

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 CLARK COUNTY CITIZENS UNITED, INC.,
6 FRIENDS OF CLARK COUNTY AND
7 FUTUREWISE (FOCC),

8 Petitioners,
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10 v.

11 CLARK COUNTY,
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13 Respondent,
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15 and

16 3B NORTHWEST LLC, CITY OF LA
17 CENTER, RDGB ROYAL FARMS LLC,
18 RDGK REST VIEW ESTATES LLC, RDGM
19 RAWHIDE ESTATES LLC, RDGF RIVER
20 VIEW ESTATES LLC, RDGS REAL VIEW
21 LLC, CITY OF BATTLE GROUND, CITY OF
22 RIDGEFIELD, LAGLER REAL PROPERTY
23 LLC AND ACKERLAND LLC,

24 Intervenors.

CASE No. 16-2-0005c

**ORDER ON REMAND FROM THE
COURT OF APPEALS**

25
26 **I. SUMMARY**

27 *The Board found the County in compliance with RCW 36.70A.060 and WAC 365-*
28 *190-050 and rescinded invalidity regarding 602 acres of agricultural lands that have been*
29 *removed from Rural Industrial Land Bank designations. The Board also rescinded invalidity*
30 *regarding the Urban Growth Areas (UGA) for the Cities of Ridgefield and La Center because*
31 *the Court of Appeals ruled that annexations by La Center and Ridgefield rendered the UGA*
32 *expansion issues moot.*

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II. INTRODUCTION

This matter came before the Board pursuant to the County's compliance report and a motion to rescind the Board's previous determinations of noncompliance and invalidity.¹

Among other submittals, the Board also had before it Petitioners' request to find continuing noncompliance regarding the specific topic of "reasonable measures" raised in Issue 5. The Board also considered the following:

- County's Compliance Report and Motion for Order Rescinding Determinations of Noncompliance and Invalidity. (December 17, 2019)
- Petitioner's Objections to Findings of Compliance and Response to Clark County's Motion for Order Rescinding Determinations of Noncompliance and Invalidity. (December 27, 2019)
- Intervenor RDGB Royal Farms LLC, et al.'s Reply to Petitioner's Objections. (January 6, 2020)
- Respondent Clark County Statement of Additional Authorities.(January 9, 2020)
- Supreme Court Order No. 97719-4 Clark County Citizens United, Inc., v Growth Management Hearings Board (January 8, 2020)
- Court of Appeals Division II Amended Mandate No. 50847-8-11 Clark County Cause No. 17-2-00929-0 (January 29, 2020)
- Friends of Clark County's and Futurewise Brief on Issue 5 Reasonable Measures. (February 26, 2020)
- Respondent Clark County's Supplemental Brief. (February 26, 2020)
- Supplemental Brief of Intervenor 3B NW LLC RE: Reasonable Measures. (February 26, 2020)
- City of Ridgefield's Joinder in Intervenor 3B NW LLC's, Clark County; and City of La Center Supplemental Briefs RE: Reasonable Measures. (February 26, 2020)
- Intervenor RDGB Royal Farms LLC et al Supplemental Brief on Issue 5 (Buildable Lands). (February 26, 2020)

¹ County's Compliance Report and Motion for Order Rescinding Determinations of Noncompliance and Invalidity. (December 17, 2019)

- 1 • Supplemental Brief of Intervenor City of La Center RE: Issue 5. (February 26,
2 2020)

3 **III. DISCUSSION AND ANALYSIS**

4 The Board first found Clark County out of compliance with portions of the GMA on
5 March 23, 2017.² The County subsequently achieved compliance with many issues
6 originally raised except for Issues 5, 10, and 19. Specifically, those three remaining issues
7 are:
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- 9 • Issue 5 – The County’s expanded urban growth areas (UGAs) adjacent to the
10 cities of La Center and Ridgefield violated RCW 36.70A.110, .115 and .215
11 because the expansions were not necessary to accommodate projected urban
12 growth and the County had not adopted “reasonable measures” to accommodate
13 growth without expanding UGA boundaries.³
14 • Issue 10 – The County improperly de-designated Agricultural Lands of Long-Term
15 Commercial Significance (ALLTCS) underlying the newly expanded UGAs,
16 violating RCW 36.70A.050, .060 and WAC 365-190-050.⁴
17 • Issue 19 – The County improperly de-designated 602 acres of ALLTCS when it
18 established two Rural Industrial Land Banks (RILB), violating RCW 36.70A.060
19 and WAC 365-190-050.⁵

20 The Board’s review considers the County’s latest compliance actions, Petitioners’ and
21 Intervenor’s responses, and the Court of Appeals decision in *Clark County. v. Growth Mgmt.*
22 *Hearings Bd.*⁶
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27 ² Final Decision and Order (March 23, 2017); Order on Compliance and Order on Motions to Modify
28 Compliance Order, Rescind Invalidity, Stay Order, and Supplement the Record (January 10, 2018); Second
29 Order Finding Continuing Noncompliance (October 17, 2018).

30 ³ Issue 5: GMHB No. 16-2-0005c Final Decision and Order (March 23, 2017) at 22-25; First Compliance Order
31 (January 10, 2018) at 14-17; Second Compliance Order (October 17, 2018) at 9-13.

32 ⁴ Issue 10: GMHB No. 16-2-0005c Final Decision and Order at 37-43; First Compliance Order (January 10,
2018) at 17-18; Second Compliance Order (October 17, 2018) at 5-6.

⁵ Issue 19: Issue 10: GMHB No. 16-2-0005c Final Decision and Order (March 23, 2017) at 75-82; First
Compliance Order (January 10, 2018) at 23-30; Second Compliance Order (October 17, 2018) at 6-9.

⁶ *Clark County. v. Growth Mgmt. Hearings Bd.*, 10 Wash. App. 2d 84 (August 20, 2019); Review denied *Clark
County Citizens United v. Growth Mgmt. Hr’gs Bd.*, 2020 Wash. LEXIS 21 (January 8, 2020).

1 **Issue 19: DE-DESIGNATING 602 AG LAND ACRES⁷**

2 Did the adoption of Amended Ordinance 2016-06-12 violate RCW 36.70A.020(8); RCW
3 36.70A.030(2), (10); RCW 36.70A.050(3); RCW 36.70A.060(1)(a); RCW 36.70A.070
4 (internal consistency); RCW 36.70A.130(1), (5); RCW 36.70A.170; WAC 365-190-
5 040(10)(b); WAC 365-190-050; or is the ordinance inconsistent the Clark County
6 comprehensive plan because it de-designated approximately 602.4 acres of agricultural
7 lands of long-term commercial significance? See Amended Ordinance 2016-06-12 and
8 Exhibit 1 Clark County, Washington 20 Year Comprehensive Growth Management Plan
9 2015-2035 pp. 10 – 12, pp. 14 – 15, p. 31, pp. 36 – 37, pp. 43 – 44, pp. 84 – 86, pp. 94 –
10 95, p. 97, p. 228, p. 402, Figure 22A, Figure 22B, and Figure 24A; Exhibit 2 County/UGA
11 Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning
12 Clark County, Washington [map]. [FOCC/FW No. 10]

11 The County approved Ordinance 2019-11-16 on November 12, 2019, which
12 amended the Comprehensive Plan text and map, the arterial atlas, and the zoning
13 regulations and map, to repeal all prior County legislation that had established the RILB,
14 including the legislation that had de-designated ALLTCS.⁸ Clark County requests the Board
15 to find its action in compliance with GMA and rescind the determination of invalidity
16 regarding Issue 19.⁹ Petitioners agreed that Ordinance 2019-11-16 repealing the RILBs
17 brings the County into compliance with the GMA on Issue 19.¹⁰ **The Board finds and**
18 **concludes that with the County amendments in Ordinance 2019-11-16 regarding**
19 **agricultural lands and the 602 acre RILB, the County has achieved compliance with**
20 **RCW 36.70A.060 and WAC 365-190-050 with regards to Issue 19. Further, under RCW**
21 **36.70A.302(7), the Board rescinds its determination of invalidity regarding Issue 19.**
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25 **Issue 5: UGA EXPANSION and BUILDABLE LANDS REPORT**

26 Did the adoption of Amended Ordinance 2016-06-12 expanding the Battle Ground, La
27 Center, and Ridgefield urban growth areas violate RCW 36.70A.020(1), (2); RCW
28 36.70A.070 (internal consistency); RCW 36.70A.110(1), (2), (3); RCW 36.70A.115; RCW
29 36.70A.130(1), (3), (5); RCW 36.70A.210(1); or RCW 36.70A.215(1)(b) **because the**
30 **expansions were not needed to accommodate the planned growth and Buildable**

31 ⁷ Final Decision and Order (March 23, 2017) at 71-82.

32 ⁸ *Id.* at 5; See also ICR 4304, Ex. 2.

⁹ *Id.* at 6.

¹⁰ Petitioner's Objections to Findings of Compliance and Response to Clark County's Motion for Order Rescinding Determinations of Noncompliance and Invalidity. (December 27, 2019).

1 **Lands reasonable measures were not adopted and implemented?** See Amended
2 Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year Comprehensive*
3 *Growth Management Plan 2015-2035* pp. 11 –13, pp. 14 – 15, pp. 26 – 29, pp. 41 – 46, pp.
4 267 – 68, Figure 12, Figure 14, Figure 15, and Figure 24A; Exhibit 2 County/UGA
5 Comprehensive Plan Clark County, Washington [map]; and Exhibit 3 County/UGA Zoning
6 Clark County, Washington [map]. [FOCC/FW No. 1] (emphasis added)

7 **Issue 10: AGRICULTURAL LAND DE-DESIGNATION**

8 Did the adoption of Amended Ordinance 2016-06-12 including the de-designation of 57
9 acres of agricultural land of long-term commercial significance in the La Center urban
10 growth area expansion and 111 acres in the Ridgefield urban growth area expansion,
11 violate RCW 36.70A.020(8); RCW 36.70A.030(2), (10); RCW 36.70A.050(3); RCW
12 36.70A.060(1)(a); RCW 36.70A.070 (internal consistency); RCW 36.70A.130(1), (3), (5);
13 RCW 36.70A.170; RCW 36.70A.210(1); WAC 365-190-040(10)(b); or WAC 365-190-050 or
14 is the de-designation inconsistent with the Clark County comprehensive plan? See
15 Amended Ordinance 2016-06-12 and Exhibit 1 *Clark County, Washington 20 Year*
16 *Comprehensive Growth Management Plan 2015-2035* pp. 10 – 12, pp. 14 – 15, pp. 43 – 44,
17 pp. 84 – 86, pp. 94 – 95, Figure 14, Figure 15, Figure 22A, Figure 22B, and Figure 24A;
18 Exhibit 2 County/UGA Comprehensive Plan Clark County, Washington [map]; and Exhibit 3
19 County/UGA Zoning Clark County, Washington [map]. [FOCC/FW No. 2]

20 Issues 5 and 10 both involve lands that were annexed in 2016 by the Cities of La
21 Center and Ridgefield prior to issuance of the Board’s Final Decision and Order and its
22 imposition of invalidity. In addressing Issue 5, the FDO found the County noncompliant with
23 RCW 36.70A.110, .115 and .215 in that the County’s expansions of the La Center and
24 Ridgefield UGAs a.) were not needed to accommodate growth¹¹, and b.) reasonable
25 measures were not adopted.¹² Further, in regards to Issue 10, the Board found the County
26 noncompliant with RCW 36.70A.050 and .060 and WAC 365-190-050 when the County de-
27 designated agricultural lands (ALLTCS) underlying these two UGAs.¹³ However, while this
28 case was pending before the Board, the Cities of La Center and Ridgefield annexed the
29 lands within the expanded UGAs. Following the Board’s ruling, both the County and
30 Petitioners appealed the Board’s Final Decision as well as certain subsequent compliance
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32 ¹¹ Final Decision and Order (March 23, 2017) at 23.

¹² *Id.* at 24, 25.

¹³ *Id.* at 43.

1 orders to the Clark County Superior Court, the Court of Appeals and the Supreme Court.
2 During the appeal period the Board granted a stay of compliance.¹⁴

3 The Court of Appeals held “that issues regarding the annexed lands are moot...and
4 remand to the Board for further proceedings in accordance with this opinion.”¹⁵ The Court
5 of Appeals reasoned that an issue is moot if the Board cannot provide effective relief
6 because the Board’s Determinations of Invalidity are *prospective* from the date of the Final
7 Decision and Order.¹⁶

9 The central question of all mootness problems is whether changes in the
10 circumstances that prevailed at the beginning of litigation have forestalled any
11 occasion for meaningful relief.¹⁷

12 Further, the Court of Appeals stated “After land contiguous to a city has been
13 designated UGA, that city may annex that contiguous land.”¹⁸ The Court of Appeals also
14 found that previous GMHB decisions “have examined this question and have held that after
15 a city annexes land, that land is no longer within the county’s jurisdiction.”¹⁹ The Court of
16 Appeals held:

18 “Issues regarding the annexed lands are moot because the Board can provide
19 no effective relief. The Board’s role is to determine whether the County is in
20 compliance with the GMA. However, after land contiguous to a city has been
21 designated UGA, that city may annex that contiguous land. Once that land has
22 been annexed, it is within the city’s sole jurisdiction. As a result, when La
23 Center and Ridgefield annexed previously unincorporated land into their
24 municipalities, the County lost its ability to plan for that land. The Board cannot
25 compel the County to take action to come into compliance regarding land the
County does not control. Such compulsion is beyond the quasi-judicial powers
of the Board.”²⁰ (Citations omitted)

26 The Supreme Court denied review.²¹ The Board is left with the remand from the Court of
27 Appeals which stated that UGA issues regarding the annexed lands are moot because the
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29 ¹⁴ Order Granting Stay for Issues 5, 10 and 19 and Reinforcing Invalidity (July 9, 2019).

30 ¹⁵ *Clark Cty. v. Growth Mgmt. Hr’gs Bd.*, 10 Wn. App. 2d 84, 91, 448 P.3d 81 (2019).

31 ¹⁶ *Id.* at 91.

32 ¹⁷ *Id.* at 104, citing *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 602 (2010).

¹⁸ *Id.*

¹⁹ *Id.* at 105.

²⁰ *Id.* at 108.

²¹ *Clark Cty. Citizens United v. Growth Mgmt. Hr’gs Bd.*, 194 Wn.2d 1021 (2020).

1 Board can provide no effective relief.²²

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3 **Based on the Court of Appeals decision finding that the UGA issues relating to**
4 **lands annexed by the Cities of La Center and Ridgefield are moot, the Board rescinds**
5 **its determinations of invalidity regarding the UGA expansions and de-designation of**
6 **Agricultural Lands of Long Term Commercial Significance on 57 acres near the La**
7 **Center UGA and 111 acres near the Ridgefield UGA.**

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9 **IV. ORDER**

10 Based on the review of the County's compliance report and its motions to rescind
11 invalidity, the Growth Management Act, prior Board orders and case law, having considered
12 Petitioners' and Intervenors' briefs and their comments offered at two compliance hearings,
13 as well as reviewing the Court of Appeals decision, and having deliberated on the matter,
14 the Board Orders:

- 15
- 16 • Clark County has **achieved compliance** with RCW 36.70A.060 and WAC 365-
17 190-050 regarding 602 acres of agricultural lands that have been removed from
18 Rural Industrial Land Bank designations.
 - 19 • The Board **rescinds** its January 10, 2018, Determination of Invalidity relating to
20 602 acres of agricultural lands that have been removed from Rural Industrial Land
21 Bank designations by repealing Section 2.2.2 (Exhibit 2) of Clark County
22 Amended Ordinance No. 2016-06-12.
 - 23 • UGA issues relating to lands annexed in 2016 by the Cities of La Center and
24 Ridgefield are moot.
 - 25 • The Board **rescinds** its March 23, 2017, Determination that invalidated the UGA
26 expansions for the cities of Ridgefield and La Center, as shown on the 2016
27 Comprehensive Plan Map, adopted by Section 2.2.2 (Exhibit 2) of Clark County
28 Amended Ordinance No. 2016-06-12.
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²² *Clark Cty. v. Growth Mgmt. Hr'gs Bd.*, 10 Wn. App. 2d 84, 104, 448 P.3d 81, 93 (2019).

- 1 • The Board **rescinds** its January 10, 2018, Determination that invalidated the De-
2 designation of Agricultural Lands of Long Term Commercial Significance on 57
3 acres near the La Center UGA and 111 acres near the Ridgefield UGA, as
4 enacted in Clark County Amended Ordinance 2016-06-12.
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6 DATED this 26th day of March 2020.
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Nina Carter, Board Member

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William Roehl, Board Member

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Raymond L. Paoella, Board Member
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20 **Note: This is a final decision and order of the Growth Management Hearings Board**
21 **issued pursuant to RCW 36.70A.300.49.²³**
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31 ²³ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
32 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. 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. 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.