

**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 FINDING
NONCOMPLIANCE
AND IMPOSING
INVALIDITY**

EUGENE BUTLER, et al.,

Petitioners,

v.

LEWIS COUNTY,

Respondent,

and

CITY OF CENTRALIA, et al.,

Intervenors

No. 99-2-0027c

**ORDER FINDING
NONCOMPLIANCE
AND IMPOSING
INVALIDITY**

At the outset, we must acknowledge the very long way Lewis County (County) has come in its efforts to meet the mandates of the Growth Management Act (GMA). Until 1996, Lewis County had no zoning laws at all. Since that time, Lewis County has undertaken a long and often arduous process to develop planning policies and regulations in conformity with the standards set by the state Legislature while balancing those policies and regulations with local needs and interests. In the course of many challenges and over many years, Lewis County has admirably achieved compliance with respect to many of its planning policies and regulations. Still remaining in these two cases, however, are issues with respect to the designation of agricultural resource lands and the conservation of forest and agricultural resource lands.

Lewis County is a county with a traditional farming and forestry base. It is home to many beautiful forests and lovely stretches of farmland. However, it is also a county that has been hard hit by the changing economic times. Many Lewis County farmers expressed a belief during the recent county public process that farming is a dying industry in their county. Those farmers articulated a wish to maintain the ability to sell their land for residential and commercial development if farming ceases to be economically viable.

The County has responded by interpreting the mandate to conserve agricultural lands in the Growth Management Act as a mandate to conserve the agricultural *industry*. Based on their estimates of the existing and projected needs of Lewis County's agricultural industry, the County has determined that it needed to designate only a portion of the lands that have traditionally been farmed in the County as agricultural resource lands. Additionally, the County has determined that agricultural lands of long-term commercial significance should be those tracts of land with prime soils that have water rights sufficient to supply irrigation.

The County has allowed nonresource-related uses on agricultural and forest resource lands in an expansive way. The County wishes to further the ability of farm and forest families to earn income through nonresource-related means as they maintain the family farm or forest business. As a result, the County allows a wide variety of nonresource-related uses on designated resource lands.

In this compliance proceeding, the Board is asked to review the County's decisions to designate agricultural resource lands and to review allowable uses in resource lands for compliance with the Growth Management Act.

I. PROCEDURAL HISTORY

There are a number of outstanding cases against Lewis County pending before the Western Washington Growth Management Hearings Board. This order deals with the outstanding compliance issues in *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c ("*Butler*"), and *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c ("*Panesko*"). The compliance issues in *Yanisch v. Lewis County*, WWGMHB Case No. 02-2-0007c will be addressed in a separate Compliance Order. The merits of the consolidated new petitions, *Vinatieri, et al., v. Lewis County*, WWGMHB Case No. 03-2-0020c, will be addressed in a separate Final Decision and Order in that case number.

The original Final Decision and Order in the *Butler* case was issued on June 30, 2000. The decision found the County out of compliance on a number of issues. As a compliance matter, *Butler* was subsequently heard together with *Panesko* and a combination final decision and order (in *Panesko*) and a compliance order (in *Butler*) was issued on March 5, 2001. Issues not resolved in the County's favor in the March 5, 2001 proceedings were heard again in a compliance hearing in which a compliance order was issued July 12, 2002. The remaining issues for compliance after that date in the *Butler* and *Panesko* cases relate to resource lands.

The County submitted a compliance report on the *Butler* and *Panesko* cases on June 30, 2003. (Lewis County's Compliance Report, WWGMHB Case Nos. 01-2-0010c, 00-2-0031c, 99-2-0027c, 98-2-0011c)¹ This compliance report advised the Board that the County had addressed matters for compliance by adopting Resolution 03-202, Ordinance 1179B, and Ordinance 1179C. The question of designation of agricultural resource lands was still open, however, and the County requested an extension to September 8, 2003, to allow the County to complete its work on this subject. The issue of designation of agricultural resource lands was subsequently addressed in Ordinance 1179E adopted on September 8, 2003. Designation of agricultural resource lands was one of the chief compliance issues in the *Butler* and *Panesko* cases.

The Board granted the County's motion for extension to allow all the compliance cases and the new petitions for review challenging the adopted resolution and ordinances to be heard together. All cases were set to be heard on December 9-10, 2003. However, Petitioners made a motion for extension of time for the hearing due to the illness of one of Petitioners. The County joined in this request and the date for hearing of all cases was moved to January 15-16, 2004. The compliance hearing and hearing on the merits of the three consolidated petitions was held on January 15-16, 2004 in the Old County Courthouse in Chehalis. All three board members were in attendance. The County was represented by Alexander Mackie. The Petitioners were present and Mr. Butler, Dr. Knutsen, Mr. Roth, Ms. Roth, Mr. Panesko and Ms. Gore all made presentations.

¹ The parties agreed that there were no outstanding issues in *Mudge v. Lewis County*, WWGMHB Case No.01-2-0010c and *Smith v. Lewis County*, WWGMHB Case No. 98-2-0011c. Those cases were removed from the compliance proceedings and closed with this Board's Order Closing Cases and Removing Closed Cases from Compliance Schedule dated September 26, 2003.

Because of the number of issues brought before the Board over the past five years, the parties requested this Board clarify the issues that are still pending before the Board. In the Order Re: Motion for Clarification of Compliance Issues dated November 18, 2003, the outstanding issues for compliance in *Butler v. Lewis County* (WWGMHB Case No. 99-2-0027c) and *Panesko v. Lewis County*, (WWGMHB Case No. 00-2-0031c) were determined to be:

- 1) Whether the County has complied with the Growth Management Act in designating agricultural resource lands.
- 2) Whether the County has complied with the Growth Management Act in adopting development regulations that ensure the conservation of resource lands, especially by precluding incompatible uses.
- 3) Whether the County has removed substantial interference with Goal 8 of the GMA by eliminating nonresource uses in resource lands.

II. SUMMARY OF DECISION

The GMA defines the requirements for designating natural resource lands based on the characteristics of the lands. Instead of basing its designation decisions on the characteristics of agricultural land, Lewis County focused its decision-making on its assessment of the needs of the local agricultural industry for land with an agricultural resource designation. Historically, in Lewis County as well as in other counties, the agricultural industry has changed as the market for agricultural products changed. Agricultural economists are not able to predict which products will be in demand next year, let alone for the foreseeable future. The legislature, therefore, did not tie the designation of agricultural lands to economic conditions which shift unpredictably but to the characteristics of the land. The moving concern underlying the GMA's requirement for designation and conservation of agricultural lands is to preserve lands capable of being used for agriculture because once gone, the capacity of those lands to produce food is likely gone forever. *See City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 48, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998) (“...requiring designation of

natural resource lands at the outset of the GMA process protects the irreversible loss of those lands to development.”)

The 1997 Census of agricultural activity in Lewis County shows 117,000 acres of farmland in active agricultural use. Nevertheless, the County designated less than 14,000 acres of farmland with prime soils as Class A farmland. The County also designated about 40,000 acres² of Class B farmland in the flood hazard zone, but this land was designated because of its location in the flood zone and regardless of the characteristics of the soil.

Based on its review of farming operations and the size and productivity of various agricultural practices in the county, the County claims that the agricultural industry only “needs” 40,000 acres as designated agricultural resource lands. In designating their agricultural resource lands, the County added a requirement of irrigation capability to those criteria recommended by the Department of Community Trade and Economic Development (“CTED”). LCC 17.30.590(1)(c). However, the record demonstrates that the County has excluded lands from consideration as Class A farmland using the irrigation criterion, in disregard of the actual existing pattern of farming in Lewis County as well as the potential use of land for farming in ways that do not require irrigation.

The County is concerned that only farmland on which a family could be supported be designated as agricultural resource land. However, this is not the test established by the GMA. The GMA requires jurisdictions to designate agricultural lands not already characterized by urban growth that have long-term commercial significance for the production of food and other agricultural products. RCW 36.70A.170. Other governmental efforts may well be necessary to support agriculture, see for instance the

² The actual amount of acreage is disputed. We are using estimates based on the arguments of the parties

Governor's "Grown in Washington" initiative. However, the *land use* requirement is for conservation of commercially productive agricultural lands.

Against the backdrop of minimal agricultural resource land designations, many of the allowable uses that are not related to agricultural activities in those lands are not only non-compliant but also substantially interfere with the GMA goal of conserving resource lands. The scope of many of the uses allowed in resource lands does not protect and conserve resource lands for resource uses, but actually reduces the amount of resource lands conserved for resource purposes.

III. BURDEN OF PROOF

Except in the case of a county or city subject to a determination of invalidity, comprehensive plans and development regulations and amendments thereto are presumed valid upon adoption. RCW 36.70A.320(1) and (4). Therefore, the burden is on the Petitioners to demonstrate that Lewis County was clearly erroneous with respect to the legislative enactments it undertook to comply with the Board's findings of noncompliance in the designation of agricultural resource lands and regarding development regulations that allow resource-related uses in resource lands.

A county or city that is subject to a determination of invalidity has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the GMA. RCW 36.70A.320(4). The Board made a finding of invalidity based upon a determination that the nonresource-related uses allowed in resource lands substantially interfere with the goals of the GMA (Goal 8 – Natural resource industries). Therefore, the burden is on the County to demonstrate that its provisions regarding nonresource-related uses in resource lands no longer substantially interfere with Goal 8 of the GMA. However, once the County satisfies that requirement, the

burden shifts back to Petitioners to show that the development regulations are clearly erroneous.

IV. ANALYSIS AND DISCUSSION OF ISSUES

Issue No. 1: Has the County complied with the Growth Management Act's requirement to designate agricultural resource lands?

Applicable Law:

On or before September 1, 1991, each county, and each city, shall designate where appropriate:

- (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products

RCW 36.70A.170(a)

“Agricultural land” means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

RCW 36.70A.030(2)

“Long term commercial significance” includes the growing capacity, productivity and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

RCW 36.70A.030(10)

Prior Board Order:

In order to comply with the GMA, Lewis County must complete its duty to designate appropriate ARLs [agricultural resource lands] under DCTED guidelines and GMA requirements.

WWGMHB Case Nos. 00-2-0031c and 99-2-0027c
(Compliance Order, July 10, 2002)

Discussion:

Petitioners argue that the County has failed to designate agricultural resource lands in conformity with the Growth Management Act and the Department of Community, Trade and Economic Development (“CTED”) Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas (Chapter 365-190 WAC) as ordered by the Board in its July 10, 2002 Compliance Order. They challenge the County’s designation of agricultural resource lands because it does not include lands that are in agricultural use but lack irrigation rights; excludes agricultural lands between the Cities of Napavine and Winlock; fails to include lands with prime soils in areas of low population density; and fails to designate “substantial agricultural lands outside of floodways”. Petitioners’ Compliance Brief at 4.

The County responds that the County is not required to designate all land that is capable of being farmed.

Lewis County defined the needs of and nature of the industry and we believe the Board should approve that approach. The notion that a County must designate all land capable of being farmed is simply wrong.

County’s Response Brief – *Butler* at 12

The County argues its duty is to “conserve agricultural lands in order to maintain and enhance the agricultural industry,” referring to *City of Redmond v. Hearing Bd.*, 116 Wn. App. 48, ___ P.3d ___(2003). County’s Response Brief – *Butler* at 8.³ The County asserts that it defined the nature and need of the agricultural industry and designated “those lands best suited to meet that need.” *Ibid* at 11.

County Definitions of “Long-term Agricultural Resource Lands”

As a threshold matter, we will address the County’s argument that its duty is to designate lands to meet the needs of the agricultural industry in Lewis County, rather

³ The County’s citation to the 2003 *City of Redmond v. CPSGMHB*, case is difficult to comprehend. The Court of Appeals only used the cited language in a quote from the decision in *King County v. CPSGMHB*, 142 Wn.2d 543, 14 P.3d 133 (2000) at 558.

than to conserve lands based on the characteristics of the land itself. It is clear that in designating agricultural resource lands, the County's explicit policy is for "minimum resource lands designations and protection standards, consistent with the requirements of Chapter 36.70A RCW". LCC 17.30.020(2).

The GMA requires every county and city to designate agricultural lands "that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70.170(1)(a).

Agricultural lands are defined as:

land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

RCW 36.70A.030(2)

The Supreme Court has held that land is "devoted to" agricultural use under RCW 36.70A.030 "if it is in an area where the land is actually used or capable of being used for agricultural production." *City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 53, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998).

The second element of the definition of agricultural land is that it has "long-term commercial significance for agricultural production." The statute defines "long-term commercial significance" as including "the growing capacity, productivity and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land." RCW 36.70A.030(10). Under this element, the decision-maker must evaluate growing capacity, productivity, and soil composition, proximity to population areas,

and the possibility of more intense uses of the land in question before the area could be designated “agricultural land”. *City of Redmond v. CPSGMHB*, 136 Wn.2d at 54.

We note that throughout the GMA and the court decisions construing it the focus is on the nature of the *land*, not on the nature of the agricultural industry that is using the land at any given time. As the Court of Appeals put it in *City of Redmond v. Hearing Bd.*, 116 Wn. App. 48, 52, 65 P.3d 310, 2003 Wash. LEXIS 719 (Division I, 2003), “the question is whether the land is capable of being used for agriculture.”

It is true, as the County urges, that the reason for conserving agricultural lands is to maintain and enhance agriculture-based industries. RCW 36.70A.020(8). However, this reason is not based in any particular industry or industries, but in the potential of the land to be used for commercial agricultural production. Present intention of the current landowner is not the test:

On cannot credibly maintain that interpreting the definition of “agricultural land” in a way that allows landowners to control the designation gives effect to the Legislature’s intent to maintain, enhance and conserve such land.

City of Redmond v. CPSGMHB, 136 Wn.2d 38, 53, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998)

The County’s theory is set out in Ordinance 1179E, which adopts the following definition as LCC 17.10.126:

Long-term agricultural resource lands.

a. “Long-term” agricultural resource lands” are those lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils.

This definition is clearly erroneous. The GMA calls for designation of agricultural lands based on characteristics of the land affecting its capability for long-term use in producing agricultural products. GMA factors include growing capacity, productivity

and soil composition, as well as proximity to population areas, and the possibility of more intense uses of the land. RCW 36.70A.030(2) and (10). Nowhere does the GMA suggest that a county attempt to look into a crystal ball and determine what the agricultural industry might need in the way of designated agricultural resource lands. LCC 17.10.126 improperly creates a criterion for designation of agricultural lands that depends upon an assessment of an economic activity that is inherently unpredictable and which may well change with market conditions, regulatory controls, newcomers to the area, and many other factors, not to mention the weather. LCC 17.10.126 fails to comply with the GMA goals and requirements for designation of agricultural resource lands.

Resolution No. 03-368 amends the Lewis County Comprehensive Plan at 4-56 of the Natural Resource Lands Sub-Element of the Comprehensive Plan to provide:

**Lands Necessary for Designation as Agricultural Lands
of Long-Term Commercial Significance**

The long terms[sic] needs of Lewis County's commercially significant agriculture industry are served by the designation of 40,000 acres or more of lands, including bottom lands and lands with good soils and irrigation.

This provision, determining that agricultural lands should be designated according to the needs of "Lewis County commercially significant agriculture industry", and setting the amount of agricultural resource land acreage on that basis is also clearly erroneous and does not comply with the GMA.

Designation Criteria

The County adopted designation criteria as part of its process to designate agricultural resource lands. There are three categories of agricultural resource lands established – Class A farmland of long-term commercial significance; Class B farmlands of long-term commercial significance; and farmlands of local importance. The criteria for

each category are set out in LCC 17.30.590. Class B farmlands are primarily defined by being in flood hazard zones. LCC 17.30.590(2). Farmlands of local importance are those that are voluntarily nominated by the landowner. LCC 17.30.590(3). Class A farmlands are defined as those areas having the following characteristics:

- (a) Not subject to frequent overflow during the growing season accompanied by serious crop damage; and
 - (b) Has prime farmland soil or soils as identified in LCC 17.30.580(1)(a); and
 - (c) Has sufficient irrigation capability; and
 - (d) Is primarily devoted to commercial agricultural production; and
 - (e) Has a minimum parcel size of 20 acres; and
 - (f) Is not located within an adopted urban growth area.
- LCC 17.30.590(1)

Petitioners challenge subparagraphs (1)(c) and (d). We will address these in turn.

Sufficient Irrigation Capability

The term “sufficient irrigation capability” causes significant confusion and is undefined in the county code. Petitioners argue that the County uses this criterion to exclude otherwise qualifying farmlands and point to several parts of the record that demonstrate the County’s reliance on “water rights” as a basis for designating or not designating farmlands. Petitioners’ Compliance Brief at 6 (Ex. II-41h and Ex. III-30 at 4-95).

Indeed, the County’s Response Brief at 13-15, argues that irrigation is required for commercial agriculture in the county, citing the testimony of a local farmer. Ex. XII - 42g and 42h. However, at argument and also in its brief, the County asserted that irrigation was just a factor for consideration in designating agricultural resource lands.

Part of the confusion arises from the apparently contradictory code provisions regarding “classification” of agricultural resource lands (LCC 17.30.570), “identification” of characteristics of long-term commercially significant agricultural

resource lands (LCC 17.30.580) and “designation” of agricultural resource lands (LCC 17.30.590). In LCC 17.30.570(1), the County identifies prime farmland soils which “commonly get an adequate and dependable supply of moisture *from precipitation* and/or irrigation” (emphasis added). These are soils are listed by the Natural Resource Conservation Service (NRSC) Classes I, IIe, IIw, IIs, IIIe, IIIw, IVe, and Vw. LCC 17.30.570(1). In the very next section, for “land capability” purposes, the County determines that the soils shall be in Capability Classes I, II, and IIIe, and availability of water is listed as a factor in growing capacity and productivity:

Availability of Water. Sufficient irrigation capability, *including precipitation* and water rights, to grow *the primary agricultural crops* produced in Lewis County.

LCC 17.30.580(1)(b) (emphasis added)

However, when it comes to designation, prime farmland soils already identified pursuant to LCC 17.30.580(1)(a) also require “sufficient irrigation capability”. LCC 17.30.590. It appears that this requirement is redundant because, by definition, prime farmland soils “commonly get an adequate and dependable supply of moisture from precipitation and/or irrigation”. LCC 17.30.570(1). Further, the primary agricultural crops which determine whether there is “sufficient irrigation capability” under LCC 17.30.580(1)(b), include “silage/pasture/hay, and Christmas trees”. LCC 17.30.230. All parties appear to agree that growing hay and Christmas trees in Lewis County does not require irrigation, and therefore water rights are not required.

In 1997, \$1,490,000 gross income was generated from the sales of hay in Lewis County. Ex. XII-36cc (USDA 1997 Census). In 2002, \$19,800,000 in gross income was generated from the sales of Christmas trees in Lewis County. Ex. XII-13u. Clearly, both crops have commercial significance.

Because the County has in fact used the absence of water rights to exclude existing agricultural lands in its designation of Class A farmlands, Petitioners assume that the meaning of the term “sufficient irrigation capability” must not simply refer to

adequate precipitation to grow trees or hay. A requirement to hold water rights on agricultural land in order for these lands to be designated agricultural lands of long-term commercial significance in Lewis County would be clearly erroneous. There is ample evidence in the record, in addition to the County's own code provisions cited above, to demonstrate that commercial crops such as hay and Christmas trees can be (and are) grown without irrigation in Lewis County. Ex. XII-36 cc; Ex. XII-13u. However, it is unclear whether the County's criterion is erroneous or whether the County has failed to follow its own criteria in designating agricultural resource lands by requiring water rights. (This was one of the Board's findings in the July 10, 2002 Compliance Order). As long as the meaning of this criterion is fluid enough to allow the County to use it to exclude lands which are presently and recently in the past were used for commercial agriculture, it fails to comply with the GMA requirements for designation of agricultural lands.

Primarily Devoted To Commercial Agricultural Production

The term "primarily devoted to the commercial production" comes directly from the GMA definition of agricultural lands. RCW 36.70A.030(2). It is therefore subject to the same construction as has been applied to that phrase in *City of Redmond v. CPSGMHB*, 136 Wn.2d 38, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998). Pursuant to the Supreme Court's construction of this phrase, it means lands *capable of being used for agriculture* and is not dependent upon present use or landowner intention. Because this phrase has no other definition in the Lewis County Code, it has the same meaning as the phrase is used in the GMA and necessarily complies with the GMA. However, Petitioners point out that there is a problem associated with applying this criterion to parcels of land. This complaint goes to the County's *application* of the criterion, not to the provision itself. As written, LCC 17.30.590(1)(d) complies with the GMA.

Conclusion:

The criterion in LCC 17.30.590(1)(d) as written complies with the Growth Management Act. We will consider whether the County applied this criterion appropriately to the designation of agricultural lands in the following section.

Mapping:

As we have said, it is not clear whether the County's designation criteria exclude agricultural lands that do not have water rights from designation as Class A farmlands, or whether the County has simply failed to follow its own criteria. In either case, the maps adopted in Ordinance 1179E and in Resolution No. 03-368 do not comply with the GMA requirements for designation of agricultural resource lands.

The 1997 Census of Agriculture reports 117,000 acres of land being farmed in Lewis County. Ex. XII-36cc. In 2002, 66,000 acres of land were accorded agricultural land tax status by the Lewis County Assessor. Ex. XII-20a. Out of 117,677 acres of land farmed in Lewis County in 1997, only 5,765 acres were irrigated. Ex. XII-36cc.

There are 283,000 acres of land in Lewis County that contain Class I, II or III soils, considered as prime soils under LCC 17.30.570. Ex. XII-36r, Table 4. Using the NRCS soils map and the 1996 aerial map obtained from the Lewis County Assessor's Office, Petitioners calculated 140,645 acres of prime soils that are presently, or show evidence of having recently been, devoted to agriculture. Ex. XII-28c. Yet the County, using its analysis of the needs of the agricultural industry, designated only 13,767 acres of upland agricultural land, Class A farmlands. Ex. XII-41h. (Class B farmlands are located in the flood hazard zone and are designated regardless of soil characteristics. The County states that it has designated over 40,000 acres of Class B farmland. County's Response Brief – *Butler* at 11).

Petitioners point to the relatively isolated parcels of designated agricultural lands in Lewis County. By designating such isolated tracts of land, the County creates an

inherent problem for the conservation of agricultural lands and even provides a rationale for changing the designation on that basis alone. See rezone application of Mr. Abplanalp, Ex. XII-43c. They also note that the County removed all parcels previously zoned as agricultural resource land in the area between Napavine and Winlock, west of the I-5 freeway, on the ground of likely future urban development. Ex. XII-41J. Yet this area is not an urban growth area. As our sister board has said, proximity to population centers alone does not preclude designation. It is just a factor to be considered. *Ridge et al. v. Kittitas County*, EWGMHB Case No. 94-1-0017 (Final Decision and Order, July 28, 1994). The County's own criteria for designating Class A Farmlands provide that the land may not be located in an urban growth area; they do not provide that the land may not be in proximity to an urban growth area. LCC 17.30.590(1)(f). In addition, there is no basis for rezoning agricultural land to meet a speculative development prospect since the county already has ample rural land zoned for such uses. The County has misapplied its own criterion to exclude parcels that have some proximity to urban growth areas but are not in them.

Similarly, the County has used the criterion in LCC 17.30.590(1)(d) –“primarily devoted to commercial agricultural production” – to exclude areas of agricultural land that are on parcels that are primarily in other use. Petitioners note that even though the amount of land that is devoted to commercial agriculture may be quite sizeable, it may make up only a portion of the use to which the entire parcel is put.

The County responds that it deleted those parcels from agricultural resource land designation where the farming activity was tree farming. “The County does not consider tree farming as an agricultural activity.” County's Response Brief – *Butler* at 17. This surprising assertion is not consistent with either the GMA (RCW 36.70A.030(2)) or Lewis County's own list of examples of primary agricultural crops. LCC 167.30.230.

Petitioners refer us to our decision in *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Final Decision and Order, September 20, 1995) in which we said that the characteristics of an individual parcel of land should not be determinative, but that the designation of agricultural lands should be an area-wide determination. This holding, however, was directed to the need for sufficient land areas to be designated, and not to the problem of a single large parcel devoted to both agriculture and forestry.

There is nothing in the County's designation criteria that applies the criteria on a parcel-by-parcel rather than on an area-wide basis. The County's choice to exclude agricultural lands because they are located on a large parcel of property on which other uses also occur violates its own criteria.

Conclusion:

The County's designations of agricultural resource lands, in its maps, comprehensive plan and county code provisions, fail to comply with the GMA's requirements for designation of agricultural resource lands. In addition, the County has failed to follow its own designation criteria in mapping agricultural resource lands.

Farm Centers And Farm Homes:

Petitioners have challenged the County's creation of "farm centers" and "farm homes" first as a public participation violation, alleging it was done without adequate notice to the public to enable Petitioners to make an adequate response. Petitioners' Compliance Brief at 18. They further raise issues concerning both the designation and conservation of agricultural resource lands with respect to "farm centers" and "farm homes". *Ibid.*

We find that Petitioners adequately raised concerns with respect to the farm centers and farm homes provisions at the county level to enable them to have standing to

challenge them to the Board. However, we reserve the public participation issues raised with respect to the process followed in adopting Ordinance 1179E and Resolution 03-368 to the Final Decision and Order in the Petition for Review challenging their enactment, *Vinatieri et al. v. Lewis County*, WWGMHB Case No. 03-2-20c.

In Ordinance 1179E, Lewis County also adopted a provision excluding “farm homes” and “farm centers” from long-term commercially significant designations of agricultural lands:

Long-term commercially significant designations do not include (a) the “farm home” (a house currently on designated lands as of the date of designation and a contiguous 5 acres, to be segregated by boundary line adjustment for separate financing purposes; and (2) “farm centers”, being those lands existing at the time of designation, marked by impervious (gravel or paved) surfaces, including buildings and sheds and storage areas) not to exceed 5 acres, which shall be available for rural commercial and industrial uses under guidelines established as a conditional use. (Non-farm development on the farm center shall not be effective until the County completes the terms of the special use permit.)

LCC 17.30.126(b)

Petitioner Panesko asserts that this provision allows segregation of agricultural resource lands, not conservation of them. He also states that it appears to allow non-farm development on portions of agricultural resource lands which are thereafter permanently removed from the protections mandated for agricultural resource lands. Petitioner Response to Lewis County’s Compliance Report at 6.

We agree. The County has designated extremely limited areas of agricultural resource lands. This provision then creates pockets of non-agricultural lands contiguous with the agricultural lands, and likely in many cases to be surrounded by them. The County candidly admits that it does not want to have the limitations on uses allowable in

agricultural lands to apply to farm centers or farm homes. However, the reason for those limitations is the need to ensure the conservation of agricultural lands and to enhance the agricultural industry. By converting existing farm lands to mini-industrial and commercial centers, the County seeks to circumvent the requirements of the GMA in precisely the kinds of locations in which protections are most important. Also, because of the relative isolation of parcels with prime soils that the County has designated as long-term resource lands, establishing farm homes and farm centers as nonagricultural uses has the potential for making adjacent resource lands vulnerable to de-designation. LCC 17.10.126(b) fails to comply with the GMA's requirements for designation and conservation of agricultural resource lands and is clearly erroneous.

Conclusion:

The County's adoption of Ordinance 1179E and Resolution 03-368 failed to comply with the Growth Management Act's requirements for designation of agricultural resource lands.

Issue No. 2: Has the County complied with the Growth Management Act in adopting development regulations that ensure the conservation of resource lands, especially by precluding incompatible uses.

Applicable Law:

Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, *shall adopt development regulations* on or before September 1, 1991, to *assure the conservation of agricultural, forest, and mineral resource lands* designated under RCW 36.70A.040...*Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.*

RCW 36.70A.060(1)(emphasis added)

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040.

- (8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(8)

Prior Board Findings:

- LCC 17.30 provides for significant nonresource uses in designated resource lands.
- Allowable uses such as recreational activities, EPFs [essential public facilities] and other nonresource-related commercial uses do not comply with the GMA and *substantially interfere with Goal 8 of the GMA*.
- Allowable residential clustering provisions in resource lands must restrict such residential uses to areas involving “poor soils” or areas otherwise unsuitable for resource land usage.
- Lewis County has failed to remove substantial interference with Goal 8 in its allowable uses in resource lands.

WWGMHB Case Nos. 01-2-0010c, 00-2-0031c, 99-2-0027c and 98-2-0011c (Compliance Order, July 10, 2002)

Discussion:

Lewis County ordinances have been found out of compliance with the GMA by this Board on several occasions with respect to allowable uses in resource lands. In addition to non-compliance, this Board has also found that some of the uses in resource lands substantially interfere with the goals and requirements of the GMA. Petitioners assert that the County has not even addressed some of the ordinance sections that the Board found out of compliance in prior orders.

Petitioners raise the following sections of the Lewis County Code as unchanged from prior enactments or as non-compliant as amended:

- 1) LCC 17.30.460 – Accessory uses allowed in forest resource lands, including public and semi-public buildings (subparagraph 5) and aircraft landing fields and heliports (subparagraph 7).
- 2) LCC 17.30.470(2) – Incidental uses allowed in forest resource lands, including residential subdivisions (subparagraph a); telecommunications facilities (subparagraph c); and gas, electric, water, communication and public utilities facilities (subparagraph d).
- 3) LCC 17.30.480 – Essential public facilities allowed in forest resource lands without review or restriction by the County.
- 4) LCC 17.30.490 – Density and lot size restrictions allowing clustering of residential development in forest resource lands.
- 5) LCC 17.30.510 – Provision for off-site water sources to support residential and other structures in forest resource lands.
- 6) LCC 17.30.620 – Mining activities included as primary uses in agricultural resource lands. Also, farm employee and immediate family member housing on agricultural resource lands allowed as a primary use, without respect to density or lot size of the housing.
- 7) LCC 17.30.630 – Accessory uses allowed outright in agricultural resource lands, including private aircraft landing fields and heliports (subparagraph 4), watershed management facilities (subparagraph 5), and power generation dams and facilities (subparagraph 8).
- 8) LCC 17.30.640(2) – Incidental uses allowed in agricultural resource lands, including residential subdivisions (subparagraph a),⁴ telecommunication facilities (subparagraph b), public and semi-public building (subparagraph c), and home based businesses (subparagraph e).

⁴ This challenge is raised by Petitioner Panesko, Petitioner's Response to Lewis County's Compliance Report at 3.

- 9) LCC 17.30.650 – Essential public facilities allowed in agricultural resource lands without review or restriction by the County.
 - 10) LCC 17.30.660 – Density and lot size restrictions allowing clustering in agricultural resource lands.
- Petitioners' Compliance Brief at 32-42.

The County admits that it has not changed all the challenged sections, but asserts that the Board swept too broadly when it ordered the County to “eliminate all nonresource uses in resource lands”. Lewis County’s Response Brief – Panesko, WWGMHB Case No. 00-2-0031c, at 3. Instead, the County argues that the amendments to its development regulations regarding natural resource lands now comply with the requirements of the Growth Management Act, and that the test on compliance should be compliance with the GMA, not compliance with the Board’s earlier order.

We agree that, as this Board held in prior decisions, the question on compliance is whether the jurisdiction has met the requirements of the Growth Management Act, not whether it complied with the specific directives of the Board’s last order. *See*, for example, *ARD v. Shelton*, WWGMHB Case No. 98-2-0005 (Compliance Order, June 17, 1999); and *WEC v. Whatcom County*, WWGMHB Case No. 94-2-0009 (Compliance Order, February 28, 1995).

At the same time, where the Board has made a finding of non-compliance with respect to a comprehensive plan provision or development regulation (and that finding was not successfully appealed), the County has an obligation to address the finding in its compliance efforts. Further, where the challenged elements of the ordinance resulted in a finding of invalidity (substantial interference with the goals of the Act), then the burden is on the County to show that “the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the goals of this chapter [Ch.36.70A RCW] under the standard in RCW 36.70A.302(1)”. RCW 36.70A.320(4).

We note that the findings this Board made in its last decision on uses in natural resource lands addressed “significant” nonresource uses in resource lands; specified recreational uses, essential public facilities and “nonresource-related commercial uses” as substantially interfering with Goal 8 of the GMA; and found that clustering residential uses on resource lands on prime soils or where resource activity could otherwise take place is non-compliant. Compliance Order, *Panesko v. Lewis County*, WWGMHB Case No. 00-2-0031c; and *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, July 10, 2002. Therefore, the question before the Board at this stage of the proceedings is whether the County’s actions with respect to nonresource uses allowed on natural resource lands no longer substantially interfere with the goals of the GMA and, in addition, whether they actually achieve compliance with the requirements of Ch. 36.70A RCW.

As we review the County’s development regulations concerning uses allowable in resource lands, we are mindful of the statutory purpose of those regulations; they must “assure the conservation” of resource lands. RCW 36.70A.060; RCW 36.70A.040(3). The County refers our attention to *King County v. CPSGMHB*, 142 Wn.2d 543, 560, 14 P.3d 133, 2000 Wash. LEXIS 834 (2000), sometimes called the “soccer fields” decision. In discussing the King County’s use of a recreational use in agricultural lands, the Supreme Court stated at 560:

In order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act’s mandate to conserve agricultural lands for the maintenance and enhancement of the *agricultural industry*. (emphasis added)

The County urges that this language indicates that the purpose of limitations on use of agricultural lands is to maintain and enhance the agricultural industry. For this reason, the County urges that uses that assist the farmers in Lewis County in making a living on the farm should be allowed in agricultural resource lands.

However, later in the *King County* “soccer fields” decision, the Supreme Court makes it clear that agricultural lands are to be used for agricultural activities, without regard to the fact that money might be made on agricultural lands through other uses:

Read logically, this phrase [construing RCW 36.70A.177] means that the County may encourage nonagricultural uses where the soils are poor or the land is unsuitable for agriculture. *It should not be read that the County may encourage nonagricultural uses whether or not the soils are poor or unsuitable for agriculture.*

King County v. CPSGMHB, 142 Wn.2d at 561. (emphasis added)

Therefore, as we review the development regulations challenged here, we must consider whether they conserve agricultural lands for agricultural uses. Where allowed uses in agricultural lands are not resource-related, they must be restricted so that they do not take the place of or interfere with agricultural uses. The same reasoning applies to allowable uses in forest lands.

Uses in Agricultural Resource Lands:

Petitioners challenge a variety of provisions in the Lewis County Code that allow nonagricultural uses in agricultural resource lands. These are:

1. LCC 17.30.620 – Mining activities included as primary uses in agricultural resource lands. Also, farm employee and immediate family member housing on agricultural resource lands allowed as a primary use, without respect to density or lot size of the housing.
2. LCC 17.30.630 – Accessory uses allowed outright in agricultural resource lands, including private aircraft landing fields and heliports (subparagraph 4), and watershed management facilities (subparagraph 5).
3. LCC 17.30.640(2) – Incidental uses allowed in agricultural resource lands, including telecommunication facilities (subparagraph b), public and semi-public building (subparagraph c), and home based businesses (subparagraph e).

4. LCC 17.30.650 – Essential public facilities allowed in agricultural resource lands without review or restriction by the County.
5. LCC 17.30.660(1)(b) and (g) – Density and lot size restrictions allowing clustering in agricultural resource lands.

1) a) Petitioners argue that mining activities should not be primary uses on agricultural resource lands. The term “primary use” is not defined in either the definitions section of Title 17 of the Lewis County Code (Land Use and Development Regulations), or in the definitions section of Ch. 17.30 LCC (Resource Lands) but it appears to carry the meaning of an allowable use, regardless of impact on agricultural activity. This is the basis for their challenge. Petitioners also argue (in the alternative) that the title of the code provision does not have legal effect, therefore the title “primary use” does not confer such meaning on the text following the title.

The County has organized the uses allowed on natural resource lands as primary, accessory and incidental. Primary and accessory uses in agricultural resource lands receive the notification and covenant protections in LCC 17.30.680. LCC 17.30.620. Although Petitioners are correct that there is no language within LCC 17.30.620 itself (apart from the title) defining or even describing the uses as “primary”, the County’s evident intent is to allow mining activities on agricultural resource lands, without restrictions as to impact of those activities on the use of those lands for agriculture. Unlike “accessory uses”, primary uses need not be directly connected with and in aid of an agricultural activity. Contrast LCC 17.30.630.

To the extent that LCC 17.30.620 allows mining activities without restriction in agricultural resource lands, that provision does not comply with the GMA. LCC 17.30.620 must ensure that agricultural resource lands are conserved for use as agricultural lands. See *King County v. CPSGMHB*, 142 Wn.2d at 561. Mining, processing, storage and sales of minerals are allowed as primary uses in agricultural

resource lands without restriction. LCC 17.30.620(4). Clearly, mining activities are nonagricultural uses with great potential to impact agricultural activities and the lands themselves.

Conclusion:

LCC 17.30.620(4) does not comply with the GMA requirements to conserve agricultural resource lands.

1) b) Petitioners also challenge LCC 17.30.620(3) which allows “farm housing” without limitation on agricultural resource lands. “Farm housing” is defined as farm employee housing and farm housing for immediate family members. Petitioners argue that such housing fails to comply with the GMA because it is allowed without regard to lot size or density.⁵

We have held that density and lot size in agricultural lands must not interfere with agricultural uses:

One of the major reasons for the enactment of the GMA was to stop the conversion of natural resource lands into sprawling low-density development. Densities within designated agricultural resource areas must not interfere with the primary use of those lands for the production of food, other agricultural products, or fiber.

Hudson v. Clallam County, WWGMHB Case No. 96-2-0031
(Final Decision and Order, April 15, 1997)

Farm worker housing and housing for immediate family members who are involved in agricultural activities on the designated land may well be a resource-related use.

⁵ The County argues that LCC 17.30.620 was not found out of compliance due to the primary uses allowed but only due to an error in language occurring when the corresponding forest resource land provision was transferred to agricultural lands. However, the County admits that the Board’s July 10, 2002 Compliance Order found LCC 17.30.620 out of compliance due to the uses allowed. There is nothing in the Board’s decision limiting this finding to a clerical error.

However, it must be better described and limited so that such housing does not interfere with agricultural use or take productive agricultural lands out of production.

Conclusion:

LCC 17.30.620(3) does not comply with the Growth Management Act requirements to conserve agricultural land.

2) Petitioners also challenge LCC 17.30.630. This code provision creates accessory uses allowed outright in agricultural resource lands. Petitioners challenge the County's inclusion of private aircraft landing fields and heliports (subparagraph 4), and watershed management facilities (subparagraph 5), as accessory uses in agricultural resource lands. Petitioners' Hearing Brief Re: Compliance at 38-9. Petitioners argue that these uses should be further restricted to ensure that there is no interference with agriculture.

The introductory language to this section concerning accessory uses provides that these are uses "allowed outright where directly connected with and in aid of an agricultural activity". LCC 17.30.630. The County argues that these uses exist today and have not been shown to interfere with agricultural activities. Lewis County's Response Brief – *Panesko* at 19. The fact that certain farmers have airplane landing strips does not mean that these landing strips are uses that conserve agricultural land. However, the code requirement that the uses are allowed only where they are *directly* connected with and *in aid* of an agricultural activity appears to ensure that the use is resource-related. Resource-related uses were not the subject of an invalidity finding so the burden is on Petitioners to show that these uses do not comply with the GMA. Clearly, there are times when agricultural practices may include crop dusting by airplane or where there may be a need on a given farm to control waters, within other applicable laws. Petitioners have not shown why these uses, when directly connected with and in aid of an agricultural activity, fail to conserve agricultural lands.

Conclusion:

Petitioners have failed to show that these uses fail to conserve agricultural lands and thus LCC 17.30.630 complies with the Growth Management Act.

3) LCC 17.30.640 establishes “incidental uses” allowed in agricultural resource lands if the incidental use will not “adversely affect the overall productivity of the farm nor affect any of the prime soils”; the incidental use is secondary to the principal activity of agriculture; and the incidental use is sited to avoid prime soils and minimize impact on farm lands of long-term commercial significance. LCC 17.30.640(1)

Petitioners challenge subparagraph(2)(a) allowing residential subdivisions⁶; subparagraph (b) allowing telecommunication facilities; subparagraph (2)(c) allowing public and semipublic buildings; and subparagraph (2)(e) allowing home based businesses. Petitioners’ Hearing Brief Re: Compliance at 39-40. Petitioners assert that none of these uses are resource-related uses. Their purpose is to provide the farmer with supplementary income. SCC 17.30.640.

The County responds that these uses may not affect prime soils and that there is no evidence that the uses will interfere with agricultural activities. Residential subdivisions themselves do not interfere with agriculture. Any division of land with a dwelling unit would be deemed “a residential subdivision”. It is the clustering of residences through the lot and density provisions of LCC 17.30.660(1)(b) and (g) that create incompatible uses in agricultural lands.

With respect to telecommunication facilities and public and semi-public buildings, we note first that the requirement that the use not “affect” prime soils is not the same as a requirement that the use not occur on prime soils. The word “affect” means “to have

⁶ Petitioner Panesko’s Response to Lewis County Compliance Report at 3.

an effect on; influence; produce a change in.”⁷ Siting a telecommunication tower on prime soils, for example, might not affect the soils (which would likely go unchanged), but it would mean using prime soils for nonagricultural purposes. Likewise, it is not clear that requiring the incidental use to be sited to avoid prime soils means that the use will not actually be situated on prime soils.

Second, the development regulations must conserve and enhance agriculture. Telecommunication facilities, public and semi-public buildings are not allowed based on their connection to agriculture. Nor is there so little nearby nonagricultural land available that such structures must be placed on agricultural lands. Approximately 350,000 acres of the County’s land is zoned rural, and is appropriately available for such uses. As written, there is no requirement that these uses aid agriculture, although they may provide income to the individual farmer. Since these uses are not defined to be resource related and are allowed in the small amount of acreage designated as agricultural lands in Lewis County, they neither conserve nor enhance agriculture.

Home-based businesses are also uses allowed in agricultural lands. LCC 17.30.640(2)(e) provides that the same rules for home based businesses in rural lands apply to such businesses in agricultural lands. These provisions do not address the particular concerns of agriculture but are rather geared to rural lands concerns, such as maintaining rural character. LCC 17.42.020. The provisions of LCC 17.42.040 allow for businesses up to 10,000 square feet in size and employing up to 10 full time equivalent employees (“FTEs”), with a special use permit. The limitations providing that the “overall productivity of the farm” not be adversely affected do not sufficiently fulfill RCW 36.70A.060(1)’s requirement to ensure that the potential impacts of unrelated businesses will not interfere with agricultural activities. While the Tier I rules for home-based businesses (“In an existing residence or associated outbuilding,

⁷ Webster’s New World Dictionary of the American Language, College Edition.

by the occupant and 2 FTE employee(s), for a total of 3, where there is no outward manifestation of the business other than a small sign, or vehicles used off site for business purposes. Overnight parking of vehicles and offsite okay.”) may sufficiently contain prospective uses so that the agricultural use of the land is not impacted, the broader provisions under Tier II, III and IV clearly fail to conserve agricultural lands as currently written. The County has argued that the situation in Lewis County requires the existence of home-based businesses to help farmers be able to afford to farm. We agree that home-based businesses can be a supplementary source of income to farm families. However, we hold that home-based businesses in agricultural lands must be limited by regulations that ensure that those businesses are of a size and scope that does not interfere with agricultural activities (or any prime soils) and are compatible with the primary use of the farmlands for farming.

Conclusion:

LCC 17.30.640(2)(a),(c) and (e) do not comply with the GMA requirements to conserve agricultural lands.

4) LCC 17.30.650 allows essential public facilities to be located on agricultural resource lands:

Essential public or regulated facilities, such as roads, bridges, pipelines, utility facilities, schools, shops, prisons, and airports, are facilities which by their nature are commonly located outside of urban areas and may need large areas of accessible land. Such uses are allowed where:

- (1) Identified in the comprehensive plan of a public agency or regulated utility;
- (2) The potential impact on farmed lands and steps to minimize impacts to commercial agriculture are specifically considered in the siting process.

As Petitioners point out, “the County’s provision continues to allow other agencies to control the final outcome on resource lands.” Petitioners’ Hearing Brief Re:

Compliance at 41. In fact, the County defers entirely to the comprehensive plan and siting process of the agency locating the essential public facility in Lewis County for determining whether the use will be allowed in agricultural resource lands. The County does not include any specific direction for restrictions to ensure that the impacts on agriculture will be limited for those public facilities such as roads, bridges, pipelines and utility lines that might, of necessity, need to pass through agricultural lands. Without specific direction that limit these uses so that they do not interfere with agricultural activity, the provisions for siting these uses still do not comply with the GMA.

The other named essential public facilities – schools, shops⁸, prisons and airports – are clearly unrelated to agriculture, have the potential to introduce facilities and services that interfere with agricultural uses, and do not need to be placed on agricultural lands. Again we note that there is ample nearby rural land zoned in Lewis County and that allowing for schools, shops, prisons, and airports in agricultural resource lands plainly fails to conserve agricultural lands.

Conclusion:

LCC 17.30.650 does not comply with the GMA requirements to conserve agricultural lands.

(4) Petitioners also challenge LCC 17.30.660, allowing residential clustering on agricultural lands. Petitioners argue that this provision allows urban levels of development in agricultural lands because the lot sizes may be less than five acres per dwelling unit. The County counters that it imposed a minimum density of one

⁸ LCC does not define “shops”. Without a definition, the Board cannot determine whether this use is in the aid of agriculture or if there is a need to be able to site these uses in the small amount of land designated as agricultural resource land.

dwelling unit per 20 acres, and that clustering on actual lots of less acreage is required to preserve the integrity of agriculture blocks.

We have the benefit of the Supreme Court's interpretation of the GMA provision allowing "innovative zoning techniques" in agricultural lands, RCW 36.70A.177. *King County v. CPSGMHB*, 142 Wn.2d 543, 560, 14 P.3d 133, 2000 Wash. LEXIS 834 (2000) to guide us with respect to clustering provisions such as this one. In that case, the Supreme Court noted that the use of the approved listed techniques was not unlimited – they may be used *for the purpose* of conserving agricultural lands and encouraging the agricultural economy. Clustering is a permitted technique, provided it ensures that new residences are sited on soils that are poor and unsuitable for agricultural purposes.

The mere fact that the residences may be on lots of less than 5 acres does not violate the GMA. The real question is whether clustering will conserve agricultural lands and encourage the agricultural economy. Pursuant to LCC 17.115.030(10), we have concerns about the potential for up to 24 dwelling units to be clustered on agricultural lands because a sizeable concentration of residences on agricultural lands would create impacts on agriculture and potentially create a demand for services that would conflict with the agricultural economy. The special use permit process that is referenced is designed for rural lands and does not require a review for impacts on *agricultural lands*.

Conclusion:

For these reasons, LCC 17.30.660 still fails to comply with the GMA.

Uses in Forest Resource Lands:

Petitioners also challenge the following provisions establishing allowable uses in forest resource lands:

- 1) LCC 17.30.460 – Accessory uses allowed in forest resource lands, including public and semi-public buildings (subparagraph 5) and aircraft landing fields and heliports (subparagraph 7).
- 2) LCC 17.30.470(2) – Incidental uses allowed in forest resource lands, including residential subdivisions (subparagraph a); telecommunications facilities (subparagraph c); and gas, electric, water, communication and public utilities facilities (subparagraph d).
- 3) LCC 17.30.480 – Essential public facilities allowed in forest resource lands without review or restriction by the County.
- 4) LCC 17.30.490(3)(b) and (g) – Density and lot size restrictions allowing clustering of residential development in forest resource lands.
- 5) LCC 17.30.510 – Provision for off-site water sources to support residential and other structures in forest resource lands.

For the same reasons that we hold the parallel provision as to agricultural lands compliant with the GMA, LCC 17.30.460 is compliant with the GMA. “Accessory uses” by definition must be “directly connected with and in aid of a forestry activity”. LCC 17.30.460. Since the listed accessory uses must be limited to those which are resource-related, the burden is on Petitioners to show that these uses do not comply with the GMA.

Conclusion:

Petitioners have failed to demonstrate that LCC 17.30.460 will not conserve forest resource lands. LCC 17.30.460 complies with the GMA.

2) LCC 17.30.470(2) creates incidental uses to provide supplementary income to foresters. These uses are not defined as resource-related and are subject to the Board’s earlier finding of invalidity. The burden is therefore on the County to show that the provisions no longer interfere with the goals of the Act.

The residential subdivision provisions of LCC 17.30.470(2)(a) require that the underlying densities be no more than 1 dwelling unit per 80 acres for forest lands of long-term commercial significance and may not affect any of the prime forest soils.⁹ LCC 17.30.490(3). However, the clustering provisions of LCC 17.115.030(10) allow clustering of up to 24 dwelling units. Given the large tracts of forest lands designated in Lewis County, the potential for such large clusters of residences is very real. The concomitant potential for impacts on forestry and increased demands for services are also very real. Limitations on clustering are needed to ensure that residential subdivisions will not interfere with forestry activities. Therefore, LCC 17.30.490(3)(b) and (g) do not comply with the GMA.

Similarly, telecommunication facilities (LCC 17.30.470(2)(c)) and public utility facilities (LCC 17.30.470(2)(d)) are allowed as incidental uses. The restriction that incidental uses not “adversely affect the overall productivity of the forest” but allowing use of up to 5% of prime soils is far less protective than the GMA requirement that natural resource lands be conserved and incompatible uses discouraged requires. These provisions are unchanged from the provisions found non-compliant and invalid by the Board in its July 10, 2002 decision.

Conclusion:

Without limitations to ensure the conservation of natural resource lands and encouragement of the forestry industry, the incidental uses allowed in LCC 17.30.470(2)(c) and (d) do not comply with the GMA.

⁹ There is also an apparent inconsistency between LCC 17.30.470(1)(a) which allows up to 15% of prime forest soils to be devoted to incidental uses and LCC 17.30.490(3)(d) which does not allow any of the prime forest soils to be used for residential subdivisions.

4) LCC 17.30.480 allows the location of essential public facilities in forest resource lands. Examples listed include schools, shops¹⁰, prisons and airports. None of these are forestry-related uses. (Work camps to provide labor for forest management is an incidental use already allowed under LCC 17.30.470(2)(f) which is unchallenged.) Again we note that the County has zoned approximately 350,000 acres “rural”, providing ample area for the location of such facilities.¹¹ Forest resource lands should be dedicated to forestry and not used for large public facilities such as schools, prisons and airports. The demands that such facilities would put on the forest lands in the way of traffic, their need for public facilities and services, and large areas set apart from the resource use make these uses non-compliant with the GMA mandate to conserve resource lands. The County has not removed the substantial interference of this provision with the goals of the GMA.

There are essential public facilities such as roads, bridges, pipelines and utility lines that must, of necessity, be located in resource lands. Clearly, the County must take into account the need for the construction of such facilities in resource lands. However, the County must also assure that the construction of these essential public facilities in forest resource lands does not interfere with the use of the resource.

Conclusion:

LCC 17.30.480 does not comply with the GMA requirements to conserve forest resource lands.

4) LCC 17.30.490 is discussed in Section 2) above.

¹⁰ Again, the LCC does not define “shops”. Without a definition, the Board is unable to determine whether this use is in the aid of forestry and whether it is necessary to accommodate it within forest resource lands.

¹¹ We do not mean to suggest that the amount of lands zoned for rural use is compliant with the GMA. Since many of the lands identified as appropriate for designation as agricultural lands are presently zoned “rural”, compliant designation of agricultural lands will more than likely reduce the acreage zoned rural.

Conclusion:

LCC 17.30.490(3)(b) and (g) fail to comply with the GMA requirements to conserve forest resource lands.

5) LCC 17.30.510 provides conditions under which water from off-site sources may be used to supply water to forest lands users. Petitioners argue that this provision is unchanged from the Board's finding that it substantially interfered with the goals of the GMA. Petitioners' Compliance Brief at 37. They also claim that the code provision runs afoul of the GMA prohibition against providing urban governmental services outside of urban growth areas. RCW 36.70A.110(4).

"Urban governmental services" are defined to include "those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewers, domestic water systems... and other public utilities associated with urban areas and normally not associated with rural areas." RCW 36.70A.030(19).

In *Thurston County v. The Cooper Point Ass'n*, 148 Wn.2d 1, 57 P.3d 1156, 2002 Wash. LEXIS 719 (2002), the state Supreme Court found that the extension of a sewer line to a rural area violated the GMA's prohibition against providing urban governmental services to a non-urban area. Unlike rural areas, natural resource lands are intended for natural resource activities rather than for residential uses. The extension of water systems (whether owned privately or publicly) to natural resource lands for residential purposes clearly violates the GMA by encouraging intense levels of development in resource lands and encouraging nonresource-related uses of those lands.

Conclusion:

LCC 17.30.510 fails to comply with the GMA, RCW 36.70A.110(4), 36.70A.060, and 36.70A.040.

IV. INVALIDITY

Issue No. 3: Whether the County has removed substantial interference with Goal 8 of the GMA by eliminating nonresource uses in its resource lands.

The Growth Management Act provides that the Board may issue a determination of invalidity as to a non-compliant provision of the comprehensive plan or development regulation if the continued validity of part or parts of the plan or regulation would “substantially interfere with the fulfillment of the goals of this chapter.” RCW 36.70A.302(1)(b). In our July 10, 2002 decision in the *Butler* and *Panesko* cases, we found that the nonresource commercial uses in resource lands substantially interfered with the fulfillment of Goal 8 of the GMA. Based on our earlier discussion, we find that substantial interference has been removed with respect to accessory uses because those are by definition resource related; and incidental uses in resource lands, as well, although we continue to find non-compliance as set out above. Substantial interference, therefore, has been removed with respect to LCC 17.30.460 and 470; and 17.30.630 and .640.

As to the allowable uses in resource lands that we have found non-compliant with the GMA, we find invalid those uses which, if allowed to develop during the period of invalidity, would substantially interfere with the County’s ability to comply with the GMA. Those uses we find invalid are:

- the clustering provisions regarding residential development in forest and agricultural lands (LCC 17.30.490(3)(b) and (g); and LCC 17.30.660(1)(b) and (g));
- the provisions regarding essential public facilities in forest and agricultural lands (LCC 17.30.480 and LCC 17.30.650),

- the provision allowing off-site water sources to serve residential development in forest lands (LCC 17.30.510), and
- the provisions allowing the primary use of mining and farm housing for immediate family members (without definition or restriction) in agricultural lands. LCC 17.30.620(3)(b) and (4).

Goal 8 is the “Natural Resource Industries” goal. It provides:

Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(8)

After three different orders of this Board – in June of 2000, March of 2001, and July of 2002 – the County’s approach is essentially unchanged and the amount of prime farmland designated for conservation is far less than the demonstrated characteristics of farmland in Lewis County warrant. It is apparent from its own policies that Lewis County will designate only “minimal” amounts of agricultural resource lands for conservation under the GMA. LCC 17.30.020(2). This stance has put much of the farmland in Lewis County at risk for development inconsistent with conservation of agricultural lands, and that risk continues today, nearly four years after the Board’s first decision directed to the issue. But for the fully developed rationale put forward by County counsel, it is not at all clear that sanctions would not be warranted.

As to development permit applications that have not vested prior to receipt of the Board’s finding of invalidity, the statute provides that they, with some exceptions “vest to the local ordinance or resolution that is determined by the board not to substantially interfere with the fulfillment of the goals of this chapter.” RCW 36.70A.302(3)(a). Yet a finding of invalidity pertaining to the designation and conservation of agricultural resource lands has less certain affects than such a finding as to a particular development regulation. It is our intention, to the extent authorized

by the GMA, that farmlands ultimately designated for conservation by the County under an ordinance or resolution that is determined not to substantially interfere with the goals of the GMA be protected from incompatible development during the period of invalidity. Thus, we find that the maps showing agricultural resource lands and other lands that should ultimately be designated as agricultural lands substantially interfere with Goal 8 of the GMA and are therefore invalid. We find the definition of long-term agricultural resource lands in LCC 17.10.126(a), and the exclusion of “farm homes” and “farm centers” in LCC 17.10.126(b) as adopted in Ordinance 1179E, also substantially interfere with Goal 8 of the Act. The findings of fact and conclusions of law set out the specific provisions of the County’s designation criteria and comprehensive plan (amended through Resolution 03-368) which we also find to substantially interfere with fulfillment of the goals of the Act.

We find that the savings clause in Ordinance 1179E and 1179C should not act to make the prior plan, maps, and code provisions regarding designation of agricultural lands effective during the remand period because those prior provisions were non-compliant as well, and designated even fewer agricultural lands than the present provisions. We believe that it is necessary to prevent inconsistent development of agricultural lands during the period of invalidity and we use the tools that the GMA has given us to try to achieve it.

We also find that the savings clause of Ordinance 1179C should not make the prior regulations effective during the period of invalidity, because the prior regulations concerning these topics were also non-compliant and invalid.

V. FINDINGS OF FACT

- 1. Lewis County is a county located west of the crest of the Cascade Mountains, and is required to plan pursuant to RCW 356.70A.040.**
- 2. Petitioners are individuals who raised their concerns regarding all of the challenged provisions in writing or in person in proceedings before the**

Lewis County Planning Commission and/or Board of County Commissioners.

3. Lewis County's prior designations of agricultural resource lands were found not to comply with the Growth Management Act by this Board in orders dated July 10, 2002, March 5, 2001, and June 30, 2000.
4. Lewis County's previous development regulations allowing non-resource uses in resource lands (including both forest and agricultural resource lands) were found not to comply with the GMA by this Board in its order dated July 13, 2000 and were found not to comply and to substantially interfere with Goal 8 of the GMA in this Board's order dated July 10, 2002.
5. The County designated agricultural resource lands on the basis of its assessment of the present and future needs of Lewis County's agricultural industry.
6. The County has designated 13,767 acres of Class A Farmland of Long-term Commercial Significance. Ex. XII-41h.
7. Class A Farmlands of Long-Term Commercial Significance are upland agricultural resource lands characterized by prime farmland soils. LCC 17.30.590(1)
8. The County asserts that it has designated over 40,000 acres of Class B Farmlands.
9. The County designated lands in flood hazard areas as Class B Farmlands of Long-Term Commercial Significance. Class B Farmlands need not be characterized by prime farmland soils. LCC 17.30.590(1)
10. Farmlands of Local Importance are farmlands that are voluntarily nominated by the landowner. LCC 17.30.590(3)
11. Over 117,000 acres of Lewis County were reported as in agricultural use in the 1997 USDA Census. Ex. XII-36cc.
12. Approximately 66,000 acres of land receive special tax status as agricultural land by the Lewis County Assessor. Ex. XII-20a.
13. Using aerial maps from the Lewis County Assessor's Office and the NRCS soils map, Petitioners identified 140,645 acres of land that was being or had recently been used for agricultural purposes. Ex. XII-28s.
14. LCC 17.30.590(1)(c) establishes "sufficient irrigation capability" as a characteristic required for designation of Class A Farmlands;
15. Of the 117,767 acres of land that were farmed in 1997, only 5,765 acres were irrigated. Ex. XII-36cc.
16. Hay and Christmas trees do not require irrigation. Ex. XII -28k
17. In 1997, the sale of hay in Lewis County generated \$1,490,000 in gross income. Ex. XII -36cc.
18. In 2002, the sale of Christmas trees in Lewis County generated \$19,800,000 in gross income. Ex. XII -13u

19. According to NRCS soil classification, “prime farmland soils” commonly get an adequate and dependable supply of moisture from precipitation and/or irrigation. LCC 17.30.570(1).
20. 283,000 acres of land in Lewis County have Type I, II, and/or III soils, which are considered prime agricultural soils pursuant to the NRCS and LCC 17.30.570. Ex. XII-36r.
21. Class A Farmlands must also be “primarily devoted to commercial agricultural production”. LCC 17.30.590(1)(d). The County has based its exclusion of some agricultural resource lands on this criterion because they are located on large parcels that also contain forested lands.
22. Many Class A Farmlands are located in isolated parcels which exposes them to incompatible uses and potential de-designation.
23. LCC 17.30.126(b) excludes from agricultural resource lands the “farm home” - a house currently on designated lands as of the date of designation and a contiguous 5 acres, to be segregated by boundary line adjustment for separate financing purposes;
24. LCC 17.30.126(b) also excludes “farm centers” from designation as agricultural resource lands. A “farm center” is defined as those lands existing at the time of designation, marked by impervious (gravel or paved) surfaces, including buildings and sheds and storage areas) not to exceed 5 acres, which shall be available for rural commercial and industrial uses under guidelines established as a conditional use.
25. By excluding “farm homes” and “farm centers” from agricultural resource lands, the County has created pockets of nonresource lands in the midst of agricultural resource lands. “Farm homes” may be sold separately from the related farmlands and need not protect against incompatible uses and interference with farm activity. “Farm centers” further establish a rural commercial and industrial zone in the middle of farm land. The County candidly admits that these exclusions are intended to avoid the conservation requirements of the GMA for agricultural resource lands.
26. The County has organized the uses allowed on natural resource lands into three categories: primary, accessory and incidental.
27. Primary uses are allowed without restriction under LCC 17.30.450 and .620.
28. LCC 17.30.620 allows mining activities as a primary use in agricultural resource lands. It also provides that farm employee and immediate family member housing on agricultural resource lands is allowed as a primary use, without respect to density or lot size of the housing
29. Mining activities have the potential to be carried out on prime agricultural soils and to interfere with agricultural activities. As

- “primary uses” allowed under the County Code, no safeguards apply to protect agricultural lands from such impacts.**
- 30. Likewise, no limitations are placed on farm employee or immediate family member housing in agricultural lands as a primary use. The failure to regulate farm housing to conserve agricultural prime soils and to prevent residential densities inconsistent with agriculture fails to conserve agricultural lands and may encourage incompatible uses.**
 - 31. Accessory uses are allowed in forest and agricultural resource lands pursuant to LCC 17.30.460 and .630. By definition, accessory uses must be directly connected to and in aid of the identified resource activity. Therefore, accessory uses are resource-related uses.**
 - 32. Incidental uses are intended to provide supplementary income without detracting from the overall productivity of the resource activity. LCC 17.30.470 and .640.**
 - 33. Residential subdivisions are allowed as an incidental use in both forest and agricultural resource lands. LCC 17.30.470(2)(a) and .640(2)(a). Under the “clustering” provisions of the county code, up to 24 dwelling units may be clustered within a one-half mile radius in forest and agricultural resource lands. LCC 17.115.030(10).**
 - 34. LCC 17.30.490 and .660 provide the maximum density and minimum lot sizes allowed in residential subdivisions in forest lands and agricultural lands respectively. Cluster subdivisions are allowed under these provisions, subject to LCC 17.115.030(10).**
 - 35. The special use permit process for residential subdivisions that is referenced in LCC 17.115.030(10) is designed for rural lands and does not require a review for impacts on agricultural or forest lands.**
 - 36. Clustered residential subdivisions as currently allowed in the 13, 767 acres of Class A Farmlands are not designed to ensure conservation of agricultural lands and encourage the agricultural economy .**
 - 37. Approximately 500,000 acres of Lewis County are designated as forest lands. Given the large tracts of forest lands, the potential for large clusters of residences to be constructed, with their concomitant potential for impacts on forestry and increased demands for services, fails to conserve forest lands.**
 - 38. Telecommunication facilities are allowed as incidental uses pursuant to LCC 17.30.470(2)(c) and 17.30.640(2)(b). Telecommunication towers could be placed on prime soils without “affecting” those soils, which would allow prime resource soils to be converted to a nonresource use. Further, the requirement that these uses not detract from the overall productivity of the resource activity is not sufficient protection to meet the GMA mandate to discourage incompatible uses.**

39. **Public and semi-public buildings are allowed as incidental uses in agricultural resource lands (LCC 17.30.640(2)(c)). In light of the small amount of designated agricultural resource land which is not actually located in a flood hazard zone, even if prime soils are unaffected by their construction, construction of public and semi-public buildings in agricultural resource lands will only reduce the small amount of agricultural land that Lewis County has designated as agricultural lands, rather than conserve it.**
40. **Public utilities facilities are allowed as incidental uses in forest resource lands pursuant to LCC 17.30.470(2)(d). Public utilities facilities without limitations are allowed on up to 5% of the prime soils on any given parcel of forest land, which fails to conserve those lands.**
41. **Home-based businesses are allowed as incidental uses in agricultural resource lands pursuant to LCC 17.30.640(2)(e). LCC 17.30.640(2)(e) provides that the same rules for home based businesses in rural lands apply to such businesses in agricultural lands. These provisions do not address the particular concerns of agriculture but are rather geared to rural lands concerns, such as maintaining rural character. LCC 17.42.020. Further, the limitations providing that the “overall productivity of the farm” not be adversely affected do not sufficiently fulfill RCW 36.70A.060(1)’s requirement to ensure that the potential impacts of unrelated businesses will not interfere with agricultural activities.**
42. **Essential public facilities are allowed in forest resource lands pursuant to LCC 17.30.480 and in agricultural resource lands pursuant to LCC 17.30.650.**
43. **Some essential public facilities such as roads, bridges and pipelines may, of necessity, need to cross resource lands, whether forest or agricultural. LCC 17.30.480 and .650 fail to provide that such essential public facilities will be sited in ways that will not interfere with the primary resource use.**
44. **LCC 17.30.480 and .650 also anticipates the siting of essential public facilities which “may need large areas of accessible land”, including schools, prisons and airports.” Allowing use of designated resource lands for such purposes, especially on the small amount of designated agricultural resource land, does not conserve the resource lands for resource purposes and creates incompatible uses.**
45. **Lewis County has zoned approximately 350,000 acres “rural”¹² and can meet its obligation to allow the siting of essential public facilities that need large areas of accessible land in the rural zone without impacting designated resource lands.**

¹² Many of these rural lands are currently farmed and may be designated as agricultural resource lands under a compliant designation ordinance

46. Pursuant to LCC 17.30.510, off-site water sources may be used to provide service to residential dwellings in forest lands. Under this provision, urban governmental service may be provided to residents in forest lands, in contradiction with the GMA's directive to restrict such urban services to urban growth areas.

VII. CONCLUSIONS OF LAW

- A. This Board has jurisdiction over the parties and subject matter of the above-captioned cases.
- B. The Petitioners have standing to challenge Ordinances 1179C and 1179E and Resolution 03-368.
- C. The County is not in compliance with the GMA goals and requirements for the designation and conservation of agricultural resource lands. Ordinance 1179E, Resolution 03-368, including the maps adopted therein.
- D. The following development regulations adopted in Ordinance 1179C fail to comply with the GMA goals and requirements to assure the conservation of designated agricultural and forest resource lands:
 - a. LCC 17.30.470(2)(c) and (d)
 - b. LCC 17.30.480
 - c. LCC 17.30.490 (3)(b) and (g)
 - d. LCC 17.30.510
 - e. LCC 17.30.620(3) and (4)
 - f. LCC 17.30.640(2)(b), (c) and (e)
 - g. LCC 17.30.650
 - h. LCC 17.30.660 (1)(b) and (g)

Invalidity – Substantial Interference With The Goals Of The Growth Management Act

In addition to being non-compliant as set forth above, the continued validity of the following provisions would substantially interfere with the fulfillment of Goal 8 of the Growth Management Act (RCW 36.70A.020(8)):

Invalid Provisions Regarding Designation Of Agricultural Resource Lands

LCC 17.10.126(a), defining “long-term agricultural resource lands”, adopted in Ord.1179E;

LCC 17.10.126(b), excluding “farm homes” and “farm centers” from long-term agricultural resource lands, adopted in Ordinance 1179E;

The amendment to the Comprehensive Plan enacted through Resolution 03-368;

LCC 17.30.590(1(c) – requiring “sufficient irrigation capability” for designation of Class A Farmlands, adopted in Ordinance 1179C;

All maps designating agricultural resource lands (adopted in Ordinance 1179E and Resolution 03-368).

Supplemental Findings Of Fact And Conclusions Of Law Regarding The Invalidity Of Agricultural Resource Lands Designation Definitions, Maps, And Criteria

- 1. Although over 117,000 acres of farmland are being farmed in Lewis County today, less than 14,000 acres of upland agricultural lands have been designated for conservation as agricultural resource lands.**
- 2. The definition of “long-term agricultural resource lands” in LCC 17.10.126 adopted in Ordinance 1179E fails to conserve resource lands by basing the definition of agricultural resource lands on the perceived needs of the agricultural industry in Lewis County, rather than on the characteristics of the land.**
- 3. Excluding “farm homes” and “farm centers” from agricultural resource lands creates isolated pockets of inconsistent zoning in farmlands.**
- 4. The listed definitions and criteria for designation of agricultural resource lands improperly exclude agricultural resource lands that are capable of being used for long-term commercial agricultural production and should be subject to GMA protections for that purpose.**
- 5. By allowing the conversion of agricultural lands to other purposes, the County has failed to take appropriate steps to conserve productive resource lands and enhance the agricultural industry.**
- 6. The County has also designated agricultural lands in conflict with its own designation criteria. The maps showing designations of lands in Lewis County do not comply with either the County’s criteria or the requirements of the GMA.**
- 7. Until designated appropriately, farmland is at risk for inconsistent development and uses incompatible with agricultural activity. Therefore, the comprehensive plan, code provisions and maps substantially interfere with fulfillment of Goal 8 of the GMA.**
- 8. Lewis County’s prior designations of agricultural resource lands were found not to comply with the Growth Management Act by this Board in orders dated July 10, 2002, March 5, 2001, and June 30, 2000. The County’s continued failure to comply with the requirements of the GMA**

for designation and conservation of agricultural resource lands has significantly delayed the conservation of those lands.

9. Ordinance 1179E contains a savings clause but the prior maps, policies and regulations shall not be valid during the remand period because they were also found non-compliant in the Board's prior orders and perpetuate planning policies and regulations that may irretrievably negatively affect agricultural resource lands.

Invalid Provisions Regarding Allowable Uses In Resource Lands

Revisions to Ch.17.30 of Lewis County Code adopted in Ordinance 1179C:

LCC 17.30.480
LCC 17.30.490 (3)(b) and (g)
LCC 17.30.510
LCC 17.30.620(3)(b) and (4)
LCC 17.30.650
LCC 17.30.660 (1) (b) and (g)

Supplemental Findings Of Fact And Conclusions Of Law Regarding The Invalidity Of Uses Allowed In Resource

1. The above-listed uses are non-compliant with the GMA pursuant to the findings and decision herein.
2. These non-compliant uses allowed in agricultural lands apply in the less than 14,000 acres of upland agricultural lands actually designated for conservation by the County.
3. The above-listed uses are not limited in ways that would ensure that they do not impact resource lands and activities negatively.
4. Allowing the listed uses would threaten the ability of Lewis County to ultimately meet Goal 8 of the GMA.
5. Lewis County's previous development regulations allowing nonresource-related uses in resource lands were found not to comply with the GMA by this Board in its order dated July 13, 2000 and were found not to comply and to substantially interfere with Goal 8 of the GMA in this Board's order dated July 10, 2002.
6. These non-compliant uses should not be allowed to vest during the remand because they would unnecessarily jeopardize the proper protections that should apply to resource lands.
7. The listed non-compliant uses substantially interfere with the goal of maintaining and enhancing resource industries and discouraging incompatible uses.

8. **Ordinance 1179C contains a savings clause but the prior development regulations shall not be valid during the period of remand because they were held to substantially interfere with Goal 8 of the GMA or not to comply with the GMA by prior Board order, and allowing development applications to vest to those regulations during the remand period would unnecessarily jeopardize resource lands.**

VIII. ORDER

This matter is remanded to the County for compliance with the Growth Management Act and to remove substantial interference with Goal 8 of the Growth Management Act, in accordance with this decision.

The County shall achieve compliance within 180 days of the date of this order. The County shall submit a compliance report, setting forth its actions to achieve compliance with this order, no later than August 24, 2004. The County shall on the same day, also serve the Petitioners with a copy of the compliance report. Petitioners shall file any objections to findings that the County is in compliance with the Board's order no later than September 7, 2004 and serve those objections upon the County. The County shall file any response to the Petitioners' objections no later than September 28, 2004, with service also upon Petitioners. All service of documents shall comport with the Board's earlier ruling, Order In Response To Motions Re: Parties And Service.

COMPLIANCE SCHEDULE

Compliance due date:	August 10, 2004
Compliance report due:	August 24, 2004
Objections due:	September 7, 2004
Response to objections due:	September 28, 2004
Compliance Hearing date:	October 14, 2004

Because this decision includes determinations of invalidity, the County may move for clarification, modification or rescission of the invalidity order pursuant to RCW 36.70A.302(6) on an expedited basis. In the event that the County moves for an expedited hearing, the County shall provide the Board (and Petitioners) with several

acceptable dates so that the Board may promptly schedule such a hearing. Petitioners shall promptly notify the Board of their preferred dates.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

SO ORDERED this 13th day of February 2004.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Margery Hite, Board Member

Holly Gadbow, Board Member

Nan Henriksen, Board Member