

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF ELLENSBURG, MIKE WILLIAMS)	
AND PAULINE DIEFENBACH,)	
)	Case No. 95-1-0009
Petitioners)	
)	ORDER GRANTING PARTIAL
vs.)	INVALIDITY
)	
KITTITAS COUNTY,)	
)	
Respondent)	

On May 7, 1996, the Eastern Washington Growth Management Hearings Board (the Board) issued its final decision and order in the above matter. On May 17, 1996, Petitioners Williams and Diefenbach filed a motion for reconsideration including a determination of invalidity.

On May 29, 1996, the Board issued an order amending Final Decision and Order, Partially Denying Motion for Reconsideration and gave Notice of Hearing on Determination of Invalidity. The Hearing was set for June 18, 1996 at 10:00 a.m. in the Board's office.

On June 18, 1996, the Board held a hearing to consider the motion for invalidity. All board members and all parties were present. The Board heard oral argument.

The Board denies Petitioners Williams and Diefenbach's Motion for Invalidity regarding Kittitas County Ordinance 95-13 with the exception of the "opt-out" criteria, Section 17A.55.030.

In its final decision and order, the Board found that Ordinance 95-13 a) fails to comply with the requirements of RCW 36.70A.020(8), because it fails to meet both of the planning goal's minimum requirements to discourage incompatible uses on designated lands and to maintain and enhance natural resource industries; b) fails to designate agricultural lands of long-term commercial significance as required by RCW 36.70A.170(1), and fails to assure the conservation of agricultural lands as required by RCW 36.70A.060 and was therefore in non-compliance. Petitioners argument for invalidity of Ordinance 95-13, Sections 17A.55.020E, 17A.55.040 and 17A.55.060B does not justify a declaration of invalidity.

The Board finds, as it previously found in its final decision and order, that the "opt-out" criteria in Section 17A.55.030 do not assure the conservation of agricultural lands of long-term commercial significance. Final decision and Order, page 16-17.

Petitioners state that presently Kittitas County is in the process of adopting its comprehensive plan. The criteria used in the draft comprehensive plan are essentially the same criteria adopted in Ordinance 95-13, Section 17A.55.030.

The Board concludes that these criteria fail to comply with the goals and requirements of the Growth Management Act, specifically RCW 36.70A.020(8).

Kittitas County has pending before it at least one request to “opt-out” of the CAZ.

The Board finds that Kittitas County Ordinance 95-13 leaves the county open for property owners to “opt-out” of the CAZ on the basis of provisions in Ordinance 95-13. Even though the “opt-out” provisions in Ordinance 95-13 have been determined in non-compliance with the Growth Management Act, property owners can still apply for exclusion from CAZ, and thus vest a right for exclusion. Such exclusions could very well be detrimental to the viability of commercial agriculture in Kittitas County. To protect the viability of commercial agriculture in Kittitas County, this Board declares the “opt-out” provisions of Ordinance 95-13, Section 17A.55.030, invalid.

SO ORDERED this 18th day of June, 1996.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Judy Wall, Presiding Officer

Tom A. Williams, Board Member

D. E. “Skip” Chilberg, Board Member