

Agenda Summary Report (ASR)

Franklin County Board of Commissioners

DATE SUBMITTED: October 25, 2022	PREPARED BY: Derrick Braaten
Meeting Date Requested: November 1, 2022	PRESENTED BY: Derrick Braaten
ITEM: (Select One) <input type="checkbox"/> Consent Agenda <input checked="" type="checkbox"/> Brought Before the Board Time needed: 15 minutes	
SUBJECT: <i>Open Public Hearing:</i> To garner public input regarding the moratorium established through Franklin County Ordinance 04-2022, regarding ensuring compliance with the EWGMHB Final Decision & Order for Case #21-1-0005	
FISCAL IMPACT: None	
<p>BACKGROUND: On June 1, 2021, the Franklin County Board of County Commissioners approved Ordinance 07-2021, adopting the 2018-2038 Franklin County Comprehensive Plan. On August 5, 2021, Futurewise, a non-profit land-use policy organization, submitted a timely Petition for Review of the Franklin County 2018-2038 Comprehensive Plan, as adopted through Ordinance 07-2021, to the Eastern Washington Growth Management Hearings Board (EWGMHB). A hearing on the merits was held before the EWGMHB on December 12, 2021. Following the December 12, 2021 Hearing on the Merits for Case #21-1-0005, the EWGMHB issued a Final Decision and Order (FDO) on January 28, 2022.</p> <p>Final Decision and Order stated the following, in summary:</p> <ul style="list-style-type: none">a. That "Franklin Crops" are Agricultural Lands of Long-Term Commercial Significance (ALLTCS).b. That the GMA does not have a requirement that Franklin County had to consider proposed (but un-adopted) development regulations when developing a land-capacity analysis regarding proposed expansions of the UGA,c. That Futurewise's challenge to the County's failure to designate certain lands is outside of the scope of its Petition for Review.d. That the FEIS and other SEPA documents included in the record failed to disclose the environmental impacts of the de-designation of the "Franklin Crops" ALLTCS and any environmental impacts.e. That the Franklin County 2018-2038 Comprehensive Plan Update, as adopted through Ordinance 07-2021, does not comply with the requirements of the GMA, and remanded it back to the County to take action to bring the Plan into compliance with the requirements of the GMA and SEPA, by August 1, 2022. <p>Franklin County appealed the EWGMHB Final Decision and Order for Case #21-1-0005 to the Washington State Court of Appeals. However, as the timeline associated with the appeal is determined by elements beyond the County's control, it was likely that a final determination on the matter could not be obtained before the EWGMHB FDO Compliance due date. Therefore, in order to meet the compliance requirement, on August 9, 2022, Franklin County declared an emergency and adopted a moratorium to prevent irreversible harm caused by new development, or other actions, that may be determined to be in violation of the Washington State Growth Management Act and/or the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order in Case No. 21-1-0005, pending the final outcome and disposition of the Franklin County appeal.</p>	

The moratorium provides that the properties under Franklin County jurisdiction, located within the area of the City of Pasco 2018-2038 UGA expansion request with a "Franklin Crops"/"Franklin Soils" designation in the 2008 Franklin County Comprehensive Plan shall continue to be treated as rural lands in relation to applications for development or other land-use actions, maintaining all rights and limitations, as defined under the 2008 adopted Agricultural comprehensive plan land-use designation, and currently adopted Agricultural Production 20 (AP-20) zoning, for said properties.

Said moratorium shall be in place until such time as (i) Franklin County has exercised its full rights to challenge the January 28, 2022 Eastern Washington Growth Management Hearings Board Final Decision and Order, regarding Case #21-1-0005; (ii) Franklin County determines it no longer desires to pursue any such appeals; or (iii) a final determination on the matter is issued by the appropriate final court of law having jurisdiction over the matters appealed. If a final ruling regarding the appeal is not obtained within six (6) months of adoption of this moratorium, a public hearing will be held to determine if additional extensions of the moratorium will be necessary in order to maintain the status quo, pending a final outcome of the appeal.

Due to the fact that this moratorium was passed through an emergency declaration, a public hearing must be held before the enacting body, in this case the Franklin County Board of County Commissioners, regarding the matter.

RECOMMENDATION: Hold the public hearing.

COORDINATION: Public Notice was posted in the Tri-City Herald on October 20, 2022, and required locations.

ATTACHMENTS: (Documents you are submitting to the Board)


- (1) August 9, 2022 Declaration of Emergency and Moratorium Adoption (Ord. 04-2022) BoCC Packet, including the EWGMHB Final Decision & Order (FDO); (2) Franklin County Work Plan Regarding Compliance (3) Franklin County Notice of Public Hearing

HANDLING / ROUTING: (Once document is fully executed it will be imported into Document Manager. Please list name(s) of parties that will need a pdf)

To the Clerk of the Board: None

To Planning: Copy of Meeting Minutes (Public Hearing); any written comments submitted regarding this item.

I certify the above information is accurate and complete.

 Derrick Braaten

ORDINANCE 04-2022

BoCC PACKET

Emergency Declaration and Moratorium on Lands

Ruled by EWGMHB to be ALLTCS

Agenda Summary Report (ASR)

Franklin County Board of Commissioners

DATE SUBMITTED: August 2, 2022	PREPARED BY: Derrick Braaten
Meeting Date Requested: August 9, 2022	PRESENTED BY: Derrick Braaten
ITEM: (Select One) <input type="checkbox"/> Consent Agenda <input checked="" type="checkbox"/> Brought Before the Board Time needed: 15 minutes	
SUBJECT: Declaring an Emergency and Establishing a Moratorium On Specific Properties Included in the 2018-2038 Franklin County Comprehensive Plan for the City of Pasco UGA Expansion. and Setting a Date for a Public Hearing – Requesting the adoption of a moratorium regarding implementation of the land use designations adopted by Franklin County through Ordinance 07-2021, specifically those properties with a 2008 Comprehensive Plan land-use designation of Agricultural, and a zoning designation of Agricultural Production 20 (AP-20), pending the final outcome of Eastern Washington Growth Management Hearings Board (EWGMHB) Case #21-1-0005, regarding these lands as included in the new City of Pasco Urban Growth Area, and setting a date for a public hearing.	
FISCAL IMPACT: None	
<p>BACKGROUND: On June 1, 2021, Franklin County adopted Ordinance 07-2021, approving the 2018-2038 Franklin County Comprehensive Plan Update. On August 5, 2021, Futurewise, a non-profit land-use policy organization, appealed the inclusion of approximately 3,407 acres of land shown on Map 8 of the 2008 Comprehensive Plan as “Franklin Crops” into the City of Pasco’s Urban Growth Area (UGA). The appeal claims the lands in question were Agricultural Lands of Long-Term Commercial Significance (ALLTCS), and because Franklin County did not notify the public and agencies that it was planning to include ALLTCS in the new UGA, it has inappropriately “de-designated” these lands from ALLTCS to non-ALLTCS, when including them as part of the new UGA. Futurewise’s specific claims are as follows:</p> <ul style="list-style-type: none">a. Did Franklin County’s adoption of Ordinance 07-2021 which de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning Policies I.1.H or II.12 because the farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-term significance?b. Did Franklin County’s adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not need to accommodate the planned growth and not properly located?c. Did Franklin County’s State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and SEPA Environmental Checklist for the adoption of Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11-310, WAC 197-11-315, WAC 197-11-330, WAC 197-11-335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or consider the environmental impacts of the ordinance? <p>The EWGMHB accepted the petition for review (appeal), as Case # 21-1-0005, and a hearing on the merits was held, via Zoom, on December 12, 2021. On January 28, 2022, the EWGMHB issued a Final Decision and Order (FDO) on the matter, as follows:</p> <ul style="list-style-type: none">a. That “Franklin Crops” are Agricultural Lands of Long-Term Commercial Significance (ALLTCS).	

- b. That the GMA does not have a requirement that Franklin County had to consider proposed (but un-adopted) development regulations when developing a land-capacity analysis regarding proposed expansions of the UGA,
- c. That Futurewise's challenge to the County's failure to designate certain lands is outside of the scope of its Petition for Review.
- d. That the FEIS and other SEPA documents included in the record failed to disclose the environmental impacts of the de-designation of the "Franklin Crops" ALLTCS and any environmental impacts.
- e. That the Franklin County 2018-2038 Comprehensive Plan Update, as adopted through Ordinance 07-2021, does not comply with the requirements of the GMA, and remanded it back to the County to take action to bring the Plan into compliance with the requirements of the GMA and SEPA, by August 1, 2022.

Franklin County has always contended that these lands were never intended to be considered as ALLTCS, and that Futurewise and the EWGMHB is misinterpreting the 2008 Comp Plan language, as the "Franklin Crops" designation for these properties was only to acknowledge that though many of these properties are used for commercial ag uses and have similar soil types as designated ALLTCS in the county, due to their proximity to the City of Pasco, it was likely that they would be eventually included in the City of Pasco UGA, and therefore *were not* to be designated as ALLTCS. In short, it was always intended to be a planning designator differentiating these properties from ALLTCS.

Franklin County appealed the EWGMHB FDO on February 25, 2022.

In order to maintain the status quo, and to prevent irreversible harm caused by new development, or other actions, that may be determined to be in violation of the Washington State Growth Management Act and/or the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order in Case No. 21-1-0005, an emergency should be declared, and a moratorium established, regarding the lands in question, such that, pending the final outcome and disposition of the Franklin County appeal of the FDO, those lands that had a 2008 Comprehensive Plan land-use designation of Agricultural, and a zoning designation of Agricultural Production 20 (AP-20), as shown in Appendix A and Appendix B of this ordinance, shall be treated as they were, prior to the June 1, 2021 adoption of Ordinance 07-2021, for those lands and actions under the jurisdictional authority of Franklin County.

Such a moratorium would take effect immediately upon approval by the BoCC, and require the Board to hold a public hearing on the matter within 60-days of said adoption. If a final ruling regarding the appeal is not obtained within six (6) months of adoption of this moratorium, a public hearing will be held to determine if additional extensions of the moratorium will be necessary in order to maintain the status quo, pending a final outcome of the appeal.

During the moratorium period, County staff will continue to study the issues presented by the Eastern Washington Growth Management Hearings Board's January 28, 2022 Final Decision and Order for Case # 21-1-0005, and how to implement said changes, if necessary. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations and, if unsuccessful in its appeal of said decision, perform SEPA review of the draft ordinance, and conduct a public review process for the amendments, which includes public hearings before the County's Planning Commission and Board of County Commissioners.

RECOMMENDATION: The Planning Department staff, in coordination with outside legal counsel and the Franklin County Prosecutor's Office, recommends that the BoCC declare an emergency and adopt a moratorium, as outlined in the attached draft Ordinance 04-2022, for those lands shown in Attachment A and Attachment B of said ordinance, and set a date for a public hearing before the Board of County Commissioners on October 4, 2022, which is within 60-days of the imposition of the moratorium.

Suggested Motion: Adopt Ordinance 04-2022, declaring an emergency, establishing a moratorium on the lands as described in the ordinance, and Appendices A and B, and setting October 4, 2022 as the date for a public hearing regarding these actions.

COORDINATION: The Franklin County Building and Planning Department prepared the ordinance in coordination with Outside Counsel Taudd Hume; Jennifer Johnson, Chief Deputy Prosecutor, Civil Division; the Franklin County Contract Planning Services Provider Nicole Stickney (AHBL), and the Franklin County


Administrator. The attached ordinance provides the preliminary findings of fact, and further internal coordination will continue in advance of the required public hearing.

ATTACHMENTS: (Documents you are submitting to the Board)

(1) Draft Ordinance (2) Futurewise Petition for Review (3) EWGMHB FDO (4) Franklin County Appeal of FDO

HANDLING / ROUTING: To the Clerk of the Board: 1 Original Ordinance To Planning: 1 Copy Ord.

I certify the above information is accurate and complete.

 Derrick Braaten

FRANKLIN COUNTY ORDINANCE 04-2022

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

***Declaring an Emergency and Establishing a Moratorium On Specific Properties
Included in the 2018-2038 Franklin County Comprehensive Plan for the City of Pasco
UGA Expansion.***

IN THE MATTER OF COUNTY PLANNING – COMPREHENSIVE PLANNING , *the following ordinance is hereby adopted but will not be codified.*

WHEREAS, Franklin County is a “fully planning” county within the context of the State of Washington Growth Management Act (GMA) and a “periodic” review and update of the comprehensive plan is required at regular intervals as established by the state legislature pursuant to RCW 36.70A.130; and

WHEREAS, Franklin County adopted a Growth Management Comprehensive Plan on February 27, 2008 via Resolution 2008-088 and Resolution 2008-089 and subsequently amended via Resolution 2012-310, Resolution 2012-311 and Resolution 2012-312; and

WHEREAS, Franklin County began process to perform a periodic update on November 1, 2017 with the passage of Resolution 2017-324 which included a Public Participation Plan, and upon passage of Resolution 2018-197 the County documented substantial progress toward the update process; and

WHEREAS, the Planning Commission held numerous public workshops regarding the Comprehensive Plan Update and each workshop was advertised and open to the public and public input opportunities were given at each meeting; there were two workshops in 2017, seven workshops in 2018, and two additional workshops in 2020 and the various meetings and workshops addressed a wide range of issues addressed in the Plan; and

WHEREAS, updates and amendments to the Comprehensive Plan are subject to review under the State Environmental Policy Act (SEPA) and a SEPA Determination of Nonsignificance (DNS) was issued on January 14, 2021 and a notice was published of the determination; the SEPA Comment period ended on January 28, 2021; and

WHEREAS, the draft 2018-2038 Comprehensive Plan document was submitted to the State of Washington’s Department of Commerce for a required 60-day review in compliance with RCW 36.70A.106. The notice and documentation was accepted by the State on January 15, 2021. The 60-day review was complete on February 16, 2021; and

WHEREAS, the Benton-Franklin Council of Governments, including their Technical Advisory Committee (TAC) and the Board of the Council of Governments, reviewed and certified the Plan’s Transportation Element for conformity with the applicable sections of the GMA and consistency with the Regional Transportation Plan (RTP); and

WHEREAS, this board found the 2018-2038 comprehensive plan to be consistent with County Resolution 2019-312 Countywide Planning Policies; and

FRANKLIN COUNTY ORDINANCE 04-2022

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

WHEREAS, on June 1, 2021, the Franklin County Board of County Commissioners approved Ordinance 07-2021, adopting the 2018-2038 Franklin County Comprehensive Plan; and

WHEREAS, the Periodic Update of the Comprehensive Plan as approved with Ordinance 07-2021 included the integration of approved amendments to Urban Growth Areas (UGAs), including an approximately 3,407 acre expansion of the City of Pasco UGA; and

WHEREAS, on August 5, 2021, Futurewise, a non-profit land-use policy organization, submitted a timely Petition for Review of the Franklin County 2018-2038 Comprehensive Plan, as adopted through Ordinance 07-2021, to the Eastern Washington Growth Management Hearings Board (EWGMHB); and

WHEREAS, said Petition for Review asked the EWGMHB to review the Franklin County 2018-2038 Comprehensive Plan, adopted through Ordinance 07-2021, regarding the following:

- a. Did Franklin County's adoption of Ordinance 07-2021 which de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning Policies I.1.H or II.12 because the farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-term significance?
- b. Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not need to accommodate the planned growth and not properly located?
- c. Did Franklin County's State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and SEPA Environmental Checklist for the adoption of Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11-310, WAC 197-11-315, WAC 197-11-330, WAC 197-11-335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or consider the environmental impacts of the ordinance?; and

FRANKLIN COUNTY ORDINANCE 04-2022

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

WHEREAS, said Petition for Review was accepted by the EWGMHB, and assigned Case #21-1-0005; and

WHEREAS, on December 12, 2021, a Hearing on the Merits was held, via Zoom, before the EWGMHB; and

WHEREAS, following the December 12, 2021 Hearing on the Merits for Case #21-1-0005, the EWGMHB issued a Final Decision and Order on January 28, 2022; and

WHEREAS, said Final Decision and Order stated the following, in summary:

- a. That "Franklin Crops" are Agricultural Lands of Long-Term Commercial Significance (ALLTCS).
- b. That the GMA does not have a requirement that Franklin County had to consider proposed (but un-adopted) development regulations when developing a land-capacity analysis regarding proposed expansions of the UGA,
- c. That Futurewise's challenge to the County's failure to designate certain lands is outside of the scope of its Petition for Review.
- d. That the FEIS and other SEPA documents included in the record failed to disclose the environmental impacts of the de-designation of the "Franklin Crops" ALLTCS and any environmental impacts.
- e. That the Franklin County 2018-2038 Comprehensive Plan Update, as adopted through Ordinance 07-2021, does not comply with the requirements of the GMA, and remanded it back to the County to take action to bring the Plan into compliance with the requirements of the GMA and SEPA, by August 1, 2022.

WHEREAS, Section 2 of Ordinance 07-2021 included a severability clause, stating:

If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance; and

WHEREAS, Franklin County appealed the EWGMHB Final Decision and Order for Case #21-1-0005 to the Washington State Court of Appeals; and

WHEREAS, pending the outcome of said appeal, changes to the 2018-2038 Franklin County Comprehensive Plan could be required; and

FRANKLIN COUNTY ORDINANCE 04-2022
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON

WHEREAS, an emergency exists necessitating the adoption of a moratorium concerning the processing of applications and other land-use actions that differ from those currently allowed under the 2008 Comprehensive Plan definition of lands possessing the underlying land-use designation of Agricultural, and also possessing an Agricultural Production 20 (AP-20) zoning designation, as described in **Appendix A**, in order to ensure irreversible new development, or other actions, that may be determined to be in violation of the Growth Management Act and/or the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order for Case # 21-1-0005, are prevented from occurring on the lands under question; and

WHEREAS, a moratorium enacted under RCW 36.70A.390 is one way county governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, pursuant to RCW 36.70A.390 the legislature of the State of Washington authorized the enactment of a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing as long as a public hearing is held within at least 60 days of its enactment; and

WHEREAS, RCW 36.70A.390 provides that, "A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least 60 days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal"; and

WHEREAS, pursuant to WAC 197-11-880, and as adopted by reference by Franklin County through FCC 18.04.320, the adoption of this moratorium ordinance is exempt from the requirements of a threshold determination under the State Environmental Policy Act (SEPA) and future permanent zoning regulations will be reviewed in accordance with SEPA Rules; and

FRANKLIN COUNTY ORDINANCE 04-2022
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON

WHEREAS, the Franklin County Board of County Commissioners concludes that it has the authority to establish an emergency moratorium and that the County must adopt an emergency moratorium on the processing of applications and other land-use permits and actions that differ from those currently allowed under the 2008 Comprehensive Plan definition of lands possessing the underlying land-use designation of Agricultural, and also possessing an Agricultural Production 20 (AP-20) zoning designation, as described in **Appendix A**, in order to ensure irreversible new development, or other actions, that may be determined to be in violation of the Growth Management Act and/or the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order for Case # 21-1-0005, and to preserve the status quo on those properties designated as Franklin Soils, as shown in Map 8 of the 2008 Comprehensive Plan, and possessing a 2008 Comprehensive Plan land-use designation of Agricultural, and an Agricultural Production 20 (AP-20) zoning designation, as described in **Appendix A**, while the final ruling on the appeal of the EWGMHB January 28, 2022 Final Decision and Order for Case # 21-1-0005 is pending; and

WHEREAS, said moratorium is established only on those unincorporated lands under the jurisdictional authority of Franklin County, Washington.

WHEREAS, the Franklin County Board of County Commissioners adopts the foregoing recitals as its findings of facts justifying the adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED as follows:

SECTION 1: **ADOPTION OF FINDINGS:** the foregoing recitals are hereby adopted as findings of facts justifying the adoption of this ordinance.

SECTION 2: **MORATORIUM ESTABLISHED:** A moratorium is hereby established regarding the implementation of the land use designations proposed by Franklin County through Ordinance 07-2021, and related to the properties more specifically described and discussed in the attached **Appendix A** and depicted on **Appendix B**, which are specifically incorporated herein by this reference, pending a final outcome regarding Franklin County's appeal of the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order.

SECTION 3: **MORATORIUM INTENT:** Said moratorium is established to prevent irreversible harm caused by new development, or other actions, that may be determined to be in violation of the Washington State Growth Management Act and/or the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order in Case No. 21-1-0005, pending the final outcome and disposition of the Franklin County appeal.

FRANKLIN COUNTY ORDINANCE 04-2022

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

SECTION 4: MORATORIUM EFFECT: For those unincorporated properties deemed to be offensive by the Eastern Washington Growth Management Hearings Board January 28, 2022 Final Decision and Order for Case # 21-1-0005, said properties shall be treated as rural lands in relation to applications for development or other land-use actions, maintaining all rights and limitations, as defined under the 2008 adopted Agricultural comprehensive plan land-use designation, and currently adopted Agricultural Production 20 (AP-20) zoning, for said properties. This is further described in Appendix A and Appendix B, of this ordinance.

SECTION 5: EFFECTIVE DATE: This moratorium shall be in effect upon approval by the Franklin County Board of Commissioners, and until such time as: (i) Franklin County has exercised its full rights to challenge the January 28, 2022 Eastern Washington Growth Management Hearings Board Final Decision and Order, regarding Case #21-1-0005; (ii) Franklin County determines it no longer desires to pursue any such appeals; or (iii) a final determination on the matter is issued by the appropriate final court of law having jurisdiction over the matters appealed. If a final ruling regarding the appeal is not obtained within six (6) months of adoption of this moratorium, a public hearing will be held to determine if additional extensions of the moratorium will be necessary in order to maintain the status quo, pending a final outcome of the appeal.

SECTION 6: PUBLIC HEARING REQUIRED: As required by RCW 36.70A.390, within 60 days of passage of this ordinance, the Board of County Commissioners will hold a public hearing on this moratorium. If a final ruling regarding the appeal is not obtained within six (6) months of adoption of this moratorium, a second public hearing will be held to determine if additional extensions of the moratorium will be necessary in order to maintain the status quo, pending a final outcome of the appeal.

SECTION 7: WORKPLAN: During the moratorium period, County staff will continue to study the issues presented by the Eastern Washington Growth Management Hearings Board's January 28, 2022 Final Decision and Order for Case # 21-1-0005, and how to implement said changes, if necessary. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations and, if unsuccessful in its appeal of said decision, perform SEPA review of the draft ordinance, and conduct a public review process for the amendments, which includes public hearings before the County's Planning Commission and Board of County Commissioners.

SECTION 8: DECLARATION OF EMERGENCY: An emergency exists necessitating that this ordinance take effect immediately, and this moratorium ordinance must be imposed as an emergency measure to prevent irreversible harm caused by new development or other actions that may be determined to be in violation of the Washington State Growth Management Act and/or the Eastern Washington Growth

FRANKLIN COUNTY ORDINANCE 04-2022

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

Management Hearings Board January 28, 2022 Final Decision and Order for Case # 21-1-0005, pending the final outcome and disposition of the Franklin County appeal.

SECTION 9: SEVERABILITY: If any section, sentence, clause or phrase of this moratorium ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

APPROVED THIS 9th DAY OF AUG, 2022.

**BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON**

ABSTAINED

Chair

Chair Pro-Tem

Member

Attest:

Kevin Melham
Clerk of the Board

Approved as to Form:

[Signature]

**FRANKLIN COUNTY ORDINANCE 04-2022
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON**

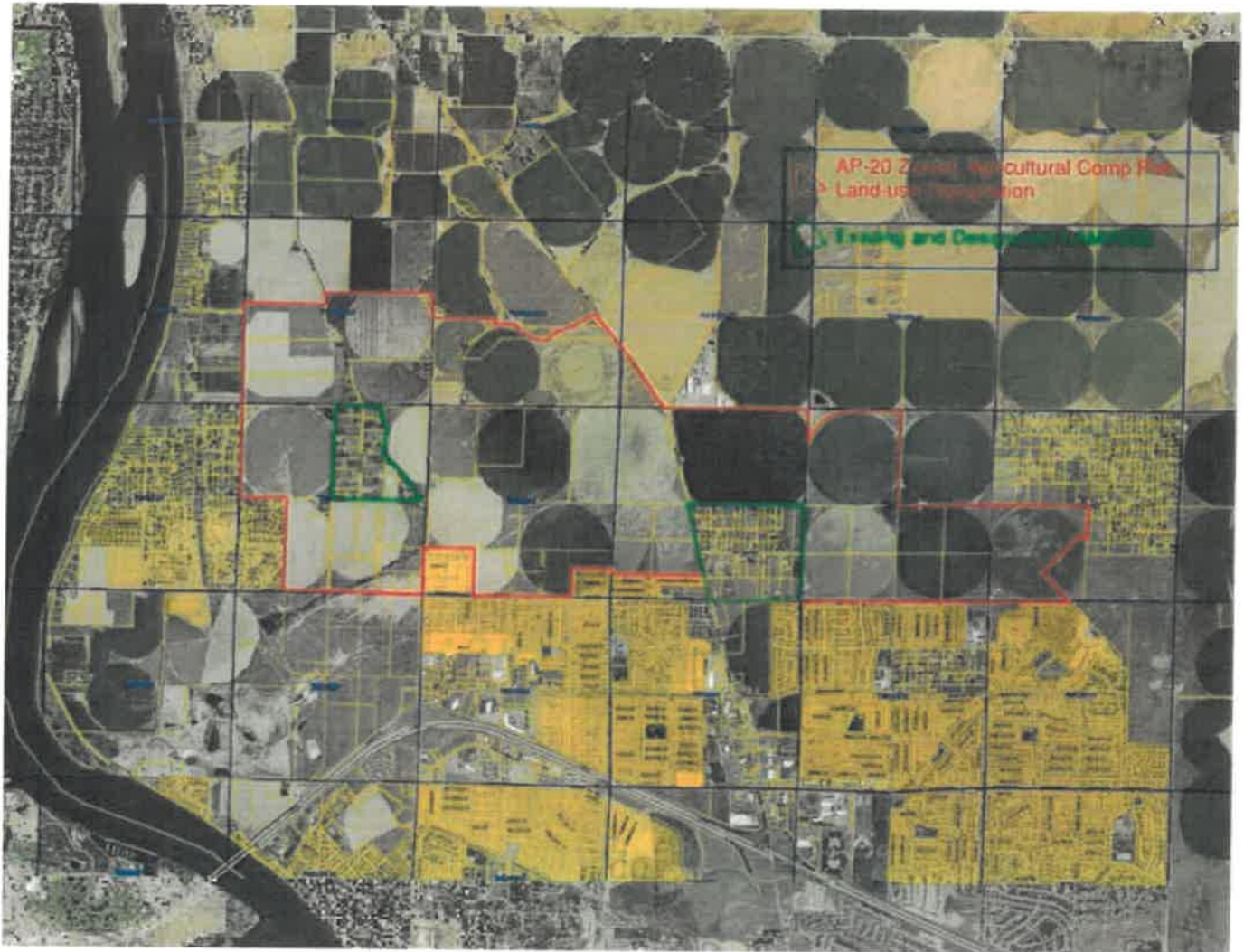
APPENDIX A

To ensure compliance with the ruling articulated in the January 28, 2022 Eastern Washington Growth Management Hearings Board Final Decision and Order regarding Case #21-1-0005, a moratorium is hereby established, regarding the land use designations and the treatment of entitlement permitting for the following properties in unincorporated Franklin County, which were included in the 2018-2038 City of Pasco UGA expansion, as proposed in the Franklin County 2018-2038 Comprehensive Plan, and adopted through Ordinance 07-2021:

1. The properties designated as Franklin Crops on Map 8 of the 2008 Franklin County Comprehensive Plan that were included in the 2018-2038 Franklin County Comprehensive Plan's 3,407 acre expansion of the City of Pasco Urban Growth Area (UGA) shall be treated as rural lands with regard to development and/or land-use applications, while under moratorium, maintaining all rights and limitations, as defined under the 2008 Agricultural comprehensive plan land-use designation, and currently adopted Agricultural Production 20 (AP-20) zoning, for said properties.
2. Specifically, these properties are located in in unincorporated Franklin County, Washington, and possess a zoning designation of Agricultural Production 20 (AP-20), and a 2008 Comprehensive Plan underlying land-use designation of Agricultural, accounting for approximately 2,798 acres of the approximately 3,407 acre expansion of the Pasco Urban Growth Area.
3. These properties are located within the unincorporated portions of Franklin County, Washington, generally east of the north/south alignment of Dent Road, west of the alignment of Road 44, approximately 2,000 feet south of Selph Landing Road (between the Dent Road and Columbia River Road/Road 68), south of Clark Road (between Columbia River Road/Road 68 and the north alignment of Road 52), 2,700' south of Clark Road (between Road 52 and Road 44), and north of Burns Road, and as shown on Appendix B.

FRANKLIN COUNTY ORDINANCE 04-2022
BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
FRANKLIN COUNTY, WASHINGTON

APPENDIX B



FUTUREWISE PETITION FOR REVIEW

**An appeal to the EWGMHB regarding certain elements of Ordinance 07-2021,
adopting the 2018-2038 Franklin County Comprehensive Plan Update**

1
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3
4
5
6 **BEFORE THE**
7 **GROWTH MANAGEMENT HEARINGS BOARD**
8 **EASTERN WASHINGTON REGION**
9 **STATE OF WASHINGTON**

10 **FUTUREWISE,**

11 **Petitioner,**

12 **v.**

13 **FRANKLIN COUNTY,**

14 **Respondent.**

Case No.

PETITION FOR REVIEW

15 **I. PETITIONER**

16 1. The mailing address, telephone number, and email of the Petitioner is:

17 Futurewise
18 816 Second Avenue, Suite 200
19 Seattle, WA 98104
20 206-343-0681 Ext. 102
21 tim@futurewise.org

22 2. For purposes of this action all correspondence and pleadings shall be served upon
23 the following attorney for the Petitioner:

24 Tim Trohimovich, Director Planning & Law
25 Futurewise
26 816 Second Avenue, Suite 200
Seattle, Washington 98104
Phone: 206-343-0681 ext. 102/Mobile 206-853-6077
Email: tim@futurewise.org

II. ACTION FOR WHICH REVIEW IS SOUGHT

1. On June 1, 2021, the Franklin County Board of County Commissioners adopted Franklin County Ordinance 07-2021 entitled "Adoption of the 2018-2038 Franklin County Comprehensive Plan." A true and correct copy of Ordinance 07-2021 and its exhibit is attached to or enclosed with this Petition for Review in Tab "Ord. 07-2021."

2. On June 10, 2021, the Franklin County Graphic published a notice of adoption of Franklin County Ordinance 07-2021.

III. ISSUES PRESENTED FOR REVIEW

1. Did Franklin County's adoption of Ordinance 07-2021 which de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning Policies I.1.H or II.12 because the farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-term significance?
2. Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not need to accommodate the planned growth and not properly located?

1 3. Did Franklin County's State Environmental Policy Act (SEPA) Determination of
2 Nonsignificance (DNS) and SEPA Environmental Checklist for the adoption of Ordinance
3 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW
4 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100,
5 WAC 197-11-158, WAC 197-11-310, WAC 197-11-315, WAC 197-11-330, WAC 197-11-
6 335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or
7 consider the environmental impacts of the ordinance?
8

9 IV. STANDING

10 1. Petitioner Futurewise is a Washington non-profit corporation that works
11 throughout Washington State to support land-use policies that encourage healthy, equitable, and
12 opportunity-rich communities, and that protect our most valuable farmlands, forests and water
13 resources. The organization has members that are landowners and residents of Franklin County
14 and who are aggrieved and adversely affected by the County's adoption of Ordinance 07-2021
15 and the matters at issue in this petition.
16

17 2. Futurewise staff and members participated in the public process by commenting
18 to the County concerning all matters at issue in this petition. Futurewise therefore asserts that, in
19 addition to other forms of standing, it has participation standing to challenge the actions at issue
20 pursuant to RCW 36.70A.280.
21

22 V. ESTIMATED LENGTH OF HEARING

23 1. The Petitioner estimates that the Hearing on the Merits for this matter will last
24 approximately four hours.
25
26

1 **VI. RELIEF SOUGHT**

2 1. Futurewise respectfully requests the Board to find that the challenged provisions of
3 Ordinance 07-2021 fail to comply with the goals and requirements of the Growth Management
4 Act and the requirements of the State Environmental Policy Act and requests that the Board remand
5 the matter back to Franklin County for action consistent with the Growth Management Act and the
6 State Environmental Policy Act.
7

8 2. In addition, Futurewise requests that the Board make a determination of invalidity
9 for the agricultural land dedesignations and the Pasco Urban Growth Area expansions adopted by
10 Ordinance 07-2021 because the challenged provisions substantially interfere with the fulfillment
11 of the goals of the Growth Management Act.
12

13 3. The Petitioner, Futurewise, has read this Petition for Review and believes the
14 contents to be true.

15 DATED this 5th day of August 2021, and respectfully submitted,

16 

17
18 Tim Trohimovich, WSBA No. 22367
19 Attorney for Futurewise
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CERTIFICATE OF SERVICE

I, Tim Trohimovich, declare under penalty of perjury and the laws of the State of Washington that, on August 5, 2021, I caused the following documents to be served on the persons listed below in the manner shown: Futurewise Petition For Review and Ordinance 07-2021 and its exhibit true and correct copies of which are attached to or enclosed with this certificate of service.

Growth Management Hearings Board
PO Box 40903
Olympia, WA 98504-0953
Tel. 360-664-9170

The Honorable Matt Beaton
Franklin County Auditor
1016 N. 4th Ave
Pasco, WA 99301

Original and three copies

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email: eastern@eluhwa.gov

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email: Auditor@co.franklin.wa.us

The Honorable Shawn Sant, Prosecutor
1016 N. 4th Ave. 3rd Floor, Rooms 328 & 317
Pasco, WA 99301

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input type="checkbox"/>	By Email:

<input type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input type="checkbox"/>	By Email:

Signed and certified on this 5th day of August 2021,


Tim Trohimovich, WSBA No. 22367
Attorney for Futurewise

EWGMHB FINAL DECISION AND ORDER (FDO)

EWGMHB Case File #21-1-0005

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

FUTUREWISE,

Petitioner,

CASE No. 21-1-0005

v.

FINAL DECISION AND ORDER

FRANKLIN COUNTY,

Respondent,

and

CITY OF PASCO,

and

PORT OF PASCO

Intervenor-
Respondents.

SYNOPSIS

Futurewise (Petitioner) challenged Franklin County's (County) adoption of Ordinance 07-2021, which it asserts de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area (UGA). The Growth Management Hearings Board (Board) concluded: (1) that the County de-designated agricultural lands of long-term commercial significance (ALLTCS), particularly areas identified as Franklin Soils, (2) that Futurewise's challenge to the County's failure to designate certain lands is outside the scope of its Petition for Review, (3) that the County

1 *was not required to consider potential and unapproved changes to the City of Pasco's (City)*
2 *zoning capacity when undertaking its land capacity analysis; and (4) that the County's State*
3 *Environmental Policy Act (SEPA) documents failed to consider the impacts of de-*
4 *designation of the Franklin Soils ALLTCS.*

5 6 I. INTRODUCTION

7 On August 5, 2021, Petitioner Futurewise challenged Franklin County's adoption of
8 Ordinance 07-2021.¹ The Ordinance, adopted on June 1, 2021, adopted the 2018-2038
9 Franklin County Comprehensive Plan and included an increase to the City of Pasco's Urban
10 Growth Area (UGA) of approximately 3,407 acres.²

11 On September 14, 2021, the Board issued an Order Granting Intervention by the City
12 of Pasco.³ This was followed by an order on October 25, 2021 granting intervention by the
13 Port of Pasco.⁴

14 The Hearing on the Merits was conducted via Zoom on December 12, 2021.

15 Procedural matters relevant to the case are detailed in Appendix A. Legal issues
16 relevant to the case are restated in Appendix B.

17 18 II. BOARD JURISDICTION

19 No party raised any objection to jurisdiction, except as provided below. The Board
20 finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board
21 finds the Petitioner has standing to appear before the Board pursuant to RCW
22 36.70A.280(2) (b)).

23 Prior to addressing the substance of the issues, the Board shall address Franklin
24 County's argument regarding the Petitioner's contention that the County failed to designate
25 Agricultural Lands of Long-Term Commercial Significance (ALLTCS) in the 2018 plan based
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30 ¹ Petition for Review, IR 2.

31 ² *Id.* at 4.

32 ³ Order on Intervention (City of Pasco) (Sept. 14, 2021).

⁴ Order on Intervention (Port of Pasco) (Oct. 25, 2021).

1 on the criteria for designating such lands in violation of the Growth Management Act (GMA).⁵
2 As argued by the County, Issue 1 in the Futurewise Petition for Review is limited to the
3 contention that the County violated the GMA because Ordinance No. 07-2021 "de-
4 designated" certain ALLTCS in the 2018 plan and these lands "still meet[]" the criteria for
5 ALLTCS designation.⁶

6 This argument cannot be considered by the Board because it is beyond the scope of
7 the issues presented in the Petition for Review and Prehearing Order. Petitions for review to
8 the Board must include a detailed statement of issues presented for resolution by the Board.
9 This Board is limited in its jurisdiction and does not issue advisory opinions "on issues not
10 presented to the board in the petition for review's statement of the issues, as modified by any
11 prehearing order."⁷

12 Issue 1 is based on the contention that Franklin County's adoption of Ordinance No.
13 07-2021 "de-designated agricultural lands of long-term commercial significance and added
14 the land to the Pasco Urban Growth Area" and that these lands "still meet[]" the criteria for
15 ALLTCS designation. Futurewise's argument in Issue 1B of its brief regarding the failure to
16 designate goes beyond the scope of issues presented in this appeal and will not be
17 addressed by this Board.

18 III. STANDARD OF REVIEW

19 Comprehensive plans and development regulations, and amendments thereto, are
20 presumed valid upon adoption.⁸ This presumption creates a high threshold for challengers
21 as the burden is on the Petitioner to demonstrate that any action taken by the County is not

22 ⁵ Futurewise Prehearing Brief at 2-17.

23 ⁶ Petition for Review at 2 ("Did Franklin County's adoption of Ordinance No. 07-2021 which de-designated
24 agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area
25 violate [GMA provisions], or Franklin County County-Wide Planning Policies I.1.H or II.12 because the
26 farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-
27 term significance?"); Prehearing Order at 1-2 (same).

28 ⁷ RCW 36.70A.290(1). See also WAC 242-02-210 (stating a petition for review "shall substantially contain . . .
29 (2)(c) A detailed and concise statement of the issues presented for resolution by the board."); WAC 242-03-
30 810(2); see also *Hazen, et al. v Yakima County*, EWGMHB No. 08-1-0008c, Partial Compliance Order (May
31 20, 2011), at 6.

32 ⁸ RCW 36.70A.320(1).

1 in compliance with the GMA.⁹ The Board is charged with adjudicating GMA compliance
2 and, when necessary, invalidating noncompliant plans and development regulations.¹⁰

3 Here, the scope of the Board's review is limited to determining whether the County
4 has achieved compliance with the GMA only with respect to those issues presented in a
5 timely petition for review.¹¹ The Board is directed to find compliance unless it determines
6 that the challenged action is clearly erroneous in view of the entire record before the Board
7 and considering the goals and requirements of the GMA.¹²

10 IV. ANALYSIS AND DISCUSSION

12 Issue No. 1.

13 Did Franklin County's adoption of Ordinance 07-2021 which de-designated
14 agricultural lands of long-term commercial significance and added the land to
15 the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW
16 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060,
17 RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW
18 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC
19 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning
20 Policies I.1.H or II.12 because the farmland still meets the Growth Management
21 Act and Franklin County criteria for agricultural lands of long-term significance?

22 A. De-designation of Franklin Soils

23 Parties' Arguments

24 Petitioner argues that the County de-designated ALLTCS designated in the County's
25 2008 comprehensive plan, specifically areas referred to as "Franklin Crops." Petitioner
26 argues that the County's 2008 comprehensive plan included "Franklin Crops" as ALLTCS
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29 ⁹ RCW 36.70A.320(2).

30 ¹⁰ RCW 36.70A.280, RCW 36.70A.302.

31 ¹¹ RCW 36.70A.290(1).

32 ¹² RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

1 and that the updated plan, as illustrated on Map 17, removed that designation.¹³ Petitioner
2 further argues that "the record does not disclose why these lands are not designated
3 especially given that areas designated as "Franklin Crops" have land capability soil
4 classifications ... [to] ... qualify as agricultural lands of long-term commercial significance
5 under both the 2008 and 2018-2038 comprehensive plans."¹⁴

6 The County¹⁵ responds that "Franklin Crops" were not de-designated because these
7 lands were never designated ALLTCS:

9 The County removed the words "Franklin Crops" from the Agricultural
10 Resource Lands Map (Map 17) in the 2018 plan update, as the term lacked
11 definition under the 2008 Plan; other than on Map 8, there is no mention of
12 "Franklin Crops" in the entire 2008 plan. But not including the term "Franklin
13 Crops" in the 2018 Plan (e.g. Map 17) did not de-designate ALLTCS
because these lands were never designated ALLTCS.¹⁶

14 The County further argues, "The 2008 plan does not state that Franklin Crops are
15 ALLTCS, and Futurewise's only argument in support of the contention that Franklin Crops
16 were designated as ALLTCS is that areas that contain Franklin Crops have land capability
17 soil classifications of 1, 2, and 3."¹⁷

18 Petitioner replies that "Franklin Crops" were both included on Map 8 designating
19 ALLTCS in the 2008 plan and met soil classification for ALLTCS.¹⁸ Petitioner also argues,
20 "The 2008 comprehensive plan is not ambiguous. It provides that ALLTCS consist of certain
21 soils and areas of these soils are shown and mapped on Map 8."¹⁹

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26 ¹³ Futurewise Prehearing Brief at 4-5.

27 ¹⁴ *Id.* at 5.

28 ¹⁵ The County's brief was jointly submitted by the County and the Intervenor-Respondents City of Pasco and
29 Port of Pasco. For simplicity's sake, this brief and the argument presented therein will be referred to solely as
"the County's." These arguments were presented by attorneys for all three parties at the hearing on the
merits.

30 ¹⁶ County Prehearing Brief at 12.

31 ¹⁷ *Id.*

32 ¹⁸ Futurewise Reply Brief at 2.

¹⁹ *Id.* at 4.

1 **Board Discussion**

2 As discussed above, the Parties do not disagree that "Franklin Crops" were identified
3 on Map 8 in the 2008 comprehensive plan, that these areas have land capability soil
4 classifications of 1, 2, and 3, and that the 2018-2038 comprehensive plan omitted these
5 areas from Map 17, which identifies areas designated as ALLTCS. There is also no dispute
6 that there was no de-designation process followed for these areas, as the County's
7 contention is that they were never designated ALLTCS. The only question for the Board to
8 consider is whether "Franklin Crops" were designated ALLTCS in the 2008 plan.
9

10 One of the primary goals of the GMA is the maintenance of agricultural lands and the
11 agricultural industry. RCW 36.70A.020(8) is the natural resource industrial goal:

12 Maintain and enhance natural resource-based industries, including ...
13 agricultural... industries. Encourage the conservation of productive ... agricultural
14 lands, and discourage incompatible uses.

15 The Supreme Court stated in *City of Redmond v. Central Puget Sound Growth Mgmt.*
16 *Hearings Bd:*

17 Natural resource lands are protected not for the sake of their ecological role but
18 to ensure the viability of the resource-based industries that depend on them.
19 Allowing conversion of resource lands to other uses by allowing incompatible
20 uses nearby impairs the viability of the resource industry.²⁰

21 The definition of agricultural land is found at RCW 36.70A.030(2):

22 "Agricultural land" means land primarily devoted to the commercial production of
23 horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products
24 or of berries, grain, hay, straw, turf, seed, Christmas trees ... finfish in upland
25 hatcheries, or livestock, and that has long-term commercial significance for
26 agricultural production.

27 "Long-term commercial significance" is then defined by RCW 36.70A.030(10):
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31 ²⁰ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091
32 (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 "Long-term commercial significance" includes the growing capacity, productivity,
2 and soil composition of the land for long-term commercial production, in
3 consideration with the land's proximity to population areas, and the possibility of
4 more intense uses of the land.

5 Once agricultural lands have been designated under RCW 36.70A.170, RCW
6 36.70A.060(1) directed counties to adopt development regulations to "assure the
7 conservation of agricultural lands." The GMA fails to delineate how a county should
8 determine that designated agriculture lands should be de-designated. The Board in *Kittitas*
9 *County Conservation v. Kittitas County* recognized this and indicated that the criteria for
10 designation of ALLTCS should be utilized for de-designation:

11 While nothing in the GMA requires agricultural lands, once designated, to remain
12 designated as such forever, and nothing in the GMA specifies precisely how a
13 county may determine that designated agricultural lands no longer should be
14 designated; logically, the only way to make such a determination consistent with
15 the GMA is to apply the same statutory criteria to a proposed de-designation of
16 agricultural lands as for a proposal to designate such lands. Any other approach
17 defeats the GMA's requirements to designate and conserve agricultural lands of
18 long-term commercial significance and is contrary to the GMA's goal of
conserving agricultural land in Washington.²¹

19 The Court of Appeals agreed identifying the "three prongs that must be satisfied for land
20 to be de-designated as ALLTCS,"²² citing the Supreme Court in *Lewis County v. Western*
21 *Wash. Growth Mgmt. Hearings Board*.²³ Those "prongs," as restated by the Court of
22 Appeals, are:

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24 1. A determination of whether the land is characterized by "urban growth;"
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28 ²¹ *Kittitas County Conservation v Kittitas County*, EWGMHB No. 07-1-0004c, Final Decision and Order (Aug.
29 20, 2007), at 71.

30 ²² A decision to de-designate ALLTCS requires consideration of the same criteria applicable to designation:
31 "We evaluate whether a de-designation of agricultural land was clearly erroneous by determining whether the
32 property in question continues to meet the GMA definition of 'agricultural land' as defined in *Lewis County*."
Clark County v. W. Wash. Growth Mgmt. Hearings Bd., 161 Wn. App. 204, 234, 254 P.3d 862 (2011), vacated
in part on other grounds, 177 Wash.2d 136, 298 P.3d 704 (2013).

²³ 157 Wn.2d 488, 139 P.3d 1096 (2006).

- 1 2. A determination of the commercial productivity of the land or the land's capability of
2 being commercially productive; and
3 3. A determination of the "long-term commercial significance" for agricultural production
4 of the parcels.

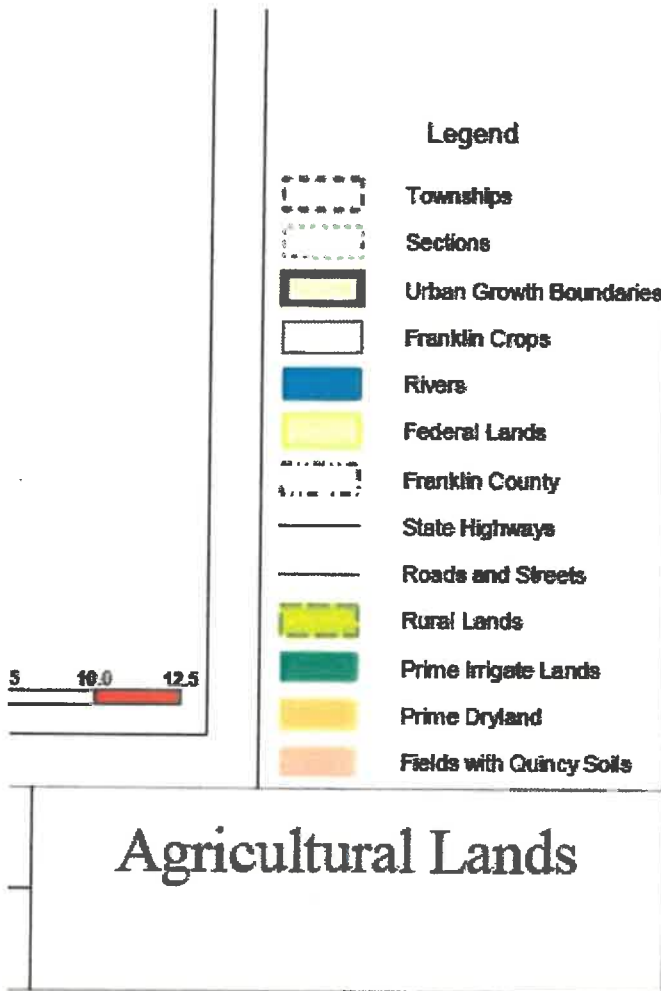
5 Based upon the Board's review of the record, it is clear that the County's 2008
6 comprehensive plan designated the "Franklin Crops" as ALLTCS. The 2008 comprehensive
7 plan states:
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9 In Franklin County agricultural lands of long-term commercial significance are
10 soil classification 1 – 3 according to the Land Capability Classification of the
11 USDA Soil Conservation service. Further, the County's Prime, Unique and of
12 State and Local Significance soils as **generally shown and mapped by the**
13 **Franklin Conservation District on Map 8, are also described as agricultural**
14 **lands of long-term commercial significance in Franklin County.**²⁴

15 There is no dispute that "Franklin Crops" are included on Map 8. As illustrated below,
16 a review of Map 8 includes the "Franklin Crops," outlined in a sold green line, the "Prime
17 Irrigate Lands," shaded green, and the "Fields with Quincy Soils," shaded pink.²⁵
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31 ²⁴ IR 5 at 93.

32 ²⁵ IR 5 at. 96.



The "Franklin Crops" also include prime farmland and farmland of statewide importance.²⁶

Because "Franklin Crops" are included on the County's Map 8 of ALLTCS and have land capability soil classifications of 1-3 and qualify as agricultural lands of long-term commercial significance under the 2008 comprehensive plans,²⁷ the Board finds that the 2008 comprehensive plan, including Map 8, was not ambiguous in its inclusion of the "Franklin Crops" as ALLTCS. The plain language of the 2008 comprehensive plan supports

²⁶ IR 63.14 at 1-22.

²⁷ IR 63.14.

1 this finding, and the Board cannot look beyond the language of the comprehensive plan
2 itself to decide otherwise.²⁸

3 The 2018-2038 comprehensive plan deleted the mapped "Franklin Crops" from the
4 ALLTCS map, essentially de-designating these ALLTCS.²⁹ The Map 17: Designated
5 Agricultural Resource Lands from the 2018-2038 comprehensive plan removes the "Franklin
6 Crops" within the expanded UGA as ALLTCS.³⁰

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8 The record does not disclose why this occurred and does not apply the de-
9 designation criteria to effectuate de-designation of these areas. The Board concludes that
10 the 2018-2038 comprehensive plan de-designated the "Franklin Crops" ALLTCS *de facto*.
11 The County's action is clearly erroneous.

12 The Board finds that the record indicates that the 2018-2038 comprehensive plan
13 de-designated the "Franklin Crops" ALLTCS identified on Map 8 of the 2008 comprehensive
14 plan without applying de-designation criteria.

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16 **B. Failure to Designate**

17 As set forth above, this argument must be rejected because it is beyond the scope of
18 issues presented in the Petition for Review and Prehearing Order.

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31 ²⁸ *Washington Shell Fish, Inc. v. Pierce Cty.*, 132 Wn. App. 239, 253-54, 131 P.3d 326 (2006).

32 ²⁹ IR 1 at 62.

³⁰ *Id.* at 60-62.

Issue No. 2.

Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not needed to accommodate the planned growth and not properly located?

Parties' Arguments

Petitioner argues that Franklin County's adoption of Ordinance No. 07-2021, which expanded the City of Pasco's UGA violated the GMA because the expansion is not needed to accommodate planned urban growth.³¹ Specifically, Petitioner argues:

During the adoption of the UGA expansion, the City of Pasco was considering development regulation amendments that have the potential to substantially increase the city's zoning capacity. These changes could substantially increase the residential capacity of the City because much of the City of Pasco is zoned for low-density single-family dwellings. The proposals included allowing duplexes, triplexes, and courtyard apartments in 84 percent of the residentially zoned land in the city. The proposals also include permitting lot size averaging which allow a homebuilder to subdivide lots using an average rather than a minimum. This proposal has the potential to increase lot yields in existing residential zones.³²

Petitioner further argues that the "City of Pasco Land Capacity Analysis did not include any of this increased capacity."³³ Petitioner supports this claim solely by reference to an October 15, 2020 City staff report.³⁴ This staff report indicated that the City—along with 51 other communities—received funding from the Washington State Department of Commerce to address housing affordability and supply.³⁵

³¹ Petition for Review at 2.

³² Futurewise Prehearing Brief at 18.

³³ *Id.* at 19.

³⁴ *Id.* at 18-19.

³⁵ *Id.* at 18, citing IR 63.1 at 1.

1 The County asserts, "there is no GMA violation simply because the City considered
2 but did not adopt new development regulations that would increase residential density.
3 These regulations were never adopted and the City otherwise properly developed its UGA
4 based on a valid land capacity analysis."³⁶

5 Petitioner replies that the proposed development regulations "could be [adopted] and
6 ... would substantially reduce the need to expand the UGA."³⁷

8 Board Discussion

9 The determination of whether there is sufficient land to accommodate development in
10 an UGA is done through a land capacity analysis. The GMA, RCW 36.70A.115(1), requires
11 this, stating:

12 Counties ... shall ensure that, taken collectively, adoption of and amendments
13 to their comprehensive plans and/or development regulations provide sufficient
14 capacity of land suitable for development within their jurisdictions to
15 accommodate their allocated housing and employment growth ... as adopted in
16 the applicable countywide planning policies and consistent with the twenty-year
17 population forecast from the office of financial management.

18 Guidance for accomplishing this land capacity analysis is provided within state
19 Department of Commerce regulations.³⁸

20 The Supreme Court in Thurston County emphasized the goal of reducing sprawl by
21 limiting the size of UGAs: "If the size of a UGA is not limited, rural sprawl could abound." To
22 that end, RCW 36.70A.215 establishes a buildable lands review and evaluation program for
23 designated counties. Where cities and counties find inconsistencies between their targets
24 for urban growth and what is happening on the ground, as disclosed in the BLR, they are
25 required to adopt "reasonable measures, **other than adjusting urban growth areas**, that
26 will be taken to comply with the requirements of [the GMA]."³⁹ Each county, in consultation
27 with its cities, must adopt County-wide Planning Policies (CPPs) setting up a five-year
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30 ³⁶ County Prehearing Brief at 20.

31 ³⁷ Futurewise Reply Brief at 7.

32 ³⁸ WAC 365-196-310, WAC 365-196-325.

³⁹ RCW 36.70A.215(1)(b) (emphasis supplied).

1 review cycle to monitor urban development – the Buildable Lands Review (BLR).⁴⁰ The BLR
2 compares county/city growth assumptions and targets with actual growth and development
3 trends.⁴¹

4 Critically, Franklin County is not among the counties to which RCW 36.70A.215
5 applies.⁴² While Petitioner's argument that a land capacity analysis must consider potential
6 and unadopted development regulations designed to increase density that may further the
7 goals of the GMA to limit sprawl might be well-taken elsewhere in the state,⁴³ the Board
8 must agree with the County. There is no GMA requirement to do so.
9

10 Petitioner has not pointed to any GMA provision or Department of Commerce
11 regulation to support its argument. We cannot find a GMA violation simply because the City
12 considered but did not adopt new development regulations that would increase residential
13 density. Again, the Board cannot find any GMA provision or past precedent that would
14 require such consideration.
15

16 The record here demonstrates that development regulations were never adopted.
17 The City need not develop a land capacity analysis considering hypothetical development
18 regulations.

19 **The Board finds** that Petitioner failed to carry its burden to show that the reliance on
20 the City of Pasco Land Capacity Analysis to support County's adoption of the Pasco UGA
21 violates any provision of the GMA.
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29 ⁴⁰ RCW 36.70A.215(1).

30 ⁴¹ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 351, 190 P.3d 38 (2008).

31 ⁴² RCW 36.70A.215(5) limits the application of this program to King, Pierce, Snohomish, Kitsap, Thurston and
Clark counties.

32 ⁴³ See, e.g., *Suquamish Tribe v. Kitsap County*, CPSGMHB No 07-3-0019c, Final Decision and Order on
Remand (August 31, 2011) at 11-14.

1 **Issue No. 3.**

2 Did Franklin County's State Environmental Policy Act (SEPA) Determination of
3 Nonsignificance (DNS) and SEP A Environmental Checklist for the adoption of
4 Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020,
5 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC
6 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11-310, WAC
7 197-11-315, WAC197-II-330, WAC 197-11-335, or WAC 197-11-340 because
8 the documents did not adequately analyze, disclose, or consider the
9 environmental impacts of the ordinance?

9 **Parties' Arguments**

10
11 Petitioner argues that the SEPA checklist for Ordinance 07-2021 lacked information
12 reasonably sufficient to evaluate Ordinance 07-2021's environmental impacts.⁴⁴
13 Specifically, Petitioner argues that the "answer to 69 of the SEPA checklist questions was
14 some variation of '[n]ot applicable, this is not a site specific proposal,' none, or no."⁴⁵
15 Petitioner asserts that "no answer was given for whether surface water withdrawals are
16 required."⁴⁶
17

18 Petitioner further argues that the County ignored the environmental impacts of the
19 urban uses allowed by UGA expansions and that the checklist relied upon the County's
20 Critical Areas Ordinance (CAO) without evaluating whether the CAO is adequate to address
21 the potential impacts.⁴⁷
22

23 Petitioner argues that the SEPA documents failed to acknowledge that much of the
24 land newly added to the Pasco UGA is presently used for irrigated and dryland cropland
25 and grazing land and then failed to discuss the impacts of the conversion of those areas into
26 urban development, including probable impacts of that development.⁴⁸ Petitioner also
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28

29 ⁴⁴ Futurewise Prehearing Brief at 20-21.

30 ⁴⁵ *Id.* at 21.

31 ⁴⁶ *Id.* at 22.

32 ⁴⁷ *Id.* at 23.

⁴⁸ *Id.* at 24-28.

1 argues that the County failed to disclose adverse impacts to the Tri-Cities Airport associated
2 with conversion of agricultural lands to urban development.⁴⁹

3 Lastly, Petitioner argues that the County did not adopt the City of Pasco
4 Comprehensive Plan: Non-project Final Environmental Impact Statement (Pasco FEIS) or
5 incorporate it by reference for Ordinance 07-202.⁵⁰

6 The County responds that it complied information regarding environmental impacts in
7 a number of SEPA documents, including the Pasco FEIS.⁵¹ The County asserts that
8 "specific issues such as water surface withdrawals, endangered species, environmental
9 health, discharge of emissions, and hazardous substances, or address probable impacts of
10 any future projects, ...were addressed in the review of the extensive Pasco FEIS and in
11 Part D of the SEPA Checklist" and that the County addressed probable impacts of future
12 project action the proposal would allow.⁵²

13 The County also argues that the Pasco FEIS was properly incorporated by
14 reference.⁵³

15 Petitioner replies that the Pasco FEIS does "not disclose that ALLTCS were being
16 de-designated or that existing farms will be converted to urban uses including over a square
17 mile of prime farmland," does "not disclose the impacts of urban residential development on
18 the Tri-Cities Airport," and does "not disclose the land use impacts, the increased surface
19 water withdrawals, or other impacts."⁵⁴ Petitioner also argues that the Pasco FEIS did not
20 disclose that land added to the UGA was ALLTCS and included prime farmland.⁵⁵

21 Lastly, Petitioner argues that the County did not properly incorporate the Pasco FEIS
22 by reference because it was not mentioned in the Determination of Nonsignificance (DNS),
23 the SEPA Checklist did not mention that it was incorporated by reference or include the
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28 ⁴⁹ *Id.* at 25.

29 ⁵⁰ *Id.* at 29.

30 ⁵¹ County Prehearing Brief at 35.

31 ⁵² *Id.*

32 ⁵³ *Id.* at 36-37.

⁵⁴ Futurewise Reply Brief at 8.

⁵⁵ *Id.* at 8-9.

1 location of Pasco FEIS or its description, and the public notice for the DNS did not mention
2 the Pasco FEIS.⁵⁶

3 **Board Discussion**

4 SEPA requires the disclosure and full consideration of environmental impacts in
5 governmental decision making.⁵⁷ Agency decisions must consider more than the narrow,
6 limited environmental impact of the immediate, pending action and cannot close their eyes
7 to the ultimate probably environmental consequences.⁵⁸ SEPA specifically required that
8 counties conduct a detailed and comprehensive review, rather than take a "lackadaisical
9 approach."⁵⁹

11 SEPA regulations specifically require that a jurisdiction "carefully consider the range
12 of probable impacts, including short-term and long-term effects" of a proposal.⁶⁰ Moreover,
13 the regulations specifically state:

14 A proposal's effects include direct and indirect impacts caused by a proposal.
15 Impacts include those effects resulting from growth caused by a proposal, as well
16 as the likelihood that the present proposal will serve as a precedent for future
17 actions. For example, adoption of a zoning ordinance will encourage or tend to
18 cause particular types of projects or extension of sewer lines would tend to
19 encourage development in previously unsewered areas.⁶¹

20 This requirement is well articulated by the Court of Appeals in *Spokane County v.*
21 *Eastern Wash. Growth Management Hearings Bd.*, which stated:

22 [F]or a non-project action, such as a comprehensive plan amendment or
23 rezone, the agency must address the probable impacts of any future project
24 action the proposal would allow. Wash. State Dep't of Ecology, *supra*, § 4.1, at

25 ⁵⁶ *Id.* at 10.

26 ⁵⁷ *Polygon Corporation v. Seattle*, 90 Wn.2d 59, 61, 578 P.2d 1309 (1978), citing *Norway Hill Preservation &*
27 *Protection Ass'n v. King County Council*, 87 Wn.2d 267, 552 P.2d 674 (1976). The Court of Appeals in *Moss v.*
28 *Bellingham* restated the long-standing rule that the purpose of SEPA is to function "as an environmental full
disclosure law." 109 Wn. App. 6, 16, 31 P.3d 703 (2001).

29 ⁵⁸ *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1976).

30 ⁵⁹ *Eastlake Cmty. Council v. Roanoke Assocs., Inc.* 82 Wn.2d 475, 494, 513 P.2d 36 (1973); see also *Norway*
Hill, 87 Wn.2d at 273 (SEPA requires a "detailed statement").

31 ⁶⁰ WAC 197-11-060(4)(c).

32 ⁶¹ WAC 197-11-060(4)(d).

1 66; see WAC 197-11-060(4)(c)-(d). The purpose of these rules is to ensure an
2 agency fully discloses and carefully considers a proposal's environmental
3 impacts before adopting it and "at the earliest possible stage." *King County v.*
4 *Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663-64, 666, 860 P.2d
5 1024 (1993); see WAC 197-11-060(4)(c)-(d).⁶²

6 Hearings Board cases are consistent with the Court of Appeals. For example, in
7 *Better Brinnon Coalition v. Jefferson County*, the Board stated:

8 The County directs our attention to WAC 197-11-442 which provides that the
9 County shall have "more flexibility in preparing EISs on nonproject proposals".
10 However, the flexibility afforded the County is not unlimited. All environmental
11 documents prepared under SEPA require consideration of environmental
12 impacts, with attention to impacts that are likely, not merely speculative. WAC
13 197-11-060 (4).

14 ...

15 We note with the County's hearing examiner that the County essentially chose
16 to defer all environmental review until the permitting stage. ... This is a pattern
17 that the hearing examiner notes leads to a "dangerous incrementalism" whereby
18 the environmental issues are never really addressed. *Ibid.* This is neither proper
19 phasing nor a proper use of flexibility in setting the detail of analysis. The County
20 must evaluate the environmental impacts that are probable as a result of the
21 change proposed. Those impacts should be measured in terms of the maximum
22 potential development of the property under the changed land use designation.
23 See *Ullock v. Bremerton*, 17 Wn. App. 573, 575, 565 P.2d 1179 (1977). By
24 waiting until each permit application is presented, the County would be unable to
25 assess the cumulative impacts of the increased development in any meaningful
26 way and would thwart the aim of providing future permit applicants with certainty
27 about what is allowed in the Brinnon Rural Village Center and WaWa Point SRT
28 overlay.⁶³

29 ⁶² *Spokane County v. Eastern Wash. Growth Management Hearings Bd.*, 176 Wash. App. 555, 579, 309 P.3d
30 673 (2013); see also, *Conservation Northwest v. Okanogan County*, 194 Wash. App. 1034 (Div. 3 2016)
31 (unpublished) (holding the County failed to prepare an adequate checklist because the checklist contains
32 repetitive, superficial, conclusory statements regarding the potential environmental impact of opening nearly
600 miles of county roads to ATV use, and the checklist is almost devoid of specific information).

⁶³ *Better Brinnon Coalition v. Jefferson County*, WWGMHB No. 03-2-0007, Amended Final Decision and Order
(Nov. 3, 2003), at 18-20.

1 As discussed above, the Board found that the County failed to properly de-designate
2 the "Franklin Crops" ALLTCS. A review of the Pasco FEIS and other SEPA documents
3 indicates that there is no disclosure of the de-designation or potential environmental
4 impacts. To the contrary, the Pasco FEIS indicates that no de-designation will occur. For
5 example, the Pasco FEIS states that "none of the alternatives would affect Franklin County-
6 designated agricultural lands of long-term commercial significance."⁶⁴ Other SEPA
7 documents in the record are silent on the de-designation of the "Franklin Crops."⁶⁵

9 Failure to disclose the de-designation of the "Franklin Crops" ALLTCS amounts to a
10 violation of the requirements of SEPA. The County has a duty, even as a non-project
11 action, to disclose and analyze the probable impacts of the de-designation.⁶⁶ SEPA
12 required the County to disclose the de-designation and any environmental impacts caused
13 by the action. The County's failure to do so was clearly erroneous.

15 **The Board finds** that the record indicates that the Pasco FEIS and other SEPA
16 documents failed to disclose the de-designated the "Franklin Crops" ALLTCS and any
17 associated environmental impacts.

18 Because this matter will be remanded, the Board declines to rule on whether the Pasco
19 FEIS was properly incorporated by reference and on the remaining issues raised by
20 Petitioners.

22 **V. FINDING OF FACT AND CONCLUSIONS OF LAW**

23 **Issue 1**

- 24 A. The Board finds that the area designated as "Franklin Soils" included land capability
25 soil classifications of 1-3, were included on the map designating ALLTCS in the 2008
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31 ⁶⁴ IR 13.5 at 35, *see also id.* at 38, 72, 110-112, 123-124.

32 ⁶⁵ *See, e.g.,* IR 13, IR 15.

⁶⁶ *Spokane County*, 176 Wash. App. at 579.

1 Comprehensive Plan, and otherwise were included as ALLTCS under the County's
2 2008 Comprehensive Plan.

3 B. The Board finds that the 2018-2038 comprehensive plan failed to include "Franklin
4 Soils" as ALLTCS and failed to apply de-designation criteria identified by the Board
5 and Washington courts.

6 C. The Board finds and concludes that the Petitioner has met its burden in
7 demonstrating that the County is in noncompliance with the requirements of the GMA in
8 de-designating the "Franklin Soils" ALLTCS.

9 D. The Board finds and concludes that any remaining issues under Issue 1 were beyond
10 the scope of the issue statements in the Petitioner's Petition for Review and will not
11 be considered by the Board.
12

13 **Issue 2**

14 A. The Board finds that there is no GMA provision or regulation requiring Franklin
15 County's consideration of unadopted development regulations when developing a
16 land capacity analysis.

17 B. The Board finds that Petitioner failed to carry its burden to show that the reliance on
18 the City of Pasco Land Capacity Analysis to support County's adoption of the Pasco
19 UGA violates any provision of the GMA.
20

21 **Issue 3**

22 A. The Board finds that the Pasco FEIS and other SEPA documents included in the
23 record failed to disclose the environmental impacts of the de-designation of the
24 "Franklin Crops" ALLTCS and any environmental impacts.

25 B. The Board finds and concludes that the Petitioner has met its burden in
26 demonstrating that the County is in noncompliance with the requirements of the
27 SEPA in failing to disclose and analyze de-designating the "Franklin Soils" ALLTCS.
28

29 **C. ORDER**

30 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
31 parties, the GMA, prior Board orders and case law, having considered the arguments of the
32

parties, and having deliberated on the matter, the Board finds:

- Ordinance 07-2021 is remanded to the County to take action to come into compliance with the requirements of the GMA and SEPA.
- All other allegations not addressed in this Order are dismissed.

Item	Date Due
Compliance Due	August 1, 2022
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	August 15, 2022
Objections to a Finding of Compliance	August 29, 2022
Response to Objections	September 8, 2022
Compliance Hearing Zoom link will be provided at a later date	September 15, 2022 10:00 A.M

Length of Compliance Documents – **Compliance Report/Statement of Actions Taken to Comply shall be limited to 35 pages, 45 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.** A document of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: "Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions."

SO ORDERED this 28th day of January 2022.



Rick Eichstaedt, Presiding Board Member



Bill Hinkle, Board Member



Cheryl Pflug, Board Member

1
2 **Note: This is a final decision and order of the Growth Management Hearings Board**
3 **issued pursuant to RCW 36.70A.300.⁶⁷**
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29 ⁶⁷ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
30 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved
31 by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in
32 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.

Appendix A: Procedural matters

On August 6, 2021, Futurewise (Petitioner) filed a Petition for Review. The petition was assigned Case No. 21-1-0005.

A Prehearing Conference was held on September 13, 2021.

A Motion to Disqualify Board Member Rick Eichstaedt was filed on September 7, 2021. This was denied on September 10, 2021.

On September 14, 2021, the Board issued an Order Granting Intervention by the City of Pasco. This was followed by an order on October 25, 2021 granting intervention by the Port of Pasco.

Briefs

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioners Prehearing Brief (November 3, 2021)
- Respondent and Intervenor-Respondents Prehearing Brief (November 24, 2021)
- Petitioners Reply Brief (December 8, 2021)

Hearing on the Merits

The Hearing on the Merits was conducted via Zoom on December 12, 2021. Board Members Rick Eichstaedt (serving as Presiding Board Member), Bill Hinkle, and Deb Eddy were present. Attorney Tim Trohimovich presented argument on behalf of Petitioner Futurewise. Attorney Taud Hume presented argument on behalf of Respondent Franklin County. Attorney Kenneth Harper presented argument on behalf of Intervenor-Respondent City of Pasco. Attorney Jesse DeNike presented on behalf of Intervenor-Respondent Port of Pasco.

Appendix B: Legal Issues

Per the Prehearing Order, legal issues in this case were as follows:

1. Did Franklin County's adoption of Ordinance 07-2021 which de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning Policies I.1.H or II.12 because the farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-term significance?
2. Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not need to accommodate the planned growth and not properly located?
3. Did Franklin County's State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and SEPA Environmental Checklist for the adoption of Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11-310, WAC 197-11-315, WAC 197-II-330, WAC 197-11-335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or consider the environmental impacts of the ordinance?

FRANKLIN COUNTY PETITION FOR REVIEW OF EWGMHB FDO

Appeal to the Washington State Court of Appeals of the EWGMHB FDO
for Case #21-1-0005

FEB 28 2022

**MICHAEL J. KILLIAN
FRANKLIN COUNTY CLERK**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF FRANKLIN**

FRANKLIN COUNTY,

Petitioner,

NO. 22 250122 11

v.

PETITION FOR REVIEW

FUTUREWISE,

Respondent,

and

CITY OF PASCO, and PORT OF PASCO,

Intervenor-Respondents.

Franklin County petitions this Court for review of the January 28, 2022 "Final Decision and Order" issued by Eastern Washington Region Growth Management Hearings Board" (the "Board") in Case No. 21-1-0005 (the "Decision").

1. NAME AND ADDRESS OF THE PETITIONER

The name and address of Petitioner is: Franklin County, 1016 N. 4th Avenue, Pasco, WA 99301.

PETITION FOR REVIEW - 1

WBM | **WITHERSPOON
BRAJICH
MCNEE**

**A PROFESSIONAL LIMITED LIABILITY COMPANY
601 West Main Avenue, Suite 714
Spokane, Washington 99201-0677
Telephone: (509) 455-9077
Fax: (509) 624-6441**

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1 Hume of the firm Witherspoon Brajcich McPhee LLP, 601 W. Main Avenue, Suite 714,
2 Spokane, WA 99201.

3 **6. FACT DEMONSTRATING THAT PETITIONER IS ENTITLED**
4 **TO JUDICIAL REVIEW**

5 6.1 Franklin County adopted its first comprehensive plan documents in the 1970s,
6 prior to the enactment of the Growth Management Act ("GMA").

7 6.2 Once the GMA was enacted, Franklin County adopted its first GMA
8 comprehensive plan for the county in 1995.

9 6.3 Franklin County's comprehensive plan included designations of agricultural
10 lands of long-term commercial significance ("ALLTCS").

11 6.4 Franklin County's comprehensive plan was revised in both 2005 and 2008. The
12 2008 revision brought Franklin County's comprehensive plan in compliance with RCW
13 36.70A.130.

14 6.5 The 2008 comprehensive plan includes a complete description and designation
15 of ALLTCS, and also followed the other required elements of a comprehensive plan, including
16 the requirement to designate Urban Growth Area ("UGA").

17 6.6 The 2008 comprehensive plan explains that ALLTCS designations by Franklin
18 County are based on a variety of factors and explains as follows:

19 The Act defines resource lands as having, 'the growing capacity, productivity, and
20 soil composition for long-term commercial production, in consideration with the
21 land's proximity to population areas, and the possibility of more intense uses of the
22 land.' [RCW 36.70A.030 (10)]. . . Franklin County identifies resource lands of
23 long-term significance using distinctive characteristics such as soil types, geologic
24 structure, location, and other unique identifiers characteristic of the resource and
set forth in the Act.

25 6.7 The 2008 comprehensive plan also breaks down three classifications of
26 agricultural lands 1) prime; 2) unique; and 3) those of local and statewide significance.

27 6.8 The 2008 comprehensive plan also includes a reference to Map 8, which depicts
28 all ALLTCS lands in Franklin County, along with all other Franklin County lands.

1 6.9 Included on Map 8 are notations for Federal Lands, Rural Lands, properties
2 within UGAs, croplands, Prime Irrigated Lands, Prime Dryland, and Fields with Quincy soils.
3 Map 8 also annotates townships, sections, rivers, state highways, roads, streets, and the Franklin
4 County's boundary.

5 6.10 Franklin County and the City of Pasco have consistently interpreted the
6 ALLTCS designations on the 2008 map to only include the Prime Irrigated Lands, Prime
7 Dryland, and Fields with Quincy Soils. They have also consistently limited UGA expansion to
8 not include those areas.

9 6.11 Franklin County updated its comprehensive plan in 2018 and dubbed it its
10 comprehensive plan for 2018-2038.

11 6.12 Franklin County then adopted Ordinance 07-2021 which served to adopt the
12 2018-2038 comprehensive plan and to expanded the UGA to include approximately 3,407 acres.

13 6.13 Notably, no ALLTCS lands were included in the expanded UGA under
14 Ordinance 07-2021, and no ALLTCS lands were de-designated.

15 6.14 On August 5, 2021 Futurewise filed a Petition for Review, asking the Board to
16 determine that Franklin County's adoption of Ordinance 07-2021 did not comply with the
17 GMA, SEPA restrictions, and Franklin County's urban growth planning. Futurewise's Petition
18 was assigned Case No. 21-1-0005.

19 6.15 The City of Pasco was permitted to intervene on September 14, 2021, following
20 by the Port of Pasco's intervention on October 25, 2021.

21 6.16 Franklin County, the City of Pasco, and the Port of Pasco submitted a joint pre-
22 hearing brief responding to Futurewise's Petition and pre-hearing brief.

23 6.17 The Board conducted a hearing on the merits on December 12, 2021.

24 6.18 On January 28, 2022 the Board issued its Decision on Futurewise's Petition. In
25 its Decision, the Board found:

26 a. Franklin County's 2008 comprehensive plan, including Map 8,
27 designated the "Franklin Crops" as ALLTCS;
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31
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1 b. Franklin County's 2018-2038 de-designated the "Franklin Crops" as
2 ALLTCS because they were removed from the associated map, thus removing them *de*
3 *facto* and without applying de-designation criteria identified by the Board and
4 Washington Court;

5 c. Futurewise met its burden in demonstrating that Franklin County is in
6 noncompliance with the requirements of the GMA when it de-designated the "Franklin
7 Crops" as ALLTCS;

8 d. Because Franklin County failed to properly de-designate the "Franklin
9 Crops" as ALLTCS, neither the Pasco FEIS nor other SEPA documents indicate that
10 there is a disclosure of the de-designation or potential environmental impacts;

11 e. As such, Futurewise met its burden to demonstrate that Franklin County
12 was in noncompliance with the requirements of SEPA to disclose and analyze the
13 probable impacts of de-designation of ALLTCS land.

14 6.19 Based on its finding, the Board ordered that Ordinance 07-2021 is remanded to
15 Franklin County to take action to come into compliance with the requirements of the GMA and
16 SEPA.

17 6.20 Franklin County is aggrieved by the Decision of the Board.

18 6.21 The Board erred in its Decision in deciding that Ordinance 07-2021 is in violation
19 of the GMA because the "Franklin Crops" were never designated by Franklin County as
20 ALLTCS under the 2008 comprehensive plan or Map 8. As explained previously, the inclusion
21 of "Franklin Crops" on a map bearing other designations, was not an ALLTCS designation.

22 6.22 The Board additionally erred in its Decision that Ordinance 07-2021 is in
23 violation of the GMA because the "Franklin Crops" were not de-designated by virtue of the
24 Ordinance or the 2018-2038 comprehensive plan. The "Franklin Crops" could not be de-
25 designated when they were never designated as ALLTCS. As such, no de-designation criteria
26 supplied by the Board or Washington Courts needed to be applied.
27

1 6.23 The Board erred in its Decision that Futurewise met its burden to demonstrate
2 that Franklin County was in noncompliance with the requirements of the GMA when it allegedly
3 de-designated "Franklin Crops" as ALLTCS.

4 6.24 The Board erred in its Decision that Ordinance 07-2021 violated SEPA
5 requirements where neither the Pasco FEIS nor other SEPA documents indicate that there was a
6 disclosure of the de-designation or potential environmental impacts because the "Franklin
7 Crops" were never designated as ALLTCS in the 2008 comprehensive plan, nor were they de-
8 designated.

9 6.25 The Board erred in its Decision that Futurewise met its burden to demonstrate that
10 Franklin County is in noncompliance with the requirements of SEPA to disclose and analyze the
11 probable impacts of de-designation of ALLTCS land because the "Franklin Crops" were never
12 designated as ALLTCS in the 2008 comprehensive plan, nor were they de-designated.

13 6.26 A judgment by this Court granting the relief requested herein, will remedy that
14 the Decision aggrieved Franklin County.

15 7. REASONS THAT RELIEF SHOULD BE GRANTED

16 7.1 Petitioner hereby incorporates by reference as if fully set forth herein Section III
17 of this Petition.

18 7.2 Franklin County seeks relief from the Decision pursuant to RCW
19 34.05.570(3)(d), which provides that the Court shall grant relief from an agency order in an
20 adjudicative proceeding where it determines that the agency erroneously interpreted or applied
21 the law.

22 7.3 Franklin County further seeks relief from the Decision pursuant to RCW
23 34.05.570(3)(e), which provides that the Court shall grant relief from an agency order in an
24 adjective proceeding where it determines that the order is not supported by evidence that is
25 substantial when viewed in light of the whole record before the Court, which includes the
26

1 agency record for judicial review, supplemented by additional evidence received by the Court
2 under the chapter.

3 7.4 The Board's finding that Franklin County's 2008 comprehensive plan
4 designated the "Franklin Crops" as ALLTCS was an erroneous interpretation or application of
5 the law.

6 7.5 The Board's finding that Franklin County's 2008 comprehensive plan
7 designated the "Franklin Crops" as ALLTCS was not supported by substantial evidence when
8 viewed in light of the whole record before the Court.

9 7.6 The Board's finding that Franklin County's 2018-2038 comprehensive plan
10 effectively de-designated the "Franklin Crops" as ALLTCS was an erroneous interpretation or
11 application of the law because the "Franklin Crops" were never so designated.

12 7.7 The Board's finding that Franklin County's 2018-2038 comprehensive plan
13 effectively de-designated the "Franklin Crops" as ALLTCS was not supported by substantial
14 evidence when viewed in light of the whole record before the Court because the "Franklin
15 Crops" were never so designated.

16 7.8 The Board's finding that the Pasco FEIS and other SEPA documents failed to
17 disclose the de-designated "Franklin Crops" as ALLTCS and analyze any associated
18 environmental impacts is an erroneous interpretation or application of the law because the
19 "Franklin Crops" were never designated nor de-designated as ALLTCS.

20 7.9 The Board's finding that the Pasco FEIS and other SEPA documents failed to
21 disclose the de-designated "Franklin Crops" as ALLTCS and analyze any associated
22 environmental impacts was not supported by substantial evidence when viewed in light of the
23 whole record before the Court because the "Franklin Crops" were never designated nor de-
24 designated as ALLTCS.
25

26 8. RELIEF REQUESTED

27
28 Franklin County respectfully requests that:
29
30

8.1 The Court reverse the Board's Decision that Franklin County's 2008 comprehensive plan designated the "Franklin Crops" as ALLTCS;

8.2 The Court reverse the Board's Decision that Franklin County's 2018-2038 comprehensive plan effectively de-designated the "Franklin Crops" as ALLTCS without proper de-designation criteria supplied by the Board and Washington courts;

8.3 The Court reverse the Board's Decision that Futurewise met its burden to demonstrate that Franklin County was in noncompliance with the requirements of the GMA when it allegedly de-designated "Franklin Crops" as ALLTCS;

8.4 The Court reverse the Board's Decision that the Pasco FEIS and other SEPA documents failed to disclose the de-designated "Franklin Crops" as ALLTCS and analyze any associated environmental impacts;

8.5 The Court reverse the Board's Decision that Futurewise met its burden to demonstrate that Franklin County was in noncompliance with the requirements of SEPA when it allegedly failed to disclose and analyze the de-designation of "Franklin Crops" as ALLTCS;

8.6 The Court dismiss Futurewise's Petition for Review and overturn the portions of the Decision referenced herein;

8.7 The Court order any such further relief as it deems just and equitable.

DATED this 25 day of February, 2022.

WITHERSPOON BRAJCICH MCFEEB, PLLC

By:

Taodd A. Hume, WSB No. 33529
Deanna M. Willman, WSBA No. 52585

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the method indicated below to the following this ____th day of February, 2022:

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c/o Kenneth W. Harper
807 North 39th Avenue
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Taud A. Hume

PETITION FOR REVIEW - 10



WITHERSPOON
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NCPHEE

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EXHIBIT A

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

FUTUREWISE,

Petitioner,

v.

FRANKLIN COUNTY,

Respondent,

and

CITY OF PASCO,

and

PORT OF PASCO

Intervenor-
Respondents.

CASE No. 21-1-0005

FINAL DECISION AND ORDER

SYNOPSIS

Futurewise (Petitioner) challenged Franklin County's (County) adoption of Ordinance 07-2021, which it asserts de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area (UGA). The Growth Management Hearings Board (Board) concluded: (1) that the County de-designated agricultural lands of long-term commercial significance (ALLTCS), particularly areas identified as Franklin Soils, (2) that Futurewise's challenge to the County's failure to designate certain lands is outside the scope of its Petition for Review, (3) that the County

1 *was not required to consider potential and unapproved changes to the City of Pasco's (City)*
2 *zoning capacity when undertaking its land capacity analysis; and (4) that the County's State*
3 *Environmental Policy Act (SEPA) documents failed to consider the impacts of de-*
4 *designation of the Franklin Soils ALLTCS.*

5 6 I. INTRODUCTION

7 On August 5, 2021, Petitioner Futurewise challenged Franklin County's adoption of
8 Ordinance 07-2021.¹ The Ordinance, adopted on June 1, 2021, adopted the 2018-2038
9 Franklin County Comprehensive Plan and included an increase to the City of Pasco's Urban
10 Growth Area (UGA) of approximately 3,407 acres.²

11 On September 14, 2021, the Board issued an Order Granting Intervention by the City
12 of Pasco.³ This was followed by an order on October 25, 2021 granting intervention by the
13 Port of Pasco.⁴

14 The Hearing on the Merits was conducted via Zoom on December 12, 2021.

15 Procedural matters relevant to the case are detailed in Appendix A. Legal issues
16 relevant to the case are restated in Appendix B.
17

18 19 II. BOARD JURISDICTION

20 No party raised any objection to jurisdiction, except as provided below. The Board
21 finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board
22 finds the Petitioner has standing to appear before the Board pursuant to RCW
23 36.70A.280(2) (b)).
24

25 Prior to addressing the substance of the issues, the Board shall address Franklin
26 County's argument regarding the Petitioner's contention that the County failed to designate
27 Agricultural Lands of Long-Term Commercial Significance (ALLTCS) in the 2018 plan based
28
29

30 ¹ Petition for Review, IR 2.

31 ² *Id.* at 4.

32 ³ Order on Intervention (City of Pasco) (Sept. 14, 2021).

⁴ Order on Intervention (Port of Pasco) (Oct. 25, 2021).

1 on the criteria for designating such lands in violation of the Growth Management Act (GMA).⁵
2 As argued by the County, Issue 1 in the Futurewise Petition for Review is limited to the
3 contention that the County violated the GMA because Ordinance No. 07-2021 "de-
4 designated" certain ALLTCS in the 2018 plan and these lands "still meet[]" the criteria for
5 ALLTCS designation.⁶

6
7 This argument cannot be considered by the Board because it is beyond the scope of
8 the issues presented in the Petition for Review and Prehearing Order. Petitions for review to
9 the Board must include a detailed statement of issues presented for resolution by the Board.
10 This Board is limited in its jurisdiction and does not issue advisory opinions "on issues not
11 presented to the board in the petition for review's statement of the issues, as modified by any
12 prehearing order."⁷

13
14 Issue 1 is based on the contention that Franklin County's adoption of Ordinance No.
15 07-2021 "de-designated agricultural lands of long-term commercial significance and added
16 the land to the Pasco Urban Growth Area" and that these lands "still meet[]" the criteria for
17 ALLTCS designation. Futurewise's argument in Issue 1B of its brief regarding the failure to
18 designate goes beyond the scope of issues presented in this appeal and will not be
19 addressed by this Board.

20 III. STANDARD OF REVIEW

21 Comprehensive plans and development regulations, and amendments thereto, are
22 presumed valid upon adoption.⁸ This presumption creates a high threshold for challengers
23 as the burden is on the Petitioner to demonstrate that any action taken by the County is not
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26 ⁵ Futurewise Prehearing Brief at 2-17.

27 ⁶ Petition for Review at 2 ("Did Franklin County's adoption of Ordinance No. 07-2021 which de-designated
28 agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area
29 violate [GMA provisions], or Franklin County County-Wide Planning Policies I.1.H or II.12 because the
30 farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-
31 term significance?"); Prehearing Order at 1-2 (same).

32 ⁷ RCW 36.70A.290(1). See also WAC 242-02-210 (stating a petition for review "shall substantially contain . .
(2)(c) A detailed and concise statement of the issues presented for resolution by the board."); WAC 242-03-
810(2); see also *Hazen, et al. v Yakima County*, EWGMHB No. 08-1-0008c, Partial Compliance Order (May
20, 2011), at 6.

⁸ RCW 36.70A.320(1).

1 in compliance with the GMA.⁹ The Board is charged with adjudicating GMA compliance
2 and, when necessary, invalidating noncompliant plans and development regulations.¹⁰

3 Here, the scope of the Board's review is limited to determining whether the County
4 has achieved compliance with the GMA only with respect to those issues presented in a
5 timely petition for review.¹¹ The Board is directed to find compliance unless it determines
6 that the challenged action is clearly erroneous in view of the entire record before the Board
7 and considering the goals and requirements of the GMA.¹²

8 9 10 **IV. ANALYSIS AND DISCUSSION**

11 **Issue No. 1.**

12
13 Did Franklin County's adoption of Ordinance 07-2021 which de-designated
14 agricultural lands of long-term commercial significance and added the land to
15 the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW
16 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060,
17 RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW
18 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC
19 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning
20 Policies I.1.H or II.12 because the farmland still meets the Growth Management
21 Act and Franklin County criteria for agricultural lands of long-term significance?

22 **A. De-designation of Franklin Soils**

23 **Parties' Arguments**

24 Petitioner argues that the County de-designated ALLTCS designated in the County's
25 2008 comprehensive plan, specifically areas referred to as "Franklin Crops." Petitioner
26 argues that the County's 2008 comprehensive plan included "Franklin Crops" as ALLTCS
27

28
29 ⁹ RCW 36.70A.320(2).

30 ¹⁰ RCW 36.70A.280, RCW 36.70A.302.

31 ¹¹ RCW 36.70A.290(1).

32 ¹² RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

1 and that the updated plan, as illustrated on Map 17, removed that designation.¹³ Petitioner
2 further argues that "the record does not disclose why these lands are not designated
3 especially given that areas designated as "Franklin Crops" have land capability soil
4 classifications ... [to] ... qualify as agricultural lands of long-term commercial significance
5 under both the 2008 and 2018-2038 comprehensive plans."¹⁴
6

7 The County¹⁵ responds that "Franklin Crops" were not de-designated because these
8 lands were never designated ALLTCS:

9 The County removed the words "Franklin Crops" from the Agricultural
10 Resource Lands Map (Map 17) in the 2018 plan update, as the term lacked
11 definition under the 2008 Plan; other than on Map 8, there is no mention of
12 "Franklin Crops" in the entire 2008 plan. But not including the term "Franklin
13 Crops" in the 2018 Plan (e.g. Map 17) did not de-designate ALLTCS
because these lands were never designated ALLTCS.¹⁶

14 The County further argues, "The 2008 plan does not state that Franklin Crops are
15 ALLTCS, and Futurewise's only argument in support of the contention that Franklin Crops
16 were designated as ALLTCS is that areas that contain Franklin Crops have land capability
17 soil classifications of 1, 2, and 3."¹⁷
18

19 Petitioner replies that "Franklin Crops" were both included on Map 8 designating
20 ALLTCS in the 2008 plan and met soil classification for ALLTCS.¹⁸ Petitioner also argues,
21 "The 2008 comprehensive plan is not ambiguous. It provides that ALLTCS consist of certain
22 soils and areas of these soils are shown and mapped on Map 8."¹⁹
23
24
25

26 ¹³ Futurewise Prehearing Brief at 4-5.

27 ¹⁴ *Id.* at 5.

28 ¹⁵ The County's brief was jointly submitted by the County and the Intervenor-Respondents City of Pasco and
29 Port of Pasco. For simplicity's sake, this brief and the argument presented therein will be referred to solely as
"the County's." These arguments were presented by attorneys for all three parties at the hearing on the
30 merits.

¹⁶ County Prehearing Brief at 12.

31 ¹⁷ *Id.*

¹⁸ Futurewise Reply Brief at 2.

32 ¹⁹ *Id.* at 4.

1 **Board Discussion**

2 As discussed above, the Parties do not disagree that "Franklin Crops" were identified
3 on Map 8 in the 2008 comprehensive plan, that these areas have land capability soil
4 classifications of 1, 2, and 3, and that the 2018-2038 comprehensive plan omitted these
5 areas from Map 17, which identifies areas designated as ALLTCS. There is also no dispute
6 that there was no de-designation process followed for these areas, as the County's
7 contention is that they were never designated ALLTCS. The only question for the Board to
8 consider is whether "Franklin Crops" were designated ALLTCS in the 2008 plan.
9

10 One of the primary goals of the GMA is the maintenance of agricultural lands and the
11 agricultural industry. RCW 36.70A.020(8) is the natural resource industrial goal:

12 Maintain and enhance natural resource-based industries, including ...
13 agricultural... industries. Encourage the conservation of productive ... agricultural
14 lands, and discourage incompatible uses.

15 The Supreme Court stated in *City of Redmond v. Central Puget Sound Growth Mgmt.*
16 *Hearings Bd.*

17 Natural resource lands are protected not for the sake of their ecological role but
18 to ensure the viability of the resource-based industries that depend on them.
19 Allowing conversion of resource lands to other uses by allowing incompatible
20 uses nearby impairs the viability of the resource industry.²⁰

21 The definition of agricultural land is found at RCW 36.70A.030(2):

22 "Agricultural land" means land primarily devoted to the commercial production of
23 horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products
24 or of berries, grain, hay, straw, turf, seed, Christmas trees ... finfish in upland
25 hatcheries, or livestock, and that has long-term commercial significance for
26 agricultural production.

27 "Long-term commercial significance" is then defined by RCW 36.70A.030(10):
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31 ²⁰ *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 47, 959 P.2d 1091
32 (1996), 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 "Long-term commercial significance" includes the growing capacity, productivity,
2 and soil composition of the land for long-term commercial production, in
3 consideration with the land's proximity to population areas, and the possibility of
4 more intense uses of the land.

5 Once agricultural lands have been designated under RCW 36.70A.170, RCW
6 36.70A.060(1) directed counties to adopt development regulations to "assure the
7 conservation of agricultural lands." The GMA fails to delineate how a county should
8 determine that designated agriculture lands should be de-designated. The Board in *Kittitas*
9 *County Conservation v. Kittitas County* recognized this and indicated that the criteria for
10 designation of ALLTCS should be utilized for de-designation:

11 While nothing in the GMA requires agricultural lands, once designated, to remain
12 designated as such forever, and nothing in the GMA specifies precisely how a
13 county may determine that designated agricultural lands no longer should be
14 designated; logically, the only way to make such a determination consistent with
15 the GMA is to apply the same statutory criteria to a proposed de-designation of
16 agricultural lands as for a proposal to designate such lands. Any other approach
17 defeats the GMA's requirements to designate and conserve agricultural lands of
18 long-term commercial significance and is contrary to the GMA's goal of
conserving agricultural land in Washington.²¹

19 The Court of Appeals agreed identifying the "three prongs that must be satisfied for land
20 to be de-designated as ALLTCS,"²² citing the Supreme Court in *Lewis County v. Western*
21 *Wash. Growth Mgmt. Hearings Board*.²³ Those "prongs," as restated by the Court of
22 Appeals, are:

- 23 1. A determination of whether the land is characterized by "urban growth;"
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28 ²¹ *Kittitas County Conservation v Kittitas County*, EWGMHB No. 07-1-0004c, Final Decision and Order (Aug.
29 20, 2007), at 71.

30 ²² A decision to de-designate ALLTCS requires consideration of the same criteria applicable to designation:
31 "We evaluate whether a de-designation of agricultural land was clearly erroneous by determining whether the
32 property in question continues to meet the GMA definition of 'agricultural land' as defined in *Lewis County*."
Clark County v. W. Wash. Growth Mgmt. Hearings Bd., 161 Wn. App. 204, 234, 254 P.3d 862 (2011), *vacated*
in part on other grounds, 177 Wash.2d 136, 298 P.3d 704 (2013).

²³ 157 Wn.2d 488, 139 P.3d 1096 (2006).

- 1 2. A determination of the commercial productivity of the land or the land's capability of
2 being commercially productive; and
3 3. A determination of the "long-term commercial significance" for agricultural production
4 of the parcels.

5 Based upon the Board's review of the record, it is clear that the County's 2008
6 comprehensive plan designated the "Franklin Crops" as ALLTCS. The 2008 comprehensive
7 plan states:
8

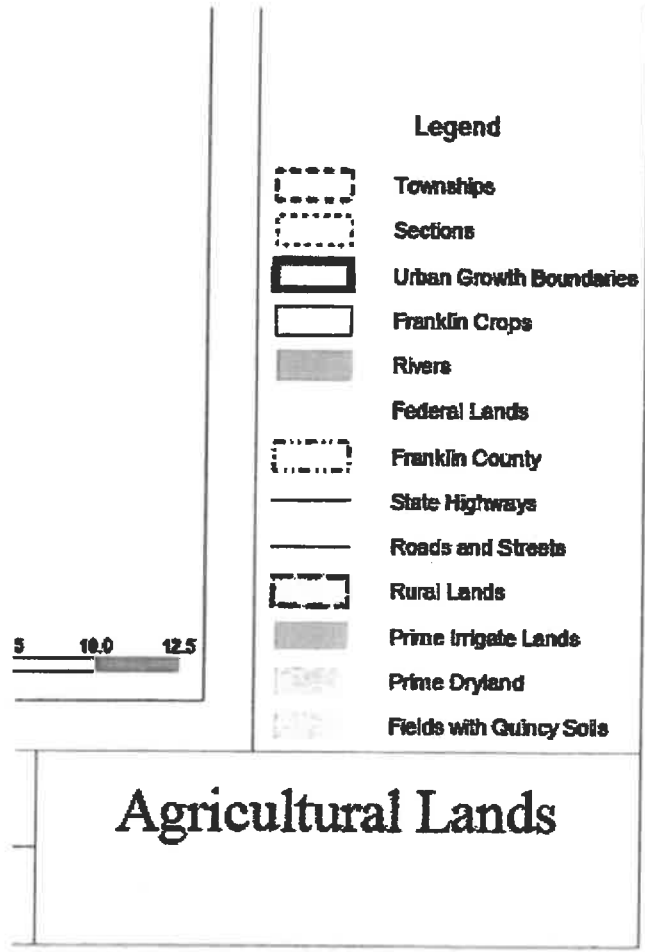
9 In Franklin County agricultural lands of long-term commercial significance are
10 soil classification 1 – 3 according to the Land Capability Classification of the
11 USDA Soil Conservation service. Further, the County's Prime, Unique and of
12 State and Local Significance soils as generally shown and mapped by the
13 Franklin Conservation District on Map 8, are also described as agricultural
14 lands of long-term commercial significance in Franklin County.²⁴

15 There is no dispute that "Franklin Crops" are included on Map 8. As illustrated below,
16 a review of Map 8 includes the "Franklin Crops," outlined in a sold green line, the "Prime
17 Irrigate Lands," shaded green, and the "Fields with Quincy Soils," shaded pink.²⁵
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31 ²⁴ IR 5 at 93.

32 ²⁵ IR 5 at 96.

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The "Franklin Crops" also include prime farmland and farmland of statewide importance.²⁶

Because "Franklin Crops" are included on the County's Map 8 of ALLTCS and have land capability soil classifications of 1-3 and qualify as agricultural lands of long-term commercial significance under the 2008 comprehensive plans,²⁷ the Board finds that the 2008 comprehensive plan, including Map 8, was not ambiguous in its inclusion of the "Franklin Crops" as ALLTCS. The plain language of the 2008 comprehensive plan supports

²⁶ IR 63.14 at 1-22.
²⁷ IR 63.14.

1 this finding, and the Board cannot look beyond the language of the comprehensive plan
2 itself to decide otherwise.²⁸

3 The 2018-2038 comprehensive plan deleted the mapped "Franklin Crops" from the
4 ALLTCS map, essentially de-designating these ALLTCS.²⁹ The Map 17: Designated
5 Agricultural Resource Lands from the 2018-2038 comprehensive plan removes the "Franklin
6 Crops" within the expanded UGA as ALLTCS.³⁰

7
8 The record does not disclose why this occurred and does not apply the de-
9 designation criteria to effectuate de-designation of these areas. The Board concludes that
10 the 2018-2038 comprehensive plan de-designated the "Franklin Crops" ALLTCS *de facto*.
11 The County's action is clearly erroneous.

12 The Board finds that the record indicates that the 2018-2038 comprehensive plan
13 de-designated the "Franklin Crops" ALLTCS identified on Map 8 of the 2008 comprehensive
14 plan without applying de-designation criteria.

15
16 **B. Failure to Designate**

17 As set forth above, this argument must be rejected because it is beyond the scope of
18 issues presented in the Petition for Review and Prehearing Order.

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31 ²⁸ *Washington Shell Fish, Inc. v. Pierce Cty.*, 132 Wn. App. 239, 253-54, 131 P.3d 326 (2006).

32 ²⁹ IR 1 at 62.

³⁰ *Id.* at 60-62.

Issue No. 2.

Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not needed to accommodate the planned growth and not properly located?

Parties' Arguments

Petitioner argues that Franklin County's adoption of Ordinance No. 07-2021, which expanded the City of Pasco's UGA violated the GMA because the expansion is not needed to accommodate planned urban growth.³¹ Specifically, Petitioner argues:

During the adoption of the UGA expansion, the City of Pasco was considering development regulation amendments that have the potential to substantially increase the city's zoning capacity. These changes could substantially increase the residential capacity of the City because much of the City of Pasco is zoned for low-density single-family dwellings. The proposals included allowing duplexes, triplexes, and courtyard apartments in 84 percent of the residentially zoned land in the city. The proposals also include permitting lot size averaging which allow a homebuilder to subdivide lots using an average rather than a minimum. This proposal has the potential to increase lot yields in existing residential zones.³²

Petitioner further argues that the "City of Pasco Land Capacity Analysis did not include any of this increased capacity."³³ Petitioner supports this claim solely by reference to an October 15, 2020 City staff report.³⁴ This staff report indicated that the City—along with 51 other communities—received funding from the Washington State Department of Commerce to address housing affordability and supply.³⁵

³¹ Petition for Review at 2.

³² Futurewise Prehearing Brief at 18.

³³ *Id.* at 19.

³⁴ *Id.* at 18-19.

³⁵ *Id.* at 18, citing IR 63.1 at 1.

1 The County asserts, "there is no GMA violation simply because the City considered
2 but did not adopt new development regulations that would increase residential density.
3 These regulations were never adopted and the City otherwise properly developed its UGA
4 based on a valid land capacity analysis."³⁶

5 Petitioner replies that the proposed development regulations "could be [adopted] and
6 ... would substantially reduce the need to expand the UGA."³⁷

7 **Board Discussion**

8
9 The determination of whether there is sufficient land to accommodate development in
10 an UGA is done through a land capacity analysis. The GMA, RCW 36.70A.115(1), requires
11 this, stating:

12 Counties ... shall ensure that, taken collectively, adoption of and amendments
13 to their comprehensive plans and/or development regulations provide sufficient
14 capacity of land suitable for development within their jurisdictions to
15 accommodate their allocated housing and employment growth ... as adopted in
16 the applicable countywide planning policies and consistent with the twenty-year
17 population forecast from the office of financial management.

18 Guidance for accomplishing this land capacity analysis is provided within state
19 Department of Commerce regulations.³⁸

20 The Supreme Court in Thurston County emphasized the goal of reducing sprawl by
21 limiting the size of UGAs: "If the size of a UGA is not limited, rural sprawl could abound." To
22 that end, RCW 36.70A.215 establishes a buildable lands review and evaluation program for
23 designated counties. Where cities and counties find inconsistencies between their targets
24 for urban growth and what is happening on the ground, as disclosed in the BLR, they are
25 required to adopt "reasonable measures, other than adjusting urban growth areas, that
26 will be taken to comply with the requirements of [the GMA]."³⁹ Each county, in consultation
27 with its cities, must adopt County-wide Planning Policies (CPPs) setting up a five-year
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30 ³⁶ County Prehearing Brief at 20.

31 ³⁷ Futurewise Reply Brief at 7.

32 ³⁸ WAC 365-196-310, WAC 365-196-325.

³⁹ RCW 36.70A.215(1)(b) (emphasis supplied).

1 review cycle to monitor urban development – the Buildable Lands Review (BLR).⁴⁰ The BLR
2 compares county/city growth assumptions and targets with actual growth and development
3 trends.⁴¹

4 Critically, Franklin County is not among the counties to which RCW 36.70A.215
5 applies.⁴² While Petitioner's argument that a land capacity analysis must consider potential
6 and unadopted development regulations designed to increase density that may further the
7 goals of the GMA to limit sprawl might be well-taken elsewhere in the state,⁴³ the Board
8 must agree with the County. There is no GMA requirement to do so.

9
10 Petitioner has not pointed to any GMA provision or Department of Commerce
11 regulation to support its argument. We cannot find a GMA violation simply because the City
12 considered but did not adopt new development regulations that would increase residential
13 density. Again, the Board cannot find any GMA provision or past precedent that would
14 require such consideration.

15
16 The record here demonstrates that development regulations were never adopted.
17 The City need not develop a land capacity analysis considering hypothetical development
18 regulations.

19 The Board finds that Petitioner failed to carry its burden to show that the reliance on
20 the City of Pasco Land Capacity Analysis to support County's adoption of the Pasco UGA
21 violates any provision of the GMA.
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29 ⁴⁰ RCW 36.70A.215(1).

30 ⁴¹ *Thurston County v. WWGMHB*, 164 Wn.2d 329, 351, 190 P.3d 38 (2008).

31 ⁴² RCW 36.70A.215(5) limits the application of this program to King, Pierce, Snohomish, Kitsap, Thurston and
Clark counties.

32 ⁴³ See, e.g., *Suquamish Tribe v. Kitsap County*, CPSGMHB No 07-3-0019c, Final Decision and Order on
Remand (August 31, 2011) at 11-14.

Issue No. 3.

Did Franklin County's State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and SEP A Environmental Checklist for the adoption of Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11-310, WAC 197-11-315, WAC197-II-330, WAC 197-11-335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or consider the environmental impacts of the ordinance?

Parties' Arguments

Petitioner argues that the SEPA checklist for Ordinance 07-2021 lacked information reasonably sufficient to evaluate Ordinance 07-2021's environmental impacts.⁴⁴

Specifically, Petitioner argues that the "answer to 69 of the SEPA checklist questions was some variation of '[n]ot applicable, this is not a site specific proposal,' none, or no."⁴⁵

Petitioner asserts that "no answer was given for whether surface water withdrawals are required."⁴⁶

Petitioner further argues that the County ignored the environmental impacts of the urban uses allowed by UGA expansions and that the checklist relied upon the County's Critical Areas Ordinance (CAO) without evaluating whether the CAO is adequate to address the potential impacts.⁴⁷

Petitioner argues that the SEPA documents failed to acknowledge that much of the land newly added to the Pasco UGA is presently used for irrigated and dryland cropland and grazing land and then failed to discuss the impacts of the conversion of those areas into urban development, including probable impacts of that development.⁴⁸ Petitioner also

⁴⁴ Futurewise Prehearing Brief at 20-21.

⁴⁵ *Id.* at 21.

⁴⁶ *Id.* at 22.

⁴⁷ *Id.* at 23.

⁴⁸ *Id.* at 24-28.

1 argues that the County failed to disclose adverse impacts to the Tri-Cities Airport associated
2 with conversion of agricultural lands to urban development.⁴⁹

3 Lastly, Petitioner argues that the County did not adopt the City of Pasco
4 Comprehensive Plan: Non-project Final Environmental Impact Statement (Pasco FEIS) or
5 incorporate it by reference for Ordinance 07-202.⁵⁰

6 The County responds that it complied information regarding environmental impacts in
7 a number of SEPA documents, including the Pasco FEIS.⁵¹ The County asserts that
8 "specific issues such as water surface withdrawals, endangered species, environmental
9 health, discharge of emissions, and hazardous substances, or address probable impacts of
10 any future projects,were addressed in the review of the extensive Pasco FEIS and in
11 Part D of the SEPA Checklist" and that the County addressed probable impacts of future
12 project action the proposal would allow.⁵²

13 The County also argues that the Pasco FEIS was properly incorporated by
14 reference.⁵³

15 Petitioner replies that the Pasco FEIS does "not disclose that ALLTCS were being
16 de-designated or that existing farms will be converted to urban uses including over a square
17 mile of prime farmland," does "not disclose the impacts of urban residential development on
18 the Tri-Cities Airport," and does "not disclose the land use impacts, the increased surface
19 water withdrawals, or other impacts."⁵⁴ Petitioner also argues that the Pasco FEIS did not
20 disclose that land added to the UGA was ALLTCS and included prime farmland.⁵⁵

21 Lastly, Petitioner argues that the County did not properly incorporate the Pasco FEIS
22 by reference because it was not mentioned in the Determination of Nonsignificance (DNS),
23 the SEPA Checklist did not mention that it was incorporated by reference or include the
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28 ⁴⁹ *Id.* at 25.

29 ⁵⁰ *Id.* at 29.

30 ⁵¹ County Prehearing Brief at 35.

31 ⁵² *Id.*

32 ⁵³ *Id.* at 36-37.

⁵⁴ Futurewise Reply Brief at 8.

⁵⁵ *Id.* at 8-9.

1 location of Pasco FEIS or its description, and the public notice for the DNS did not mention
2 the Pasco FEIS.⁵⁶

3 Board Discussion

4 SEPA requires the disclosure and full consideration of environmental impacts in
5 governmental decision making.⁵⁷ Agency decisions must consider more than the narrow,
6 limited environmental impact of the immediate, pending action and cannot close their eyes
7 to the ultimate probably environmental consequences.⁵⁸ SEPA specifically required that
8 counties conduct a detailed and comprehensive review, rather than take a "lackadaisical
9 approach."⁵⁹

11 SEPA regulations specifically require that a jurisdiction "carefully consider the range
12 of probable impacts, including short-term and long-term effects" of a proposal.⁶⁰ Moreover,
13 the regulations specifically state:

14 A proposal's effects include direct and indirect impacts caused by a proposal.
15 Impacts include those effects resulting from growth caused by a proposal, as well
16 as the likelihood that the present proposal will serve as a precedent for future
17 actions. For example, adoption of a zoning ordinance will encourage or tend to
18 cause particular types of projects or extension of sewer lines would tend to
19 encourage development in previously unsewered areas.⁶¹

20 This requirement is well articulated by the Court of Appeals in *Spokane County v.*
21 *Eastern Wash. Growth Management Hearings Bd.*, which stated:

22 [F]or a non-project action, such as a comprehensive plan amendment or
23 rezone, the agency must address the probable impacts of any future project
24 action the proposal would allow. Wash. State Dep't of Ecology, *supra*, § 4.1, at

25 ⁵⁶ *Id.* at 10.

26 ⁵⁷ *Polygon Corporation v. Seattle*, 90 Wn.2d 59, 61, 578 P.2d 1309 (1978), citing *Norway Hill Preservation &*
27 *Protection Ass'n v. King County Council*, 87 Wn.2d 267, 552 P.2d 674 (1976). The Court of Appeals in *Moss v.*
28 *Bellingham* restated the long-standing rule that the purpose of SEPA is to function "as an environmental full
disclosure law." 109 Wn. App. 6, 16, 31 P.3d 703 (2001).

29 ⁵⁸ *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1976).

30 ⁵⁹ *Eastlake Cmty. Council v. Roanoke Assocs., Inc.* 82 Wn.2d 475, 494, 513 P.2d 36 (1973); see also *Norway*
Hill, 87 Wn.2d at 273 (SEPA requires a "detailed statement").

31 ⁶⁰ WAC 197-11-060(4)(c).

32 ⁶¹ WAC 197-11-060(4)(d).

1 66; see WAC 197-11-060(4)(c)-(d). The purpose of these rules is to ensure an
2 agency fully discloses and carefully considers a proposal's environmental
3 impacts before adopting it and "at the earliest possible stage." *King County v.*
4 *Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663-64, 666, 860 P.2d
5 1024 (1993); see WAC 197-11-060(4)(c)-(d).⁶²

6 Hearings Board cases are consistent with the Court of Appeals. For example, in
7 *Better Brinnon Coalition v. Jefferson County*, the Board stated:

8 The County directs our attention to WAC 197-11-442 which provides that the
9 County shall have "more flexibility in preparing EISs on nonproject proposals".
10 However, the flexibility afforded the County is not unlimited. All environmental
11 documents prepared under SEPA require consideration of environmental
12 impacts, with attention to impacts that are likely, not merely speculative. WAC
13 197-11-060 (4).

14 ...

15 We note with the County's hearing examiner that the County essentially chose
16 to defer all environmental review until the permitting stage. ... This is a pattern
17 that the hearing examiner notes leads to a "dangerous incrementalism" whereby
18 the environmental issues are never really addressed. *Ibid.* This is neither proper
19 phasing nor a proper use of flexibility in setting the detail of analysis. The County
20 must evaluate the environmental impacts that are probable as a result of the
21 change proposed. Those impacts should be measured in terms of the maximum
22 potential development of the property under the changed land use designation.
23 See *Ullock v. Bremerton*, 17 Wn. App. 573, 575, 565 P.2d 1179 (1977). By
24 waiting until each permit application is presented, the County would be unable to
25 assess the cumulative impacts of the increased development in any meaningful
26 way and would thwart the aim of providing future permit applicants with certainty
27 about what is allowed in the Brinnon Rural Village Center and WaWa Point SRT
28 overlay.⁶³

29 ⁶² *Spokane County v. Eastern Wash. Growth Management Hearings Bd.*, 176 Wash. App. 555, 579, 309 P.3d
30 673 (2013); see also, *Conservation Northwest v. Okanogan County*, 194 Wash. App. 1034 (Div. 3 2016)
31 (unpublished) (holding the County failed to prepare an adequate checklist because the checklist contains
32 repetitive, superficial, conclusory statements regarding the potential environmental impact of opening nearly
600 miles of county roads to ATV use, and the checklist is almost devoid of specific information).

⁶³ *Better Brinnon Coalition v. Jefferson County*, WWGMHB No. 03-2-0007, Amended Final Decision and Order
(Nov. 3, 2003), at 18-20.

1 As discussed above, the Board found that the County failed to properly de-designate
2 the "Franklin Crops" ALLTCS. A review of the Pasco FEIS and other SEPA documents
3 indicates that there is no disclosure of the de-designation or potential environmental
4 impacts. To the contrary, the Pasco FEIS indicates that no de-designation will occur. For
5 example, the Pasco FEIS states that "none of the alternatives would affect Franklin County-
6 designated agricultural lands of long-term commercial significance."⁶⁴ Other SEPA
7 documents in the record are silent on the de-designation of the "Franklin Crops."⁶⁵
8

9 Failure to disclose the de-designation of the "Franklin Crops" ALLTCS amounts to a
10 violation of the requirements of SEPA. The County has a duty, even as a non-project
11 action, to disclose and analyze the probable impacts of the de-designation.⁶⁶ SEPA
12 required the County to disclose the de-designation and any environmental impacts caused
13 by the action. The County's failure to do so was clearly erroneous.
14

15 The Board finds that the record indicates that the Pasco FEIS and other SEPA
16 documents failed to disclose the de-designated the "Franklin Crops" ALLTCS and any
17 associated environmental impacts.

18 Because this matter will be remanded, the Board declines to rule on whether the Pasco
19 FEIS was properly incorporated by reference and on the remaining issues raised by
20 Petitioners.
21

22 V. FINDING OF FACT AND CONCLUSIONS OF LAW

23 Issue 1

- 24 A. The Board finds that the area designated as "Franklin Soils" included land capability
25 soil classifications of 1-3, were included on the map designating ALLTCS in the 2008
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31 ⁶⁴ IR 13.5 at 35, *see also id.* at 38, 72, 110-112, 123-124.

32 ⁶⁵ *See, e.g.,* IR 13, IR 15.

⁶⁶ *Spokane County*, 176 Wash. App. at 579.

1 Comprehensive Plan, and otherwise were included as ALLTCS under the County's
2 2008 Comprehensive Plan.

3 B. The Board finds that the 2018-2038 comprehensive plan failed to include "Franklin
4 Soils" as ALLTCS and failed to apply de-designation criteria identified by the Board
5 and Washington courts.
6

7 C. The Board finds and concludes that the Petitioner has met its burden in
8 demonstrating that the County is in noncompliance with the requirements of the GMA in
9 de-designating the "Franklin Soils" ALLTCS.

10 D. The Board finds and concludes that any remaining issues under Issue 1 were beyond
11 the scope of the issue statements in the Petitioner's Petition for Review and will not
12 be considered by the Board.
13

14 Issue 2

15 A. The Board finds that there is no GMA provision or regulation requiring Franklin
16 County's consideration of unadopted development regulations when developing a
17 land capacity analysis.

18 B. The Board finds that Petitioner failed to carry its burden to show that the reliance on
19 the City of Pasco Land Capacity Analysis to support County's adoption of the Pasco
20 UGA violates any provision of the GMA.
21

22 Issue 3

23 A. The Board finds that the Pasco FEIS and other SEPA documents included in the
24 record failed to disclose the environmental impacts of the de-designation of the
25 "Franklin Crops" ALLTCS and any environmental impacts.

26 B. The Board finds and concludes that the Petitioner has met its burden in
27 demonstrating that the County is in noncompliance with the requirements of the
28 SEPA in failing to disclose and analyze de-designating the "Franklin Soils" ALLTCS.
29

30 C. ORDER

31 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
32 parties, the GMA, prior Board orders and case law, having considered the arguments of the

1 parties, and having deliberated on the matter, the Board finds:

- 2 • Ordinance 07-2021 is remanded to the County to take action to come into
3 compliance with the requirements of the GMA and SEPA.
4 • All other allegations not addressed in this Order are dismissed.
5

6

Item	Date Due
Compliance Due	August 1, 2022
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	August 15, 2022
Objections to a Finding of Compliance	August 29, 2022
Response to Objections	September 8, 2022
Compliance Hearing Zoom link will be provided at a later date	September 15, 2022 10:00 A.M

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14 Length of Compliance Documents – Compliance Report/Statement of Actions Taken to
15 Comply shall be limited to 35 pages, 45 pages for Objections to Finding of
16 Compliance, and 10 pages for the Response to Objections. A document of 15 pages or
17 longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states:
18 “Clarity and brevity are expected to assist a board in meeting its statutorily imposed time
19 limits. A presiding officer may limit the length of a brief and impose format restrictions.”
20
21

22 SO ORDERED this 28th day of January 2022.

23
24 

25 Rick Eichstaedt, Presiding Board Member

26 

27 Bill Hinkle, Board Member

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29 Cheryl Pflug, Board Member
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**Note: This is a final decision and order of the Growth Management Hearings Board
issued pursuant to RCW 36.70A.300.⁶⁷**

⁶⁷ Should you 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 242-03-830(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.

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A Prehearing Conference was held on September 13, 2021.

On September 14, 2021, the Board issued an Order Granting Intervention by the City of Pasco. This was followed by an order on October 25, 2021 granting intervention by the City of Pasco.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- **Petitioners Prehearing Brief (November 3, 2021)**
- **Respondent and Intervenor-Respondents Prehearing Brief (November 24, 2021)**
- **Petitioners Reply Brief (December 8, 2021)**

The Hearing on the Merits was conducted via Zoom on December 12, 2021. Board Members Rick Eichstaedt (serving as Presiding Board Member), Bill Hinkle, and Deb Eddy were present. Attorney Tim Trohimovich presented argument on behalf of Petitioner Futurewise. Attorney Taud Hume presented argument on behalf of Respondent Franklin County. Attorney Kenneth Harper presented argument on behalf of Intervenor-Respondent City of Pasco. Attorney Jesse DeNike presented on behalf of Intervenor-Respondent Port of Pasco.

Appendix B: Legal Issues

Per the Prehearing Order, legal issues in this case were as follows:

1. Did Franklin County's adoption of Ordinance 07-2021 which de-designated agricultural lands of long-term commercial significance and added the land to the Pasco Urban Growth Area violate RCW 36.70A.020(8), RCW 36.70A.030(3) or (13), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.070 (internal consistency) and (1), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.170, RCW 36.70A.210, RCW 36.70A.290, WAC 365-190-040, WAC 365-190-050, or Franklin County County-Wide Planning Policies I.1.H or II.12 because the farmland still meets the Growth Management Act and Franklin County criteria for agricultural lands of long-term significance?
2. Did Franklin County's adoption of Ordinance 07-2021, including expanding the Pasco Urban Growth Area by approximately 3,407 acres, violate RCW 36.70A.020(1) or (2), RCW 36.70A.070 (internal consistency); RCW 36.70A.100, RCW 36.70A.110, RCW 36.70A.115, RCW 36.70A.130(1), RCW 36.70A.210, RCW 36.70A.290, or Franklin County County-Wide Planning Policies I.1.A, I.1.B, II.2, or II.3 because the expansion is not need to accommodate the planned growth and not properly located?
3. Did Franklin County's State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) and SEPA Environmental Checklist for the adoption of Ordinance 07-2021 violate RCW 36.70A.020(8) or (10), RCW 43.21C.020, 43.21C.030, RCW 43.21C.031(1), RCW 43.21C.060, WAC 197-11-060, WAC 197-11-080, WAC 197-11-100, WAC 197-11-158, WAC 197-11-310, WAC 197-11-315, WAC 197-11-330, WAC 197-11-335, or WAC 197-11-340 because the documents did not adequately analyze, disclose, or consider the environmental impacts of the ordinance?

COMPLIANCE WORKPLAN

Emergency Declaration and Moratorium on Lands

Ruled by EWGMHB to be ALLTCS



FRANKLIN COUNTY

PLANNING AND BUILDING DEPARTMENT

Draft Work Plan Regarding Ensuring Compliance with EWGMHB Ruling Regarding Case #21-1-0005

The current moratorium implemented through Ordinance 04-2022 ends on February 9, 2023. If Franklin County's appeal is successful, and the process is completed before February 9, 2022, then no further action will be required, regarding this matter. To be "completed", all legal remedies for both parties must be exhausted, or either party will need to decide to no longer pursue the matter.

If the appeal of the Final Decision and Order for Case #21-1-0005 (FDO) to the Appeals Court is unsuccessful, then the County will need to determine if it will seek to request that the Washington State Supreme Court review the Appeals Court decision. If, however, a final decision by the Courts is not reached by February 7, 2022, then a second public hearing will be held before the BoCC to determine if the County will extend the moratorium, as adopted, pending a final outcome of any appeals; modify it; or lift the moratorium and implement the requirements of the FDO.

During the moratorium period, County staff will continue to study the issues presented by the Eastern Washington Growth Management Hearings Board's January 28, 2022 Final Decision and Order for Case # 21-1-0005, and how to implement said changes, if necessary. Staff will prepare a draft ordinance with appropriate revisions to the County's land use regulations and, if unsuccessful in its appeal of said decision, perform SEPA review of the draft ordinance, and conduct a public review process for the amendments, which includes public hearings before the County's Planning Commission and Board of County Commissioners.

In summary, the FDO seeks to require that Franklin County designate those properties with a "Franklin Crops" and/or "Franklin Soils" designation, as shown on Map 8 of the 2008 Franklin County Comprehensive Plan, and included in the 2018-2038 Franklin County Comprehensive Plan City of Pasco Urban Growth Area Expansion, as Agricultural Lands of Long-Term Commercial Significance (ALLTCS). If the County is unsuccessful in its appeal of this determination, it will need to comply with this interpretation and designate the lands as ALLTCS. Or, it can decide to de-designate these properties by notifying the public it intends to de-designate said properties as ALLTCS; perform a SEPA Checklist better articulating the potential environmental impacts of such a de-designation; implement a SEPA Review and Comment period reflecting the same; and finalize the action through our adopted regulatory change process.

Compliance Timeline

Draft Compliance Ordinance:	November 18, 2022
SEPA Checklist Prepared:	November 18, 2022
WA Dept. of Commerce 60-day Review:	November 21, 2022 – January 21, 2022 (Will request expedited review, which may shorten review time)

Because the final disposition regarding this matter is dependent on a schedule determined by the Courts, the SEPA/Project comment period, public hearings, and final action by the BoCC are not better defined. It is hoped that the final court ruling on this matter will occur prior to February 7, 2023. However, as this is currently unknown, the moratorium may need to be extended pending a final

outcome of the County's appeal of the EWGMHB ruling, or due to parties appealing the Appeals Court ruling to the WA Supreme Court.

Public Notice/Agency Comment Period: TBD. To run at least 14-days, following final disposition of the matter.

Public Hearing, Planning Commission: TBD. To be held 30-45 days following final disposition of the matter, dependent on the final ruling date and day.

Public Hearing, BoCC: TBD. To be held 14-21 days following the Planning Commission Public Hearing.

BoCC Final Action: TBD. To occur either immediately following the BoCC Public Hearing, or as decided by the BoCC at the Public Hearing held before the BoCC.

Moratorium Extension Public Hearing: February 7, 2023

If a final ruling on this matter is entered before the moratorium ends, and the County is unsuccessful in its appeal and determines all legal remedies have been exhausted, or decides it will comply with the FDO, or to de-designate the properties, it will likely be necessary to extend the moratorium after the February 7, 2023 date, in order to maintain the status quo during the time period required to declare them as ALLTCS, and to finalize the de-designation of the properties under question. However, such an extension will likely be less than 6-months.

PUBLIC NOTICE OF PUBLIC HEARING

Emergency Declaration and Moratorium on Lands

Ruled by EWGMHB to be ALLTCS



FRANKLIN COUNTY

PLANNING AND BUILDING DEPARTMENT

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that Franklin County, Washington, will be holding a public hearing to garner public input regarding the emergency moratorium established through Franklin County Ordinance 04-2022, regarding ensuring compliance with the EWGMHB Final Decision & Order for Case #21-1-0005, an appeal of certain sections of the Franklin County 2018-2038 Comprehensive Plan.

NOTICE IS FURTHER GIVEN that there will be an open public hearing on November 1, 2022, at 9:00 am., in the Franklin County Courthouse, Commissioners Meeting Room, 1016 North 4th Avenue, Pasco, WA 99301. Written comments are accepted prior to the public hearing, or parties may attend the public hearing, and be heard. Written comments shall be submitted to the Franklin County Planning Department, 502 W. Boeing Street, Pasco, Washington 99301.

DATED AT PASCO, WASHINGTON ON THIS 18th DAY OF OCTOBER 2022.

Derrick Braaten

Derrick Braaten, Planning & Building Director