should be made, and those decisions will be accorded substantial deference.

The designation and redesignation criteria appear sufficiently modified to accurately reflect the approaches to designating and redesignating resource lands upheld in the City of Arlington and Lewis County cases. For example, the FLAC's recommended criteria for designating CFL

¹ On October 16, 2008, the County filed a motion to the Court of Appeals to vacate the 2008 Order due to the Growth Board's failure to create a suitable record. On October 21, 2008, the County filed a motion to the Growth Board to continue the Compliance Schedule set forth in the 2008 Order pending resolution of the motion before the Court of Appeals. For the reasons set forth herein, AFLC respectfully requests the Commissioners to adopt the FLAC's current set of recommendations irrespective of the County's motions.

² Cited frequently by the City of Arlington Court, the case of Lewis County v. W. Wash. Growth Mgmt. Hearings Bd., 175 Wn.2d 488, 139 P.3d 1096 (2006) is also instructive. Both cases are attached for convenience (City of Arlington at Attachment A, Lewis County at Attachment B), as well as the statutory and regulatory provisions cited herein (Attachment C).

³ The Court in City of Arlington refers to changes of land use designation as "redesignation," not "de-designation," and that usage is properly reflected in the revised criteria.
explicitly follow the direction of the Washington Supreme Court: the first factor is found at RCW 36.70A.170(1)(b), the second factor at RCW 36.70A.030(8), and the third factor is taken from RCW 36.70A.030(8) and .030(10). See City of Arlington, 2008 WL 4512849 at *5; Lewis County, 157 Wn.2d at 498-499. And also made clear in the FLAC's recommended designation criteria, the County is further directed to consider the factors for determining "primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production" found at RCW 36.70A.030(8), and to consider the factors in WAC 365-190-060 as directed by RCW 36.70A.170(2). See City of Arlington, 2008 WL 4512849 at *6.

For redesignating CFL, the approach is also one upheld by the City of Arlington: consider the GMA's designation criteria, and utilizing WAC 365-190-060, consider what, if any, "change of circumstances" (see WAC 365-190-040(2)(g)) has occurred rendering the original land use designation inappropriate. See City of Arlington, 2008 WL 4512849 at *5-10. And to assist the County in determining whether or not any particular land is no longer commercially viable for long-term timber production, the original redesignation "criteria" has been changed to "guidelines." This change is intended to avoid any confusion that these guidelines may be considered in addition to the GMA's mandatory criteria and minimum guidelines. See, e.g., City of Arlington, 2008 WL 4512849 at *10 (clarifying that factors not explicitly contained in the GMA's criteria for resource lands, such as a landowner's intended use for a particular parcel, may be considered but are not necessarily conclusive).

AFLC respectfully requests that the Commissioners adopt the Committee's recommendations at this time. While the previous recommendations may well have been upheld on appeal, we believe these most recent changes to the County's designation and redesignation criteria arguably make the CFL portion of the County's Comprehensive Plan even stronger under the GMA.

If you have any questions, please don't hesitate to call me anytime.

Very truly yours,

[Signature]

Patrick W. Ryan

Attachments

cc: Jeff Jones
ATTACHMENT A
H

Only the Westlaw citation is currently available.
Supreme Court of Washington, En Banc.
CITY OF ARLINGTON, Dwayne Lane, and Snohomish County, Respondents,
v.
CENTRAL PUGET SOUND GROWTH MANAGMENT HEARINGS BOARD, State of Washington; 1000 Friends of Washington nka Futurewise; Stillaguamish Flood Control District; Pilchuck Audubon Society; The Director of the State of Washington Department of Community, Trade, and Economic Development; and Agriculture for Tomorrow, Petitioners.
No. 80395-1.

Decided Oct. 9, 2008.

Background: City, county, and landowner appealed determination of the Growth Management Hearings Board which determined that, under the Growth Management Act of 1990, county could not re-designate land from agricultural to commercial. The Superior Court, Snohomish County, Linda C. Kresse, J., granted Board's motion to dismiss and also affirmed the decision on the merits, and city, county, and landowner appealed. The Court of Appeals, 138 Wash.App. 1, 154 P.3d 936, reversed and remanded. Board appealed.

Holdings: The Supreme Court, Sanders, J., held that: (1) report was sufficient to support county's determination that parcel had no long-term commercial significance for agricultural production; (2) parcel was already characterized by urban growth and was adjacent to other urban growth, and thus met the locational requirements for expansion of urban growth area; (3) current action was not barred on grounds of res judicata and collateral estoppel; and (4) burden was on Board to show that county's action did not comply with the Act.

Affirmed.

Chambers, J., concurring in the result and filed opinion.

Alexander, C.J., dissenting and filed opinion joined by Madsen and Stephens, JJ.

[1] Zoning and Planning 414 C>>279

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)(1) In General
414k278 Particular Terms and Uses
414k279 k. Agricultural Uses; Farm; Nursery; Greenhouse. Most Cited Cases
Under the Growth Management Act of 1990, counties must designate 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. West's RCWA 36.70A.170(1)(a).


414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)(1) In General
414k278 Particular Terms and Uses
414k279 k. Agricultural Uses; Farm; Nursery; Greenhouse. Most Cited Cases
Counties must adopt development regulations to assure the conservation of those agricultural lands designated under the Growth Management Act of 1990. West's RCWA 36.70A.060(1)(a), 36.70A.170(1)(a).

[3] Zoning and Planning 414 C>>167.1

414 Zoning and Planning
414III Modification or Amendment
414III(A) In General
414k167 Particular Uses or Restrictions
   414k167.1 k. In General. Most Cited Cases
Report from consulting firm retained by interested landowner was sufficient to support county's determination that parcel of agricultural land had no long-term commercial significance for agricultural production for purposes of the Growth Management Act of 1990 such that county could redesignate land for urban commercial use, although other reports, including both a county planning and development services report and a draft supplemental environmental impact statement, concluded that the land was agricultural land of long-term commercial significance. West's RCWA 36.70A.170(1)(a); WAC 365-190-050(1).


414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
   414V(C)1 In General
   414k278 Particular Terms and Uses
       414k279 k. Agricultural Uses;
Farm; Nursery; Greenhouse. Most Cited Cases
"Agricultural land" for the purposes of the Growth Management Act of 1990 is, among other things, land that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. West's RCWA 36.70A.170(1)(a).


414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
   414V(C)1 In General
   414k278 Particular Terms and Uses
       414k279 k. Agricultural Uses;
Farm; Nursery; Greenhouse. Most Cited Cases
Counties may consider the development-related factors enumerated in regulation outlining the min-

imum guidelines to classify agriculture, forest, mineral lands and critical areas in determining which lands have long-term commercial significance for purposes of the Growth Management Act of 1990. West's RCWA 36.70A.170(1)(a); WAC 365-190-050(1).


414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
   414V(C)1 In General
       414k278 Particular Terms and Uses
           414k279 k. Agricultural Uses;
Farm; Nursery; Greenhouse. Most Cited Cases
Parcel of agricultural land was already characterized by urban growth and was adjacent to other urban growth such that it met the locational requirements for expansion of urban growth area under the Growth Management Act of 1990, where land abutted the intersection of two freeways, contained existing freeway service structures, and had unique access to utilities, and land contained a 700-foot border of freeway and access road rights-of-way with adjacent urban growth area. West's RCWA 36.70A.110(1).


414 Zoning and Planning
414X Judicial Review or Relief
   414X(D) Determination
       414k727 k. Effect of Decision. Most Cited Cases
Issues in current action regarding whether county's exercise of its discretion in redesignating land as urban commercial and expanding urban growth area to include certain parcel was clearly erroneous in view of the entire record before the Growth Management Hearings Board and in light of the goals and requirements of the Growth Management Act of 1990 were not the same issues or claims that were before the Board and the courts in prior litigation concerning whether the county's previous decision to designate the land as agricultural was
clearly erroneous, and thus current action was not barred on grounds of res judicata and collateral estoppel. West's RCWA 36.70A.320(1, 3).

[8] Judgment 228 584

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(B) Causes of Action and Defenses
Merged, Barred, or Concluded
228k584 k. Nature and Elements of Bar or Estoppel by Former Adjudication. Most Cited Cases
Resurrecting the same claim in a subsequent action is barred by res judicata.

[9] Judgment 228 584

228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(B) Causes of Action and Defenses
Merged, Barred, or Concluded
228k584 k. Nature and Elements of Bar or Estoppel by Former Adjudication. Most Cited Cases
Under the doctrine of res judicata, or claim preclusion, a prior judgment will bar litigation of a subsequent claim if the prior judgment has a concurrence of identity with the subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.

[10] Judgment 228 713(1)

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(C) Matters Concluded
228k713 Scope and Extent of Estoppel in General
228k713(1) k. In General. Most Cited Cases
When a subsequent action is on a different claim, yet depends on issues which were determined in a prior action, the relitigation of those issues is barred by collateral estoppel.


228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(A) Judgments Conclusive in General
228k634 k. Nature and Requisites of Former Adjudication as Ground of Estoppel in General. Most Cited Cases
Collateral estoppel, or issue preclusion, requires: (1) identical issues, (2) a final judgment on the merits, (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication, and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

[12] Judgment 228 720

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(C) Matters Concluded
228k716 Matters in Issue
228k720 k. Matters Actually Litigated and Determined. Most Cited Cases

Judgment 228 724

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(C) Matters Concluded
228k723 Essentials of Adjudication
228k724 k. In General. Most Cited Cases
For collateral estoppel to apply, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.


414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k619 Matters of Discretion
414k620 k. Regulations. Most Cited Cases
A county's decision to designate land agricultural or urban commercial, or to expand its urban growth area, is an exercise of its discretion that will not be overturned unless found to be clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the Growth Management Act of 1990. West's RCWA 36.70A.320(1, 3).

[14] Zoning and Planning 414 C.167.1

414 Zoning and Planning
414III Modification or Amendment
414III(A) In General
414k167 Particular Uses or Restrictions
414k167.1 k. In General. Most Cited Cases
County which wished to re-designate agricultural resource land as urban under the Growth Management Act of 1990 was not required to show a change in circumstances, but rather burden was on Growth Management Hearings Board to show that county's action did not comply with the Act. West's RCWA 36.70A.320(2).

Timothy M. Harris, Andrew C. Cook, Building Industry Assoc. of Wash. State, Olympia, WA, Amicus Curiae on behalf of Building Industry Association of Wash.
Jeffrey M. Eustis, Aramburu & Eustis LLP, Seattle, WA, Amicus Curiae on behalf of Western Washington Agricultural Association.

Admin. Law Div., Olympia, WA, for Other Parties.

SANDERS, J.

*1 ¶ 1 Snohomish County passed an ordinance amending the comprehensive plan to change the designation and zoning of 110.5 acres of land to urban and general commercial. The petitioners here requested the Central Puget Sound Growth Management Hearings Board (the Board) review the county ordinance to determine if the decision was consistent with the requirements of the Growth Management Act (GMA). The Board found the ordinance invalid as noncompliant with the GMA. The Superior Court affirmed the decision of the Board. It also held the change was precluded on res judicata grounds because the County demonstrated no changed circumstances after a prior decision. The Court of Appeals unanimously reversed the Superior Court's decision and remanded the case to the Board. City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 138 Wash.App. 1, 154 P.3d 936 (2007). The well reasoned and articulate opinion by Judge Grosse is correct in all respects; we adopt the opinion, which follows, as our own.

The Growth Management Hearings Board must find compliance with the Growth Management Act (GMA), chapter 36.70A RCW, unless it determines that a county action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. Here, the Board failed to consider important evidence in the record that supports Snohomish County's finding that the land at Island Crossing was not land of long-term commercial significance to agriculture and thus eligible for redesignation to urban commercial use. Because, in light of the improperly dismissed evidence, the County's action redesignating the land was not clearly erroneous, we reverse and remand.

FACTS

This appeal is the latest episode in a long fight
over the designation of a triangular piece of land in Snohomish County located north of the city of Arlington. The land borders the interchange of Interstate 5 and State Road 530, and is part of an area known as Island Crossing.

Prior Appeal

The land at issue was designated and zoned agricultural in 1978. In 1995, Snohomish County adopted a comprehensive plan under the GMA. As part of the plan, the County redesignated Island Crossing as urban commercial and included it in Arlington's Urban Growth Area (UGA). The Growth Management Hearings Board affirmed the decision in Sky Valley v. Snohomish County, No. 95-3-0068c (Final Decision and Order[, 1996 W1 734917]).[FN1]

In 1997, the Snohomish County Superior Court reviewed the Board's decision affirming the County's action and determined substantial evidence in the record did not support the redesignation of Island Crossing and the inclusion of the land in the UGA. Specifically, the superior court found that Island Crossing is in active/productive use for agricultural crops on a commercial scale and that the area is not characterized by urban growth under GMA standards. The superior court remanded to the Board for a detailed examination. The Board in turn ordered the County to conduct additional public hearings on this issue.

*2 The County held public hearings and after considering the oral and written testimony and the Planning Commission's public hearings record, the Snohomish County Council passed two ordinances redesignating Island Crossing as agricultural resource land and removing it from Arlington's UGA. Specifically, the Council found that Island Crossing is devoted to agriculture and is actually used or is capable of being used as agricultural land. It also found that the area is in current farm use with interspersed residential and farm buildings. The County Executive approved the ordinances.

Dwayne Lane, a party in the current case and owner of 15 acres of land bordering Interstate 5 in Island Crossing, challenged the County's designation of Island Crossing as agricultural resource land. Lane planned to locate an automobile dealership on his land at Island Crossing. He filed a petition for review of the County's 1998 decision with the Board, contending that the County failed to comply with the GMA. The Board concluded the County complied with the GMA and that the County's conclusion was not clearly erroneous. The superior court affirmed the Board's decision.

Lane then appealed to this court. Lane argued that the record did not support the Board's decision to affirm the County's designation of Island Crossing as agricultural resource land under the GMA. In an unpublished decision this court disagreed with Lane, concluding:

Island Crossing is composed of prime agricultural soils and has been described as having agricultural value of primary significance. Except for the County's 1995 redesignation of Island Crossing as agricultural land, Island Crossing has been designated and zoned agricultural since 1978. Thus, the record supports a finding that Island Crossing is capable of being used for agricultural production. Although Island Crossing borders the interchange of Interstate 5 and State Road 530, it is separated from Arlington by farmland. Indeed, the record contains evidence to indicate that most of the land in Island Crossing is being actively farmed, except a small area devoted to freeway services. Thus, the record indicates that the land is actually used for agricultural production. The only urban development permits issued for Island Crossing are for the area that serves the freeway. Further, the substantial shoreline development permit for sewer service in the freeway area explicitly "prohibits any service tie-ins outside the Freeway Service area." Thus, ad-
equate public facilities and services do not currently exist. Although Lane speculates that it may be possible for him to obtain permits under exceptions to the present restrictions, he fails to demonstrate that such permits can be provided in an efficient manner as required by statute.

Although the record may contain evidence to support a different conclusion, this court cannot reweigh the evidence. Indeed, the record contains substantial evidence supporting the conclusion that the designation of Island Crossing as agricultural land encourages the conservation of productive agricultural lands and discourages incompatible uses in accordance with the GMA. And the removal of Island Crossing from Arlington’s UGA is consistent with the GMA’s goal to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. The record supports the Board’s decision that the County’s designation of Island Crossing as agricultural resource land was not clearly erroneous. Further, as discussed above, Lane failed to show that the Board made a legal error or that its decision was arbitrary and capricious. Thus, he failed to satisfy his burden of showing that the Board’s action was invalid and, as a result, Lane is not entitled to relief.\footnote{21}

Current Appeal

*3 Two years later, in September 2003, the Snohomish County Council passed Amended Ordinance No. 03-063. The ordinance amended the County’s Comprehensive Plan to add 110.5 acres in Island Crossing to the Arlington UGA, changed the designation of that land from Riverway Commercial Farmland (75.5 acres) and Rural Freeway Service (35 acres) to Urban Commercial, and rezoned the land from Rural Freeway Service and Agricultural (10 acres) to General Commercial.

An appeal was filed with the Board in October 2003. The Board divided the issues into three groups: the redesignation of agricultural resource land (issue 2), urban growth and expansion issues (issues 3 and 4), and critical areas issue (issue 5). The Board declined to address the critical areas issue, and that issue is no longer part of this appeal.

Regarding the redesignation of Island Crossing as urban commercial from agricultural resource land, the Board stated in its Corrected Final Decision and Order that the petitioners had carried their burden of proof to show the ordinance failed to be guided by, and did not substantively comply with, RCW 36.70A.020(8) (planning goal to preserve natural resource land) and that it failed to comply with RCW 36.70A.040 (local governments must adopt development regulations that preserve agricultural lands), RCW 36.70A.060(1) (designation of agricultural lands), and RCW 36.70A.170(1)(a) (designation of agricultural lands). The Board found that the County’s action was unsupported by the record and thus was clearly erroneous in concluding that the land in Island Crossing no longer met the criteria for designation as agricultural land of long-term commercial significance, and remanded the ordinance to the County to take legislative action to bring it into compliance with the goals and requirements of the GMA.

Regarding the urban growth area and expansion issues, the Board stated in its decision and order that petitioners had carried their burden of proof to show the ordinance failed to be guided by and did not substantively comply with RCW 36.70A.020(1),(2), and (8) (planning goals requiring encouragement of urban growth in urban growth areas, reduction of sprawl, enhancement of natural resource industries) and that it failed to comply with RCW 36.70A.110 and .215 (limiting UGA expansions to land necessary to accommodate projected future growth and setting priorities for the expansion of urban growth areas) and
RCW 36.70A.210(1). The Board therefore concluded that the County’s action regarding the UGA expansion was clearly erroneous and remanded the ordinance to the County to take legislative action to bring it into compliance with the goals and requirements of the GMA. Upon remand the County held new hearings, took new testimony, and adopted a new land capacity analysis. Based on the new evidence, the County adopted Emergency Ordinance No. 04-057.

A compliance hearing was held by the Board in June 2004, and the Board entered an Order Finding Continuing Noncompliance and Invalidity and Recommendation for Gubernatorial Sanctions. The Board found that the County had achieved compliance with RCW 36.70A.215 but had failed to carry its burden of proving compliance with the other GMA provisions.

"No Snohomish County, the City of Arlington, and Dwayne Lane jointly appealed the Board’s Amended Final Decision and Order and the Order on Compliance to the superior court. Futurewise and the Stillaguamish Flood Control District filed a motion to dismiss, claiming that the issue of whether the county ordinances complied with the GMA was barred by res judicata and collateral estoppel. The superior court granted the motion to dismiss and also affirmed the Board’s decisions on the merits.

The City of Arlington, Snohomish County, and Dwayne Lane appeal.

ANALYSIS

Standard of Review

The appropriate standard of review, as summarized in the recent Supreme Court opinion Lewis County v. Western Washington Growth Management Hearings Board,\[FN3\] is as follows:

The Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations. RCW 36.70A.280, .302. The Board “shall find compliance” unless it determines that a county action “is 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). To find an action “clearly erroneous,” the Board must have a “firm and definite conviction that a mistake has been committed.” Dept. of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County, 121 Wash.2d 179, 201, 849 P.2d 646 (1993). On appeal, we review the Board’s decision, not the superior court decision affirming it. King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wash.2d 543, 553, 14 P.3d 133 (2000) (hereinafter referred to as Soccer Fields). “We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court.” Id. (quoting City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wash.2d 38, 45, 959 P.2d 1091 (1998)...

The legislature intends for the Board “to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of the GMA. RCW 36.70A.3201. But while the Board must defer to Lewis County’s choices that are consistent with the GMA, the Board itself is entitled to deference in determining what the GMA requires. This court gives “substantial weight” to the Board’s interpretation of the GMA. Soccer Fields, 142 Wash.2d at 553, 14 P.3d 133.[FN4]

Furthermore, “[u]nder the Administrative Procedure Act ... chapter 34.05 RCW, a court shall grant relief from an agency’s adjudicative order if it fails to meet any of nine standards delineated in RCW 34.05.570(3).”\[FN5\] Here, the appellants assert the Board engaged in unlawful procedure or decision-making process or failed to follow a prescribed procedure (RCW 34.05.570(3)(c)), the
Board erroneously interpreted the law (RCW 34.05.570(3(d)), the Board's order is not supported by evidence that is substantial when viewed in light of the whole record before the court (RCW 34.05.570(3)(e)), and the Board's order was arbitrary and capricious (RCW 34.05.570(3)(i)).

*5 Errors of law alleged under subsections (c) and (d) are reviewed de novo. Errors alleged under subsection (e) are mixed questions of law and fact, where the reviewing court determines the law independently, then applies it to the facts as found by the Board. Substantial evidence is " 'a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.' "

For the purposes of subsection (i), arbitrary and capricious actions include " 'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.' " Furthermore, " '[w]here there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.' "

Redesignation of Island Crossing from Agricultural Resource Land to Urban Commercial

[1][2] Under the GMA, counties must designate "a]gricultural 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." Furthermore, counties must adopt development regulations "to assure the conservation of" those agricultural lands designated under RCW 36.70A.170.

While this case was awaiting oral argument the definition of "agricultural land" for GMA purposes was addressed by the Supreme Court in Lewis County. The court held that three factors must be met before land may be designated agricultural land for the purposes of the GMA. The court stated:

[A]gricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance.

¶ 2 The WAC factors include:

(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.

In the ordinances at issue in this case, Snohomish County made the following finding regarding whether the land in question was agricultural land.

for GMA purposes:

*6 The land contained within the Island Crossing Interchange Docket Proposal is not agricultural land of long term commercial significance. Although some of the soils may be of a type appropriate for agricultural use, soil type is only one factor among many others in the legal test for agricultural land of long term commercial significance. The County Council has addressed the question as to whether the land is:

“primarily devoted to the commercial production of agricultural products and has long term commercial significance for agricultural production”

and found that it is not.

At the public hearing, the testimony of Mrs. Roberta Winter ([Ex.] 111) was very persuasive on this point. Since the mid-1950's, she and her husband had a dairy farm in the very location of the Island Crossing Interchange Docket Proposal site. Locating and then expanding I-5 put them out of the dairy business. They soon discovered that crops generated less revenue than the property taxes. The Winters sold the land because the land could not be profitably farmed.

Council finds that this land cannot be profitably farmed, and is not agricultural land of long term commercial significance.

[3] The Board found that the County's action in redesignating the land was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. We find the Board erred in concluding the County committed clear error in determining the land in question has no long-term commercial significance for agricultural production. There is evidence in the record supporting the County's determination on this point, and the Board wrongly dismissed this evidence. Because this evidence supports the County's finding that the land at Island Crossing has no long-term commercial significance for agricultural production, the Board erred in not deferring to the County's decision to redesignate the land for urban commercial use.

[4][5] As stated in the Lewis decision, agricultural land for the purposes of the GMA is, among other things, land that "has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses."[FN15] Furthermore, "counties may consider the development-related factors enumerated in WAC 365-190-050(1) in determining which lands have long-term commercial significance."[FN16]

In regards to whether the land at Island Crossing has long-term commercial significance for agricultural production, the Board stated:

2. Do the 75.5 acres of land at Island Crossing have longterm commercial significance?

Again, the Board answers in the affirmative. The County relies on Finding T, set forth in Finding of Fact 3, ... to support its conclusion that the Riverway Commercial Farmland no longer has long-term commercial significance. The "evidence" relied upon is testimony from an individual who operated a dairy farm in the vicinity fifty years ago who opined that she sold her farm "because the land could not be profitably farmed."[Ex. 111. Anecdotal testimony, particularly from an individual whose direct experience with the area is decades removed from the present and whose declared was in dairy rather than crop farming, does not constitute credible evidence on which to support the County's action. Also, as Petitioners noted, this "Finding" was contradicted by others with present-day experience in crop farming in the Stillaguamish Valley.
The Board went on to cite the report of the Snohomish County Planning and Development Services (PDS), the Draft Supplemental Environmental Impact Statement (DSEIS), the United States Department of Agriculture (USDA) soils report, and the recommendations of the Snohomish County Agricultural Advisory Board as substantial evidence contrasting sharply with the testimony relied upon by the County.

For example, both the PDS report and DSEIS specifically address the relevant WAC factors and conclude that the land in question is agricultural land of long-term commercial significance:

Analyses of the proposal conducted by PDS conclude that under the GMA’s minimum guidelines for classification of agricultural lands, the portion of the proposal site currently designated and zoned for agricultural uses should continue to be classified as such. This conclusion is based on the following analysis of the GMA guidelines:

• Availability of Public Facilities: Public water and sanitary sewer facilities are physically located in and adjacent to the proposal site. However, sanitary sewer service is restricted by the [General Policy Plan (GPP)] to Urban Growth Areas. The shoreline substantial development permit for the existing sewer line restricts availability of sanitary sewer to the existing parcels zoned Rural Freeway Service.

• Tax Status: Several large parcels in the area (approximately 32% of the area) are classified as Farm and Agricultural Land by the Snohomish County Assessor and are valued at their current use rather than “highest and best use.” The other parcels in the area, however, are valued and taxed at their “highest and best use”.

• Availability of Public Services: Public Services such as public water and sanitary sewer service are physically located within and adjacent to the proposal site. However, sanitary

• Relationship or proximity to urban growth areas: The proposal site is approximately 0.9 miles from the Arlington city limits and is functionally separated from the City because it is within the Stillaguamish River floodplain. The southern tip of the proposal site, however, is adjacent to the Arlington UGA.

• Land Use Settlement Patterns and Compatibility with Agricultural Practices: Most of the proposal site is currently in farm use with interspersed residential and farm buildings.

• Predominant Parcel Size: Predominant parcel sizes are large and of a size typically found in areas designated commercial farmland. Nine parcels are located within the 75.5 acres of the proposal site designated Riverway Commercial Farmland. Approximate sizes of these parcels are 20.7 acres, 15.8 acres, 14.6 acres, 8.1 acres, 2.9 acres, and three smaller parcels.

• Intensity of Nearby Uses: More intense land uses and urban land developments are located within the Rural Freeway Commercial node at the I-5/SR 530 interchange that has existed essentially in its present configuration since 1968. Farmland is located immediately to the east, and, separated by I-5, to the west.

• History of Land Development Permits Issues Nearby: No urban development permits have been issued in the vicinity of the proposal site except for the substantial shoreline development permit issued for the sewer line that serves only the existing rural freeway commercial uses.

• Land Values under Alternative Uses: The area of the proposal site outside of the Rural

Freeway Service designation is in the floodway fringe area of the Stillaguamish River. Higher uses than farming would be difficult to locate in the area because of the floodplain con-strains.

* Proximity of Markets: Markets within Arlington, Marysville, and Stanwood are located in close proximity to the site.

In addition, soils in the proposal area are prime farmland soils as defined by the [USDA Soil Conservation Service] and Snohomish County....

Based on review of the site characteristics and the GMA criteria, the proposal area meets the criteria for an agricultural area of long-term commercial significance. The proposal area contains prime farmland soils, is not characterized by urban growth, and is adjoined by uses that are compatible with agricultural practices.

Respondents argue that the DSEIS is unique because it is “the only comprehensive, GMA-focused analysis” in the record.

However, Dwayne Lane, a litigant in this case, hired consulting firm Higa-Burkholder to conduct a similar analysis employing the WAC criteria, and Higa-Burkholder came to the opposite conclusion. HigaBurkholder’s analyzed the WAC factors as follows:

(a) Availability of public facilities: The interchange is currently serviced by water and sewer, power, telecommunications, and gas. The fact that sewer expansion is limited by the existing Shoreline permit (1977) only means that to expand sewer service, a proposal must be approved by the Snohomish County Council under a Shoreline Permit application. In fact, the facilities exist and, in the case of water are in use.

(b) Tax Status: All but one parcel is smaller than 20 Acres Minimum for Open Space Taxation. Many property owners are being assessed tax rates that, according to the Snohomish County Assessor’s Office, reflect “freeway influence” implying that the County believes that these properties have a “higher and better use” than agriculture. Taxes on this land are higher than the revenues generated from farming. Tax assessments reflect the availability of water.

(c) Availability of Public Services: Island Crossing has automobile services, lodging, food, and transit access.

(d) Relationship and Proximity to UGA: The Arlington UGA border is the southern boundary of the subject area. The City will annex the area through a special election in November of 2003.

*9 (e) Predominant Parcel Size: The 1982 Snohomish County Agricultural Provision Plan (SCAPP) suggests the optimum size for agricultural parcels is 40 acres with 20 acres minimum for crop production if adjacent to other large parcels. Minimum size for specialty crops is ten acres. A majority of the parcels are smaller than the 20 acres considered minimum for large-scale farming and for qualification for the open space tax abatement program for agriculture.

(f) Land Use and Settlement Patterns and Their Compatibility with Agricultural Practices: Well-documented conflicts exist with traffic and urban development. Traffic counts have increased to the point where it is dangerous for farm vehicles to cross the highway and certainly to pasture animals that often escape endangering the traveling public. These things limit the viability of agricultural [sic].

(g) Intensity of Nearby Land Uses: This interchange represents one of two connections to I-5 for a large market area including Darrington, Arlington, Smokey Point and North Marysville. These communities have been some of the fastest growing areas in Snohomish County. Arlington has approved the development of an Airport Industrial Park that has the potential to add 4000
jobs to the community, half of which will use the Island Crossing Interchange over the next ten years.

The Stillaguamish Tribe has developed a tribal center that includes several high traffic generating businesses including a smoke shop, a pharmacy, fireworks store, a police station and a community center. This development is located at the intersection of SR 530 and Old Highway 99. Currently, the Tribe's property is served by City of Arlington Water, but it has no public sewer service. The Tribe has plans to expand their operation at Island Crossing by purchasing other land and converting it to Trust Land.

(h) History of Development Permits Nearby:
Over 200 homes have recently been developed on 47th Street NE less than one half mile from Island Crossing. Smokey Point Boulevard has been the center of residential growth over the past ten years. Island Crossing represents one of two access points to I-5 for all of this growth.

(i) Land Values under Alternative Uses: Island Crossing has the potential to benefit Snohomish County economically. Jobs, sales tax revenue and property taxes are but a few of the economic benefits.

(j) Proximity to Markets: Although this area is in the Puget Sound population center and access to markets for farm products is close by, most production is occurring elsewhere, for example, in Eastern Washington where fewer conflicts with urban land uses, access to large parcels and lower priced land make agriculture viable. Twin City Foods imports its raw product from the east side of the State and no longer grows product in this area.

Relying on our Supreme Court's decision in City of Redmond, the Board dismissed the entire Higa-Burkholder analysis out of hand. Specifically, the Board construed the Higa-Burkholder report to be “reflections, if not direct expressions, of ‘landowner intent’” and assigned it “the appropriate weight.”

*10 The Board incorrectly relied on City of Redmond to dismiss this evidence. In City of Redmond the Supreme Court analyzed the meaning of the phrase “devoted to” as used in the GMA definition of agricultural land and held:

While the land use on the particular parcel and the owner's intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor landowner intent of a particular parcel is conclusive for purposes of this element of the statutory definition.[[FN17]]

All City of Redmond holds is that a landowner cannot control whether land is primarily devoted to agriculture by taking his or her land out of agricultural production. It does not say the Board may dismiss evidence supporting the County's decision if it was obtained at the request of an interested party. The Board erroneously used City of Redmond as a tool with which to dismiss of an important piece of evidence that supported the County's position with regards to whether Island Crossing was agricultural land of long-term commercial significance. To the extent this evidence supports the County's conclusion that the land was not of long-term commercial significance to agricultural production, and we find that it does, the Board would be required under the GMA to defer to the County and affirm its decision redesignating the land urban commercial.

Expansion of the Arlington UGA

The Board also found the expansion of the Arlington UGA in Amended Ordinance No. 03-063 did not comply with the GMA for two reasons. First, the Board found the record did not contain
a valid land capacity analysis demonstrating a need for additional commercial land. In response, the County submitted a Large Plot Parcel Analysis prepared by Higa-Burkholder \footnote{3} as part of its statement of compliance and the Board found this action cured noncompliance with RCW 36.70A.215. This issue is therefore not part of this appeal.

[6] Second, the Board found the Expanded UGA including Island Crossing did not meet the locational requirements of RCW 36.70A.110(1), which states in pertinent part:

An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is designated new fully contained community as defined by RCW 36.70A.350.\footnote{9}

The Board concluded in its Corrected Final Decision and Order:

As to whether the expanded UGA for Island Crossing meets the locational requirements of RCW 36.70A.110, the Board agrees with Petitioners. The closest point of contact between Arlington’s city limits and private property within the expansion area is approximately 700 feet.... Also, the fact that limited sewer service is adjacent to, or even existing within, a rural area is not dispositive on the question of whether the area is urban in character. Therefore, the Board concludes the subject property is not “adjacent to land characterized by urban growth,” and does not comply with RCW 36.70A.110(1).

\footnote{11} The Board explained further in its Order Finding Continuing Noncompliance:

No new facts or reasoning are presented to disturb the Board’s conclusions that Island Crossing continues to have agricultural lands of long-term commercial significance, that the presence of a sewer line is irrelevant, particularly given its limitations, that the freeway service uses do not rise to the status of “urban growth,” and that Island Crossing is not “adjacent” to the Arlington UGA or a residential “population” of any sort. In fact, the private lands within this proposed UGA expansion would be connected to the Arlington UGA only by means of a 700 foot long ‘cherry stem’ consisting of nothing but public right-of-way.... While such dramatically irregular boundaries were common in the pre-GMA era, the meaning of “adjacency” under the GMA precludes such behavior.

“Urban growth” is defined in the GMA as:

growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.\footnote{8}

We find that the unique location of the land at Island Crossing as abutting the intersection of two freeways and its connection to the Arlington UGA together meet the requirements of RCW 36.70A.110(1). Thus, the County’s reliance on such facts in expanding the Arlington UGA was proper and the Board’s decision reversing the County’s action is erroneous.
The County stated in its ordinance: "This land is located at an I-5 interchange between an interstate highway and a state highway, and is uniquely located for commercial needs of the area... This land has unique access to utilities." In other words, the County concluded that the land is appropriate for urban growth because the land is located at a highway interchange and has unique access to utilities. The County also acknowledged the land has existing freeway service structures on it and is adjacent to the City of Arlington's UGA. Taken together, these facts at least support a conclusion that the land in question is "located in relationship to an area with urban growth on it as to be appropriate for urban growth" and thus characterized by urban growth.

Furthermore, the Board's conclusion that Island Crossing is not adjacent to the Arlington UGA for GMA purposes is also erroneous. It is undisputed that the area in question borders Arlington's UGA. The question posed here is whether the 700 foot border consisting entirely of freeway and access road rights-of-way constitute the adjacency to "territory already characterized by urban growth" required by RCW 36.70A.110(1). In reaching its decision the Board emphasized the geography and topography of the land in question and decided that, in this case, such concerns should control whether the land involved was adjacent to land characterized by urban growth and not simply the 700 foot UGA boundary to the south.

Res Judicata and Collateral Estoppel

[7] The parties argue much over whether the issues of res judicata and collateral estoppel were timely raised below; however, an analysis of the issues on the merits reveals the superior court erred in granting the motion to dismiss the appeal based on res judicata and collateral estoppel.

[8][9] "Resurrecting the same claim in a subsequent action is barred by res judicata." Under the doctrine of res judicata, or claim preclusion, "a prior judgment will bar litigation of a subsequent claim if the prior judgment has 'a concurrence of identity with [the] subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.'"

[10][11][12] "When a subsequent action is on a different claim, yet depends on issues which were determined in a prior action, the relitigation of those issues is barred by collateral estoppel." Collateral estoppel, or issue preclusion, requires

"(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied."[FN25]

"In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action."[FN26]

Here, the superior court dismissed the appeal on grounds that the appellants' claims were barred by res judicata and collateral estoppel. The superior court stated in its Decision on Appeal Affirming Growth Board:

4.2 In prior proceedings involving many of the same parties, in 1998 the Board affirmed
Snohomish County's designation of the subject property (Island Crossing property) as agricultural resource land (75.5 acres) and Rural Freeway Service (35 acres) and removed it from the Arlington urban growth area (UGA). That decision was eventually affirmed by the Court of Appeals in an unreported decision (Dwayne Lane v. Central Puget Sound Growth Management Hearings Board, No. 46773-5-I)[, noted at 105 Wash.App. 1016, 2001 WL 244384] ). In order to re-designate the land, the County must show that there has been a change in circumstances since 1998, and that the property is no longer properly designated as agricultural resource land and Rural Freeway service.

4.3 The Petitioners have failed to demonstrate any material change in circumstances justifying a change in the designation of the land.

*13 The superior court explained further in its oral decision:

As I've already stated, these issues have twice before been the subject of proceedings before the Board and the Court. On both occasions the Court has held that the lands should be properly designated as agricultural, and that the area should not be included in the Urban Growth Area. The causes of action are identical, the persons and parties are the same, although on the second appeal in 2001, the County was on the other side. I don't think this detracts from the applicability of the other principles and the quality of the parties are the same. FN27

The superior court in its decision and the respondents in their briefs misstate the issues and claims that were before the Board and the courts. The inquiry before the Board and the courts in the prior litigation was not whether the land was properly designated agricultural resource land as opposed to urban commercial land. The inquiry was whether the County committed clear error in designating the land agricultural in view of the entire record before the Board and in light of the goals and requirements of the GMA. This distinction is crucial.

In the prior Island Crossing litigation, we ultimately held "the Board's decision that the County's designation of Island Crossing as agricultural resource land was not clearly erroneous."FN28 This court did not hold that the land was agricultural resource land of long-term commercial significance. We could not have done so even had we tried. This is because the Board's review is limited to whether "the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]."FN29 and our review was limited to whether the Board's decision was supported by substantial evidence or was arbitrary and capricious.

[13] Because clear error is such a high standard to meet, it follows that situations may exist where a county could properly designate land either agricultural or urban commercial depending on how the county exercises its discretion in planning for growth, without committing clear error. The legislature recognized this when it implemented the clear error standard of review:

In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant great deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. FN30

A county's decision to designate land agricultural or urban commercial, or to expand its urban growth area, is thus an exercise of its discretion that will not be overturned unless found to be clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.
In the present case, the issues include whether the County's exercise of its discretion in redesignating the same land as urban commercial and expanding the Arlington UGA to include Island Crossing was clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. This is not the same issue or claim that was before the Board and the courts in the prior litigation. As stated before, the issue in that litigation was whether the County's decision to designate the land agricultural was clearly erroneous. The superior court's decision to bar the appeal on res judicata and collateral estoppel grounds was in error. The appellants were entitled to a decision on appeal as to whether the County's subsequent decision to redesignate Island Crossing was clearly erroneous.

*14 In short, simply because the Board and courts previously held that the agricultural designation was not clearly erroneous in view of the record and in light of the GMA, does not mean that an urban commercial designation would be clearly erroneous in view of the same or similar record and in light of the goals and requirements of the GMA. The prior judgment and the current litigation do not involve the same claim, nor are the issues identical. Thus, the superior court should not have precluded the petitioners from challenging the Snohomish County ordinances at issue in this case.

[14] The superior court's decision is erroneous in another respect. Specifically, the superior court's holding that "In order to re-designate the land, the County must show that there has been a change in circumstances since 1998, and that the property is no longer properly designated as agricultural resource land and Rural Freeway service" impermissibly shifts the burden away from the petitioners. Under RCW 36.70A.320(2), "the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under [the GMA] is not in compliance with the requirements of [the GMA]." In the Court of Ap-

peals decision in City of Redmond v. Central Puget Sound Growth Management Hearings Board (hereinafter referred to as City of Redmond II),FN31 we held that the Board erroneously placed the burden on the city to demonstrate conclusive evidence of changed circumstances in order to justify the de-designation of agricultural resource land. The superior court's ruling that the County be required to show evidence of changed circumstances in order to overcome collateral estoppel and res judicata thus directly conflicts with the statute's mandate that burden of proof set forth in RCW 36.70A.320(2) and affirmed in City of Redmond II.

In sum, we hold the Board erred in finding the County committed clear error in concluding that the land at Island Crossing had no long term commercial significance to agricultural production. The Board erred because it dismissed a key piece of evidence that supported the County's conclusion on this point. Because there is evidence in the record to support the County's conclusions, the Board should have deferred to the County.FN32

Furthermore, we hold the Board erred in finding the County committed clear error in including the land at Island Crossing within the newly expanded Arlington UGA. There are facts in the record to support the conclusions that the land in question is characterized by urban growth and/or adjacent to territory already characterized by urban growth.

Finally, we hold the superior court erred in dismissing the appeal on res judicata and collateral estoppel grounds. We thus reverse and remand this matter to the Board for a decision consistent with the opinion of this court. FN33

WE CONCUR: SUSAN OWENS, CHARLES W. JOHNSON, MARY E. FAIRHURST and JAMES M. JOHNSON, Justices.CHAMBERS, J. (concurring).

*15 ¶ 3 I concur with the majority in result. I write
separately to emphasize that our legislature has directed the growth management hearing boards to show deference to the local governments and has directed this court to show deference to the hearing boards. *Swinomish Indian Tribal Cnty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wash.2d 415, 424, 166 P.3d 1198 (2007) (citing RCW 36.70A.3201 and RCW 34.05.570(3)). The majority has passed by the fact that we review the hearing board’s decision for substantial evidence. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wash.2d 543, 553, 14 P.3d 133 (2000). Nothing in our opinion today should be read to change that.

¶ 4 With that reservation, I concur in result.

Dissent by ALEXANDER, C.J.
ALEXANDER, C.J. (dissenting).

¶ 5 The central issue before our court is whether Snohomish County correctly determined that the land in question, Island Crossing, is characterized by urban growth and/or is adjacent to a territory characterized by urban growth. The majority concluded, as did the Court of Appeals, that the record supports the county’s determination. I disagree with this conclusion and, therefore, dissent.

¶ 6 On the issue of whether the 75.5 acres of Island Crossing is characterized by urban growth, it seems clear to me that the Central Puget Sound Growth Management Hearings Board correctly rejected the county’s determination that the land is characterized by such growth. One needs to look only at aerial photographs of this land to see that the great bulk of it is presently devoted to agricultural uses. Clerk’s Papers (CP) at 322, 2133. The only activity on the land that approaches urban growth is that which is located on the small portion of the land near the freeway interchange, which contains freeway services. Looking at the land in its entirety, however, it cannot be said that there is “intensive use of [the] land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of [the] land for the production of food, [and] other agricultural products.”RCW 36.70A.030(18).

¶ 7 Neither is the land “adjacent to territory already characterized by urban growth.”RCW 36.70A.110(1). While the Central Puget Sound Growth Management Hearings Board must defer to county choices that are consistent with the Growth Management Act, chapter 36.70A RCW, the board is entitled to deference in determining what the act requires. *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wash.2d 488, 139 P.3d 1096 (2006). The Court of Appeals, in my judgment, failed to give appropriate weight to the board’s determination of the term “adjacent” as it is used in RCW 36.70A.110(1). In making that determination, courts must “give careful consideration to the subject matter involved, the context in which the words are used, and the purpose of the statute.” *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wash.2d 224, 239, 110 P.3d 1132 (2005) (quoting City of Tacoma v. Taxpayers of Tacoma, 108 Wash.2d 679, 693, 743 P.2d 793 (1987)). Here, the board correctly concluded that although Island Crossing’s “700 foot long ‘cherry stem’ consisting of nothing but public right-of-way” abutted the Arlington growth area, it was not sufficiently adjacent to that area for purposes of the act given the dramatically irregular boundaries and geography of the area. CP at 2908. This determination comports with the Growth Management Act’s goal of concentrating growth in urban areas, reducing urban sprawl, and protecting the environment. RCW 36.70A.020(1), (2), (10).

*16 ¶ 8 The Department of Community, Trade and Economic Development and Futurewise each make the point that the Court of Appeals’ interpretation of the term “adjacent” opens the door to a gerrymandered approach to locating urban growth areas, since all that would be required to satisfy the “adjacent” criterion is that the proposed urban growth area touch an existing growth area. I agree with the department that the Court of Appeals’ reliance simply on a dictionary definition of “adjacent,” “without regard to statutory context or...

WE CONCUR: BARBARA A. MADSEN and DEBRA L. STEPHENS, Justices.


FN4. Lewis County, 157 Wash.2d at 497-98, 139 P.3d 1096.

FN5. Lewis County, 157 Wash.2d at 498, 139 P.3d 1096.


FN7. Lewis County, 157 Wash.2d at 498, 139 P.3d 1096.


FN10. City of Redmond, 136 Wash.2d at 47, 959 P.2d 1091 (quoting Kendall, 118 Wash.2d at 14, 820 P.2d 497).

FN11. RCW 36.70A.170(1)(a); see also Lewis County, 157 Wash.2d at 498-99, 139 P.3d 1096.

FN12. RCW 36.70A.060(1)(a); see also Lewis County, 157 Wash.2d at 499, 139 P.3d 1096.

FN13. Lewis County, 157 Wash.2d at 502, 139 P.3d 1096.

FN14. WAC 365-190-050(1).

FN15. Lewis County, 157 Wash.2d at 502, 139 P.3d 1096.

FN16. Lewis County, 157 Wash.2d at 502, 139 P.3d 1096.

FN17. City of Redmond, 136 Wash.2d at 53, 959 P.2d 1091.

FN18. This is a different report than the one that evaluated whether the land at Island Crossing was agricultural land of long-term commercial significance.

FN19. (Emphasis added.)

FN20. RCW 36.70A.030(18) (emphasis added).

FN21. RCW 36.70A.030(18).


FN23. In re Election Contest Filed by Coday, 156 Wash.2d 485, 500-01, 130

FN24. Hilltop Terrace Homeowner's Ass'n, 126 Wash.2d at 31, 891 P.2d 29.


FN27. (Emphasis added.)


FN29. RCW 36.70A.320(3).

FN30. RCW 36.70A.3201 (emphasis added).


FN32. See RCW 36.70A.3201.

FN33. RCW 34.05.574(1); Manke Lumber Co. v. Diehl, 91 Wash.App. 793, 809-10, 959 P.2d 1173 (1998).

FN1. A term made famous by a salamander shaped election district in Massachusetts, which was formed for partisan purposes in 1812. This occurred during the governorship of Elbridge Gerry, a noted American statesman and signer of the Declaration of Independence.

FN2. The department makes the dire prediction that the Court of Appeals' decision "would allow the Arlington UGA [urban growth area] to be extended north along I-5 beyond Island Crossing to the next freeway interchange, then to the one after that, so long as the end of the 'kite string' 'touches' the existing UGA." Pet. for Review at 19. Time will tell if this prediction is prescient or farfetched.


City of Arlington v. Central Puget Sound Growth Management Hearings Bd.

--- P.3d ----, 2008 WL 4512849 (Wash.)

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ATTACHMENT B
clear as to the second certified question, and that clarity disposes of this case, the court should go no further. This court lacks the authority, the resources, the procedures, and complete information possessed by or available to the legislature, all of which would be necessary to adequately weigh competing interests and decide how reimbursement should be determined. If the legislature intended a different result, it should amend the statute.

Concurring: SANDERS, FAIRHURST, JJ.

LEWIS COUNTY, Appellant,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD,
Eugene Butler, Edward G. Smathers,
Douglas H. Hayden, Annette H. Yanisch,
Brenda Boardman, Dorothy L. Smith,
Debra Ertel Burris, Michael T. Vinatieri,
Deanna M. Zieske, Vince Panesko,
John T. Mudge, Evaleine Community Association,
Susan Roth, Richard Roth,
Karen Knutsen, and Valerie Gore, Respondents.

No. 76553–7.

Supreme Court of Washington,
En Banc.

Argued Nov. 10, 2005.

Background: County appealed regional growth management hearings board's determination that county's designation of agricultural lands for conservation violated

the Growth Management Act (GMA). The Superior Court, Lewis County, H. John Hall, J., affirmed. Direct review was granted.

Holdings: The Supreme Court, Alexander, C.J., held that:
(1) definition of “agricultural land” designated for conservation under GMA is properly based not only on soil and land characteristics, but also on farm industry’s projected needs;
(2) county’s exclusion of “farm centers” and farm homes from agricultural lands designated for conservation was clearly erroneous; and
(3) county’s ordinance allowing residential subdivisions and other non-farm uses was noncompliant with GMA’s conservation requirement.
Affirmed in part, reversed in part, and remanded.

J.M. Johnson, J., filed opinion concurring in part and dissenting in part, in which Sanders and Chambers, JJ., joined.

1. Zoning and Planning ☑️358.1

To find a county’s zoning and planning action “clearly erroneous” under the Growth Management Act (GMA), the regional growth management hearings board must have a firm and definite conviction that a mistake has been committed. West’s RCWA 36.70A.320(3).

2. Zoning and Planning ☑️745.1

On appeal, the Supreme Court reviews the regional growth management hearings board’s decision, not the decision of the superior court.

3. Zoning and Planning ☑️574

Judicial review of the regional growth management hearings board’s decision is based on the record made before the board.

4. Zoning and Planning ☑️745.1

On appeal, the Supreme Court gives substantial deference to the regional growth management hearings board’s interpretation of the Growth Management Act (GMA). West’s RCWA 36.70A.320.

5. Zoning and Planning ☑️680.1

The burden of demonstrating that the regional growth management hearings board erroneously applied the law or failed to follow prescribed procedure is on the party asserting error.

6. Zoning and Planning ☑️745.1

The Supreme Court’s review of issues of law under the Growth Management Act (GMA) is de novo. West’s RCWA 34.05.570(3)(d).

7. Zoning and Planning ☑️745.1, 747

On appeal of a regional growth management hearings board’s determination involving mixed questions of law and fact, the Supreme Court determines the law independently, then applies it to the facts as found by the board.

8. Zoning and Planning ☑️279

Definition of “agricultural land” designated for conservation under the Growth Management Act (GMA) is properly based not only on soil and land characteristics, but also on farm industry’s projected needs. West’s RCWA 36.70A.080(2), 10, 36.70A.170(1)(a); WAC 365–190–050.

9. Zoning and Planning ☑️279

“Agricultural land” designated for conservation under the Growth Management Act (GMA) is properly defined as land not already characterized by urban growth, which is primarily devoted to the commercial production of agricultural products, including land in areas used or capable of being used for production based on land characteristics, and which has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses, and counties may consider the development-related factors enumerated in an administrative rule in determining which lands have long-term commercial significance. West’s RCWA 36.70A.080(2), 10, 36.70A.170(1)(a); WAC 365–190–050.
10. Zoning and Planning \(\Rightarrow\)279

County’s ordinances excluding “farm centers” and farm homes from agricultural lands designated for conservation under the Growth Management Act (GMA), purportedly for economic benefit of farmers, was clearly erroneous; serving farmers “non-farm” economic needs was not a permissible consideration in designating agricultural lands under GMA. West’s RCWA 36.70A.170(1)(a), 36.70A.080(10).

11. Zoning and Planning \(\Rightarrow\)76

County’s ordinance allowing residential subdivisions and other non-farm uses within agricultural lands designated for conservation under the Growth Management Act (GMA) was noncompliant with GMA’s conservation requirement. West’s RCWA 36.70A.060(1), 36.70A.170, 36.70A.177(1, 2).

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Alexander Weal Mackie, Perkins Cole LLP, Olympia, Douglas Emry Jensen, Lewis County Prosecutor’s Office, Chehalis, for Petitioner/Appellant.

Lewis Handfield Zieske, Deanna Zieske, Chehalis, for Appellee/Respondents.

Timothy E. Allen, Law Offices of Guilford, McGaughey & Da, Bellevue, Tim Trohimo-vich, Futurewise, Seattle, for Amicus Curiae, Futurewise.


ALEXANDER, C.J.

\(\text{\textsuperscript{1}}\) After failing four times to satisfy the Western Washington Growth Management Hearings Board (Board) that it properly designated agricultural lands for conservation under the Growth Management Act (GMA), chapter 36.70A RCW, Lewis County now asks us to reverse the latest Board orders rebuffing its efforts. We conclude that the Board incorrectly defined agricultural land in reviewing Lewis County’s 2008 ordinances. Accordingly, we reverse the Board’s conclusion that the county violated the GMA by focusing on the farm industry’s projected needs, rather than on soil and land characteristics, in designating agricultural lands for conservation. We also remand the case to the Board to determine whether the county’s designations of agricultural land comply with the GMA, using the correct definition of agricultural land.\(\text{\textsuperscript{1}}\) We conclude, however, that the Board did not err by invalidating the ordinances that: (a) allowed non-farm uses within designated agricultural lands, and (b) excluded “farm centers” and farm homes from those lands. Therefore, we partially affirm the Board’s orders.

I

\(\text{\textsuperscript{1}}\) Lewis County has long struggled to meet GMA requirements to designate and to reconsider its approach to conserving designated lands. Finally, although we conclude that both the Board and Lewis County misinterpreted the definition of agricultural land in RCW 36.70A.030(2), that does not necessarily mean that Lewis County designated the wrong parcels (or too few of them). The extent to which the designated parcels match the actual definition of agricultural land is a compliance question, and therefore is properly directed to the Board, the agency charged with determining GMA compliance. RCW 36.70A.320(3). It seems that the dissent would bypass the Board and allow counties to decide whether their own actions comply with the GMA. For example, the dissent complains that these “unelected boards” may “micromanage land use plans for counties.” Dissent at 1107 n. 1. While bypassing the Board certainly would promote the dissent’s goal of “allowing the ... local government to govern,” it would contradict the intent of the legislature for a quasi-judicial body to evaluate GMA compliance. Dissent at 1109.
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In June 2000, March 2001, and July 2002, the Board found the county’s efforts noncompliant.

1.3 In response to the Board’s September 8, 2003, deadline to achieve GMA compliance, the county staff prepared a report explaining how it identified agricultural lands to be conserved. The 2003 staff report said that of the 1,117 farms existing in Lewis County as of the 1997 census, only 176 farms had gross sales of $25,000 or more, and only 161 of them were larger than 180 acres. The report also said that of about 150,000 acres eligible for agricultural designation based on soil type, about 50,000 had no recent agricultural activity. The report described a decline in dairies and field crops, an absence of “significant clusters” of organic farms, and a poultry industry constrained by a lack of water rights. Clerk’s Papers (CP) at 242.

The report also said no land conservation was needed for the hay and Christmas tree industries because they do not depend on soil, and “[g]razing hay in particular is a marginal operation, in that in good years the return is often barely enough to pay taxes on the property.” Id. at 254. Finally, the staff report said most Lewis County farms are not economically self-sufficient and therefore need “non farm income” for survival. Id. To address that need, the report recommended allowing each farm to have a “farm center” of up to five acres where rural commercial and industrial uses would be allowed. Id. at 255.

1.4 The Lewis County Planning Commission held public hearings and approved the staff report almost entirely. It recommended that the Lewis County Commission designate 54,600 acres of agricultural land, “appropriate in location and amount to reasonably conserve the land-based needs of the commercial agriculture industry for the foreseeable future.” Id. at 283. On September 8, 2005, the Lewis County Commission adopted by ordinance the planning commission findings and most of its recommendations.

2. Planning Commissioners ultimately recommended conserving 2,800 acres fewer than the county staff had recommended.

3. One condition was to “not adversely affect the overall productivity of the farm nor affect any of the prime soils on any farm.” CP at 381.

4. Petitioners included Vince Panesko, Eugene Butler, and 14 other respondents in this case.
Lewis County as well as in other counties, the agricultural industry has changed as the market for agricultural products changed. Agricultural economists are not able to predict which products will be in demand next year, let alone for the foreseeable future. The legislature, therefore, did not tie the designation of agricultural lands to economic conditions which shift unpredictably but to the characteristics of the land. The moving concern underlying the GMA’s requirement for designation and conservation of agricultural lands is to preserve lands capable of being used for agriculture because once gone, the capacity of those lands to produce food is likely gone forever.

CP at 634. The Board invalidated the ordinances and maps that: (a) designated the agricultural lands to be conserved, (b) excluded “farm centers” and farm homes from designated agricultural lands, (c) allowed nonagricultural uses on the designated lands, and (d) required “sufficient irrigation capability” for designation as Class A farmland. CP at 674, 675. In a May 2004 order on reconsideration, the Board said that “until the County utilizes a compliant approach . . . potential agricultural resource lands in the rural zones must be preserved from incompatible development so that they will be available for assessment under a compliant approach.” Id. at 684.

Lewis County appealed both 2004 orders to the Lewis County Superior Court. On December 23, 2004, the superior court affirmed the Board’s orders, agreeing with the Board that “the . . . ‘needs of the industry’ argument is clearly erroneous” and that “the definition of long-term significance refers to the growing capacity and productivity of the soil.” Id. at 10. We granted review.

5. The Board found that only 5,765 of the 117,767 acres being farmed in Lewis County as of 1997 were irrigated.

6. The reconsideration order also reversed the Board’s invalidation of maps designating Class A and Class B farmlands, finding that those lands were adequately protected pending full compliance. But the order upheld the invalidation of maps designating “Class C” farmlands in rural zones—citing concerns that land with prime soils or recent farming activity could be lost to non-farm development in the absence of agricultural zoning.

7. The dissent wrongly summarizes the Board’s role as merely this: “to ensure that the proper legislative bodies under the GMA are making the decisions mandated,” as if any decisions will do. Dissent at 1108. Actually, the Board is empowered to determine whether county decisions comply with GMA requirements, to remand noncompliant ordinances to counties, and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into
LEWIS COUNTY v. HEARINGS BD.

Cite as 139 P.3d 1096 (Wash. 2006)

¶9 Under the Administrative Procedure Act (APA), chapter 34.05 RCW, a court shall grant relief from an agency's adjudicative order if it fails to meet any of nine standards delineated in RCW 34.05.570(3). Here, Lewis County asserts that the Board erroneously applied the law, warranting relief under RCW 34.05.570(3)(d), and engaged in an unlawful decision-making process. RCW 34.05.570(3)(c). The burden of demonstrating that the Board erroneously applied the law or failed to follow prescribed procedure is on the party asserting error. Soccer Fields, 142 Wash.2d at 553, 14 P.3d 133.

Our review of issues of law under RCW 34.05.570(3)(d) is de novo. Thurston County v. Cooper Point Ass'n, 148 Wash.2d 1, 8, 57 P.3d 1156 (2002). "On mixed questions of law and fact, we determine the law independently, then apply it to the facts as found by the agency." Id. (citing Hanel v. Employment Sec. Dep't, 93 Wash.App. 140, 145, 966 P.2d 1282 (1998), review denied, 137 Wash.2d 1086, 980 P.2d 1289 (1999)).

¶10 Under the GMA, Lewis County must designate "[a]gricultural 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." RCW 36.70A.170(1)(a). In addition, the county must adopt development regulations "to assure the conservation of" those agricultural lands designated under RCW 36.70A.170.

¶11 Lewis County designated agricultural lands based on its own definition: "those lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils." CP at 418. The Board called the county's definition clearly erroneous, saying, "We note that throughout the GMA and the court decisions construing it the focus is on the nature of the land, not on the nature of the agricultural industry that is using the land at any given time." Id. at 640. The Board also said "[t]he GMA calls for designation of agricultural lands based on characteristics of the land" that affect long-term production capability. Id. But to be guided strictly by the physical nature of the land would stifle economic development in counties like Lewis, which have a significant amount of potentially good farmland, much of which is unproductive. For reasons set forth below, we conclude that the Board's and county's definitions of agricultural land are both incorrect.

¶12 The GMA defines agricultural land as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees . . . or livestock, and that has long-term commercial significance for agricultural production." RCW 36.70A.080(2). Thus, the legislature established that agricultural lands are those which (1) are "primarily devoted to" commercial agricultural production, and (2) have "long-term commercial significance" for such production. RCW 36.70A.080(2). We now turn to what these terms mean.

¶13 This court previously addressed the meaning of the term "primarily devoted to" in City of Redmond v. Central Puget Sound Growth Management Hearings Board, 136 Wash.2d 38, 959 P.2d 1091 (1998) (hereinafter referred to as Benavoya I), a case in which

8. Lewis County became subject to GMA planning mandates in July 1993 and first designated agricultural lands in 1996. Until 1996, the county had no zoning laws at all.

9. The issue in Benavoya I was whether a landowner must intend for the land to be "devoted to" agriculture to be subject to designation. We said, "While the land use on the particular parcel and the owner's intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor landowner
landowners challenged designation of their land as agricultural. We said there that land is primarily "devoted to" commercial agricultural production "if it is in an area where the land is actually used or capable of being used for agricultural production," and that a landowner’s intended use of land is not conclusive. Id. at 53, 959 P.2d 1091.

¶ 14 In the present case, the Board relied partly on the aforementioned language in concluding that Lewis County improperly excluded from designation those lands that are "capable of being used" for farm production. CP at 637. But Benaroya I dealt only with whether land is "primarily devoted to" farming under RCW 36.70A.030. Benaroya I, 136 Wash.2d at 49, 959 P.2d 1091. The other question in designating agricultural land, neglected by the Board in this case, is whether land also has "long-term commercial significance" for farm production.

¶ 15 The GMA says that 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) (emphasis added). Thus, counties must do more than simply catalogue lands that are physically suited to farming. They must consider development prospects (the "possibility of more intense uses") in determining if land has the enduring commercial quality needed to fit the agricultural land definition.

¶ 16 While this court has not previously interpreted RCW 36.70A.030(10), we approve of the approach used by the Court of Appeals in Manke Lumber Co. v. Dishl, 91 Wash.App. 793, 959 P.2d 1173 (1998), renews denied, 137 Wash.2d 1018, 984 P.2d 1033 (1999). In Manke, Mason County challenged a Board decision to invalidate its designation of forest lands, subject to the same GMA conservation requirements as agricultural lands. In holding that the Board erred, the court relied largely on WAC 365–190–050, a Washington Department of Community, Trade and Economic Development regulation designed to guide counties in determining which agricultural and forest lands have "long-term commercial significance." That regulation says that counties

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.

10 WAC 365–190–050(1). The court in Manke determined that the Board misapplied the GMA, and that the county could limit forest land designations to parcels of at least 5,000 acres that have a forest tax classification because the guidelines allow consideration of "predominant parcel size" and "tax status" in determining long-term significance. See Manke, 91 Wash.App. at 807–08, 959 P.2d 1173.

11. Interestingly, while the State of Washington’s amicus brief argues that the "structure" of WAC 365–190–050 supports the primacy of soil characteristics, it does not mention the extensive text devoted to these development-related considerations that have nothing to do with soil. State’s Amicus Curiae Br. at 10. Besides, the regulation’s structure merely mirrors the order in which the underlying statute, RCW 36.70A.030(10), lists the factors to consider in determining long-term commercial significance. Neither the statute nor the regulation purports to prioritize those factors.
In sum, based on the plain language of the GMA and its interpretation in Benaroya I, we hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.080(2), including land in areas used or capable of being used for production based on land characteristics, and (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development-related factors enumerated in WAC 365-150-060(1) in determining which lands have long-term commercial significance. We, therefore, remand this case for the Board to apply the correct definition of agricultural land in determining whether Lewis County’s 2006 ordinances complied with RCW 36.70A.170(1).

IV

18 The respondent citizens in this case argue that “[n]owhere in the GMA or in the implementing WACs is there authority to limit agricultural resource lands designations using an industry needs assessment.” Br. of Resp’ts at 10. While it is true that no statute specifically authorizes counties to weigh industry needs above all other considerations in designing and conserving agricultural land, this does not mean the GMA prohibits such an approach. As noted above, the GMA’s stated intent is to recognize the “broad . . . discretion” of counties to make choices within its confines. RCW 36.70A.3201. Because the GMA does not dictate how much weight to assign each factor in determining which farmlands have long-term commercial significance, and because RCW 36.70A.080(10) includes the possibility of more intense uses among factors to consider, it was not “clearly erroneous” for Lewis County to weigh the industry’s anticipated land needs above all else. If the farm industry cannot use land for agricultural production due to economic, irrigation or other constraints, the possibility of more intense uses of the land is heightened. RCW 36.70A.080(10) permits such considerations in designating agricultural lands. Indeed, Munke involved some of the same considerations cited in the Lewis County staff report, undersized parcels and possible conflicts with nearby development. Therefore, the Board erred in concluding that Lewis County violated the GMA by designating agricultural lands based on the local farm industry’s anticipated needs.

19 However, we do not decide whether Lewis County, in focusing on the needs of the local agriculture industry, went beyond the considerations permitted by WAC 365-190-060 and RCW 36.70A.080 in designating agricultural lands. Unfortunately, Lewis County’s briefs do not explain the extent to which the county applied the specified factors. And while Lewis County Ordinance 1178C does spell out in detail how the county considered WAC 365-190-060 factors in mapping agricultural lands, the record part on other grounds, 154 Wash.2d 224, 110 P.3d 1132 (2005); see also Quadrant Corp., 154 Wash.2d at 246, 110 P.3d 1132 (2005) (this court “did not rely on the applicable goal in isolation nor did it hold the goals to independently create substantive requirements”). Thus, the county is mistaken in its apparent belief that the general goal in RCW 36.70A.020(8) is the test for defining agricultural lands.

12. Rather than focusing on the mandates of RCW 36.70A.060 and .170 to designate and conserve agricultural lands as defined in RCW 36.70A.030, the county’s opening brief, reply brief, and its answer to the amicus brief of Futurewise inexplicably dwell on GMA “planning goals,” which merely offer guidance. See RCW 36.70A.020 (“The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations . . . .” (emphasis added)). The county’s line of argument is misguided. Quadrant Corporation v. Central Puget Sound Growth Management Hearings Board held that when there is a conflict between the “general” planning goals and more specific requirements of the GMA, “the specific requirements control.” Quadrant Corp. v. Ctrl. Puget Sound Growth Mgmt. Hearings Bd., 119 Wash.App. 562, 575, 81 P.3d 918 (2003), rev’d in

13. For example, the county said it considered growing capacity and productivity by requiring agricultural land to have certain soil types, as well as sufficient irrigation capability “to grow the primary agricultural crops produced in Lewis County.” CP at 378. The county considered predominant parcel size by requiring agricultural land to be at least 20 acres (for economic viability), or to meet the United States Department of
does not indicate whether the county used permissible criteria in other decisions not explicitly tied to the WAC factors. For example, in not designating Christmas tree farms as agricultural land because they do not depend on a particular soil type, the county could have been considering the soil composition factor listed in RCW 36.70A.030(10). But in light of the Christmas tree industry’s relatively robust $19.8 million in annual sales, it is not apparent why Lewis County would “consider” soil in this way, excluding productive tree farms from designated agricultural lands simply because they don’t need the types of prime soil that other farm sectors need. Thus, upon remand, when the Board reviews whether Lewis County properly designated agricultural lands, the inquiry should include whether the county’s decisions were “clearly erroneous” in light of the considerations outlined in RCW 36.70A.030 or WAC 365-190-050.

V

(10) ¶ 20 While most of the county’s designation decisions at least possibly could have been based on permissible criteria, we note one exception. In excluding “farm centers” and farm homes from designated agricultural lands, the county sought “to serve the farmer’s non-farm economic needs.” Agriculture definition of “commercial” agriculture. The county considered availability of public facilities and services by requiring agricultural lands to be located outside areas where urban-level services are “conducive to the conversion” of farmland. Id. at 379, 110 P.3d 1132.

14. For example, in finding that farms need gross sales of $25,000 or more for potential long-term significance, the county could have been considering “productivity” of the land or the “possibility of more intense use” pursuant to RCW 36.70A.030(10). It is not necessarily error to assume that farms with meager income are likely to succumb to development pressures. Similarly, in finding that farms smaller than 180 acres may not be cost effective, the county could have been considering productivity, the possibility of more intense uses, or “predominant parcel size.”

15. While the county’s briefs discuss this issue in the context of zoning choices, the Board correctly treated it as a designation issue. The Board found that excluding farm homes and farm centers from designated agricultural land was “clearly erroneous” because it “creates isolated pockets of inconsistent zoning in farmlands” and Opening Br. at 30. Serving the farmer’s “non-farm” economic needs is not a logical or permissible consideration in designating agricultural lands under the GMA. That is because it is a goal in and of itself, not a characteristic of farmland to be evaluated in determining whether such land has long-term commercial significance. A farmer’s presumed need for “non-farm” income does not necessarily relate to soil, productivity or growing capacity under RCW 36.70A.030(10), nor to proximity to population areas or the possibility of more intense uses of land. It has to do only with the farmer’s bottom line. And while we share Lewis County’s concern for the struggles farmers often face, we note that the GMA is not intended to trap anyone in economic failure, as evidenced by the mandate to conserve only those farmlands with long-term commercial significance. The problem with the county’s approach is that any farmer could convert any five acres of farmland to more profitable uses, even if such conversion would remove perfectly viable fields from production. Thus it was clearly erroneous for Lewis County to exclude from designated agricultural lands up to five acres on every farm, without regard to soil, productivity or other specified factors in each farm area. Accordingly, we affirm the makes adjacent lands vulnerable to de-designation. CP at 649, 675.

16. The dissent suggests that a county may designate agricultural land based on a farmer’s economic needs or, for that matter, any other factors it deems worthy. Indeed, the dissent repeatedly invokes “discretion” as a mantra, as if the GMA places no bounds on county decisions. Dissent at 1106, 1107, 1110, 1111, 1112, 1114. For example, in defending Lewis County’s decision to allow mining, residential subdivisions and other non-farm uses within designated farmlands, the dissent merely recites Lewis County’s arguments without reference to the applicable GMA language. But the GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. RCW 36.70A.3201. In other words, there are bounds. Furthermore, although we agree with the dissent that counties may consider factors besides those specifically enumerated in RCW 36.70A.030(10) in evaluating whether agricultural land has long-term commercial significance, that is not what happened here. Rather, Lewis County simply decided to serve its own goal, serving the farmer’s non-farm economic
Board’s invalidation of the blanket exclusion of five-acre farms from designated agricultural lands.

VI

[11] ¶ 21 Having discussed whether Lewis County properly designated lands under RCW 36.70A.170, we now turn to the RCW 36.70A.060 duty to conserve designated lands. The GMA says in relevant part: “Each county ... shall adopt development regulations ... to assure the conservation of agricultural ... lands designated under RCW 36.70A.170.” RCW 36.70A.060(1).

A county ... may use a variety of innovative zoning techniques in areas designated as agricultural lands ... The ... techniques should be designed to conserve agricultural lands and encourage the agricultural economy. A county ... should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

RCW 36.70A.177(1) (emphasis added).

[Techniques a county ... may consider include ...]

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land ... 

(b) Cluster zoning ... 

(c) Large lot zoning ... 

(d) Vquater zoning ... 

(e) Sliding scale zoning ... 

RCW 36.70A.177(2). Thus, counties may choose how best to conserve designated lands as long as their methods are “designed to conserve agricultural lands and encourage the agricultural economy.” RCW 36.70A.177(1).

¶ 22 Lewis County contends that the Board ignored RCW 36.70A.177 and mandated needs, instead of meeting the GMA’s specific land designation requirements.

17. The dissent appears to misperceive the scope of that RCW 36.70A.177 requirement for zoning methods to be “designed to conserve agricultural lands and encourage the agricultural economy.” That is simply the standard that a county must meet if it uses an innovative zoning technique to conserve agricultural lands. Confusingly, the dissent asserts that it is also “the standard we use when reviewing a board’s determination of noncompliance and invalidity regarding non-resource uses.” Dissent at 1111. But the standard of review for Board determinations of noncompliance, as already noted, is drawn from the APA. Rather than apply the APA standard of review, the dissent simply offers bare assertions, i.e., “The uses that the Board found noncompliant are actually consistent with the GMA” to
¶ 23 The county also argued that the Board failed to heed this court’s decision in *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wash.2d 543, 14 P.3d 133 (2000), which involved whether soccer fields could be located on agricultural lands. Opening Br. at 31–32. The county contends that the *Soccer Fields* test is whether a nonagricultural use “unreasonably” prevents agricultural land “from being used for its intended purpose,” or “defeat[s]” the county’s ability to maintain and enhance the farm industry. Opening Br. at 32. That is not the test. This court said, “In order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act’s mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.” *Soccer Fields*, 142 Wash.2d at 560, 14 P.3d 133. “After properly designating agricultural lands … the County may not then undermine the Act’s agricultural conservation mandate by adopting ‘innovative’ amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use.” *Id.* at 561, 14 P.3d 133. The court concluded that the soccer field zoning was noncompliant because it “would result in a long-term removal” of agricultural land from agricultural production, possibly never returning to agricultural use. *Id.* at 562, 14 P.3d 133. Thus, a zoning technique that allows non-farm uses on designated agricultural lands satisfies the *Soccer Fields* test if it does not undermine the GMA mandate to conserve agricultural lands for the maintenance and enhancement of the farm industry.

¶ 24 Applying the *Soccer Fields* test to this case, the question is whether Lewis County’s ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement. This is a question of law, and we give “substantial weight” to the Board’s interpretation of the GMA. *Id.* at 553, 14 P.3d 133. In concluding that Lewis County’s permitting of non-farm uses could “impact resource lands and activities negatively,” and therefore substantially interferes with maintaining and enhancing the farm industry, the Board essentially interpreted the GMA to prohibit negative impacts on agricultural lands and activities. CP at 676. That is consistent with the RCW 36.70A.060 directive to conserve designated agricultural lands, the RCW 36.70A.020(8) goal of maintaining and enhancing the agricultural industry, and the *Soccer Fields* holding that innovative zoning may not undermine conservation. Therefore, the Board did not err in holding that the non-farm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands.

VII

¶ 25 In conclusion, as explained above, we reverse the Board’s decision that Lewis County may not designate agricultural lands based on the local farm industry’s projected land needs. If the State wants to conserve all land that is capable of being farmed without regard to its commercial viability, it may buy the land.

¶ 26 We also remand the case for the Board to apply the correct definition of agricultural land, taking into account whether the county used permissible criteria. However, we affirm the Board’s invalidation of the exclusion of farm homes and farm centers from designated agricultural lands because “serving the farmer’s non-farm economic needs” is not a permissible consideration. We also affirm the Board’s invalidation of non-farm uses within agricultural lands. 18

Concurring: C. JOHNSON, MADSEN, BRIDGE, OWENS, and FAIRHURST, JJ.

J.M. JOHNSON, J.
(dissenting/concurring).

¶ 27 The legislature recognized the authority and wide discretion of county governments to adopt county comprehensive plans according to local growth patterns, resources, 18. Because we decide this case on statutory grounds we do not reach the procedural issues raised by Lewis County.
and needs. RCW 36.70A.010–902; Monke Lumber Co. v. Diehl, 91 Wash.App. 798, 996, 959 P.2d 1173 (1998). This is the necessary starting point when reviewing any Growth Management Act (GMA) case involving review of local legislative planning decisions by one of the Growth Management Hearings Boards (GMA Boards).1

¶ 28 The majority adequately recognizes this deference owed to county legislative bodies and the resulting standards of review. However, the majority disregards this principle when it upholds the GMA Board’s decision to overturn Lewis County’s (County) determination that farm centers and farm homes and certain other nonresource related uses are appropriate and allowable on agricultural and forest lands in the county. Therefore, I concur in part and dissent in part.

I. THE GROWTH MANAGEMENT ACT AND THE ROLE OF THE GMA BOARDS

¶ 29 Prior to reviewing these GMA Board decisions, it is necessary to provide a brief overview of the GMA, the creation of the three GMA Boards, the requirements for GMA Board membership, and the GMA Boards’ limited role to ensure compliance with GMA, while giving local legislative bodies discretion to address local needs.

¶ 30 In 1991 the Washington State legislature passed the GMA to help preserve Washington’s environmental quality and to balance the inevitable growth with the quality of life concerns for the benefit of Washington residents. See LAWS OF 1990, 1st Ex.Sess., ch. 17, codified at ch. 36.70A RCW. The GMA recognizes 13 planning goals, which are not ranked in priority, are not meant to be exclusive, and are permitted to be given varying degrees of emphasis by local legislative bodies. RCW 36.70A.020; WAC 365-195-070(1).

¶ 31 The GMA was to be a “bottom-up” approach, allowing local cities and counties the authority to make decisions based on their local needs in order to harmonize and balance the 13 statewide planning goals.5

¶ 32 GMA was not intended to be a top-down approach with state agencies (or GMA Boards) dictating requirements to local entities. Thus, in accordance with the legislative language of the act, we have held that the GMA does not prescribe a single approach to growth management. RCW 36.70A.3201; Viking Props. v. Holm, 155 Wash.2d 112, 125–26, 118 P.3d 322 (2005) (“the ultimate burden and responsibility for planning, harmonizing the planning goals of [the GMA], and implementing a county’s or city’s future interests with that community.”) (alteration in original) (quoting RCW 36.70A.3201)).

¶ 33 Thus, the GMA is implemented exclusively by city and county governments and is to be construed with the flexibility to allow local governments to accommodate local needs. Viking Props., 155 Wash.2d at 125–26, 118 P.3d 322.

¶ 34 Rather than have GMA disputes proceed directly to superior court, the legislature created three regional GMA Boards to resolve land disputes under the GMA—Western Washington Growth Management Board, Eastern Washington Growth Management Board, and Central Puget Sound Growth Management Board. RCW 36.70A.250. In this case we are dealing with the Western Washington Growth Management Board (Board).

¶ 35 The role of GMA Boards is quasi-judicial and each may interpret for counties and cities the requirements of the GMA to ensure compliance with the GMA’s 13 goals.

1. A separate concern, of constitutional dimension, is not presented today; whether these sui generis unelected boards, appointed by the governor, may override county legislators and micromanage land use plans for counties.

2. RCW 36.70A.020 lists the goals as:
   1. Urban growth
   2. Reduce sprawl
   3. Transportation
   4. Housing

5. Economic development
6. Property rights
7. Permits
8. Natural resource industries
9. Open space and recreation
10. Environment
11. Citizen participation and coordination
12. Public facilities and services
GMA Boards are the first level to resolve conflicting interpretations in order to resolve land disputes quickly and efficiently. GMA Boards are empowered to "hear and determine" allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA and related provisions of the Shoreline Management Act of 1971 and the State Environmental Policy Act RCW 36.70A.280.

¶ 36 GMA Boards review petitions for review regarding (1) designation of resource lands and critical areas, (2) regulations to conserve and protect critical areas, (3) designate urban growth boundaries, and (4) comprehensive plans, development regulations, and shoreline master plans. Each board may also review the 20-year growth management plans, determine issues of standing, and has the task of making adjustments to growth management planning projects while considering state-wide implications. RCW 36.70A.280.

¶ 37 However, the role of GMA Boards is very limited. The legislature requires each GMA Board "to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals" of the GMA. RCW 36.70A.3201. While we give weight to each GMA Board’s decisions, deference is required to county planning actions if consistent with the goals and requirements of the GMA. State v. Bradshaw, 152 Wash.2d 522, 535, 98 P.3d 1190 (2004), cert. denied, 544 U.S. 922, 125 S.Ct. 1662, 161 L.Ed.2d 480 (2005). Moreover, if a GMA Board fails to give deference to a county planning decision that complies with the GMA, the GMA Board’s ruling is not entitled to deference from this court. Quadrant Corp. v. State Growth Mgmt. Hearings Bd., 154 Wash.2d 224, 238, 110 P.3d 1132 (2005).

¶ 38 Some GMA Boards have recognized their very limited authority: that they are not allowed to reach constitutional or equitable issues nor are they empowered to resolve disputes related to impact fees (RCW 82.02.020). See e.g., Alberg v. King County, 3. Ch. 90.58 RCW.

¶ 39 While "substantial weight" is afforded to a GMA Board’s interpretation of the GMA, they are not judicial or legislative officers. The board members are not elected, but are appointed by the sitting governor for six-year terms (without legislative confirmation). In order to be eligible to participate on a GMA Board, the GMA simply requires of members (1) that at least one attorney and one former local elected official serve on each board, (2) that each board member reside within the region for which the GMA Board has jurisdiction and is qualified by "experience or training in matters pertaining to land use planning," and (3) that no more than two members may reside in the same county nor be from the same political party. RCW 36.70A.260.

¶ 40 In summary, in order to effectuate the true legislative intent of the GMA, local legislative bodies must be free to address local needs and concerns. Each GMA Board’s limited quasi-judicial role is to ensure that the proper legislative bodies under the GMA are making the decisions mandated.

II. AGRICULTURAL LAND AND FARM CENTERS AND FARM HOMES

¶ 41 The majority properly ascertains the definition of agricultural land from the plain language of the GMA and our prior case law. See majority at 1101-02 (citing City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 136 Wash.2d 88, 959 P.2d 1091 (1998)). However, the majority and I differ as to the appropriate remedy. The majority

would remand the issue to the Board and instruct them to apply the definition. Majority at 1108. This will further protract and delay while not allowing the appropriate local government to govern. 6

¶ 42 I also would remand to the Board (as remand is procedurally necessary) but would instruct the Board to remand to Lewis County to allow the county and its legislative body to correct the designations of land given this new definition. Lewis County must be allowed to alter its plans, if it so desires.

¶ 43 The majority summarily affirms the Board’s finding of noncompliance pertaining to farm homes and farm centers. See majority at 1106. Specifically, the Board found that the provisions allowing farm centers and farm homes failed to comply with the GMA requirements for designation of agricultural resource lands. Clerk’s Papers (CP) at 81. I disagree. The farm centers and farm homes that Lewis County allowed are compatible with agricultural lands under the requirements of the GMA.

¶ 44 Lewis County allowed specific farm homes and farm centers to be excluded from the designation of long-term agricultural lands (and thus allowed in those areas):

Long-term commercially significant designations do not include (a) the “farm home” (a house currently on designated lands as the date of designation and a contiguous 5 acres, to be segregated by boundary line adjustment for separate financing purposes; and (2) “farm centers,” being those lands existing at the time of designation, marked by impervious (gravel or paved) surfaces, including buildings and sheds and storage areas) not to exceed 5 acres, which shall be available for rural commercial and industrial uses under guidelines established as a conditional use. (Non-farm development on the farm center shall not be effective until the County completes the terms of the special use permit.)

Lewis County Ordinance 1179E, CP at 418 (emphasis added). These farm homes and farm centers were areas that had preexisting nonagricultural uses. Id. In adopting the above ordinance, Lewis County reasoned that “[t]he family home on the farm is not farmed and is often used for numerous activities that provide economic return to the farm family other than farm agriculture.” CP at 255. Regarding farm centers, such as roadside stands for sale of farm products, Lewis County reasoned that “[f]arms in Lewis County have areas developed by paved or gravel level areas, barns, sheds, storage facilities, equipment and machine storage and maintenance areas . . . [s]uch areas support the farm activity, but are not cropped, tilled, or generally used for soil-based agriculture, nor are they likely to in the future.” CP at 255. Moreover, the farm centers were to be “centered around the existing barn and shed facilities.” CP at 255.

¶ 45 The purpose of farm homes and farm centers was to ensure the long-term survival of agricultural land by allowing farmers to supplement their income. “[M]ost farms are not economically self-sufficient . . . ‘on farm non farm income’ and the ability of the farm to provide non farm economic opportunities are both essential to the survival of long-term agriculture in Lewis County.” CP at 254–55; 883. This income is a substantial component of financial viability for farms in Lewis County.

¶ 46 Such farm centers were often already developed on lands in which the soil was not used for agriculture. A farm house and contiguous land was limited to five acres. Lewis County’s Opening Br. at 30. Thus, these farm centers and farm homes have a minimal effect on agricultural land. Lewis County notes that

The designation of the farm home and the farm center from long-term commercially significant lands will not have a major impact on the conservation and protection of long-term commercially significant agricultural lands because

County’s comprehensive plan every seven years. Thus, by the time this opinion issues, Lewis County will be on the cusp of yet another review and they have not fully completed this review.
III. NON-RESOURCE USES

\(\text{¶150}\) The GMA directs counties to do management and planning but allows county government broad discretion to decide what is best for each county. This discretion is especially important when considering non-resource uses on forest and agricultural land.

\(\text{¶151}\) RCW 36.70A.060, the development regulations for natural resource lands and critical areas, uses mandatory language and thus imposes a requirement. RCW 36.70A.060(1) provides:

Each 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. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(Emphasis added).

\(\text{¶152}\) This court interpreted this statute in the “Soccer Fields” case stating: “The County is to conserve agricultural land in order to maintain and enhance the agricultural industry and to discourage incompatible uses.” King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wash.2d 543, 557, 14 P.3d 133 (2000) (emphasis omitted) (hereinafter Soccer Fields).

\(\text{¶153}\) RCW 36.70A.177(1), allowing innovative zoning techniques, uses discretionary language, which indicates a recommendation not a requirement:

A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning tech-
niques should be designed to conserve agricultural lands and encourage the agricultural economy. A county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes. (Emphasis added). The explicit purpose of this statute is to allow counties to apply creative alternatives that conserve agricultural lands and maintain and enhance the agricultural industry. Soccer Fields, 142 Wash.2d at 561, 14 P.3d 133.

¶ 54 The majority reads these two statutes together to mean that “counties may choose how best to conserve designated lands as long as their methods are ‘designed to conserve agricultural lands and encourage the agricultural economy.’” Majority at 1105. Thus, Lewis County has discretion in its land designations, but should aim to conserve agricultural lands and encourage the agricultural economy. This is the standard we use when reviewing a board’s determination of noncompliance and invalidity regarding non-resource uses.

¶ 55 The majority states:

[The Board essentially interpreted the GMA to prohibit negative impacts on agricultural lands. CP at 676. That is consistent with the RCW 36.70A.060 directive to conserve designated agricultural lands, the RCW 36.70A.020(8) goal of maintaining and enhancing the agricultural industry, and the Soccer Fields holding that innovative zoning may not undermine conservation.

Majority at 1106. However, the Board did not specify any negative impact Lewis County’s non-resource uses had on agricultural land. Thus, the Board failed to adequately consider the uses and did not support its findings with evidence. The Board decision did not further the goal of maintaining and enhancing the agricultural industry and may actually undermine farm survival. As discussed above, the many small farms compos-

ing “agricultural industry” often need supplemental income to survive. Finally, the Soccer Fields case is easily distinguished. In that case entire parcels of agricultural land were being converted to long-term and nonagricultural uses of recreational fields. Here only a small and specified portion of some agricultural land parcels are being used in each instance (cumulatively little).

¶ 56 The uses that the Board found noncompliant are actually consistent with the GMA when given proper consideration (as Lewis County did here).

A. Lewis County Code (LCC) 17.30.470(3)(c) and (d): Forest Land Incidental Uses

¶ 57 LCC 17.30.470 allows incidental uses on forest land, which may provide supplemental income, “without detracting from the overall productivity of the forestry activity.” (Emphasis added). The uses must not “adversely affect the overall productivity of the forest nor affect more than five percent of the prime soils[7] ... on any forest resource lands;” the use must be “secondary to the principal activity of forestry;” and the use must be “sited to avoid prime lands where feasible and otherwise to minimize impact on forest lands of long-term commercial significance. LCC 17.30.470(1); Attach. III (Lewis County’s Am. Opening Br.) at 178–79 (Attach. III).

¶ 58 The Board declared several subsections of LCC 17.30.470 as noncompliant and invalid: (2)(c), allowing telecommunication facilities as an incidental activity, and (2)(d), allowing the “erection, construction, alteration, and maintenance of gas, electric, water, or communication and public utility facilities.” Attach. III at 179; CP at 46. The Board reasoned that the restrictions on the incidental uses did not fulfill the GMA requirement that natural resource lands be conserved and incompatible uses discouraged. CP at 46.

7. The omitted language of the quote provides “(15 percent as provided below in LCC 17.30.490(3)(d))”. Attach. III (Lewis County’s Am. Opening Br.) at 178 (Attach. III). A notation next to the quote provides “error—see strike out at 17.30.490(3)(d).” 17.30.490(3)(d) strikes out the words “15 percent or less.” Attach. III at 180. The County states that the 15 percent clause was erroneously left in the subsection and should have been struck out. We assume that the County means what it says and has corrected this error.
 ¶ 59 Lewis County had reasoned that these incidental uses are necessary because the county’s residential corridors are surrounded by forest lands, any cross county public utility will necessarily cross either forest or agricultural lands. CP at 866. Moreover, most of the prominent hills in the county are located in forest land, thus any desire to run communication lines or towers on tall hills will require that they be located in forest lands. CP at 866.

 ¶ 60 Considering the protective limits Lewis County placed on the minimally intrusive incidental uses, as well as the necessity of those uses and their importance to the agricultural economy, the uses meet the GMA’s directive to conserve agricultural lands and encourage the agricultural economy. The uses comply with the GMA and are well within Lewis County’s discretion under the GMA.

B. LCC 17.30.480: Essential Public Facilities (forest land)

 ¶ 61 LCC 17.30.480 provides:

Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports are facilities, which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such areas are allowed where:

(1) Identified in the comprehensive plan of a public agency or regulated utility.

(2) The potential impact on forestry lands and steps to minimize impacts to commercial forestry are specifically considered in the siting process.

In deciding that this section was both non-compliant and invalid, the Board admitted that:

There are essential public facilities such as roads, bridges, pipelines and utility lines that must, of necessity, be located in resource lands. Clearly, the County must take into account the need for the construction of such facilities in resource lands. However, the County must also assure that the construction of these essential public facilities in forest resource lands does not interfere with the use of the resource.

CP at 47. Lewis County notes that one-third of the county is in designated forest lands. CP at 871. Thus, essential public facilities including roads, bridges, pipelines, and utility lines must be located in resource lands.

 ¶ 62 This section of Lewis County’s code is compliant and valid because the County has appropriately balanced the requirement for essential public facilities with conservation of forest land. The evidence supporting this appropriate balance includes the admitted fact that forest land encompasses a large percentage of Lewis County, and the requirements of section 480 that uses must be identified in the comprehensive plan. The impact of each use on the forest land is considered and minimized in the siting process. The legislature required the counties to receive deference in making such decisions.

C. LCC 17.30.490(3)(b) and (g): Maximum Density and Minimum Lot Area (forest land)

 ¶ 63 LCC 17.30.490(3) provides:

Subdivision as an Incidental Use. A residential subdivision of land for sale or lease within primary or local forest lands, whether lots are over or under five acres in size, may be approved under the following circumstances.

(a) The total density, including existing dwellings, is not greater than one unit per 80 acres, for forest land of long-term commercial importance, and that one unit per 20 acres for forest lands of local importance.

(b) The units are clustered on lot sizes consistent with Lewis County board of health rules for wells and septic.

(c) Adequate water and provisions for septic are in fact present.

(d) The project affects none of the prime soils on the contiguous holdings at the time of the adoption of this chapter, including all roads and accessory uses to serve the development; however, that prime lands previously converted to non-
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forestry uses are not considered prime forest lands for purposes of this section.

(e) The plat shall set aside the balance of the parcel in a designated forest tract.

(f) The plat shall contain the covenants in LCC 17.30.540.

(g) Any subdivision shall meet the cluster subdivision requirements of LCC 17.115.030(10) [8]

[9] The Board found subsections (b) and (g) noncompliant and invalid. CP at 48. The Board stated that “[i]nvalidations on clustering are needed to ensure that residential subdivisions will not interfere with forestry activities.” CP at 46. However, the section contains many limitations designed to protect forest activities—no prime soils may be affected, water provisions must be in place, and clustering restrictions contained in LCC 17.115.030(10). These limitations are sufficient to fulfill the GMA requirement of conserving forest land. Thus, the challenged sections are compliant and valid.

D. LCC 17.30.510: Water Supply

(1) When residential dwellings, other structures, or any other use intended to be supplied with water from off-site sources, an easement and right running with the land shall be recorded from the property owners supplying the water prior to final plat approval, building permit issuance, or regulated use approval.

(2) Due to the potential to interfere or disrupt forest practices on forest lands, new residential or recreational public water supplies shall comply with state standards and shall not be located within 100 feet of classified forest lands without an easement from the adjacent or abutting forest land property owner.

¶ 65 The Board found LCC 17.30.510 to be in violation of the GMA, RCW 36.70A.110 (4), 36.70A.060[b] and 36.70A.040. CP at 49. The Board based its conclusion on chapter 36.70A RCW claiming that the provision “runs afoul of the GMA prohibition against providing urban governmental services outside of urban growth areas.” CP at 48. The Board stated

The extension of water systems (whether owned privately or publicly) to natural resource lands for residential purposes clearly violates the GMA by encouraging intense levels of development in resource lands and encouraging nonresource-related uses of those lands.

CP at 48.

¶ 66 The Board’s conclusion ignores the GMA’s balancing of the 18 planning goals and fails to implement the GMA’s clear mandate that cities and counties are to make planning decisions—not boards.

¶ 67 To properly apply chapter 36.70A RCW, we must be guided by legislative intent as expressed in the language of the GMA. Dep’t of Licensing v. Cannon, 147 Wash.2d 41, 57, 50 P.3d 627 (2002); Rozen v. City of Bellevue, 116 Wash.2d 342, 347, 804 P.2d 24 (1991). All of the GMA provisions must be considered in their relation to one another, and if possible, harmonized to en-

8. LCC 17.115.030(10) provides:

CLUSTER SUBDIVISIONS greater than six units.

(a) Special conditions.

(i) Must be on properties 40 acres and larger.

(ii) No more than 24 cluster subdivision units in any 1/2-mile radius, except where separated by a visual geographic barrier.

(iii) The hearing examiner shall examine the existing and proposed development within a one-mile radius of the perimeter of the proposed site to protect rural character and shall:

(A) Determine the nature of existing development and availability of adequate facilities.

(B) Determine the likelihood of probable future cluster development.

(C) Determine the cumulative effect of such existing and probable future development.

(iv) The hearing examiner shall make written findings that the area in which the cluster is located is within the population targets of Table 4.3, p. 4-63 of the Lewis County comprehensive plan.

(v) The hearing examiner shall identify necessary conditions, including caps or specific limitations to assure that urban development defined in RCW 36.70A.030(17) as prohibited outside urban growth areas by RCW 36.70A.110 does not occur, and that the rural character identified in the comprehensive plan and RCW 36.70A.030(16) and RCW 36.70A.070(5)(a) is protected, and to achieve the specific requirements of RCW 36.70A.070(5)(c).


¶ 68 The Board’s decision implies that extension of water systems to natural resource lands for residential purposes may never occur. This is not consistent with the GMA. There are 13 planning goals that must be balanced and harmonized with others. This balancing and harmonizing is within the discretion of the cities and counties. See *Manke Lumber*, 113 Wash.App. at 628–27, 63 P.3d 1011. The protection of natural resources and critical areas is just one of the 13 planning goals under the GMA. The other planning goals require, inter alia, cities and counties to balance economic development needs, private property needs, and environmental needs. The blanket ban on extension of water systems to natural resource lands renders RCW 36.70A.110(4), 36.70A.040, and 36.70A.060 inconsistent with the GMA’s harmonizing approach and inconsistent with the discretion given to local cities and counties to balance those goals.

*Appendix E. LCC 17.30.620(3) and (4): Primary Uses*

¶ 69 LCC 17.30.620(3) and (4) allowed several “primary uses” on agricultural land including:

- (3) One-single family dwelling unit or mobile home per lot, parcel, or tract, and the following farm housing:
  - (a) Farm employee housing; or
  - (b) Farm housing for immediate family members.

- (4) Active mineral resource activities, including mining, processing, storage, and sales.

LCC 17.30.620(3), (4). The Board held these uses noncompliant and invalid. CP at 38–39.

¶ 70 Regarding section (3), housing, the Board inconsistently acknowledged that “[f]arm worker housing and housing for immediate family members . . . may well be a resource-related use.” CP at 38. The record here supports the necessity to encourage young members of families to stay on the farm. CP at 877. Further, farm worker housing is a resource related use that maintains and enhances the agricultural industry. Section (3) is an allowable use under the GMA.

¶ 71 Regarding section (4), mining, the Board held that the provision does not comply with the GMA to the extent mining activities are allowed without restriction in agricultural resource lands. CP at 37. The Board noted that mining activities are nonagricultural uses with great potential to impact agricultural activities and the lands themselves. CP at 38.

¶ 72 Lewis County argued that mining (presumably sand and gravel) is allowed to provide on-farm non-farm income. CP at 877.

¶ 73 The Board erroneously held that allowing any such mining in agricultural areas would not comply with the GMA. It is likely that mining (as further defined) could be allowed in an agricultural area with the appropriate restrictions. However, such use may be better included in the incidental uses section discussed directly below.

*Appendix F. LCC 17.30.640(2)(b)(c) and (e)*

¶ 74 LCC 17.30.640, Incidental uses, provides for “[u]ses which may provide supplementary income without detracting from the overall productivity of the farming activity.” (Emphasis added). The Board found subsections (2)(b), (e), and (e) noncompliant. CP at 42. LCC 17.30.640(2) (Ord.1170B, 2000) provides:

- (2) Uses Allowed as Incidental Activities.
  
  (b) Telecommunication facilities;
  
  (c) Public and semipublic buildings, structures, and uses including, but not limited to, fire stations, utility substations, pump stations, wells, and transmission lines;
  
  (e) Home based business subject to the same size requirements, development conditions, and procedures as home based businesses authorized under LCC 17.42.40[.]

¶ 75 Subsection (1) qualifies these allowed uses by stating that such uses “will not ad-
versely affect the overall productivity of the farm nor affect any of the prime soils on any farm.” LCC 17.30.640(1)(a). The code itself states that uses may not detract from the overall farming activity and that such uses will not affect any of the prime soils. Lewis County has properly qualified the non-farm incidental uses in its code. Thus, the County requirements for a non-farm use assure the conservation of agricultural lands as required by RCW 36.70A.060.

G. **LCC 17.30.650: Essential Public Facilities (agricultural land)**

\(\uparrow\) 76 This section is similar to the requirements in LCC 17.30.480, discussed above. LCC 17.30.650 provides:

Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports, are facilities, which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such areas are allowed where:

1. Identified in the comprehensive plan of a public agency or regulated utility.

2. The potential impact on farmed lands and steps to minimize impacts to commercial agriculture are specifically considered in the siting process.

The Board concluded that this section was noncompliant and invalid. CP at 43. Regarding roads, bridges, pipelines, and utility lines, the Board found noncompliance because there were no restrictions ensuring minimal interference with agricultural activity. CP at 43. However, the Board overlooked the restrictions which are written into the statute; the public facilities must be identified in the comprehensive plan and the impact on the lands must be considered and minimized when determining the location of such facilities.

\(\uparrow\) 77 Regarding schools, shops, prisons, and airports, the Board found noncompliance because the uses interfere with agricultural uses and do not need to be placed on agricultural land. CP at 43. It is appropriate that Lewis County consider the need for such facilities on agricultural land. An example of such a need would be allowing some schools to be sited in agricultural areas to shorten student commutes.


\(\uparrow\) 78 This section is similar to the requirements in LCC 17.30.490(3), discussed above. LCC 17.30.660(1) provides:

The minimum lot area for any new subdivision, short subdivision, large lot subdivision or exempt segregation of property shall be as follows, except for parcels to be used for uses and activities provided under LCC 17.30.610 through 17.30.650:

1. Development Standards—Division of Land for Sale or Lease. The minimum lot area for subdivision of commercial farmland shall be 20 acres; provided, however, that a residential subdivision of land for sale or lease, whether lots are over or under five acres in size, may be approved under the following circumstances:

   a. The total density of residential development on the entire contiguous ownership, including existing dwellings, is not more than one unit per 20 acres.

   b. The units are clustered on lot sizes consistent with Lewis County board of health rules for wells and septic.

   c. Adequate water and provisions [for] septic capacity are in fact present.

   d. The project affects none of the prime soils on the contiguous holdings at the time of the adoption of the ordinance codified in this chapter, including all roads and accessory uses to serve the development; provided, however, that prime lands previously converted to non-crop related agricultural uses, including residential, farm and shop buildings and associated yards, parking and staging areas, drives and roads, are not considered prime farm lands for purposes of this section.

   e. The plat shall set aside the balance of the prime farm lands in a designated agricultural tract.

   f. The plat shall contain the covenants and protections in LCC 17.30.690.
(g) Any subdivision shall meet the cluster subdivision requirements of LCC 17.115.080(10).

¶ 79 The Board found subsections (b) and (g) noncompliant and invalid. CP at 56. The Board expressed concern that clustering would not conserve agricultural lands and encourage the agricultural economy. CP at 44. However, the section contains many limitations designed to protect agricultural activities—no prime soils may be affected, water provisions must be in place, and clustering restrictions are contained in LCC 17.115.030(10). These limitations are sufficient to fulfill the GMA's requirement of conserving agricultural land. Thus, the challenged sections are compliant and valid.

IV. CONCLUSION

¶ 80 I concur with the majority's conclusion regarding the definition of agricultural land. However, the majority incorrectly proceeds to allow the Board—instead of the County—to decide that farm centers and farm homes are improper on agricultural land and that certain non-resource related uses are improper on agricultural and forest lands. By remanding to the Board instead of through the Board to the County to apply the decision, the local control mandated by the legislature in the GMA is further frustrated. The proceedings and resulting delay impose costs easily avoided by my recognition of the legislature's intent. Therefore, I concur in part and dissent in part.

SANDERS and CHAMBERS, JJ., concur.
ATTACHMENT C
The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) 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.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance. [2002 c 154 § 1; 1990 1st ex.s. c 17 § 2.]

36.70A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

(6) "Department" means the department of community, trade, and economic development.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordi-

ances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(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.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under **RCW 36.70A.170 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

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if the county or city acquires sufficient interest to prevent development of the lands or to control the resource development of the lands. The requirement for acquisition of sufficient interest does not include those corridors regulated by the interstate commerce commission, under provisions of 16 U.S.C. Sec. 1247(d), 16 U.S.C. Sec. 1248, or 43 U.S.C. Sec. 912. Nothing in this section shall be interpreted to alter the authority of the state, or a county or city, to regulate land use activities.

The city or county may acquire by donation or purchase the fee simple or lesser interests in these open space corridors using funds authorized by RCW 84.34.230 or other sources. [1992 c 227 § 1; 1990 1st ex.s. c 17 § 16.]

36.70A.165 Property designated as greenbelt or open space—Not subject to adverse possession. The legislature recognizes that the preservation of urban greenbelt is an integral part of comprehensive growth management in Washington. The legislature further recognizes that certain greenbelts are subject to adverse possession action which, if carried out, threaten the comprehensive nature of this chapter. Therefore, a party shall not acquire by adverse possession property that is designated as a plat greenbelt or open space area or that is dedicated as open space to a public agency or to a bona fide homeowner’s association. [1997 c 429 § 41.]

Severability—1997 c 429: See note following RCW 36.70A.320.

36.70A.170 Natural resource lands and critical areas—Designations. (1) 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;
(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber;
(c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals; and
(d) Critical areas.

(2) In making the designations required by this section, counties and cities shall consider the guidelines established pursuant to RCW 36.70A.050. [1990 1st ex.s. c 17 § 17.]

36.70A.171 Playing fields—Compliance with this chapter. In accordance with RCW 36.70A.030, 36.70A.060, *36.70A.1701, and 36.70A.130, playing fields and supporting facilities existing before July 1, 2004, on designated recreational lands shall be considered in compliance with the requirements of this chapter. [2005 c 423 § 5.]


Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

36.70A.172 Critical areas—Designation and protection—Best available science to be used. (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(2) If it determines that advice from scientific or other experts is necessary or will be of substantial assistance in reaching its decision, a growth management hearings board may retain scientific or other expert advice to assist in reviewing a petition under RCW 36.70A.290 that involves critical areas. [1995 c 347 § 105.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

36.70A.175 Wetlands to be delineated in accordance with manual. Wetlands regulated under development regulations adopted pursuant to this chapter shall be delineated in accordance with the manual adopted by the department pursuant to RCW 90.58.380. [1995 c 382 § 12.]

36.70A.177 Agricultural lands—Innovative zoning techniques—Accessory uses. (1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

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

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;
(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;
(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;
(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and
(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

(3) Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

(a) Accessory uses shall be located, designed, and operated so as to not interfere with, and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;
(b) Accessory uses may include:
(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers,
given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.

(8) Geologically hazardous areas are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

(9) Habitats of local importance include, a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus, and wetlands.

(10) Landslide hazard areas are areas potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

(11) 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 land.

(12) Minerals include gravel, sand, and valuable metallic substances.

(13) Mine hazard areas are those areas directly underlain by, adjacent to, or affected by mine workings such as adits, tunnels, drifts, or air shafts.

(14) Mineral resource lands means lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.

(15) Natural resource lands means agricultural, forest and mineral resource lands which have long-term commercial significance.

(16) Public facilities include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(17) Public services include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(18) Seismic hazard areas are areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

(19) Species of local importance are those species that are of local concern due to their population status or their sensitivity to habitat manipulation or that are game species.

(20) Urban growth refers to growth that makes extensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. “Characterized by urban growth” refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(21) Volcanic hazard areas shall include areas subject to pyroclastic flows, lava flows, and inundation by debris flows, mudflows, or related flooding resulting from volcanic activity.

(22) Wetland or wetlands means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands, if permitted by the county or city.

[Statutory Authority: RCW 36.70A.050, 91-07-041, § 365-190-030, filed 3/15/91, effective 4/15/91.]

**PART THREE GUIDELINES**

WAC 365-190-040 Process. The classification and designation of natural resource lands and critical areas is an important step among several in the overall growth management process. Together these steps comprise a vision of the future, and that vision gives direction to the steps in the form of specific goals and objectives. Under the Growth Management Act, the timing of the first steps coincides with development of the larger vision through the comprehensive planning process. People are asked to take the first steps, designation and classification of natural resource lands and critical areas, before the goals, objectives, and implementing policies of the comprehensive plan are finalized. Jurisdictions planning under the Growth Management Act must also adopt interim regulations for the conservation of natural resource lands and protection of critical areas. In this way, the classification and designation help give shape to the content of the plan, and at the same time natural resource lands are conserved and critical areas are protected from incompatible development while the plan is in process. Under the Growth Management Act, preliminary classifications and designations will be completed in 1991. Those planning under the act must also enact interim regulations to protect and conserve these lands by September 1, 1991. By July 1, 1992, counties and cities not planning under the act must bring their regulations into conformance with their comprehensive plans. By July 1, 1993, counties and cities planning under the act must adopt comprehensive plans, consistent with the goals of the act. Implementation of the plans will occur by the following year.

(1) Classification is the first step in implementing RCW 36.70A.050. It means defining categories to which natural resource lands and critical areas will be assigned.

Pursuant to RCW 36.70A.170, natural resource lands and critical areas will be designated based on the defined classifications. Designation establishes, for planning purposes: The classification scheme; the general distribution, location, and extent of the uses of land, where appropriate, for agriculture, forestry, and mineral extraction; and the gen-
eral distribution, location, and extent of critical areas. Inventories and maps can indicate designations of natural resource lands. In the circumstances where critical areas (e.g., aquifer recharge areas, wetlands, significant wildlife habitat, etc.) cannot be readily identified, these areas should be designated by performance standards or definitions, so they can be specifically identified during the processing of a permit or development authorization. Designation means, at least, formal adoption of a policy statement, and may include further legislative action. Designating inventoried lands for comprehensive planning and policy definition may be less precise than subsequent regulation of specific parcels for conservation and protection.

Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his or her land under current law. Land uses are regulated on a parcel basis and innovative land use management techniques should be applied when counties and cities adopt regulations to conserve and protect designated natural resource lands and critical areas. The department of community development will provide technical assistance to counties and cities on a wide array of regulatory options and alternative land use management techniques.

These guidelines may result in critical area designations that overlay other critical area or natural resource land classifications. That is, if two or more critical area designations apply to a given parcel, or portion of a given parcel, both or all designations apply. For counties and cities required or opting to plan under chapter 36.70A RCW, reconciling these multiple designations will be the subject of local development regulations adopted pursuant to RCW 36.70A.060.

(2) Counties and cities shall involve the public in classifying and designating natural resource lands and critical areas.

(a) Public participation:

(i) Public participation should include at a minimum: Landowners; representatives of agriculture, forestry, mining, business, environmental, and community groups; tribal governments; representatives of adjacent counties and cities; and state agencies. The public participation program should include early and timely public notice of pending designations and regulations.

(ii) Counties and cities should consider using: Technical and citizen advisory committees with broad representation, press releases, news conferences, neighborhood meetings, paid advertising (e.g., newspaper, radio, T.V., transit), newsletters, and other means beyond the required normal legal advertising and public notices. Plain, understandable language should be used. The department of community development will provide technical assistance in preparing public participation plans, including: A pamphlet series, workshops, and a list of agencies available to provide help.

(b) Adoption process. Statutory and local processes already in place governing land use decisions are the minimum processes required for designation and regulation pursuant to RCW 36.70A.060 and 36.70A.170. At least these steps should be included in the process:

(i) Accept the requirements of chapter 36.70A RCW, especially definitions of agricultural lands, forest lands, minerals, long-term commercial significance, critical areas, geologically hazardous areas, and wetlands as mandatory minimums.

(ii) Consider minimum guidelines developed by department of community development under RCW 36.70A.050.

(iii) Consider other definitions used by state and federal regulatory agencies.

(iv) Consider definitions used by the county and city and other counties and cities.

(v) Determine recommended definitions and check conformance with minimum definitions of chapter 36.70A RCW.

(vi) Adopt definitions, classifications, and standards.

(vii) Apply definitions to the land by mapping designated natural resource lands.

(viii) Establish designation amendment procedures.

(c) Intergovernmental coordination. The Growth Management Act requires coordination among communities and jurisdictions to reconcile conflicts and strive for consistent definitions, standards, and designations within regions. The minimum coordination process required under these guidelines may take one of two forms:

(i) Adjacent cities (or those with overlapping or adjacent planning areas); counties and the cities within them; and adjacent counties would provide each other and all adjacent special purpose districts and special purpose districts within them notice of their intent to classify and designate natural resource lands and critical areas within their jurisdiction. Counties or cities receiving notice may provide comments and input to the notifying jurisdiction. The notifying jurisdiction specifies a comment period prior to adoption. Within forty-five days of the jurisdiction's date of adoption of classifications or designations, affected jurisdictions are supplied a copy of the proposal. The department of community development may provide mediation services to counties and cities to help resolve disputed classifications or designations.

(ii) Adjacent jurisdictions; all the cities within a county; or all the cities and several counties may choose to cooperatively classify and designate natural resource lands and critical areas within their jurisdictions. Counties and cities by interlocal agreement would identify the definitions, classification, designation, and process that will be used to classify and designate lands within their areas. State and federal agencies or tribes may participate in the interlocal agreement or be provided a method of commenting on designations and classifications prior to adoption by jurisdictions.

Counts and/or cities may begin with the notification option ((c)(i) of this subsection) and choose to change to the interlocal agreement method ((c)(ii) of this subsection) prior to completion of the classification and designations within their jurisdictions. Approaches to intergovernmental coordination may vary between natural resource land and critical area designation. It is intended that state and federal agencies with land ownership or management responsibilities, special purpose districts, and Indian tribes with interests within the jurisdictions adopting classification and designation be consulted and their input considered in the development and adoption of designations and classifications. The department of community development may provide mediation services to help resolve disputes between counties and cities that are using either the notification or interlocal agreement method of coordinating between jurisdictions.
(d) Mapping. Mapping should be done to identify designated natural resource lands and to identify known critical areas. Counties and cities should clearly articulate that the maps are for information or illustrative purposes only unless the map is an integral component of a regulatory scheme.

Although there is no specific requirement for inventorying or mapping either natural resource lands or critical areas, chapter 36.70A RCW requires that counties and cities planning under chapter 36.70A RCW adopt development regulations for uses adjacent to natural resource lands. Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective.

For critical areas, performance standards are preferred, as any attempt to map wetlands, for example, will be too inexact for regulatory purposes. Standards will be applied upon land use application. Even so, mapping critical areas for information but not regulatory purposes, is advisable.

(e) Reporting. Chapter 36.70A RCW requires that counties and cities annually report their progress to department of community development. Department of community development will maintain a central file including examples of successful public involvement programs, interjurisdictional coordination, definitions, maps, and other materials. This file will serve as an information source for counties and cities and a planning library for state agencies and citizens.

(f) Evaluation. When counties and cities adopt a comprehensive plan, chapter 36.70A RCW requires that they evaluate their designations and development regulations to assure they are consistent with and implement the comprehensive plan. When considering changes to the designations or development regulations, counties and cities should seek interjurisdictional coordination and public participation.

(g) Designation amendment process. Land use planning is a dynamic process. Procedures for designation should provide a rational and predictable basis for accommodating change.

Land use designations must provide landowners and public service providers with the information necessary to make decisions. This includes: Determining when and where growth will occur, what services are and will be available, how they might be financed, and what type and level of land use is reasonable and/or appropriate. Resource managers need to know where and when conversions of rural land might occur in response to growth pressures and how those changes will affect resource management.

Designation changes should be based on consistency with one or more of the following criteria:
(i) Change in circumstances pertaining to the comprehensive plan or public policy.
(ii) A change in circumstances beyond the control of the landowner pertaining to the subject property.
(iii) An error in designation.
(iv) New information on natural resource land or critical area status.
(h) Use of innovative land use management techniques. Resource uses have preferred and primary status in designated natural resource lands of long-term commercial significance. Counties and cities must determine if and to what extent other uses will be allowed. If other uses are allowed, counties and cities should consider using innovative land management techniques which minimize land use incompatibilities and most effectively maintain current and future natural resource lands.

Techniques to conserve and protect agricultural, forest lands, and mineral resource lands of long-term commercial significance include the purchase or transfer of development rights, fee simple purchase of the land, less than fee simple purchase, purchase with leaseback, buffering, land trades, conservation easements or other innovations which maintain current uses and assure the conservation of these natural resource lands.

Development in and adjacent to agricultural and forest lands of long-term commercial significance shall assure the continued management of these lands for their long-term commercial uses. Counties and cities should consider the adoption of right-to-farm provisions. Covenants or easements that recognize that farming and forest activities will occur should be imposed on new development in or adjacent to agricultural or forest lands. Where buffering is used it should be on land within the development unless an alternative is mutually agreed on by adjacent landowners.

Counties and cities planning under the act should define a strategy for conserving natural resource lands and for protecting critical areas, and this strategy should integrate the use of innovative regulatory and nonregulatory techniques.

[Statutory Authority: RCW 36.70A.050, 91-07-041, § 365-190-040, filed 3/15/91, effective 4/15/91.]

WAC 365-190-050 Agricultural lands. (1) In classifying agricultural lands of long-term significance for the production of food or other agricultural products, counties and cities shall use the land-capability classification system of the United States Department of Agriculture Soil Conservation Service as defined in Agriculture Handbook No. 210. These eight classes are incorporated by the United States Department of Agriculture into map units described in published 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) In defining categories of agricultural lands of long-term commercial significance for agricultural production, counties and cities should consider using the classification of prime and unique farmland soils as mapped by the Soil Conservation Service. If a county or city chooses to not use these categories, the rationale for that decision must be included in its next annual report to department of community development.

[Title 365 WAC— p. 37]
(3) Counties and cities may further classify additional agricultural lands of local importance. Classifying additional agricultural lands of local importance should include consultation with the board of the local conservation district and the local agriculture stabilization and conservation service committee.

These additional lands may also include bogs used to grow cranberries. Where these lands are also designated critical areas, counties and cities planning under the act must weigh the compatibility of adjacent land uses and development with the continuing need to protect the functions and values of critical areas and ecosystems.

[Statutory Authority: RCW 36.70A.050, 91-07-041, § 365-190-050, filed 3/15/91, effective 4/1/91.]

WAC 365-190-060 Forest land resources. In classifying forest land, counties and cities should use the private forest land grades of the department of revenue (WAC 458-40-530). This system incorporates consideration of growing capacity, productivity and soil composition of the land. Forest land of long-term commercial significance will generally have a predominance of the higher private forest land grades. However, the presence of lower private forest land grades within the areas of predominantly higher grades need not preclude designation as forest land.

Each county and city shall determine which land grade constitutes forest land of long-term commercial significance, based on local and regional physical, biological, economic, and land use considerations.

Counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(1) The availability of public services and facilities conducive to the conversion of forest land.

(2) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-term commercial significance are located outside the urban and suburban areas and rural settlements.

(3) The size of the parcels: Forest lands consist of predominantly large parcels.

(4) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest lands of long-term commercial significance.

(5) Property tax classification: Property is assessed as open space or forest land pursuant to chapter 84.33 or 84.34 RCW.

(6) Local economic conditions which affect the ability to manage timberlands for long-term commercial production.

(7) History of land development permits issued nearby.

[Statutory Authority: RCW 36.70A.050, 91-07-041, § 365-190-060, filed 3/15/91, effective 4/1/91.]

WAC 365-190-070 Mineral resource lands. (1) Counties and cities shall identify and classify aggregate and mineral resource lands from which the extraction of minerals occurs or can be anticipated. Other proposed land uses within these areas may require special attention to ensure future supply of aggregate and mineral resource material, while maintaining a balance of land uses.

(2) Classification criteria. Areas shall be classified as mineral resource lands based on geologic, environmental, and economic factors, existing land uses, and land ownership. The areas to be studied and their order of study shall be specified by counties and cities.

(a) Counties and cities should classify lands with long-term commercial significance for extracting at least the following minerals: Sand, gravel, and valuable metallic substances. Other minerals may be classified as appropriate.

(b) In classifying these areas, counties and cities should consider maps and information on location and extent of mineral deposits provided by the Washington state department of natural resources and the United States Bureau of Mines. Additionally, the department of natural resources has a detailed minerals classification system counties and cities may choose to use.

(c) Counties and cities should consider classifying known and potential mineral deposits so that access to mineral resources of long-term commercial significance is not knowingly precluded.

(d) In classifying mineral resource lands, counties and cities shall also consider the effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(i) General land use patterns in the area;

(ii) Availability of utilities;

(iii) Availability and adequacy of water supply;

(iv) Surrounding parcel sizes and surrounding uses;

(v) Availability of public roads and other public services;

(vi) Subdivision or zoning for urban or small lots;

(vii) Accessibility and proximity to the point of use or market;

(viii) Physical and topographic characteristics of the mineral resource site;

(ix) Depth of the resource;

(x) Depth of the overburden;

(xi) Physical properties of the resource including quality and type;

(xii) Life of the resource; and

(xiii) Resource availability in the region.

[Statutory Authority: RCW 36.70A.050, 91-07-041, § 365-190-070, filed 3/15/91, effective 4/1/91.]

WAC 365-190-080 Critical areas. (1) Wetlands. The wetlands of Washington state are fragile ecosystems which serve a number of important beneficial functions. Wetlands assist in the reduction of erosion, siltation, flooding, ground and surface water pollution, and provide wildlife, plant, and fisheries habitats. Wetlands destruction or impairment may result in increased public and private costs or property losses.

In designating wetlands for regulatory purposes, counties and cities shall use the definition of wetlands in RCW 36.70A.030(22). Counties and cities are requested and encouraged to make their actions consistent with the intent and goals of "protection of wetlands," Executive Orders 89-10 and 90-04 as they exist on September 1, 1990. Additionally, counties and cities should consider wetlands protection guidance provided by the department of ecology including the model wetlands protection ordinance.

(a) Counties and cities that do not now rate wetlands shall consider a wetlands rating system to reflect the relative function, value and uniqueness of wetlands in their jurisdic-