

1. Pierce County's adoption of Amendments T-8 and M-12, in Ordinance No. 2003- 103s, was **clearly erroneous** and **does not comply** with the notice and public participation requirements of RCW 36.70A.035, .130 and .140 or the agricultural resource land designation provisions of RCW 36.70A.050 and .170, as defined in .030(2) and (10), and was **not guided by Goal 8 – RCW 36.70A.020(8)**.
2. Pierce County's adoption of Amendment M-10, in Ordinance No. 2003-103s, related to the three challenged parcels, was **clearly erroneous** and **does not comply** with the agricultural resource land designation and implementation provisions of RCW 36.70A.040, .050, .060, .170 and was **not guided by Goal 8 – RCW 36.70A.020(8)**.
3. Further, the adoption of Amendments T-8 and M-12 substantially interfere with the fulfillment of Goal 11 – RCW 36.70A.020(11); and Amendment M-10 substantially interferes with the fulfillment of Goal 8 – RCW 36.70A.020(8); therefore, the Board enters a **Determination of Invalidity** with respect to Amendments T-8 and M-12 and to the noncompliant parcels in Amendment M-10 of Ordinance No. 2003-103s.
4. The Board **remands** text amendment T-8, in its entirety, map amendment M-12, in its entirety, and map amendment M-10, related to the three challenged parcels, to the County with direction to provide for effective notice and the opportunity for public participation and take appropriate legislative action to establish explicit criteria for the designation and/or de-designation of agricultural resource lands and conduct the appropriate analysis in undertaking such designations in order to comply with the goals and requirements of the Act.
 - By no later than **January 31, 2005**, the County shall take appropriate legislative action to bring its Plan into compliance with the goals and requirements of the GMA, as interpreted and set forth in this Final Decision and Order (**FDO**).
 - By no later than **February 7, 2005**, the County shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioners and Intervenors. By this same date, the County shall file a "**Remand Index**," listing the procedures (meetings, hearings *etc.*) occurring during the remand period and materials (documents, reports, analysis, testimony *etc.*) considered during the remand period in taking the remand action.

- By no later than **February 14, 2005**, the Petitioners and Intervenors may file with the Board an original and four copies of Comments on the County's SATC. Petitioners and Intervenors shall each simultaneously serve a copy of its Comments on the County's SATC on the County and each other.
- By no later than **February 17, 2005**, the County may file with the Board an original and four copies of the County's Reply to Comments. The City shall simultaneously serve a copy of such Reply on Petitioners and Intervenors.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. February 21, 2005²** at the Board's offices.

If the parties so stipulate, the Board will consider conducting the compliance hearing telephonically. If the County takes legislative compliance actions prior to the January 31, 2005 deadline set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 44-45.

On August 16, 2004, the Board issued an "Order on Reconsideration [Rescinding Invalidity for Amendments T-8 and M-12]."

On February 4, 2005, the Board received "Respondent Pierce County's Statement of Actions Taken to Comply" (**County SATC**), with 47 attachments.

On February 14, 2005, the Board received: 1) 1000 Friends of Washington's "Petitioners' Comments to Pierce County's Statement of Actions Taken to Comply" (**1000 Friends Comment**); 2) "CTED Comments on Pierce County's Statement of Action Taken to Comply" (**CTED Comment**); and 3) "The Buttes, LLC's Comments on Pierce County's Compliance Report" (**Buttes Comment**).

On February 17, 2005, the Board received "Respondent Pierce County's Reply to Comments" (**County Reply**).

On February 23, 2005, the Board received an unauthorized and unsolicited filing from The Buttes entitled "The Buttes, LLC's Reply Regarding Comments on Pierce County's Compliance Report" (**Buttes Reply**). At the compliance hearing the County moved that

² On January 11, 2005 the Board issued an Order changing the date of the compliance hearing from February 21, 2005 (a state holiday) to February 22, 2005. On January 27, 2005, at the request of the parties, the Board again rescheduled the compliance hearing; changing the February 22, 2005 date to February 28, 2005.

the Board strike the Buttes Reply since it was unsolicited and unauthorized. The Board **granted** the County's motion and will not consider it in the present proceeding.

On February 28, 2005, beginning at 10:00 a.m., the Board conducted the compliance proceeding at the Board's offices – 900 4th Avenue, Seattle, Washington. Board Member Edward G. McGuire, presiding officer, convened the hearing. Board Members Bruce C. Laing and Margaret A. Pageler were present. M. Peter Philley represented Pierce County. Margaret Y. Archer represented Intervenor/Petitioner The Buttes, LLC/Orton Farms and Alan D. Copsey represented Intervenor CTED. Petitioner/Intervenor 1000 Friends did not attend the compliance hearing. The hearing ended at approximately 11:00 a.m.

II. COUNTY COMPLIANCE ACTIONS and DISCUSSION

The County's Compliance Actions and Comments of the Parties:

The County's SATC indicates that it expanded and improved its notice and public participation process for consideration of amendments to its criteria for identifying and designating agricultural resource lands. *See* SATC Attachments 20-22, 25-26 and 30-46. The County also indicates that it took three distinct legislative actions to comply with the GMA and the Board's FDO:

- On August 17, 2004, the County adopted **Ordinance No. 2004-73**, which deleted all map references and findings related to Amendment M-10. SATC, at 6-7, and Attachment 1;
- On November 9, 2004, the County adopted **Ordinance No. 2004-87s**, which was the County's Plan Update. In the Plan Update, the County modified its criteria for identifying and designating agricultural resource lands (**ARLs**) and designated ARLs, among other things, in this Ordinance. SATC, at 7-8, and Attachments 2-5;
- On December 7, 2004, the County adopted **Ordinance No. 2004-120**, which deleted Plan text and map references related to Amendment T-8 and M-12. SATC, at 8, and Attachment 6.

In its SATC, the County suggests that, pursuant to the Board's FDO, all it was required to do was take legislative action prior to January 31, 2005 and utilize appropriate notice and public participation procedures in taking that action. SATC, at 3.

1000 Friends indicates that their only concern in the compliance proceeding is amendment M-10, and since the County has redesignated the three parcels at issue in the case as Agriculture, they support a finding of compliance. 1000 Friends Comment, at 2.

CTED indicates that it intervened in this matter:

[T]o address three issues related to text amendment T-8, which amended the agricultural lands section [of the County's Plan]. CTED's concerns centered on the proper interpretation and implementation of the GMA's duty to identify, designate and protect agricultural lands of long-term commercial significance. CTED did not address the issue of whether the County had complied with the public participation requirements of RCW 36.70A.035, .130 and .140. Because the compliance issues now before the Board are not those argued by CTED in the briefing and argument on the merits, CTED takes no position on those issues. CTED reserves the right to address the County's substantive compliance with the GMA at the appropriate time.

CTED Comment, at 2.

The Buttes objects to the County's action related to one of the properties in Amendment M-10. The Buttes argues that the Board found noncompliance and invalidity on The Buttes property because the County had not conducted an analysis and evaluation as to whether it should, or should not, be designated as agricultural resource lands. Intervenor contends that the County has placed the property in an ARL designation without conducting any analysis or evaluation. Buttes Comment, at 1-4. The Buttes also indicates that it has filed a challenge to the Board's FDO in superior court and filed a petition for review with this Board regarding Ordinance No. 2004-87s. *Id.* at 4-5.

The County disagrees with The Buttes. It contends that Amendment M-10 involved other parcels besides Intervenor's single parcel, and all of M-10 was found noncompliant and invalid by the Board. The County asserts that repeal of Amendment M-10 was appropriate in order to have invalidity rescinded by restoring the Amendment M-10 properties to their prior status. Additionally, the County contends it did do the necessary evaluation and analysis in applying the new criteria [Ordinance No. 2004-87s] to The Buttes property, and it remains Agricultural. The County also notes that, subsequent to adoption of Ordinance No. 2004-87s, The Buttes did not apply to have its property de-designated during the 2005 annual review cycle. County Reply, at 1-5.

Board Discussion:

It is undisputed, and the record supports, the notion that the notice and public participation procedures used by the County in adopting Ordinance Nos. 2004-73, 87s and 120, and in revising its ARLs criteria and designation complies with the notice and public participation requirements of RCW 36.70A.035, .130 and .140. *See* FDO, Section V, paragraph 1, at 44; and SATC Attachments 20-22, 25-26 and 30-46. Therefore, the Board will enter a **finding of compliance** related to this action.

The adoption of Ordinance No. 2004-120 repeals all text and map references to Amendments T-8 and M-12, which the Board found noncompliant with the Act. This action had the effect of restoring the prior Plan text and FLUM designations. *See* FDO,

Section V, paragraph 1, at 44; and SATC, at 8; and Attachment 6. Therefore the Board will enter a **finding of compliance** related to this action.

The adoption of Ordinance No. 2004-73 repeals all map references to Amendments M-10, which the Board found noncompliant with the Act. *See* FDO, Section V, paragraph 2, at 44; and SATC, at 6-7; and Attachment 1. This action had the effect of restoring the prior FLUM designations. Therefore, the Board will enter a **finding of compliance** related to this action. This action also removes the substantial interference with RCW 36.70A.020(8), and the Board will **rescind** the determination of invalidity pertaining to M-10.

Finally the Board notes that the FDO, Section V, paragraph 1, at 44 provides:

1. *Pierce County's adoption of Amendments T-8 and M-12, in Ordinance No. 2003- 103s, was **clearly erroneous and does not comply** with the notice and public participation requirements of RCW 36.70A.035, .130 and .140 or the agricultural resource land designation provisions of RCW 36.70A.050 and .170, as defined in .030(2) and (10), and was **not guided by Goal 8 – RCW 36.70A.020(8).***

(*Italicized emphasis supplied*). In response to this portion of the FDO, the County adopted Ordinance No. 2004-87s, which revised the County's criteria for identifying and designating agricultural resource lands. Therefore, by adopting Ordinance No. 2004-87s the County has changed its ARLs criteria and designations from those restored by Ordinance Nos. 2004-120 and 2004-73.

The Board notes that Ordinance No. 2004-87s is the subject of a separate proceeding, wherein 1000 Friends of Washington (now Futurewise), Friends of Pierce County, and The Buttes LLC, have challenged whether these same ARLs provisions of Ordinance No. 2004-87s comply with the relevant provisions of the GMA. *See Bonney Lake, et al. v. Pierce County*, CPSGMHB Consolidated Case No. 05-3-0016c, Prehearing Order, (March 1, 2005). Therefore, the Board will not address whether the ARLs provisions of Ordinance No. 2004-87s comply with RCW 36.70A.050 and .170, as defined in .030(2) and (10), or .020(8) in this *Orton Farms* Order.

Since the parties³ in *Orton Farms* are parties in the *Bonney Lake* proceeding, and have raised issues of whether the County's ARLs provisions, in Ordinance No. 2004-87s, comply with the relevant provisions of the GMA; the Board will address the ARLs issue comprehensively in that proceeding. The Board will consider the final piece of

³ The Board notes that CTED was an Intervenor in support of the County in *Orton Farms*, and was a participant in this compliance proceeding. The Board also notes that CTED "reserve(d) the right to address the County's substantive compliance with the GMA" related to the County's duty to identify, designate and protect agricultural lands of long-term commercial significance. CTED Comment, *supra*. Since CTED has reserved its right to address substantive compliance with the GMA's ARLs provisions, CTED should clarify its position and file an appropriate motion to intervene in the *Bonney Lake* proceeding.

compliance in *Orton Farms* in the context of the *Bonney Lake* proceeding and issue a separate order regarding Ordinance No. 2004-87s' compliance with the GMA as set forth and interpreted in the *Orton Farms* FDO. Consequently, the Board will issue an **Order Finding Partial Compliance** in this matter.

III. FINDING OF PARTIAL COMPLIANCE

Based upon review of the Board's August 2, 2004 FDO, the SATC and Attachments [specifically related to notice and public participation], Ordinance No. 2004-73, Ordinance No. 2004-87s, Ordinance No. 120, the arguments of the parties and having considered and deliberated on the matter, the Board finds:

- The County's notice and public participation procedures in this compliance action, the adoption of Ordinance No. 2004-73 [deleting map references to Amendment M-10] and the adoption of Ordinance No. 2004-120 [deleting Plan text and FLUM references to T-8 and M-12] comply with the requirements of the GMA, as set forth in the Board's August 2, 2004 FDO. The Board therefore enters a **Finding of Partial Compliance** for Pierce County. Additionally, the adoption of Ordinance No. 2004-73 removes substantial interference with Goal 8, and the Board **rescinds** its determination of invalidity related to M-10.
- However, whether the County's adoption of Ordinance No. 2004-87s complies with the GMA as set forth in the Board's August 2, 2004 FDO is the subject of a separate proceeding – *Bonney Lake, et al., v. Pierce County*, CPSGMHB Consolidated Case No. 05-3-0016c. Consequently, the Board does not address Ordinance No. 2004-87s' compliance with RCW 36.70A.050 and .170 and .020(8) in this Order. However, the Board will address the final phase of the County's compliance in *Orton Farms* in the context of the *Bonney Lake* proceeding and issue the appropriate Order.

IV. ORDER

Based upon review of the Board's August 2, 2004 FDO, the SATC and Attachments [specifically related to notice and public participation], Ordinance No. 2004-73, Ordinance No. 2004-87s, Ordinance No. 120, the arguments of the parties and having considered and deliberated on the matter, the Board ORDERS:

- As discussed *supra*, regarding the County's notice and public participation procedures, adoption of Ordinance Nos. 2004-73 and 2004-120, the Board enters a **Finding of Partial Compliance** and **rescinds** the determination of invalidity pertaining to Amendment M-10.
- Also as discussed *supra*, the Board continues its deliberations on whether the adoption of Ordinance No. 2004-87s complies with the GMA, as set forth in the Board's August 2, 2004 FDO. Resolution of this compliance

issue will be addressed in the context of the Board's proceeding in *Bonney Lake, et al., v. Pierce County*, CPSGMHB Consolidated Case No. 05-3-0016c. A final determination regarding compliance in *Orton Farms* will be made concurrent with the Board's Final Decision and Order in that matter.

So ORDERED this 1st day of March 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, regarding this portion of the case, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.