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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR CLARK COUNTY**

9 CLARK COUNTY,

10 Petitioner, Respondent Below,

11 v.

12 GROWTH MANAGEMENT HEARINGS
13 BOARD, WESTERN WASHINGTON
14 REGION,

15 Respondent,

16 CLARK COUNTY CITIZENS UNITED, INC.,
17 FRIENDS OF CLARK COUNTY and
18 FUTUREWISE,

19 Petitioners Below,

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

25 Intervenors Below.
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Superior Court Case No. _____

WWGMHB Case No. 16-2-0005c

**PETITION FOR
JUDICIAL REVIEW**

1 Clark County, Washington ("County"), petitions this Court for review under the
2 Administrative Procedure Act, RCW Chapter 34.05, of the Final Decision and Order ("FDO" or
3 "Order") entered March 23, 2017, by the Washington State Growth Management Hearings
4 Board, Western Washington Region ("Growth Board") in *Clark County Citizens United, Inc., et.*
5 *al., v. Clark County and 3B Northwest, LLC, et. al.*, WWGMHB Case No. 16-2-0005c.
6

7 **I. NAME AND MAILING ADDRESS OF PETITIONER**

8 Clark County Prosecutor's Office
9 Civil Division
10 PO Box 5000
Vancouver WA 98666-5000

11 **II. NAME AND MAILING ADDRESS OF PETITIONER'S ATTORNEYS**

12 Christine M. Cook
13 Christopher Horne
14 Clark County Prosecutor's Office
15 Civil Division
16 PO Box 5000
Vancouver WA 98666-5000

17 **III. NAME AND MAILING ADDRESS OF AGENCY**

18 Growth Management Hearings Board
19 Western Washington Region
20 PO Box 40953
Olympia WA 98504-0953

21 Pursuant to RCW 34.05.542, this Petition for Judicial Review will be served on the
22 Office of the Attorney General for the State of Washington at the following address:

23 Office of the Attorney General
24 State of Washington
25 1125 Washington St SE
26 Olympia WA 98504-0100

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IV. AGENCY ACTION AT ISSUE

The agency action at issue is the Board's Final Decision and Order in *Clark County Citizens United, Inc., et. al., v. Clark County and 3B Northwest, LLC, et. al.*, WWGMHB Case No. 16-2-0005c, entered March 23, 2017. A true and correct copy of the Order, bearing the complete caption, is attached to this Petition as **Appendix A** and is incorporated by reference.

V. PARTIES TO ADJUDICATIVE PROCEEDINGS BEFORE THE AGENCY

The following were parties to the adjudicative proceedings in WWGMHB Case No. 16-2-0005c, a consolidated case consisting of three appeals:

Petitioners: Clark County Citizens United, Inc. ("CCCU")
Friends of Clark County ("FOCC")
Futurewise

Respondent: Clark County

Intervenors: 3B Northwest, LLC
RDGB Royal Farms, LLC
RDGK Rest View Estates, LLC
RDGM Rawhide Estates, LLC
RDGF River View Estates, LLC
RDGS Real View, LLC
City of La Center
City of Battle Ground
City of Ridgefield
Lagler Real Property, LLC
Ackerland, LLC
Friends of Clark County (Intervenor/Respondent in CCCU appeal)
Futurewise (Intervenor/Respondent in CCCU appeal)
CCCU (Intervenor/Respondent in FOCC/Futurewise appeal)

VI. FACTS ENTITLING PETITIONER TO JUDICIAL REVIEW

6.1 The Court has jurisdiction over this Petition pursuant to the Administrative Procedure Act, RCW Chapter 34.05, RCW 34.05.510 and .514(1), and the Growth Management Act ("GMA"), RCW 36.70A.300(5).

1 6.2 Clark County has standing to seek review of the Order pursuant to RCW
2 34.06.530 and RCW 36.70A.300(5). The County's adoption of an update to its Comprehensive
3 Growth Management Plan by legislative approval of Clark County Amended Ordinance 2016-
4 06-12 ("2016 Plan Update") was the subject of the underlying review and the Growth Board's
5 Order. Clark County was Respondent in the underlying review, and actively defended its actions
6 under review. In reviewing the 2016 Plan Update, the Growth Board was required to consider
7 the County's interest in the lawful exercise of its discretion to plan for its growth. RCW
8 36.70A.3201. The Order held that certain portions of the County's 2016 Plan Update violated
9 GMA, or were invalid under GMA, and has thereby prejudiced the County in the exercise of its
10 discretion to manage its growth.
11

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13 6.3 Issue 5 in the underlying review complained that the County's approval of
14 expansions of the urban growth areas of Battle Ground, Ridgefield and La Center had violated
15 GMA and were invalid. Issue 10 in the underlying review complained that revised
16 comprehensive plan designations for the formerly agricultural lands newly included in the
17 Ridgefield and La Center urban growth areas had violated GMA. The Order found that the
18 revised plan designations had violated GMA, as contended in Issue 10, and that the expansions
19 of urban growth areas for the three cities had been invalid, as contended in Issue 5. The Order
20 purports to compel the County to achieve compliance with GMA regarding those Issues. The
21 lands included within the urban areas of the Cities of La Center and Ridgefield, however, were
22 annexed by those cities before the Growth Board issued its Order and are now entirely within the
23 corporate areas of those municipalities. The County has no authority to govern those lands. The
24 Order would compel the County to take action that it is not capable of taking, with further
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1 invalidity under GMA or sanctions as potential penalties if the County fails to do so. For that
2 additional reason, the Order has substantially prejudiced Clark County.

3 6.4 Issue 19 in the underlying review contends that Clark County violated GMA by
4 changing the comprehensive plan designation of certain lands adjoining the Vancouver urban
5 growth boundary from agricultural lands of long-term commercial significance to light industrial.
6 By the 2016 Plan Update, the County established a rural industrial land bank on these lands, as
7 authorized by RCW 36.70A.367. The Order held that the revision to plan designations in
8 connection the rural industrial land bank violated GMA, as claimed by Issue 19. This holding
9 fails to defer to the County in the exercise of its planning discretion (RCW 36.70A.3201), and
10 renders impossible the County's efforts to lawfully establish a rural industrial land bank, thereby
11 resulting in substantial prejudice to the County's interests.
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14 6.5 This Court's judgment, in favor of the County as sought, would eliminate or
15 redress the prejudice to the County caused by the Growth Board's Order.
16

17 6.6 Venue is proper in Clark County Superior Court pursuant to RCW 36.70A.300(5)
18 and RCW 34.05.514.

19 **VII. PETITIONER'S REASONS FOR BELIEVING RELIEF SHOULD BE GRANTED**

20 7.1 The Growth Board should not have issued the Order against the County as to
21 lands annexed by the Cities of La Center and Ridgefield. The Growth Board has erroneously
22 interpreted and applied the law, incorrectly applied the standard of review, and acted outside its
23 statutory authority or jurisdiction. Clark County has no legal authority under GMA to plan for
24 lands that have been annexed by any city. The County cannot remove parts of these incorporated
25 cities from their urban growth areas, and it cannot change the comprehensive plan designations
26 of lands within the cities' incorporated boundaries. At the time the Growth Board issued the
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1 Order on Issues 5 and 10, the Growth Board was no longer able to direct the County to take
2 action with regard to the lands annexed by Ridgefield and La Center. The Growth Board was
3 unable to provide effective relief in the underlying review of the County's actions, and the
4 review of the County's actions as to those lands was, therefore, moot. This Court should reverse
5 the Order as to those lands.
6

7 7.2 The Order held that the County violated GMA, as contended in Issue 19, by
8 changing the plan designation of agricultural lands in connection with establishment of a master-
9 planned industrial land bank, pursuant to RCW 36.70A.367. This portion of the Order
10 incorrectly applies the standard of review, erroneously interprets and applies the law, and is not
11 supported by evidence that is substantial, when viewed in light of the whole record before the
12 Growth Board and this Court. First, ample and substantial evidence in the record as a whole
13 demonstrates that the lands on which the County established the rural industrial land bank are no
14 longer agricultural lands of long-term commercial significance. Hence, their revised
15 comprehensive plan designation was proper, lawful and within the County's discretion. Second,
16 no part of RCW 36.70A.367 specifies any particular comprehensive plan designation for the land
17 on which an industrial land bank is established, except that it must be outside urban growth
18 areas. Even if the subject lands should have retained their designation as agricultural, any error
19 of the County in changing that designation was harmless under RCW 36.70A.367. The Order
20 should be reversed and remanded with respect to lands for the County's rural industrial land
21 bank.
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25 **VIII. REQUEST FOR RELIEF**

26 Petitioner Clark County respectfully requests the following relief from the Court:
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1 8.1 A judgment setting aside the Growth Board's findings and conclusions in its
2 Order that the County's 2016 Plan Update had violated GMA by revising the comprehensive
3 plan designations of certain lands and including those lands within the urban growth boundaries
4 of the Cities of La Center and Ridgefield;

5 8.2 A judgment setting aside the Growth Board's findings of fact, conclusions, and
6 determination of invalidity in its Order with respect to the lands added to the urban growth areas
7 and annexed by the Cities of La Center and Ridgefield.

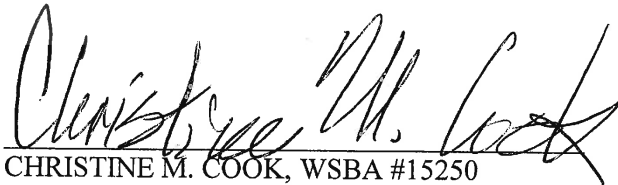
8 8.3 A judgment setting aside the Growth Board's findings and conclusions in its
9 Order that the County's 2016 Plan Update had violated GMA by changing the comprehensive
10 plan designation of lands in connection with establishing a rural industrial land bank, pursuant to
11 RCW 36.70A.367.

12 8.4 Attorneys' fees and costs of suit as allowed by law; and

13 8.5 Such other and further relief as the Court deems just under the circumstances.

14 DATED this 24th day of April, 2017.

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CHRISTINE M. COOK, WSBA #15250
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Attorney for Petitioner Clark County

CERTIFICATE OF SERVICE

On this 24th day of April, 2017, I, Thelma Kremer, hereby certify that I made service of the foregoing *Clark County's Petition for Judicial Review* on the parties listed below in the manner(s) indicated:

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27 DATED this 24th day of April, 2016.

28 
29 Thelma Kremer, Legal Secretary

ATTACHMENT A

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

CLARK COUNTY CITIZENS UNITED, INC.,
FRIENDS OF CLARK COUNTY AND
FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent,

and

3B NORTHWEST LLC, CITY OF LA CENTER,
RDGB ROYAL FARMS LLC, RDGK REST
VIEW ESTATES LLC, RDGM RAWHIDE
ESTATES LLC, RDGF RIVER VIEW
ESTATES LLC, RDGS REAL VIEW LLC,
CITY OF BATTLE GROUND, CITY OF
RIDGEFIELD, LAGLER REAL PROPERTY
LLC AND ACKERLAND LLC,

Intervenors.

Case No. 16-2-0005c

FINAL DECISION AND ORDER

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