

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 VINCE PANESKO, et al.,

3 Petitioners,

4 v.

5 LEWIS COUNTY,

6 Respondent,

7 and

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9
10 *LEWIS COUNTY ECONOMIC DEVELOPMENT*
11 *COUNCIL & INDUSTRIAL LANDS ADVISORY*
12 *TASK FORCE,*

13 Intervenor.

No. 00-2-0031c

**ORDER FINDING
COMPLIANCE ON USES IN
NATURAL RESOURCE
LANDS; AND ELIMINATION
OF "FARM HOMES" AND
"FARM CENTERS" NRL
DESIGNATION EXEMPTION**

14
15 EUGENE BUTLER, et al.,

16 Petitioners,

17 v.

18 LEWIS COUNTY,

19 Respondent,

20 and

21 CITY OF CENTRALIA, et al.,

22 Intervenor.

No. 99-2-0027c

**ORDER FINDING
COMPLIANCE ON USES IN
NATURAL RESOURCE
LANDS; AND ELIMINATION
OF "FARM HOMES" AND
"FARM CENTERS" NRL
DESIGNATION EXEMPTION**

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28 **I. SYNOPSIS OF DECISION**

29 THIS Matter comes before the Board upon Lewis County's motion to dismiss.¹ The Butler
30 Petitioners (Petitioners Knutsen, Smith, Mudge, Gore, Yanisch, Hayden, Vinatieri, Zieske,
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¹ Motion of Lewis County To Dismiss, February 7, 2007.
ORDER FINDING COMPLIANCE ON ARL USES
AND ELIMINATION OF "FARM HOMES" AND "FARM CENTERS"
Case Nos. 00-2-0031c; 99-2-0027c
February 27, 2007
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1 Butler, Smethers, Richard Roth and Susan Roth) filed their response on February 20,
2 2007.² Petitioner Panesko filed his objections to a finding of compliance on these issues on
3 February 8, 2007.³
4

5 In this decision, the Board finds that the deletion of the noncompliant code provisions
6 regarding uses in natural resource lands through the adoption of Ordinance 1179M makes
7 the remaining code provisions on uses in natural resource lands compliant with the GMA. In
8 addition, the deletion of LCC 17.10.126 eliminates the noncompliant exemptions of “farm
9 homes” and “farm centers” from the designation of agricultural lands of long-term
10 commercial significance. Therefore, the Board finds that there are no longer noncompliant
11 designation exemptions for “farm homes” and “farm centers” under the Lewis County Code.
12 As a result, the Board finds compliance on those issues.
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15 **II. PROCEDURAL BACKGROUND**

16 Although these coordinated cases have a long and complex history, this compliance case
17 arises most recently from the Board’s decision of February 13, 2004 Finding Noncompliance
18 and Imposing Invalidity. The portion of the Board’s decision that found noncompliant certain
19 provisions in the Lewis County Code allowing uses in natural resource lands was affirmed
20 by the Washington State Supreme Court on August 10, 2006. The State Supreme Court
21 also affirmed the Board’s determination that the agricultural lands’ designation exemption
22 for “farm homes” and “farm centers” failed to comply with the Growth Management Act
23 (GMA).⁴
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26 The Washington State Supreme Court reversed the Board’s decision with respect to the
27 designation of agricultural lands of long-term commercial significance and remanded that
28 issue to the Board to review the County’s 2003 adoptions (Resolution 03-202, Ordinances
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31 _____
32 ² Petitioners’ Response to County’s Motion to Dismiss.

³ Petitioner Panesko’s Objections To a Finding of Compliance Due [sic]

⁴ *Lewis County v. Western Washington Growth Management Hearings Board, et al.*, No. 76553-7 (August 10, 2006).

1 1179B and 1179C) in light of the State Supreme Court decision.⁵ In response, the Board
2 separated the remand issue of designation of agricultural resource lands from the issues on
3 which the Board's 2004 decision was affirmed - certain uses allowed in natural resource
4 lands (NRL uses); and the exemption of "farm homes" and "farm centers" from designation
5 as agricultural resources lands ("farm center" exemption).⁶ This decision concerns the NRL
6 uses and the "farm center" exemption, issues on which the Board was affirmed.
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8 The schedule for compliance on the NRL uses and "farm center" exemption issues
9 established the compliance due date as December 5, 2006.⁷ However, the County did not
10 take legislative action by the compliance due date. Instead, Lewis County filed its Fifth
11 Progress Report and Motion of Lewis County to Extend Compliance Report Date on
12 December 5, 2006. Finding that a basis for the extension of the compliance period on the
13 issues which had been reviewed and affirmed by the State Supreme Court was not justified,
14 the Board denied the motion for an extension.⁸ The County moved for reconsideration of
15 the extension denial.⁹ The motion for reconsideration was stricken as improper.¹⁰
16 Thereafter, the County adopted Ordinance No. 1179M on January 22, 2007 in response to
17 this Board's determination that certain uses allowed on designated natural resource lands
18 fail to comply with the Growth Management Act. Ordinance No. 1179M amends the Lewis
19 County Code to delete those uses found noncompliant (those also found invalid are shown
20 with an *):
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- 23 LCC 17.30.470(2)(c) and (d)
- 24 LCC 17.30.480*
- 25 LCC 17.30.490(3)(b) and (g)*
- 26 LCC 17.30.510*
- 27 LCC 17.30.620(3) and (4)*

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29 ⁵ *Ibid.*

30 ⁶ Order Re: Compliance Schedule on Remand, September 5, 2006

31 ⁷ *Ibid.*

32 ⁸ Order on County's Request for an Extension of the Compliance Period Re: Uses on Ag Lands; and Farm Centers, December 22, 2006.

⁹ Lewis County's Motion to Reconsider Denial of Compliance Extension and/or Motion to Correct Findings and Conclusions In Order, January 3, 2007.

¹⁰ Order Striking Motion for Reconsideration of Extension Denial

1 LCC 17.30.640(2)(b), (c) and e
2 LCC 17.30.650*
3 LCC 17.30.660(1)(b) and (g)*

4 Ordinance No. 1179M also deletes the definition of “long-term agricultural resource lands”
5 which excluded “farm homes” and “farm centers” from designation (LCC 17.10.126).
6

7 **III. ISSUES PRESENTED**

- 8
- 9 1. Does the deletion of the noncompliant code provisions through the adoption of
10 Ordinance 1179M divest the Board of subject matter jurisdiction in this case?
 - 11 2. Does the deletion of the noncompliant code provisions through the adoption of
12 Ordinance 1179M render the compliance proceedings moot?
 - 13 3. With the removal of noncompliant provisions of the County’s development regulations
14 as to NRL uses, is Ch. 17.30 LCC now compliant with the GMA goals and
15 requirements for conservation of natural resource lands? Is the deletion of the
16 exemption of “farm home” and “farm centers” from designation as agricultural lands
17 of long-term commercial significance compliant with those same goals and
18 requirements?
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20 **IV. DISCUSSION OF ISSUES**

21 **Positions of the Parties**

22 The County argues that the repeal of “legislation found noncompliant” divests the Board of
23 subject matter jurisdiction. The County asserts that “a ‘straight’ repeal of regulations,
24 unadulterated by amendment or qualification, is not envisioned as requiring compliance with
25 RCW 36.70A.035, -.130 & -.140.” The County also argues that repeal of noncompliant
26 legislation renders the pending compliance proceedings moot.¹¹
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¹¹ Motion of Lewis County to Dismiss at 4-6.
ORDER FINDING COMPLIANCE ON ARL USES
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1 The Butler Petitioners deny that the Board lacks subject matter jurisdiction over the
2 compliance issues.¹² They note that Ordinance 1179M does not repeal the original
3 ordinances but only amends them. However, the Butler Petitioners have no objection to a
4 determination of compliance based on the repeal of noncompliant code provisions.¹³
5 Petitioner Panesko filed his objections to a finding of compliance in accordance with the
6 schedule established by the Board.¹⁴ Petitioner Panesko noted that the County had not
7 complied with the Board's schedule and had not revised the "erroneous development
8 regulations to justify the lifting of noncompliance and invalidity."¹⁵
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10 11 **Board Discussion**

12 It is clear that the County did not meet the schedule for achieving compliance established in
13 this matter. Compliance was due December 5, 2006 and Ordinance 1179M was not
14 adopted until January 22, 2007. Nevertheless, at this time, the County has repealed the
15 County Code provisions that were found noncompliant in the Board's February 13, 2004
16 order. Therefore, the Board will consider whether compliance should be found.
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19 The Board does not agree with the County that the Board lacks subject matter jurisdiction
20 over this compliance case. Ordinance 1179M amends development regulations - Lewis
21 County Code Title 17, Chapters 17.30 LCC and 17.10 LCC. Amendments to the
22 development regulations in the Lewis County Code are properly within the jurisdiction of the
23 Board. RCW 36.70A.280(1)(a) and 36.70A.290(2).
24

25 Further, Ordinance 1179M does not repeal the three enactments which were the subject of
26 the Board's February 13, 2004 decision – Resolution 03-202, Ordinance 1179B and 1179C.
27 After the time for complying with the requirements of the order has expired, the Board shall
28 determine whether the county "is in compliance with the requirements of this chapter."
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32 ¹² Petitioners' Response to County Motion to Dismiss, February 20, 2007.

¹³ *Ibid*

¹⁴ Petitioners Objections to Finding Compliance Due [sic], February 8, 2007.

¹⁵ *Ibid* at 5.

1 RCW 36.70A.330(1). Whether Ordinance 1179M achieves compliance, is properly the
2 subject of a Board determination.

3
4 The repeal of the noncompliant provisions does not moot the compliance case. However, it
5 does make the determination of compliance straightforward. Once the Board determines
6 that the noncompliant provisions have been deleted, the Board may find compliance.

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8 The February 13, 2004 Order Finding Noncompliance and Imposing Invalidity found the
9 following sections of Ch. 17.30 LCC to be noncompliant:

10 LCC 17.30.470(2)(c) and (d)
11 LCC 17.30.480
12 LCC 17.30.490(3)(b) and (g)
13 LCC 17.30.510
14 LCC 17.30.620(3) and (4)
15 LCC 17.30.640(2)(b), (c) and e)
16 LCC 17.30.650
17 LCC 17.30.660(1)(b) and (g)

18 Our review of Ordinance 1179M confirms that all of these noncompliant provisions have
19 been deleted. Therefore, Ch. LCC 17.30 is now compliant with the GMA (RCW
20 36.70A.020(8), 36.70A.040, 36.70A.060 and 36.70A.160) as to uses that are allowed in
21 natural resource lands.

22
23 As to “farm homes” and “farm centers”, Ordinance 1179M deletes LCC 17.10.126 in its
24 entirety. This amendment to the development regulations therefore removes the exemption
25 for “farm homes” and “farm centers” from the designation of agricultural lands of long-term
26 commercial significance. Removal of that exemption is compliant with the goals and
27 requirements of the GMA for conservation of agricultural lands of long-term commercial
28 significance (RCW 36.70A.020(8), 36.70A.040, 36.70A.060 and 36.70A.160).

29
30 **Conclusion:** Having removed the noncompliant provisions of the County’s development
31 regulations pertaining to uses allowed in natural resource lands, the County has achieved
32 compliance on uses in natural resource lands. By deleting LCC 17.10.126, the County has

1 also removed the noncompliant exemptions from designation as agricultural lands of long-
2 term commercial significance.

3 4 **V. FINDINGS OF FACT**

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6 1. Lewis County is located west of the crest of the Cascade Mountains and is required
7 to plan pursuant to RCW 36.70A.040.
- 8 2. Petitioners Knutsen, Smith, Mudge, Gore, Yanisch, Hayden, Vinatieri, Zieske, Butler,
9 Smethers, Richard Roth and Susan Roth (collectively, "the Butler Petitioners") were
10 original petitioners and participants in the compliance proceedings in these
11 coordinated cases.
- 12 3. Petitioner Panesko was an original petitioner and participant in the compliance
13 proceedings in these coordinated cases.
- 14 4. The Board entered findings of noncompliance and invalidity in its February 13, 2004
15 decision in these cases.
- 16 5. The County appealed the Board's February 13, 2004 decision.
- 17 6. On August 10, 2006, the Washington State Supreme Court affirmed the Board in part
18 and reversed the Board in part. The Board was reversed with respect to its analysis
19 of the County's designation of agricultural lands of long-term commercial significance.
20 That issue is being addressed in separate proceedings.
- 21 7. The Board's determinations of noncompliance and invalidity as to uses allowed in
22 natural resource lands and the exemption of "farm homes" and "farm centers" from
23 designation as agricultural lands of long-term commercial significance were affirmed
24 by the State Supreme Court. These issues are the subject of this order.
- 25 8. On January 22, 2007, the Lewis County Board of County Commissioners adopted
26 Ordinance 1179M.
- 27 9. Ordinance 1179M deletes the following provisions of the Ch. 17.30 of the Lewis
28 County Code that were found noncompliant in the February 13, 2004 decision:
29
30 LCC 17.30.470(2)(c) and (d)
31 LCC 17.30.480
32 LCC 17.30.490(3)(b) and (g)

1 LCC 17.30.510
2 LCC 17.30.620(3) and (4)
3 LCC 17.30.640(2)(b), (c) and e)
4 LCC 17.30.650
5 LCC 17.30.660(1)(b) and (g)

6 10. Ordinance 1179M also repeals LCC 17.10.126 in its entirety. The “farm home” and
7 “farm centers” exemptions from designation as agricultural lands of long-term
8 commercial significance in LCC 17.10.126 were found noncompliant in the February
9 13, 2004 decision.

11 VI. CONCLUSIONS OF LAW

- 12 A. The Board has jurisdiction over the parties and subject-matter of these cases.
13 B. Ch. 17.30 LCC complies with the GMA goals and requirements for the
14 conservation of natural resource lands and to discourage incompatible uses.
15 C. The repeal of LCC 17.10.126 eliminates the “farm home” and “farm centers”
16 exemption from designation of agricultural lands of long-term commercial
17 significance and complies with the GMA goals and requirements for
18 conservation of natural resource lands.
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22 VII. ORDER

23 Based on the foregoing, the Board FINDS that the Lewis County Code provisions on uses
24 allowed in natural resources lands are COMPLIANT with RCW 36.70A.020(8), 36.70A.040,
25 36.70A.060 and 36.70A.170. The Board further FINDS that the elimination of the exemption
26 from natural resource land designation of “farm homes” and “farm centers” is COMPLIANT
27 with RCW 36.70A.020(8), 36.70A.040, 36.70A.060 and 36.70A.
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29 DATED this 27th day of February 2007.
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Margery Hite, Board Member

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Holly Gadbow, Board Member

James McNamara, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a petition for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy to all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

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