

Sophia Cassam

From: Stephanie Johnson O'Day <sjoday@rockisland.com>
Sent: Thursday, August 11, 2022 3:51 PM
To: Sophia Cassam
Cc: bret@rockisland.com; 'Francine Shaw'
Subject: FW: Comp Plan Map Change 18-0019
Attachments: Letter to Planning Commission THURMAN 18-0019.pdf; GMHB Order 2016 THURMAN.pdf

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Hello Sophia. Please signify receipt. This letter is for the upcoming August 19 PC hearing. Please forward to the PC members. Many thanks.

Stephanie O'Day

-----Original Message-----

From: sjoday@rockisland.com <sjoday@rockisland.com>
Sent: Thursday, August 11, 2022 5:32 PM
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August 11, 2022

San Juan County Planning Commission
c/o Sophia Cassam, Planner II
Department of Community Development
San Juan County
Friday Harbor, WA 98250

Re: Thurman Request for De-Designation 18-0019
Sent via email to avoid delay

Dear Members of the Planning Commission:

I don't believe any of you were on the Planning Commission in 2014 when my clients Bret and Kathryn Thurman applied for a de-designation of their 4 properties, (composed of a total of 30 acres) abutting the Deer Harbor Community Center from Forest Resource 20 to RFF 5. The road to where we are today has been arduous, to say the least.

Rather than take you through all the events leading up to today's review of their Map Request change, I am attaching the Final Decision and Order on their request from the Growth Management Hearings Board.

In a nutshell, here is what has transpired:

The application was submitted in 2014. After a continued Planning Commission Hearing and a hearing before the Council, in which the Friends of the San Juans (FOSJ) objected, the County approved their "re-designation" to Rural Farm Forest 5, which is where it belongs. The Council recognized that this property's location and physical attributes did not comport with GMA's directive that a FR land must have a forest primarily devoted to growing trees for long-term commercial timber production.

Nevertheless, FOSJ appealed to the Growth Management Hearings Board, after another lengthy hearing on the merits, the GMHB issued its decision reversing the order on the grounds that the county did not conduct a county-wide or

regional analysis and consider mandated criteria for de-designating resource lands. In other words, they needed a complete study of the county resource land pursuant to their “upcoming” GMA mandated Comp Plan review.

In February 2015 the Thurman submitted a second application to amend the Official Maps during the Comp Plan update process to modify their four waterfront lots from FR20 to RFF 5. It has taken seven long years to get to where we are today. The County has now undertaken the county wide review of resource lands as required by GMA. The County Forest Resource Lands Analysis was issued December 2017. The Economic Analysis of Resource Lands was also issued December 2017

The County has reviewed the Thurman's request in light of the Growth Management Act and Washington Administrative Code guidelines and the above referenced reports. San Juan County staff has once again agreed that the Thurman properties are not properly designated as Forest Resource and should be redesignated as Rural Farm Forest. We appreciate that the County has once again agreed to the re-designation.

The only issue here is density. During the initial review, the Planning Commission agreed that the four properties should be RFF but recommended keeping the density at 20 acres per unit. No reason was given for this. Three of the Thurman properties are currently 5 acres in size, so it isn't reasonable to now label these properties as having a 1 unit per 20-acre density. At best, Thurman will only gain two units.

Back in 2015, FOSJ argued to the Growth Board that allowing the Thurman properties to be de-designated RFF5 would create “Rural Sprawl”. The Growth Board disagreed:

*Petitioner's issues include allegations that the adoption of challenged ordinance 20-2015 allows rural sprawl. The board notes that the intervenors property consists of three parcels of approximately 5 acres each and one of approximately 15 acres. The allowed density following de-designation of the property is 1 dwelling unit per five acres. At most only three additional residential units could be added to the entire 30 acres as each of the three existing residences is located on a 5-acre parcel. Petitioner has not established that adding three additional residences to the 15-acre parcel, in consideration of the specific facts of this case, leads to rural sprawl. While the precedential effect and the possible allowed uses would be of concern if the County's action affected a greater area, scale presented here is minor. That fact, combined with the clarification of the necessary process to be followed in de-designating natural resource lands included in this order, allays those concerns. **Petitioner is unable to establish GMA violations related to rural sprawl.** GMHB Case 16-2-0001 Friends of the San Juans v. SJC and Thurman – Page 19.*

So, in summary, thank you again for de-designating this property from Forest Resource to Rural Farm Forest – a much better fit for these specific properties in this specific area. Our ask is simple – please revise the density to one unit per five acres.

Bret Thurman will be presenting the Planning Commission with a large aerial map of the area, which should make it very clear that there is no substantive reason why the density should not be increased to allow an additional two units within their property boundaries.

Very truly yours,

Stephanie O'Day

Stephanie Johnson O'Day

Cc: Bret and Kathryn Thurman

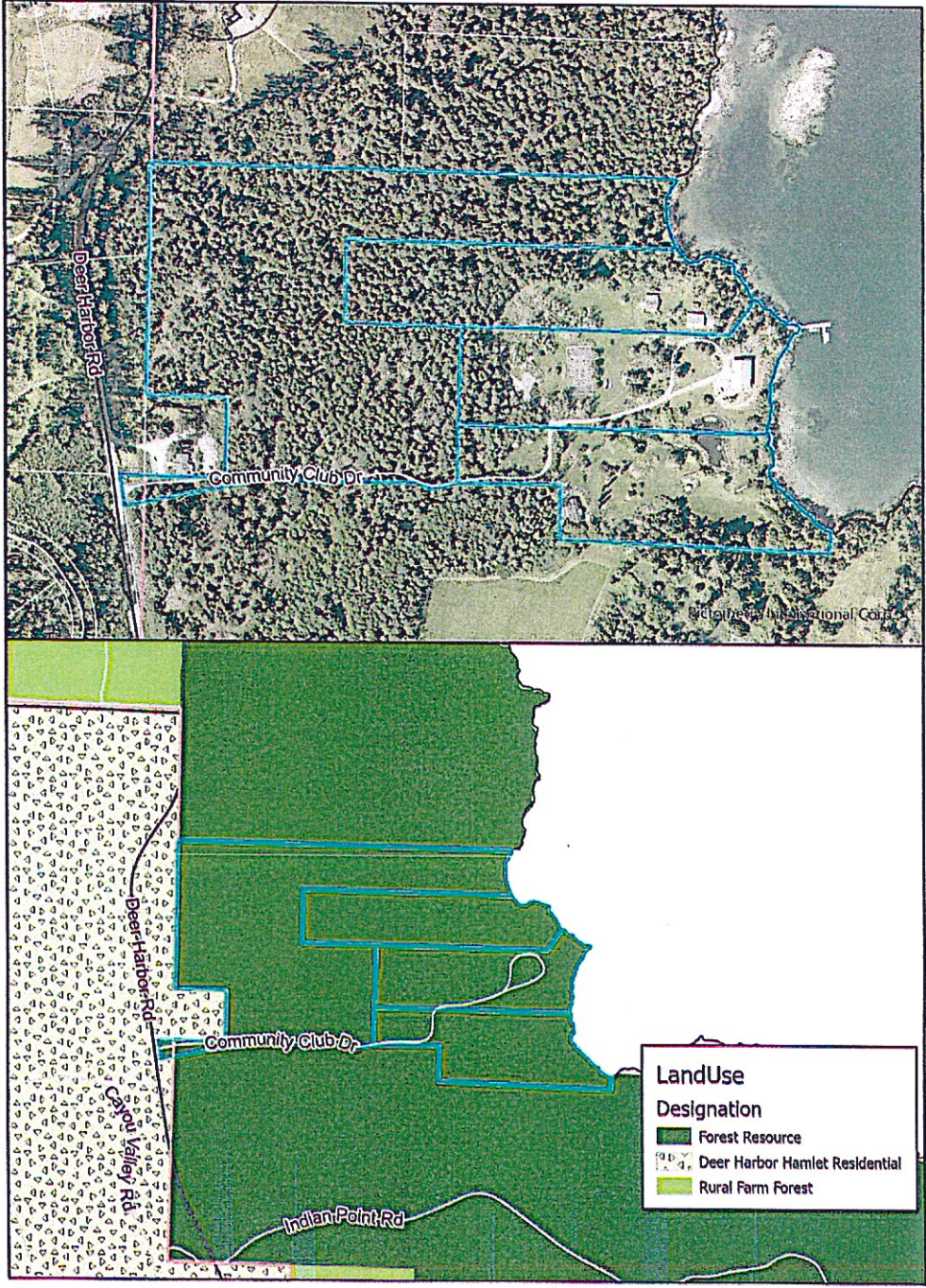
Table 2a. Land Use Review Requests on Orcas Island.

More information on Land Use Review Requests and individual applications: <https://www.sanjuanco.com/DocumentCenter/View/23199/>

Request #	Parcels	Request	Planning Commission Preliminary Recommendation
16-0003	271143016000	Remove the split designation on this 8.5 acre-parcel and designate it exclusively Service and Light Industrial (SLI).	No Change (July 16)
18-0007	262222012000	Re-designate the north 2 acres of TPN 262222012000 from Orcas Village Commercial (OVC) to Orcas Village Residential (OVR).	Re-designate the northern 3.5 acres to OVR (June 18)
18-0008	271223009000 271223011000	Add two parcels to the Eastsound urban growth area (UGA). The two parcels are undeveloped land totaling around 29 acres designated Eastsound Rural Residential on the northeast side of the UGA.	Do not expand the Eastsound UGA (June 18)
18-0010	271143012000	Allow residential uses and 'eating establishments' (restaurants) in service light industrial (SLI).	No Change (July 16)
18-0014	271433011000 271433012000 271433013000 271433010000	Add four parcels in the Fishing Bay Short Plat to the Eastsound UGA for the purpose of connecting to sewer.	Do not expand the Eastsound UGA (June 18)
18-0018	271144008000 271144017000	Re-designate two developable parcels inside the UGA from ER4P to Village Residential/institutional (VRI). This increases the maximum density from four units per acre to twelve units per acre.	Re-Designate parcels to VRI (July 16)
18-0019	260711002000 260643002000 260643009000 260643008000	De-designate four parcels (30 acres) Forest Resource land (FOR) (1 du/20 acres) and change them to Rural Farm Forest (RFF) (1 du/5 acres).	De-designate the subject parcels but do not increase the maximum residential density (May 21)
20-0002	173533001000	De-designate TPN 173533001000 from Forest Resource (FOR) to Rural Farm Forest (RFF).	De-designate this parcel and the four to the south from FOR to RFF (May 21)

Thurman

Map 15. Request 18-0019.



6/30/16

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

FRIENDS OF THE SAN JUANS,

Petitioner,

v.

SAN JUAN COUNTY,

Respondent,

And

BRET and KATHRYN THURMAN,

Intervenors.

CASE No. 16-2-0001

FINAL DECISION AND ORDER

SYNOPSIS

The Friends of the San Juans (Petitioner) challenged San Juan County's adoption of Ordinance No. 20-2015 which de-designated the upland portion of Bret and Kathryn Thurman's (Intervenors) four Orcas Island parcels from Forest Resource 20 (natural resource lands designated pursuant to RCW 36.70A.170) to Rural Farm.¹ The Board concluded Ordinance No. 20-2015 does not comply with the requirements of RCW 36.70A.170 and RCW 36.70A.130(1)(d).

I. INTRODUCTION

The Hearing on the Merits was convened on June 9, 2016, at the San Juan County Courthouse in Friday Harbor, Washington. Present at the hearing were Board Members Nina Carter, Margaret Pageler, and William Roehl, with Roehl presiding. The Petitioner was

¹ The de-designation did not affect that portion of the Intervenors' property within the jurisdiction of the County's Shoreline Management Program which retained the shoreline designation of Rural Farm Forest.

EXHIBIT

C

1 represented by Kyle L. Loring. Deputy Prosecuting Attorney Amy S. Vira represented San
2 Juan County while Stephanie Johnson O'Day appeared on behalf of the Intervenors.

3 4 II. BOARD JURISDICTION

5 The Board finds the Petition for Review was timely filed pursuant to RCW 36.70A
6 .290(2). The Board finds the Petitioner has standing to appear before the Board pursuant to
7 RCW 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the
8 Petition for Review (First Amended) pursuant to RCW 36.70A.280(1)(a).
9

10 III. BURDEN OF PROOF

11 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations
12 and amendments to them are presumed valid upon adoption.² This presumption creates a
13 high threshold for challengers as the burden is on the petitioner to demonstrate action taken
14 by the local jurisdiction is not in compliance with the Growth Management Act (GMA).³

15 The Board is charged with adjudicating GMA compliance and, when necessary,
16 invalidating noncompliant plans and development regulations.⁴ The scope of the Board's
17 review is limited to determining whether a local jurisdiction has achieved compliance with
18 the GMA only with respect to those issues presented in a timely petition for review.⁵ The
19 GMA directs that the Board, after full consideration of the petition, shall determine whether
20 there is compliance with the requirements of the GMA.⁶ The Board shall find compliance
21 unless it determines the local jurisdiction's action is clearly erroneous in view of the entire
22 record before the Board and in light of the goals and requirements of the GMA.⁷ In order to
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27 ² RCW 36.70A.320(1) provides: "[Except for the shoreline element of a comprehensive plan and applicable
28 development regulations] comprehensive plans and development regulations, and amendments thereto,
29 adopted under this chapter are presumed valid upon adoption."

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

⁴ RCW 36.70A.280, RCW 36.70A.302.

⁵ RCW 36.70A.290(1).

⁶ RCW 36.70A.320(3).

⁷ RCW 36.70A.320(3).

1 find the local jurisdiction's action clearly erroneous, the Board must be "left with the firm and
2 definite conviction that a mistake has been committed."⁸

3 Thus, the burden is on the Petitioner to overcome the presumption of validity and
4 demonstrate the challenged action taken by San Juan County is clearly erroneous in light of
5 the goals and requirements of the GMA.
6

7 IV. PRELIMINARY MATTERS

8 In its Response Brief, the County objected to the Petitioner referencing the 2014 Staff
9 Report, arguing it was not part of the Record. The County withdrew its objection at the
10 hearing, acknowledging the report had been attached to the 2015 County Staff Report (IR
11 0088).⁹
12

13 The Board agreed to take official notice of County Resolution No. 103-2000 at the
14 request of the Intervenors.¹⁰
15

16 V. FACTS

17 The Petitioner challenged the County's adoption of Ordinance No. 20-2015 which
18 amended the County's Comprehensive Plan official maps by de-designating Intervenors'
19 four parcels from Forest Reserve 20 to Rural Farm Forest 5.¹¹ The Forest Reserve category
20 is the name the County uses to identify forest land designated under RCW 36.70A.170,
21 often referred to as Forest Land of Long Term Commercial Significance (FLLTCS).¹² Rural
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25 ⁸ *City of Arlington v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 162 Wn.2d 768, 778, 193 P.3d 1077
26 (2008) (Citing *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646
27 *v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006)).

28 ⁹ Hearing on the Merits Transcript (HOM Transcript) at 6, 7.

29 ¹⁰ HOM Transcript at 42, 43.

30 ¹¹ The County designated the Intervenors as well as adjacent property as FLLTCS in 1998. See IR 00092.

31 ¹² RCW 36.70A.170

32 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;

1 Farm Forest 5 is a "rural" GMA category and does not include RCW 36.70A.170 designated
2 natural resource lands.

3 The Intervenors' property is located on Orcas Island. Prior to a boundary line
4 adjustment recorded on December 2, 2014, the land consisted of parcels of 213 square
5 feet, 9,383 sq. ft., 27.7 acres, and 2.4 acres, the latter two of which abutted the marine
6 shoreline.¹³ The boundary line adjustment resulted in two 5 acre parcels, one of 5.1 acres,
7 and a fourth of 15.1 acres, all of which now have shoreline frontage.¹⁴ The three smaller
8 parcels are improved with residences.¹⁵ The Record indicates that the residence located on
9 Parcel 260711002000, the 5.1 acre parcel, is approximately 500 feet from the shoreline
10 within the Forest Reserve designation.¹⁶ The Intervenors' motivation for de-designating the
11 parcels from Forest Reserve is that vacation rentals are not permitted on Forest Reserve
12 land, thus preventing them from renting the house located within the FLLTCS designation.¹⁷
13 (Their other two residences are within 200 feet of the shoreline and subject to the
14 jurisdiction of the County's Shoreline Management Program which allows vacation rentals.)
15

16 Intervenors' 30.2 acre property is located within a 421.2 acre block of designated
17 FLLTCS, consisting of 19 parcels including the 4 parcels owned by Intervenors.¹⁸ The
18 property is bordered on the East by marine waters, to the West by the "Deer Harbor
19 Hamlet", and lands to the North and South are designated FLLTCS.
20
21

22 VI. LEGAL ISSUES AND ANALYSIS

23 All of the Petitioner's legal issues relate to the County's decision which changed
24 Intervenors' acreage from RCW 36.70A.170 designated natural resource forest land
25

26 _____
27 (c) Mineral resource lands that are not already characterized by urban growth and that have long-term
28 significance for the extraction of minerals; and

(d) Critical areas.

29 (2) In making the designations required by this section, counties and cities shall consider the guidelines
30 established pursuant to RCW 36.70A.050.

¹³ IR 0089. IR 00168.

¹⁴ IR 0088.

¹⁵ IR 0088 and 0089.

¹⁶ IR 0089.

¹⁷ IR 0507 at 31 and 85.

¹⁸ IR 00117.

1 (FLLTCS) to a rural category. The pivotal question presented is whether the GMA required
2 the County's decision to be made under the natural resource lands designation criteria,
3 including the process set forth in the "Minimum Guidelines" of chapter 365-190WAC, as
4 Petitioner asserts. The County and Intervenors contend that the decision was properly
5 considered and made pursuant to SJCC 18.90.030, the County code provisions for land-
6 owner-requested Comprehensive Plan land use designation or density changes. They
7 argue consideration of GMA natural resource lands designation criteria apply only when
8 these lands were originally designated as such. The Board therefore begins its analysis with
9 a review of the law concerning natural resource lands before focusing on Petitioner's
10 specific issues.
11

12 In its briefing and oral argument, Petitioner addressed the issues¹⁹ under distinct
13 headings, which include the following allegations:
14

- 15 • The County erred by de-designating FLLTCS in a manner which violates the
16 GMA. (Issues 1, 3, 4, 5, 6, and 8)
- 17 • The County's action encourages sprawl. (Issues 2, 3, 4, and 7)
- 18 • The County's action resulted in internal comprehensive plan inconsistencies.
19 (Issues 10 and 11)
- 20 • The County erred in adopting an ordinance which included a finding that the
21 action complied with GMA requirements. (Issue 9)
22

23 The Board will address the issues in a similar order and finds and concludes the County's
24 de-designation of the Intervenors' land does not comply with applicable law. Petitioner
25 carried its burden of proof to establish the County did not apply an area-wide analysis to its
26 de-designation process in violation of RCW 36.70A.170, RCW 36.70A.130(1)(d), and the
27 applicable sections of the Washington Administrative Code. Petitioner, however, failed to
28 sustain its burden to support allegations regarding rural sprawl and internal comprehensive
29 plan inconsistencies.
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¹⁹ The Petitioner's Issue Statements are set out in full at the end of this Order.

1 **Natural Resource Lands**

2 The GMA includes a specific focus on natural resource lands and industries. The
3 GMA's natural resource industries goal, RCW 36.70A.020(8), provides:

4 Natural resource industries. Maintain and enhance natural resource-based
5 industries, including productive timber, agricultural, and fisheries industries.
6 Encourage the conservation of productive forest lands and productive
7 agricultural lands, and discourage incompatible uses.

8 The first GMA mandated action required jurisdictions to designate natural resource
9 lands (together with critical areas) and this further underscores the importance of these
10 lands. Designation and protection were mandated even before jurisdictions were required to
11 adopt comprehensive plans and establish urban growth boundaries.²⁰ As the Washington
12 Supreme Court stated:

13
14 The GMA set aside special land it refers to as "natural resource lands," which
15 include agricultural, forest, and mineral resource lands. Natural resource
16 lands are protected not for the sake of their ecological role but to ensure the
17 viability of the resource-based industries that depend on them. Allowing
18 conversion of resource lands to other uses by allowing incompatible uses
19 nearby impairs the viability of the resource industry.²¹

19 The GMA defines forest land:

20 RCW 36.70A.030(8) "Forest land", means land primarily devoted to growing
21 trees for long-term commercial timber production on land that can be
22 economically and practically managed for such production . . . and that has
23 long-term commercial significance. In determining whether forest land is

24
25 ²⁰ RCW 36.70A.170 (1) On or before September 1, 1991, each county, and each city, shall designate where
appropriate:

- 26 (a) Agricultural lands that are not already characterized by urban growth and that have long-term
27 significance for the commercial production of food or other agricultural products;
28 (b) Forest lands that are not already characterized by urban growth and that have long-term significance
for the commercial production of timber;
29 (c) Mineral resource lands that are not already characterized by urban growth and that have long-term
significance for the extraction of minerals; and
30 (d) Critical areas.

31 (2) In making the designations required by this section, counties and cities shall consider the guidelines
established pursuant to RCW 36.70A.050.

32 ²¹ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47 (1998), quoting
Richard L. Settle and Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present,
and Future*, 16 U. Puget Sound L. Review 1141,1145 (1993).

1 primarily devoted to growing trees for long-term commercial timber production
2 on land that can be economically and practically managed for such
3 production, the following factors shall be considered: (a) The proximity of the
4 land to urban, suburban, and rural settlements; (b) surrounding parcel size
5 and the compatibility and intensity of adjacent and nearby land uses; (c) long-
6 term local economic conditions that affect the ability to manage for timber
7 production; and (d) the availability of public facilities and services conducive
8 to conversion of forest land to other uses. (Emphasis added)

9 The identical "devoted to" clause appears in the definition of agricultural land, RCW
10 36.70A.030(2).²² The Washington Supreme Court in *City of Redmond* clarified the "devoted
11 to" language used in that definition:

12 We hold land is "devoted to" agricultural use under RCW 36.70A.030 if it is in
13 an area where the land is actually used or capable of being used for
14 agricultural production. . . . While the land use on the particular parcel and the
15 owner's intended use for the land may be considered along with other factors
16 in the determination of whether a parcel is in an area primarily devoted to
17 commercial agricultural production, neither current use nor landowner intent
18 of a particular parcel is conclusive for purposes of this element of the
19 statutory definition.²³ (Emphasis added)

20 Another clause included in both RCW 36.70A.030(2) and (8) is "Long-term
21 commercial significance" which is also defined:

22 "Long-term commercial significance" includes the growing capacity,
23 productivity, and soil composition of the land for long-term commercial
24 production, in consideration with the land's proximity to population areas, and
25 the possibility of more intense uses of the land.²⁴

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29 ²² RCW 36.70A.030(2) "Agricultural land" means land primarily devoted to the commercial production of
30 horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay,
31 straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through
32 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for
agricultural production.

²³ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 53 (1998).

²⁴ RCW 36.70A.030(10).

1 San Juan County complied with its RCW 36.70A.170 obligation to designate its
2 natural resource lands, including its forest lands, in 1998.²⁵ Included in that designation
3 was the 421.2 acre block within which Intervenors' property is located.
4

5 De-Designation of Natural Resource Lands

6 The County's challenged Ordinance 20-2015 removed Intervenors' acreage from its
7 natural resource FLLTCS designation; the Intervenors' property has been de-designated to
8 Rural Farm Forest 5.²⁶
9

10 Under certain circumstances it may be appropriate to de-designate natural resource
11 lands. For example, a review of a jurisdiction's comprehensive plan might reflect significant
12 changes in circumstances, that a mistake occurred when the area was originally
13 designated, or more recent information could lead to the conclusion that designation was
14 inappropriate.

15 However, it is clear from appellate court decisions and numerous decisions of the
16 Board (from all three GMA regions) that in order to de-designate natural resource lands,
17 jurisdictions must go through the same process of analysis applicable when designating
18 those natural resource lands.
19

20 We evaluate whether a dedesignation of agricultural land was clearly
21 erroneous by determining whether the property in question continues to meet
22 the GMA definition of "agricultural land" as defined in *Lewis County*.²⁷

23 In 2002, the County changed the designation of 1,086 acres of the Caton
24 property from agricultural resource to rural self-sufficient. To determine
25 whether the redesignation of the Caton property was clearly erroneous, we
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27
28 ²⁵ HOM transcript at 77. Some provisions of the 1998 Comprehensive Plan were challenged and final
29 compliance was determined by the Board in 2002. There have been no RCW 36.70A.130 county-wide
30 comprehensive plan updates since then. Also IR 00092.

31 ²⁶ The density allowed within the County's FRLTCS was 1 dwelling unit (d/u) per 5 acres until 2000 when it
32 was changed to 1 d/u per 20 acres to comply with an order of this Board. *Town of Friday Harbor v. San Juan
Co.*, WWGMHB No. 99-2-0010c (FDO, July 21, 1999) at 7, 8; (Order on Reconsideration, August 25, 1999) at
2. San Juan County Resolution No. 103-2000, at 5 apparently refers to comprehensive plan amendments
adopting the density change.

²⁷ *Clark Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 234 (2011).

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must examine whether the property meets the GMA definition of "agricultural land."²⁸

However, since agricultural resource lands were identified and designated pursuant to the GMA's criteria and requirements it follows that the de-designation of such lands demands additional evaluation and analysis to ascertain whether the GMA criteria and requirements are, or are not, still applicable to the lands being considered for change. A rational process evaluating objective criteria is essential for designating or de-designating agricultural resource lands.²⁹

The same statutory requirements govern both the determination whether particular agricultural lands of long-term commercial significance should be designated and whether particular lands should no longer be designated.³⁰

Thus, decisions to de-designate forest resource lands involve the same extensive analysis process required for designation; the Boards and the Washington Supreme Court have applied the statutory designation criteria when considering the de-designation of such lands.³¹

What factors was the County required to consider and determine in deciding whether to de-designate the Intervenors' property? The appellate court decisions considering agricultural resource lands address that question.

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.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.³² (Emphasis added)

²⁸ *Yakima Co. v. E. Wash. Growth Management Hearings Bd.*, 146 Wn. App. 679, 688 (2008).
²⁹ *Orton Farms, et. al. v. Pierce Co.*, CPSPGMHB No. 04-3-0007c, (FDO, August 2, 2004) at 36.
³⁰ *Kittitas County Conservation v. Kittitas Co.*, EWGMHB No. 07-1-0004c, (FDO, August 20, 2007) at 71.
³¹ *Nilson v. Lewis Co.*, GMHB No. 11-2-0003, (FDO, August 31, 2011) at 22.
³² *Lewis County v. W. Wash. Growth Management Hearings Bd.*, 157 Wn.2d 488, 502 (2006).

1 The error in the Supreme Court's use of the clause "may consider the development-
2 related factors enumerated in WAC 365-190-050(1)" was observed by the Court of Appeals:

3 Despite our Supreme Court's permissive language suggesting that counties
4 "may consider the development-related factors enumerated in [former] WAC
5 365-190-050(1)," *Lewis County*, 157 Wn.2d at 502 (emphasis added), when
6 addressing the third prong of the *Lewis County* test to determine if land has
7 long-term significance for agricultural production, the regulation actually
8 requires counties to consider the 10 factors:³³ (Emphasis added)

9 WAC 365-190-050 and the "development-related factors" referenced by the courts in
10 the above quotes are included in the Minimum Guidelines to Classify Agriculture, Forest,
11 Mineral Lands and Critical Areas.³⁴ The Department of Commerce was directed to adopt
12 these guidelines by RCW 36.70A.050 which stated the guidelines "shall be minimum
13 guidelines that apply to all jurisdictions". Chapter 365-190 WAC includes "development-
14 related factors" applicable to all three categories of natural resource lands.

15 Numerous appellate court decisions in addition to *Lewis County* and *Manke Lumber*
16 *Co.*, have referenced the Minimum Guidelines, concluding they are mandatory:

17 "the minimum guidelines require counties to map natural resource land..."
18 citing WAC 365-190-040(2)(b)(vii).³⁵

19 "The GMA sets forth objectives and minimum guidelines that local
20 governments must follow when classifying land."³⁶

21 In *Lewis County v. GMHB* the Supreme Court approved the *Manke Lumber* approach
22 of reliance on the Minimum Guidelines.³⁷

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27 ³³ *Clark Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 232 (2011). See also *Yakima Co. v.*
28 *E. Wash. Growth Mgmt. Hearings Bd.*, 146 Wn. App. 679, 692 (2008): "The Department of Community, Trade,
29 and Economic Development established guidelines for classifying "agricultural lands of long-term significance
30 for the production of food or other agricultural products." WAC 365-190-050(1). Specifically, WAC 365-190-050
31 requires that counties and cities use the land-capability classification system of the Soil Conservation Service."
32 (Emphasis added)

³⁴ Chapter 365-190 WAC.

³⁵ *Manke Lumber Co. v Diehl*, 91 Wn. App 793, 807 (1998).

³⁶ *Id.* at 804.

³⁷ *Lewis Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 501 (2006).

1 Thus, in designating, and de-designating, forest lands, a jurisdiction must consider
2 whether:

3 1.) The land is primarily devoted to growing trees for long-term commercial
4 timber production on land that can be economically and practically managed
5 for such production . . . and that has long-term commercial significance.

6 In addressing that question it is necessary to consider (a) The proximity of the land to urban,
7 suburban, and rural settlements; (b) surrounding parcel size and the compatibility and
8 intensity of adjacent and nearby land uses; (c) long-term local economic conditions that
9 affect the ability to manage for timber production; and (d) the availability of public facilities
10 and services conducive to conversion of forest land to other uses (RCW 36.70A.030(8)) as
11 well as "the growing capacity, productivity, and soil composition of the land for long-term
12 commercial production, in consideration with the land's proximity to population areas, and
13 the possibility of more intense uses of the land". (RCW 36.70A.030(10))

14
15 2.) The land is in an area actually used or capable of being used for
16 agricultural production.

17
18 In addressing that question it is necessary to remember that while the owner's intended use
19 for the land may be considered, neither current use nor landowner intent of a particular
20 parcel is conclusive for purposes of this element of the statutory definition. *City of*
21 *Redmond*.³⁸

22 3.) Finally, in addressing these questions, jurisdictions are required to
23 consider and follow the requirements of the development-related factors
24 enumerated in the relevant sections of the Minimum Guidelines to Classify
25 Agriculture, Forest, Mineral Lands and Critical Areas (WAC 365-190-040 and
26 WAC 365-190-060³⁹), which reference and amplify considerations from RCW
27 36.70A.030(10) and *City of Redmond*.

28 WAC 365-190-040 addresses the process for the designation as well as the
29 designation amendment process for natural resource lands in general while WAC 365-190-
30 060 is focused only on forest resource lands. Both subsections provide guidance and
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³⁸ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 53 (1998).
³⁹ *Clark Co. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 232 (2011).

1 direction for jurisdictions in regards to designation and de-designation of forest lands.
2 Included in both of those rules is a direction that designation and de-designation must be
3 undertaken on a county-wide or regional basis.

4 WAC 365-190-040(10) Designation amendment process. (In part)

5 (b) Reviewing natural resource lands designation. In classifying and
6 designating natural resource lands, counties must approach the effort as a
7 county-wide or regional process. Counties and cities should not review
8 natural resource lands designations solely on a parcel-by-parcel process.
9 (Emphasis added)

10 WAC 365-190-060 Forest resource lands.⁴⁰ (In part)

11 (1) In classifying and designating forest resource lands, counties must
12 approach the effort as a county-wide or regional process. Cities are

13 _____
14 ⁴⁰ (1) In classifying and designating forest resource lands, counties must approach the effort as a county-wide
15 or regional process. Cities are encouraged to coordinate their forest resource lands designations with their
16 county and any adjacent jurisdictions. Counties and cities should not review forest resource lands designations
solely on a parcel-by-parcel basis.

17 (2) Lands should be designated as forest resource lands of long-term commercial significance based on
18 three factors:

19 (a) The land is not already characterized by urban growth. To evaluate this factor, counties and cities
20 should use the criteria contained in WAC 365-196-310.

21 (b) The land is used or capable of being used for forestry production. To evaluate this factor, counties and
22 cities should determine whether lands are well suited for forestry use based primarily on their physical and
23 geographic characteristics.

24 Lands that are currently used for forestry production and lands that are capable of such use must be
25 evaluated for designation. The landowner's intent to either use land for forestry or to cease such use is not
26 the controlling factor in determining if land is used or capable of being used for forestry production.

27 (c) The land has long-term commercial significance. When determining whether lands are used or capable
28 of being used for forestry production, counties and cities should determine which land grade constitutes
29 forest land of long-term commercial significance, based on local physical, biological, economic, and land
30 use considerations. Counties and cities should use the private forest land grades of the department of
31 revenue). This system incorporates consideration of growing capacity, productivity, and soil composition of
32 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.

(3) Counties and cities may also consider secondary benefits from retaining commercial forestry
operations. Benefits from retaining commercial forestry may include protecting air and water quality,
maintaining adequate aquifer recharge areas, reducing forest fire risks, supporting tourism and access to
recreational opportunities, providing carbon sequestration benefits, and improving wildlife habitat and
connectivity for upland species. These are only potential secondary benefits from retaining commercial
forestry operations, and should not be used alone as a basis for designating or dedesignating forest
resource lands.

(4) Counties and cities must also consider the effects of proximity to population areas and the possibility of
more intense uses of the land as indicated by the following criteria as applicable:

1 encouraged to coordinate their forest resource lands designations with their
2 county and any adjacent jurisdictions. Counties and cities should not review
3 forest resource lands designations solely on a parcel-by-parcel basis.
4 (Emphasis added)

5 Those requirements reflect the holdings in *City of Redmond v. CPSGMHB*⁴¹ and *King*
6 *County v. CPSGMHB*⁴² where the courts referred to "including land in areas used or
7 capable of being used for production" as well as the need to consider the needs of the
8 industry⁴³ in considering long term commercial significance.⁴⁴ The Board has followed the
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- 17 (a) The availability of public services and facilities conducive to the conversion of forest land;
18 (b) The proximity of forest land to urban and suburban areas and rural settlements: Forest lands of long-
19 term commercial significance are located outside the urban and suburban areas and rural settlements;
20 (c) The size of the parcels: Forest lands consist of predominantly large parcels;
21 (d) The compatibility and intensity of adjacent and nearby land use and settlement patterns with forest
22 lands of long-term commercial significance;
23 (e) Property tax classification: Property is assessed as open space or forest land pursuant to chapter
24 84.33 or 84.34 RCW;
25 (f) Local economic conditions which affect the ability to manage timberlands for long-term commercial
26 production; and
27 (g) History of land development permits issued nearby.

28 (5) When applying the criteria in subsection (4) of this section, counties or cities should designate at least
29 the minimum amount of forest resource lands needed to maintain economic viability for the forestry
30 industry and to retain supporting forestry businesses, such as loggers, mills, forest product processors,
31 equipment suppliers, and equipment maintenance and repair facilities. Economic viability in this context is
32 that amount of designated forestry resource land needed to maintain economic viability of the forestry
industry in the region over the long term.

⁴¹ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 52. The Legislature intended the land use planning process of GMA to be area-wide in scope when it required development of specific plans for natural resource lands and, later, comprehensive plans.

⁴² *King Co. v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 557.

⁴³ RCW 36.70A.020 (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.

⁴⁴ Consideration of the needs of the timber industry would appear to require an area-wide or county-wide analysis.

1 courts' guidance in numerous decisions. See for example *Kittitas County Conservation v.*
2 *Kittitas County*⁴⁵, *Futurewise v. Benton County*⁴⁶, and *CCNRC v. Clark County*⁴⁷.

3 4 Analysis

5 In its review of the County's action, the Board must look to the "articulated basis" for
6 the decision.⁴⁸ That basis must be reflected in the Record developed by the County.

7to discharge its duty in designating agricultural resource lands, the
8 County must conduct an evaluation and analysis that applies the
9 mandated GMA requirements (*i.e.*, the criteria) for designation to the lands
10 under consideration. This evaluation must be part of the record, and
11 drawn upon, to support the designation decisions. It logically follows that if
12 the County is required to conduct an analysis based upon GMA mandated
13 criteria to designate agricultural resource lands of long-term commercial
14 significance; it cannot simply adopt an Ordinance that undoes, undermines
15 or contradicts the analysis performed to support the original designation
16 decisions.

17 Again, there must be some link from the County's conclusions to this
18 analysis.⁴⁹ (Emphasis added)

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21 ⁴⁵ EWGMHB No 07-1-0004c, (FDO, August 20, 2007) at 71. "If requests to de-designate agricultural lands
22 were evaluated on a parcel-by-parcel basis, or as individual requests for de-designation, a county ultimately
23 would be powerless to conserve agricultural land, because presumably "it will always be financially more
24 lucrative to develop such land for uses more intense than agriculture." *Redmond*, 136 Wn.2d at 52. It was
25 precisely to prevent the incremental loss of agricultural land and the agricultural industry that the Legislature
26 required the use of area-wide criteria for determining which lands to designate and conserve. *Redmond*, 136
27 Wn.2d at 52. **It is for the same reason area-wide criteria must be used in determining whether particular
28 parcels should be de-designated.**"

29 ⁴⁶ GMHB No. 14-1-0003 (FDO October 15, 2014) at 35.

30 ⁴⁷ WWGMHB No. 09-2-0002, (AFDO, August 10, 2009) at 20. "The GMA emphasis is broader than
31 conservation of parcels of agricultural land on a site-specific basis. Rather, in order to preserve or foster the
32 agricultural economy, one needs to focus on the agricultural industry as a whole. It would behoove the County,
prior to further review of lands proposed for de-designation (or designation), to consider what area or areas
should be included during review. The scope of that focus would be dictated by the nature of the agricultural
activity conducted, or capable of being conducted, on the properties considered for de-designation."

⁴⁸ "What does the Board look to in its review of the County's action? It looks for an articulated basis for the
County's decision. So what did the County do, and what can the County actually point to in its decision-making
process that demonstrates it has carried out its designation duty as imposed by the Act?" *Orton Farms, et. al.*
v. Pierce Co., CPSGMHB No. 04-3-0007c, (FDO) at 28.

⁴⁹ *Id.*, p. 37.

1 What was the "articulated basis" for the County's decision to de-designate Intervenor's
2 property? The findings in challenged Ordinance 20-2015 make no reference whatsoever to
3 any analysis undertaken or conclusions drawn regarding the numerous factors to be
4 addressed in the natural resource lands designation/de-designation process. In fact, the
5 County Council's findings focus almost entirely on compliance with the San Juan County
6 Unified Development Code requirements for site-specific re-designations, SJCC 18.90.030
7 (as did the findings of the Planning Commission, IR 269-270; IR 272-274).⁵⁰ SJCC
8 18.90.030 sets forth a mechanism for amending the County's comprehensive plan official
9 maps and it includes specific criteria to be considered. It is the position of both the County
10 and the Intervenor's that it is solely those County Code provisions that apply to consideration
11 of an application, such as the Intervenor's', to remove designated natural resource lands
12 from that designation.⁵¹ The County and Intervenor's contend the Intervenor's' application
13 met those criteria.
14

15
16 Significantly, the County did not conduct a county-wide or regional analysis pursuant
17 to WAC 365-190-040 and WAC 365-190-060, a fact which the County acknowledged.⁵²
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21 ⁵⁰ IR 0544. Section 1. Findings. The County Council makes the following findings:

22 A. Site-specific map amendments are allowed to be considered annually under SJCC 18.90.030 and a
23 Comprehensive Plan amendment docket. This re-designation ordinance is one of two ordinances on the 2015
24 docket.

25 B. The San Juan County Comprehensive Plan Official Maps, as amended by this action, were prepared as
26 required by RCW 36.70A.040(1) and meet the requirements of and are consistent with the GMA, Chapter
27 36.70A RCW.

28 C. SJCC 18.90.030 establishes criteria and procedures for site specific map changes, re-designations and text
29 amendments. The amendments to the Official Land Use Maps of the San Juan County Comprehensive Plan
30 that are shown on the attached Exhibit A were evaluated and reviewed as part of the docket process and meet
31 the procedural review requirements of the SJCC.

32 D. The public was provided notice and opportunity to review and comment on the proposed re-designations
and the environmental impact of their adoption. This meets the requirements of SJCC 18.90 .030 and RCW
36.70A.140.

E. The County Council finds that the proposed re-designation from Forest Reserve 20 to Rural Farm Forest 5
for tax parcel numbers 260643002, 260643008, 260643009, and 260711002 is consistent with the criteria of
SJCC 18.90.030 and should be approved.

⁵¹ HOM Transcript at 50, lines 16-20; at 62, lines 8-11; at 69, lines 1-4. IR 507, p. 31, lines 7-22.

⁵² HOM Transcript at 62: Ms. Vira: The county concedes that we did not do a county-wide evaluation of
resource lands, . . .

1 Both the County and Intervenor argue such an analysis is only required when resource
2 lands are originally designated.⁵³

3 Similarly, both the County's and the Intervenor's briefs focus on compliance with
4 SJCC 18.90.030.⁵⁴ Interestingly, the County and the Intervenor make little reference in
5 those briefs to the natural resource lands designation/de-designation factors, other than to
6 contend the chapter 365-190 WAC Minimum Guidelines need not be followed.⁵⁵ Intervenor
7 go so far as to suggest the County's challenged action somehow did not constitute a de-
8 designation of FRLTCS, stating the Petitioner "coined" the term.⁵⁶ As stated above, the
9 Intervenor and the County argue the Minimum Guidelines, including WAC 365-190-
10 040(10), only apply when a jurisdiction "first classifies and designates land as a natural
11 resource".⁵⁷ Their arguments fail to consider the statement included in WAC 365-190-040(3)
12 that "The process description and recommendations in this section incorporate those
13 clarifications [arising from legal challenges] and describe both the initial designation and
14 conservation or protection of natural resource lands and critical areas, as well as
15 subsequent local actions to amend those designations and provisions." (Emphasis added)
16
17

18 The Record includes transcripts of two County Council public hearings. IR 0507 and
19 IR 0522. While staff and public comments, including from the Petitioner's counsel, referred
20 to the requirement to consider de-designations on a county-wide or regional basis⁵⁸, a
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23 ⁵³ HOM Transcript at 37, lines 3-6: Ms. O'Day: "... we don't consider this a de-designation, we consider this a
24 re-designation. Under the county approved process under 18.90.030, it is an allowed process for an individual to
25 make application.

26 HOM Transcript at 62: "... but it's the county's strong position that it is not required for this type of re-
27 designation on a small scale. It was required initially when we did the county-wide planning."

28 ⁵⁴ Consideration and compliance with SJCC 18.90.030 was also addressed at length during the Hearing on the
29 Merits. See, e. g. HOM Transcript at 49: "Now, the county did consider all the criteria that's in 18.90.030(F),
30 which is our local code, which allows an individual landowner to go apply for a change."

31 ⁵⁵ Respondent San Juan County's Pre-Hearing Brief, at 4: "... the guidelines related to classification of
32 resource lands are 'minimum guidelines that apply to all jurisdictions, but shall allow for regional differences
that exist ... Thus, though the Board looks to the WAC guidelines in the analysis of legal issues in a case,
allegations of noncompliance with sections of the WAC procedural criteria should be dismissed. "

⁵⁶ Intervenor's Responsive Brief at 9.

⁵⁷ Intervenor's Responsive Brief at 8. Intervenor's counsel and representative made the same arguments to
the County Council: IR 0507, p. 32, lines 12-22; p. 40, lines 20-24; p. 53, line 20 to p. 54, line 2. IR 0522, p. 14,
line 24 to p.15, line 2.

⁵⁸ IR 507 at 62, 64.

1 careful review of the council members' discussion indicates the decision was made on a
2 "parcel-by-parcel" basis⁵⁹. There was no Council discussion about a county-wide or regional
3 analysis other than a Council member opining that ". . . when we do look at the
4 Comprehensive Plan we need to look at the whole area around Deer Harbor. We do have
5 some large property owners around there that - that are - that may not be affected by
6 leaving it in the resource land."⁶⁰
7

8 Notwithstanding the County's view that de-designation of FLLTCS does not require
9 the same level of analysis as designation, it argues the Record does include thorough staff
10 reports which addressed all of the statutory and WAC requirements for de-designation of
11 FLLTCS, including the staff report author's belief that a county-wide or regional analysis was
12 required.⁶¹ The Petitioner also submitted written and oral comments which referenced the
13 county-wide or regional concept.⁶² The County contends the fact that information was in the
14 Record is sufficient to support the County Council's decision.⁶³ That is, the legislative body
15 has discretion to draw its own conclusions from the Record.
16

17 The County's argument is not well taken. While the County Council has discretion to
18 draw its own conclusions from facts in the Record, those conclusions must be in accord with
19 the GMA. It is settled law that de-designation must follow the same thorough analytic
20 process as required for designation. That was not done in this instance and the record
21 clearly establishes that fact. Appellate court and Board decisions as well as the applicable
22 WACs require an area-wide, county-wide or regional analysis prior to de-designation. That
23 was also not done.⁶⁴ The record simply fails to show that the County followed the required
24 process and analysis for de-designation of natural resource lands.
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29 ⁵⁹ IR 507 at 5, 8, 55, 64, 68-75, 85.

30 ⁶⁰ IR 507 at 86.

31 ⁶¹ HOM Transcript at 65-68.

32 ⁶² *Id.* at 68; IR 0478; IR 0507 at 15-27; IR 0522 at 10-12.

⁶³ HOM Transcript at 66-67.

⁶⁴ As the County stated at the HOM: "This does not mean that the county is free to enact legislation that is inconsistent with the requirements of the GMA . . ." HOM Transcript at 61.

1 Although the *Citizens v. Chelan County*⁶⁵ decision arose under Land Use Petition Act
2 (chapter 36.70C RCW), an observation of the court referencing findings and conclusions is
3 relevant to the matter before the Board. In that case, an ordinance's findings and
4 conclusions failed to address the "central question" before the court which was whether a
5 proposed subdivision was "urban in character and therefore prohibited outside" an urban
6 growth area. Similarly, in this matter, the entire record before the Board fails to support a
7 determination by the County that Intervenor's land no longer met the GMA criteria for
8 designated timber land, and was therefore appropriate for de-designation.
9

10 The Board deems it important to stress that the question before it is not whether
11 Intervenor's forest resource land should be or should not be de-designated. The question is
12 whether the County undertook the required analysis, including doing so on an area-wide or
13 county-wide basis when deciding to de-designate previously designated forest lands of long-
14 term commercial significance. As the Central Board (now Central panel) stated in 2004:
15

16 The Board continues to believe that de-designation of previously designated
17 resource lands is possible under the Act. Given the importance of soils data
18 and mapping, and the large scale of such maps, it seems reasonable that as
19 Plans are reviewed and evaluated in terms of more current or refined
20 information, a jurisdiction may realize that mistakes have been made or
21 circumstances have changed that warrant a revision to prior resource land
22 designations. However, since agricultural resource lands were identified and
23 designated pursuant to the GMA's criteria and requirements it follows that the
24 de-designation of such lands demands additional evaluation and analysis to
25 ascertain whether the GMA criteria and requirements are, or are not, still
26 applicable to the lands being considered for change. A rational process
27 evaluating objective criteria is essential for designating or de-designating
28 agricultural resource lands.⁶⁶

29 The observation of the court in *Clark County v. WWGMHB*,⁶⁷ appropriately applies in
30 the context of this case in its reference to the de-designation of natural resource lands:

31 The County designated these parcels as ALLTCS in its 2004 comprehensive
32 plan, which it intended to follow for 20 years. Absent a showing that this

⁶⁵ *Citizens v. Chelan Co.*, 105 Wn. App. 753 (2001).

⁶⁶ *Orton Farms v. Pierce Co.*, GMHB No. 04-3-0007c (FDO, August 3, 2004) at 36.

⁶⁷ 161 Wn. App. 204 at 234.

1 designation was both erroneous in 2004 and improperly confirmed by the
2 Growth Board, or that a substantial change in the land occurred since the
3 ALLTCS designation, the prior designation should remain. Without such
4 deference to the original designation, there is no land use plan, merely a
5 series of quixotic regulations. Moreover, under such ever-changing
6 regulations, the GMA goal of planning, maintaining, and conserving
7 agricultural lands could never be achieved.

8 Based on the foregoing analysis, the Board concludes the action of the County in
9 adopting Ordinance No 20-2015 violated RCW 36.70A.170⁶⁸ and RCW 36.70A.130(1)(d)⁶⁹.

10 Rural Sprawl

11 Petitioner's Issues include allegations that the adoption of challenged Ordinance 20-
12 2015 allows rural sprawl. The Board notes that Intervenors' property consists of three
13 parcels of approximately 5 acres each and one of approximately 15 acres. The allowed
14 density following de-designation of the property is one dwelling unit per 5 acres. At most,
15 only three additional residential units could be added to the entire 30 acres as each of the
16 three existing residences is located on a 5 acre parcel. Petitioner has not established that
17 adding three additional residences to the 15 acre parcel, in consideration of the specific
18 facts of this case, leads to rural sprawl. While the precedential effect and the possible
19 allowed uses would be of concern if the County's action affected a greater area, the scale
20 presented here is minor. That fact, combined with the clarification of the necessary process
21 to be followed in de-designating natural resource lands included in this order, allays those
22 concerns. Petitioner is unable to establish GMA violations related to rural sprawl.
23

24

25 

26 Inconsistencies

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29 ⁶⁸ (1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:
30 (b) Forest lands that are not already characterized by urban growth and that have long-term significance
31 for the commercial production of timber;
32 (2) In making the designations required by this section, counties and cities shall consider the guidelines
established pursuant to RCW 36.70A.050.

⁶⁹ Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any
amendment of or revision to development regulations shall be consistent with and implement the
comprehensive plan.

1 Petitioner's Issue Statements also include allegations of internal comprehensive plan
2 inconsistencies. In its brief it cites *Nilson v. Lewis County* in which the Board found an
3 inconsistency when similarly situated forest lands were designated differently.⁷⁰ In this case,
4 the allegation is that Intervenors' property "shares site characteristics with other parcels in
5 that block". That may or may not be true. The record does not include sufficient information
6 for the Board to conclude that an inconsistency has been created. The County's natural
7 resource forest land designation criteria were not before the Board. The GMA violation in
8 *Nilson* arose from inconsistent application of Lewis County's forest land designation criteria.
9

10 Petitioner's other inconsistency argument focuses on an alleged failure of the County
11 to follow its own code amendment requirements (SJCC 18.90.030). Based on the Board's
12 analysis in which it finds and concludes the County failed to follow GMA de-designation
13 analysis requirements, the Board will not address what it views as a sub- issue. That is,
14 jurisdictions must first comply with the de-designation requirement to determine whether or
15 not property(ies) continues to meet designated forest land requirements under the GMA.
16 The County has the discretion to include additional requirements, such as those included in
17 SJCC 18.90.030. Here, the County failed to conduct the initial GMA analysis, including the
18 direction included in WAC 365-190-040(10)(b) to first approach such changes on an area or
19 county-wide basis and only then to address such criteria as changes in circumstances and
20 errors in designation.⁷¹ Indeed, many of the WAC criteria for amending natural resource
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24 ⁷⁰ GMHB Case No. 11-2-0003 (FDO, August 31, 2011).

25 ⁷¹ WAC 365-190-040(10) Designation amendment process.

26 (a) Land use planning is a dynamic process. Designation procedures should provide a rational and
27 predictable basis for accommodating change.

28 (b) Reviewing natural resource lands designation. In classifying and designating natural resource lands,
29 counties must approach the effort as a county-wide or regional process. Counties and cities should not
30 review natural resource lands designations solely on a parcel-by-parcel process. Designation amendments
31 should be based on consistency with one or more of the following criteria:

32 (i) A change in circumstances pertaining to the comprehensive plan or public policy related to designation
criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(ii) A change in circumstances to the subject property, which is beyond the control of the landowner and is
related to designation criteria in WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3);

(iii) An error in designation or failure to designate;

(iv) New information on natural resource land or critical area status related to the designation criteria in
WAC 365-190-050(3), 365-190-060(2), and 365-190-070(3); or

1 designations mirror the site-specific comprehensive plan map change criteria included in
2 SJCC 18.90.030.⁷² However, consideration of those criteria are secondary to compliance
3 with the GMA.
4

5 **Invalidity**

6 The Petitioner asks the Board to impose invalidity, arguing the allowance of
7 increased intensity of development resulting from adoption of the challenged ordinance
8 would substantially interfere with fulfillment of GMA Goals 2 and 8. Invalidity is authorized
9 only after the Board has made a finding of non-compliance and is based on a determination
10 that the challenged action, in whole or in part, would substantially interfere with the
11 fulfillment of the goals of the GMA. While GMA non-compliance has been found, the
12 Petitioner failed to establish substantial interference with RCW 36.70A.020(2) and (8). The
13 Board declines to impose invalidity.
14
15

16 **Summary of Conclusions**

17 The Board is left with the firm and definite conviction that a mistake has been made
18 through San Juan County's failure to follow the analysis required by the GMA for the de-
19 designation of natural resource lands, as interpreted by the appellate courts and the Board.
20 The Board concludes Ordinance No. 20-2015 does not comply with the requirements of
21
22

23 (v) A change in population growth rates, or consumption rates, especially of mineral resources.

24 ⁷² SJCC 18.90.030 F. Criteria for Approval. These actions are reviewed for conformance with the applicable
25 provisions of the Comprehensive Plan, the UDC, and as follows:

26 1. Comprehensive Plan Official Map Amendments. The County may approve an application or proposal for a
27 Comprehensive Plan Official Map amendment if all of the following criteria are met:

28 a. The changes would benefit the public health, safety, or welfare.

29 b. The change is warranted because of one or more of the following: changed circumstances; a
30 demonstrable need for additional land in the proposed land use designation; to correct demonstrable
31 errors on the official map; or because information not previously considered indicates that different land
32 use designations are equally or more consistent with the purposes, criteria and goals outlined in the
Comprehensive Plan.

c. The change is consistent with the criteria for land use designations specified in the Comprehensive
Plan.

d. The change, if granted, will not result in an enclave of property owners enjoying greater privileges and
opportunities than those enjoyed by other property owners in the vicinity where there is no substantive
difference in the properties themselves or public purpose which justifies different designations.

e. The benefits of the change will outweigh any significant adverse impacts of the change.

1 RCW 36.70A.170 and RCW 36.70A.130(1)(d). Accordingly, the Board concludes Ordinance
2 No. 20-2015 is clearly erroneous in view of the entire record before the Board and in light of
3 the goals and requirements of the GMA.

4 VII. ORDER

5 Based upon review of the Petition for Review (First Amended), the briefs and exhibits
6 submitted by the parties, the GMA, case law and prior Board orders, having considered the
7 arguments of the parties, and having deliberated on the matter, the Board Orders as
8 follows:
9

- 10 1. San Juan County failed to include and consider mandated criteria for de-
11 designating forest resource lands. The adoption of Ordinance No. 20-2015 did
12 not comply with the requirements of RCW 36.70A.170 and RCW
13 36.70A.130(1)(d);
- 14 2. All other issues raised by the Petitioner, Friends of the San Juans, are
15 dismissed;
- 16 3. The Board remands Ordinance No. 20-2015 for compliance, as set forth in this
17 order;⁷³
- 18 4. The Board sets the following schedule for the County's compliance:
19
20

21 Item	22 Date Due
23 Status Report on Compliance Due	November 28, 2016
24 Compliance Due	December 27, 2016
25 Compliance Report/Statement of Actions Taken to 26 Comply and Index to Compliance Record	January 10, 2017
27 Objections to a Finding of Compliance	January 20, 2017
28 Response to Objections	January 30, 2017
29 Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 7757643#	February 10, 2017 10:30 a.m.

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32 ⁷³ The Board understands that the County has begun or will soon begin its RCW 36.70A.130 comprehensive plan review. That process would provide an appropriate opportunity to consider an area-wide or county-wide evaluation of its FLLTCS although the County has the discretion to achieve compliance on other timelines.

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DATED this 30th day of June, 2016

William Roehl, Board Member

Nina Carter, Board Member

Margaret Pageler, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁷⁴

⁷⁴ Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-3-830(1), WAC 242-3-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

APPENDIX

Legal Issues

1. Does the Ordinance's dedesignation of FRL in the midst of a block of forest resource land contravene RCW 36.70A.020(8), the goal to maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries?
2. Does the Ordinance's density increase from 20 to 5 acre minimums in the midst of a block of 20-acre density parcels prevent the County from achieving consistency with the GMA planning goal to reduce sprawl, RCW 36.70A.020(2)?
3. Does the Ordinance's dedesignation of FRL and upzoning from 20-acre to 5-acre minimums in the midst of a block of forest resource lands prevent San Juan County from complying with its Growth Management Act ("GMA") responsibility to designate and conserve forest resource lands and containing rural development pursuant to RCW 36.70A.040(3) and 36.70A.070(1), .070(5)(b), .070(5)(c)(i)?
4. Does the Ordinance's dedesignation of FRL and upzoning from 20-acre to 5-acre minimums in the midst of a block of forest resource lands prevent San Juan County from complying with its GMA responsibility to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area or protect against conflicts with the use of forest resource lands pursuant to RCW 36.70A.070(c)(iii), .070(c)(v)?
5. Does the Ordinance's dedesignation of FRL and upzoning from 20-acre to 5-acre minimums in the midst of a block of forest resource lands prevent San Juan County from complying with its responsibility to ensure that any amendment of or revision to a comprehensive land use plan conforms to the GMA pursuant to RCW 36.70A.130(1)(b), .130(1)(d)?
6. Does the Ordinance's dedesignation of FRL in the midst of a block of forest resource land satisfy the criteria for dedesignating forest resource land pursuant to RCW 36.70A.170(1)(b)?
7. Do the cumulative impacts of establishing an island of land designated RFF-5 within a block of lands designated FRL-20 interfere with the County's ability to implement planning goals to reduce sprawl maintain and enhance natural resource-based industries at RCW 36.70A.020(2) and (8)?
8. Do the cumulative impacts of establishing an island of land designated RFF-5 within a block of lands designated FRL-20 interfere with the County's ability to

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comply with the requirements at RCW 36.70A.070(1), .070(5)(b), .170(1)(b) to designate and protect FRLs and to provide for a variety of rural densities and uses?

- 9. Did the County err in declaring at finding section 1.B. that “[t]he San Juan County Comprehensive Plan Official Maps, as amended by this action, were prepared as required by RCW 36.70A.040(1) and meet the requirements of and are consistent with the GMA, Chapter 36.70A RCW.”?
- 10. Does the Ordinance contravene the GMA’s consistency requirements at RCW 36.70A.040(3), .040(4), .070, and .130(1)(d) due to its inconsistency the San Juan County Comprehensive Plan goal to conserve renewable natural resources for the benefit of existing and future generations by conserving forest lands in forest grades 1-5 (as classified by the Washington Department of Natural Resources) for long-term timber production. SJC Comprehensive Plan § 2.2.F.? (sic)
- 11. Does the Ordinance contravene the GMA’s consistency requirements at RCW 36.70A.040(3), .040(4), .070, and .130(1)(d) because it amended the Comprehensive Plan without ensuring consistency with SJCC 18.90.030.F., the development regulations for Comprehensive Plan map amendments?
- 12. Does the Ordinance contravene common law rezone standards that require a substantial change in circumstances and a substantial relationship to the public health, safety, morals, or welfare?⁷⁵

⁷⁵ Legal issue 12 was dismissed by Order of Dismissal dated March 28, 2016.

