

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

VINCE PANESKO, et al.,

Petitioners,

v.

LEWIS COUNTY,

Respondent,

and

LEWIS COUNTY ECONOMIC DEVELOPMENT  
COUNCIL & INDUSTRIAL LANDS ADVISORY TASK  
FORCE,

Intervenors

No. 00-2-0031c

**ORDER ON  
RECONSIDERATION  
OF EXTENT OF  
INVALIDITY**

EUGENE BUTLER, et al.,

Petitioners,

v.

LEWIS COUNTY,

Respondent,

and

CITY OF CENTRALIA, et al.,

Intervenors

No. 99-2-0027c

**ORDER ON  
RECONSIDERATION  
OF EXTENT OF  
INVALIDITY**

## I. SUMMARY OF DECISION

Upon reconsideration of the extent to which invalidity shall be imposed upon the County's zoning maps, the Board finds:

- Invalidity is not necessary to conserve Class A and Class B farmlands and will therefore be lifted
- The new maps (Ex. XII -50) of lands that contain prime soils and show evidence of current or recent farming activity within areas zoned "rural" reflects those rural lands that should be considered for designation as agricultural resource lands and the determination of invalidity shall therefore apply to those lands mapped as Class C Farmlands on Ex. XII – 50, to those lands recommended as not included in agricultural resource lands in RDD-5, RDD-10, and RDD-20 (blue cross-hatched), and to no others. Therefore, invalidity will not apply to lands marked as "Recommended Not To Be Designated" located in Forest Lands of Long-term Commercial Significance.

## II. PUBLIC COMMENT

The County asked the Board to review the public testimony provided at the April 23, 2004 hearing before the Board of County Commissioners. We have done so<sup>1</sup>. While we believe that the County officials and County counsel understand this Board's ruling, it is apparent that many of the citizens do not. Because of the evident confusion, we take this opportunity to clarify what this Board has *not* held.

In the challenge to the County's agricultural resource lands designation presented to the Board, the Board found the County's method for designating agricultural resource lands under the GMA does not comply with the Growth Management Act, that one of

---

<sup>1</sup> Petitioners also submitted exhibits and argument regarding the April 23, 2004 public hearing in their post-hearing submissions. In fairness to all parties, the Petitioners' exhibits are admitted for the same purpose as the exhibits offered by the County on this subject.

the County's designation criteria (LCC 17.30.590(1)(c)) fails to comply with the Growth Management Act, and that the County did not comply with the Growth Management Act in the application of its other criteria to map Class A Farmlands. See Order Finding Non-Compliance and Imposing Invalidity, February 13, 2004.

The Board has remanded this issue to the County to achieve compliance. The Board further made a determination that the County's current zoning maps will allow lands in the rural zones that should be considered for agricultural resource land designation to be developed during the period of remand in a manner that would interfere with the County's ability to achieve compliance. The Board did not direct the County to change the designation of those lands; it directed that incompatible development on those lands be precluded until such time as the County utilizes a compliant process to designate agricultural resource lands.

It may be that lands within this area will not ultimately be designated as agricultural resource lands. There may be good reasons for not designating them as agricultural resource lands; reasons relating to capacity and productivity for agricultural activity may be among them. However, until the County utilizes a compliant approach to assessing potential agricultural resource lands, potential agricultural resource lands in the rural zones must be preserved from incompatible development so that they will be *available* for assessment under a compliant approach.

### **III. PROCEDURAL HISTORY**

This case comes before the Board upon the motions of the Butler Petitioners (Motion to Correct, Amend or Reconsider, February 23, 2004) and Petitioner Panesko (Motion for Reconsideration, February 20, 2004). The Board issued an Order Finding Noncompliance and Imposing Invalidity in the above-entitled cases on February 13, 2004. The Petitioners filed motions for reconsideration on February 20, 2004 and

February 23, 2004. The County filed Lewis County's Reply to Motion to Correct, Amend or Reconsider and Motion for Reconsideration on March 4, 2004.

In our Order on Reconsideration – 2004 (March 11, 2004), we addressed the various issues raised in the motions and granted reconsideration of the extent to which the determination of invalidity should apply to the County's zoning maps. The parties advised us that they were engaged in negotiations to determine if they could agree upon a map which would describe those rural lands that should be the subject of the Board's invalidity determination; they requested, and were granted, an extension of time for those purposes. Order Granting County's Motion to Amend Hearing Date, April 5, 2004. Unfortunately, those negotiations were not successful and the parties argued their positions to the Board at the hearing on reconsideration, held April 26, 2004 in Chehalis, Washington.

While the negotiations did not lead to agreement, we would like to compliment County staff and counsel on the work they did to present a compromise position. The maps shown as Ex. XII – 50 reflect this work and allow the Board to reduce the number of rural lands subject to its determination of invalidity.

### **Invalidity as to Class A and Class B Farmlands Designations**

The County argues persuasively that an invalidity finding is not necessary to preserve lands presently designated as Class A and Class B farmlands for future designation as agricultural resource lands. As presently designated, these lands cannot be developed in ways incompatible with use of the lands for agriculture because they are already subject to limitations for those purposes.

The Petitioners agree with respect to Class A Farmlands but disagree with respect to Class B Farmlands. They argue that the criteria for designation of Class B Farmlands

do not require either prime soils or a history of agricultural use. They urge that the County can change lands from this designation “without consequence” if invalidity does not attach. Petitioners’ Post Reconsideration Hearing Supplemental Memorandum at 2-3.

In order for the County to change the designation of lands presently designated as Class B farmlands, at a minimum the County would have to adopt a new map. This would enable Petitioners to file a challenge, if GMA requirements were implicated. We do not find this possible future action by the County to be a basis for imposing invalidity on lands not at risk for incompatible development now.

**Decision: Invalidity shall not apply to Class A and Class B Farmlands mapped on Ex. XII-50 or other County zoning maps.**

#### **Extent of Invalidity as to Rural Lands**

The Butler Petitioners<sup>2</sup> filed a Motion to Correct, Amend or Reconsider on February 23, 2004 which, among other things, requested the Board to “consider action to prevent vesting of inconsistent permits on lands currently in Rural Development.” Petitioners’ Motion to Correct, Amend or Reconsider at 2. Petitioners point to 140,645 acres of lands with prime agricultural soils that also show evidence of being presently or recently devoted to agriculture and asks that those lands be subject to the Board’s invalidity determination. *Ibid.*

The County did not move this Board for reconsideration of its Order Finding Non-Compliance and Imposing Invalidity. However, the County agrees that the extent of invalidity should be clarified. Lewis County’s Reply to Motion to Correct, Amend or Reconsider and Motion for Reconsideration at 2-3 and 12.

---

<sup>2</sup> Petitioner Panesko’s Motion for Reconsideration (February 20, 2004) did not address the question of the extent of invalidity as to rural lands.

The County argues first that invalidity should not be imposed on any lands because it creates a *de facto* moratorium. Lewis County's Reply to Motion to Correct, Amend or Reconsider and Motion for Reconsideration at 3-12.

We addressed this argument in our Order on Motions for Reconsideration – 2004, March 11, 2004. A determination of invalidity is necessary here because continued development of rural lands that should be considered for designation as agricultural resource lands threatens the ability of the County to ultimately conserve all appropriate agricultural resource lands. RCW 36.70A.060; RCW 36.70A.170(1)(a).

In order to achieve compliance, the County will need to have available for consideration at least those lands that meet two criteria: those that have prime agricultural soils; and those that are being used or recently have been devoted to agriculture. The county code defines primes agricultural soils according to the growing capacity, productivity and soil composition of the land as determined by the United State Department of Agriculture Soils Conservation Service, Handbook 210. LCC 17.30.570. This is a key factor in assessing appropriate agricultural resource lands. See the Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas, WAC 365-190-050. Current or recent use of those lands for farming shows that farming has been a real activity rather than just a potential use of those lands. Therefore, lands meeting these criteria should be considered in the designation process, although they may not all be designated under the final process. In the future designation process, other designation concerns may dictate that some of those lands would not ultimately be designated. *Ibid.* While we cannot say what lands the County will ultimately designate under compliant policy and criteria, a finding of invalidity allows us to ensure that the reasons for not designating agricultural lands do not rest in incompatible development that has occurred during the period of remand.

We do not make a determination of invalidity as to lands meeting these two criteria that are currently designated as forest lands of long-term commercial significance. Forest lands of long-term commercial significance are, by definition, part of minimum blocks of 5,000 contiguous acres of forest lands. LCC 17.30.430(1). Because of the need for agricultural lands to be in proximity with one another and other uses compatible with them, it is unlikely that isolated farmlands in the middle of significant stretches of forest resource lands will ultimately be designated as agricultural resource lands. See WAC 365-190-050(1)(f). Therefore, invalidity will not be imposed with respect to the blue cross hatched areas shown on the new maps (Ex. XII-50) (Recommended as not Agricultural Resource Lands) that are located in lands zoned as forest lands of long-term commercial significance under LCC 17.30.430(1).

The County argued at the hearing on reconsideration that imposing invalidity upon all rural lands is clearly excessive because even Petitioners agree that only some rural lands should even be considered for designation as agricultural resource lands. The County argues that lands zoned RDD-20 cannot be subdivided beyond 20 acre parcels and that preventing a change in parcel size to less than 20 acres is the only reason that invalidity is needed during remand. Therefore, the County urges, the greatest amount of rural lands that should be considered for invalidity are those zoned RDD-5 and RDD-10.

While it is true that the risk of subdivision of potential agricultural resource lands during the period of remand is a significant concern, it is not the only one. The development regulations applicable to rural lands allow some uses that are not compatible with conservation of agricultural resource lands. Among these uses are clusters of up to 24 residential subdivision units, isolated small businesses that are not resource-related and have from 5 to 10 FTEs working on site, and schools. Chapter 17.42 (Rural Zones) Table 2 Rural Areas Land Use Zoning Summary. Further, the

conditions for development in the rural zones do not include the need to conserve agricultural lands and as a consequence the provisions for administrative review and special use permits on other types of uses do not include needed protections for that purpose. *Ibid.* Therefore, we find that the limitation on subdivision of parcel acreage to not more than one dwelling unit per 20 acres in the RDD-20 zone is *not* sufficient to ensure that incompatible rural development will not take place on potential agricultural resource lands zoned RDD-20 during the period of remand. Therefore, invalidity applies to the lands designated as Class C Agricultural Lands in RDD 20 zones, as well as to Class C Agricultural Lands in RDD 10 and RDD 5 zones.

#### **IV. FINDINGS OF FACT RELATING TO INVALIDITY**

1. In the Order Finding Non-Compliance and Imposing Invalidity, February 13, 2004. The Board found the County's method for designating agricultural resource lands under the GMA does not comply with the Growth Management Act, that one of the County's designation criteria (LCC 17.30.590(1)(c)) fails to comply with the Growth Management Act, and that the County did not comply with the Growth Management Act in the application of its other criteria to map Class A Farmlands.
2. Lands presently designated as Class A and Class B farmlands cannot be developed in ways incompatible with use of the lands for agriculture because they are already subject to limitations for those purposes.
3. In order for the County to change the designation of lands presently designated as Class B farmlands, at a minimum the County would have to adopt a new map.
4. In order to achieve compliance, the County will need to have available for consideration at least those lands that meet two criteria: those that have prime agricultural soils; and those that are being used or recently have been devoted to agriculture.

5. Prime agricultural soils are classified according to the growing capacity, productivity and soil composition of the land as determined by the United State Department of Agriculture Soils Conservation Service, Handbook 210. LCC 17.30.570.
6. The presence of prime agricultural soils is a key factor in assessing appropriate agricultural resource lands under the Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas adopted by the Department of Community, Trade and Economic Development, WAC 365-190-050.
7. Current or recent use of lands containing prime soils for agriculture shows that farming has been a real activity on those lands rather than just a potential use of them.
8. To conserve agricultural resource lands as required by the GMA, the County will need to have available for consideration at least those lands that meet two criteria: they contain prime agricultural soils; and they are being used or recently have been devoted to agriculture.
9. However, lands meeting those criteria that are located in areas zoned for forest lands of long-term commercial significance under the county code are unlikely to be ultimately designated as agricultural resource lands because such forest land zoning requires blocks of 5,000 acres of contiguous forest land (LCC 17.30.430(1) and many agricultural lands located in those zones already lack proximity to one another and other uses compatible with them,
10. Isolated farmlands in the middle of significant stretches of forest resource lands are currently subject to the protections applicable to forest resource lands under the county code.
11. Therefore, invalidity will not be imposed with respect to the blue cross hatched areas shown on the new maps (Ex. XII-50) that are located in lands zoned as forest lands of long-term commercial significance under LCC 17.30.430(1).

12. Rural lands that meet the criteria of containing prime agricultural soils and showing evidence of present or recent use for agriculture are at risk for incompatible development during the period of remand.
13. Rural lands zoned RDD-5 and RDD-10 are at risk for development under present rural zone development standards into parcels that may be too small for farming, i.e. smaller than 20 acres.
14. Rural lands zoned RDD are also at risk for development during the period of remand under rural development regulations that allow some uses that are not compatible with conservation of agricultural resource lands.
15. Among the uses in rural zones (RDD) that are incompatible with agricultural resource lands are clusters of up to 24 residential subdivision units, isolated small businesses that are not resource-related and have from 5 to 10 FTEs working on site, and schools. Chapter 17.42 (Rural Zones) Table 2 Rural Areas Land Use Zoning Summary.
16. The conditions for development in the rural zones do not include the need to conserve agricultural lands and as a consequence the provisions for administrative review and special use permits on additional types of uses do not include needed protections for that purpose.
17. A determination of invalidity is necessary to protect rural lands that have prime agricultural soils and are currently or have recently been devoted to agriculture because continued development of rural lands that should be considered for designation as agricultural resource lands threatens the ability of the County to ultimately conserve all appropriate agricultural resource lands.
18. The County's designated Class A and Class B farmlands are so denominated on Ex. XII-50 (new zoning maps introduced at the April 26, 2004 hearing).
19. The County has mapped most of the rural lands that contain prime agricultural soils and are being used or have recently been used for agriculture as Class C

farmlands on Ex. XII-50 (new zoning maps introduced at the April 26, 2004 hearing).

20. The County has mapped the remaining lands that contain prime agricultural soils and are being used or have recently been used for agriculture as “Recommended as not Agricultural Resource Lands” (blue cross-hatch) on Ex. XII-50. These include some lands that are designated forest lands of long-term commercial significance and some that are rural lands.

## **V. CONCLUSIONS OF LAW RELATING TO INVALIDITY**

1. The County’s designation of agricultural resource lands fails to comply with the Growth Management Act as set out in the Board’s Order Finding Non-Compliance and Imposing Invalidity, February 13, 2004.
2. The County’s zoning maps, inasmuch as they allow development of the lands mapped on Ex. XII-50 (the new maps introduced at the April 26, 2004 hearing on reconsideration) as Class C Farmlands, substantially interfere with the fulfillment of Goal 8 of the GMA, RCW 36.70A.020(8) and are invalid.
3. An invalidity finding is not necessary to preserve lands presently designated as Class A and Class B farmlands for future designation as agricultural resource lands and the finding of invalidity shall not apply to those lands mapped as Class A and Class B farmlands on Ex. XII -50.
4. Lands as mapped on Ex.XII-50 as “Recommended as not Agricultural Resource Lands” that are designated as forest lands of long-term significance under LCC 17.30.430(1) do not substantially interfere with the fulfillment of Goal 8 of the GMA and therefore are not invalid.
5. The rural lands that are mapped “Recommended as not Agricultural Resource Lands” on Ex. XII-50 substantially interfere with fulfillment of Goal 8 of the GMA and are therefore invalid.

## VI. ORDER

Based on the foregoing, the Board hereby revises its determination of invalidity in the Order Finding Non-Compliance and Imposing Invalidity, February 13, 2004 and Order on Motions for Reconsideration – 2004, March 11, 2004 as follows:

The following portions of the County’s zoning maps are hereby declared to be INVALID:

- Those portions of the maps mapped as “Class C” farmlands on Ex. XII-50 (new maps introduced at the April 26, 2004 hearing on reconsideration)
- Those portions of the maps mapped as “Recommended as not Agricultural Resource Lands” that apply to rural lands only.

The Board’s determination of invalidity as to portions of the County’s zoning maps shall apply to no other portions of the County’s zoning maps.

Should the County wish to offer changes or additions to its development regulations and/or comprehensive plan that will prevent incompatible development in the areas to which this invalidity order applies, the Board stands ready to consider those bases for lifting invalidity as to some or part of the lands on an expedited basis. RCW 36.70A.302(6).

///

///

///

Pursuant to WAC 242-02-832(4), this decision constitutes a final decision and order for purposes of judicial review.

SO ORDERED this 21<sup>st</sup> day of May 2004.

---

Margery Hite, Board Member

---

Holly Gadbow, Board Member

---

Nan Henriksen, Board Member