

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

)	
CORINNE HENSLEY and 1000)	Case No. 03-3-0009c
FRIENDS OF WASHINGTON,)	
)	
Petitioners,)	<i>(Hensley VI)</i>
)	
v.)	
)	
SNOHOMISH COUNTY,)	ORDER FINDING VALIDITY OF
)	THE PRIOR PLAN AND
Respondent,)	REGULATIONS DURING THE
)	REMAND PERIOD AND
and)	RESCINDING INVALIDITY
)	
MARK VERBARENDSE, MBA/ SCCAR, SULTAN and MARYSVILLE SCHOOL DISTRICTS, MacANGUS RANCHES INC., AND YARMUTH-DAVIS PARTNERSHIP)	
)	
Intervenors.)	

I. Procedural Background

On September 22, 2003, 2001 the Central Puget Sound Growth Management Hearings Board (the **Board**) entered a Final Decision and Order (**FDO**) in the above-captioned case. The Board found certain provisions of Ordinance Nos. 03-001 and 03-002 both noncompliant and invalid. The FDO set a compliance deadline of March 11, 2004, and directed Snohomish County (the **County**) to file a Statement of Actions Taken to Comply (**SATC**) within ten days of taking the legislative compliance actions.

The Board’s September 22, 2003 FDO provided, in relevant part:

Snohomish County’s adoption of Ordinance Nos. 03-001 and 03-002, as they relate to the County’s *de-designation* of 216-acres of Upland Commercial Farmland and A-10 zoning,

as discussed *supra*, **does not comply** with the requirements of RCW 36.70A.170.

Snohomish County's adoption of Ordinance No. 03-001, as it relates to the County's designation of a Type 3 LAMIRD on 9-acres of land, as discussed *supra*, **does not comply** with the requirements of RCW 36.70A.070(5)(d)(iii), and **was not guided by** RCW 36.70A.020(2).

Additionally, the Board has entered a **Declaration of Invalidity** for Ordinance Nos. 03-001 and 03-002, as they relate to the de-designation of 216-acres of Upland Commercial Farmland and implementing zoning; and the Board has entered a **Declaration of Invalidity** for Ordinance No. 03-001, as it relates to the designation of 9-acres as a Type 3 LAMIRD.

FDO, at 50.

On October 2, 2003, the Board received "Snohomish County's Motion for Determination of Validity Pursuant to RCW 36.70A.302(4)" (**County Motion**); and "Intervenor MacAngus Ranches, Inc.'s Joinder in Snohomish County's Motion for Determination of Validity Pursuant to RCW 36.70A.302(4)" (**MacAngus Motion**).

As of the date of this Order, the Board had not received any response or objection to the County or MacAngus Motions.

II. Discussion of Motion re: Validity of Prior Plan and Regulations

As noted *supra*, the Board's FDO found that Snohomish County's adoption of Ordinance Nos. 03-001 and 03-002 **did not comply** with the provisions of RCW 36.70A.170, and .070(5)(d)(iii) and .020(2), as they related to the agricultural land de-designation and creation of a LAMIRD. Additionally, the Board determined that these Ordinances were **invalid** as they related to the agricultural land de-designation and LAMIRD since they substantially interfered with the fulfillment of Goals 2 and 8 (RCW 36.70A.020(2) and (8)).

Snohomish County's Motion relies upon RCW 36.70A.302(4) to request that due to the County's savings clauses, the invalid provisions of its action, be reinstated and the prior valid designations be in effect during the remand period. RCW 36.70A.302(4) provides:

If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

The Board finds:

1. Ordinance Nos. 03-001 and 03-002 both contain savings clauses at sections 6 of the Ordinances, respectively.
2. The savings clause, in both Ordinances states:

Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or a court of competent jurisdiction, the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

(See Ordinance No. 03-001, Section 6 – Ex. 271 and Ordinance No. 03-002, Section 6 – Ex. 270)

3. The Board ruled that Ordinances 03-001 and 03-002 were invalid regarding the agricultural land de-designation and LAMIRD on September 22, 2003.
4. The savings clause in both ordinances caused the plan and regulations regarding the two invalid provisions to be changed, by operation of law, back to the previous plan and regulation in place as if the invalidated ordinances were never adopted.
5. Prior to enactment of Ordinance Nos. 03-001 and 03-002, the land use and zoning designation on the affected agricultural land was Upland Commercial Farmland and A-10, respectively. The prior land use designation on the affected LAMIRD was Rural Residential – 5. These designations were valid under the provisions of the GMA.
6. These savings clauses, therefore had the effect of reinstating the prior GMA compliant plan and zoning designations.

Based upon these findings, the Board concludes:

1. The prior designations have been revived and reinstated, by operation of the law, through the savings clauses of Ordinance Nos. 03-001 and 03-002.
2. These reinstated provisions remain in effect and are valid and compliant during the period of remand (September 22, 2003 through compliance proceedings).

3. The 216 acres of agricultural land affected by the County's action and Board's FDO is therefore currently designated as Upland Commercial Farmland on the County's FLUM and zoned Agricultural – 10. The 9 acre LAMIRD affected by the County's action and Board's FDO is therefore designated as Rural Residential – 5 on the County's FLUM.

III. ORDER

Having reviewed its September 22, 2003 FDO, the Motion of the County and Intervenor, and relevant provisions of the GMA, and considering the findings of fact and conclusions of law contained in Sections II of this Order, *supra*, the Board ORDERS:

- The 216 acres of agricultural land affected by the County's action (MacAngus amendment), the Board's FDO and the savings clause is currently designated as Upland Commercial Farmland on the County's FLUM and zoned Agricultural – 10.
- The 9 acre LAMIRD affected by the County's action (Verbarendse amendment), the Board's FDO and the savings clause is currently designated as Rural Residential – 5 on the County's FLUM.
- Pursuant to RCW 36.70A.302(4), these designations are **deemed valid** during the period of remand and the Board **rescinds** the **Determination of Invalidity**.
- The Compliance schedule, as set forth in the Board's September 22, 2003 FDO remains in effect.

So ORDERED this 13th day of October 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Presiding Officer

Joseph W. Tovar, AICP
Board Member

NOTICE: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a petition for reconsideration pursuant to WAC 242-02-832.