

**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

WENAS CITIZENS ASSOCIATION et al.,

Petitioner,

v.

YAKIMA COUNTY,

Respondent,

JIM CATON,

Intervenors.

Case No. 02-1-0008

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

On April 9, 2002, WENAS CITIZENS ASSOCIATION, by and through its attorney, David Mann, filed a Petition for Review.

On May 29, 2002, Petitioner's filed their Motion to Supplement or Amend the Record. On May 29, 2002, Respondent filed Respondent's Motion to Dismiss for Lack of Standing.

On June 17, 2002, Petitioners filed their Voluntary Dismissal of all Issues Pertaining to the Yakima County ZON 01-12. The Board issued an Amended Order of Dismissal on June 24, 2002, dismissing ZON 01-12.

On June 25, 2002, the Board held a telephonic Motions Hearing in the above referenced matter. All parties were present and represented. On June 27, 2002, the Board issued its Motions Order.

On September 23, 2002, the Board held the Hearing on the Merits. Present were Judy Wall, Presiding Officer, and Board Member D.E. "Skip" Chilberg. Present for Petitioners was David Mann. Present for Respondent was Terry Austin, Deputy Prosecuting Attorney. Present for Intervenors was James Carmody.

II. FACTS OF CASE

Yakima County adopted its Comprehensive Plan on May 20, 1997. The Plan designated the Caton property as Agricultural Resource lands of long-term commercial significance. This designation limited division of this land to parcels of not less than 40 acres. During the 2001 Comprehensive Plan amendment cycle, the Catons sought a comprehensive plan amendment to redesignate and rezone the subject property, 1,086 acres.

The Board of Yakima County Commissioners approved Ordinance No. 1-2002 changing the designation of the Caton property from Agricultural Resource to Rural Self-Sufficient and rezoning the property from Agricultural to Valley Rural with the adoption of ZON 01-14 on February 5, 2002. This change allows subdivision into lot sizes as small as 5 acres on the Caton property.

The County claims the change better implements the comprehensive plan policies than the current resource land designation, and the amendment corrects an obvious mapping error. In support of this contention, the County and the Intervenor (the property owner) argue that the land has not been farmed for the past eighteen years and has no water rights for irrigation. They claim the land is better suited to be divided into small-acreage lots, thus reducing pressure on conversion of more productive farmland to residential uses.

Petitioners challenge the County's action as a violation of RCWs 36.70A.020(2), 36.70A.020(8) and 36.70A.060(1) by failing to conserve agricultural lands of long-term commercial significance. Further, they argue the land meets none of the County's own requirements for a change in the comprehensive plan resource lands designation. Petitioners support their challenge with arguments that: (1) there is no evidence of a shortage of small acreage residential lots in Yakima County necessitating a change to meet demand, (2) the land is far removed from other residential developments, (3) the land has been in the Federal Conservation Reserve Program for most of the past eighteen years, where farming is prohibited in exchange for federal payments, (4) the land has enjoyed special taxation status as agricultural lands, (5) the designation as agricultural resource lands was not an error but was an accurate reflection of the characteristics of the land, and (6) "de-designation" as agricultural resource lands will harm fish and wildlife habitat.

Petitioners ask the Board for a finding of Invalidity on Amendment ZON 01-14 as

substantially interfering with Goals 2, (reduction of sprawl) 8, (preservation of natural resource industries) and 9 (preservation of open space and recreation).

III. SUMMARY OF DECISION

The Board finds the County is out of compliance with the Growth Management Act and has failed to preserve agricultural lands of long-term significance.

The Board reaches this conclusion from the following conclusions:

1. The record lacks of any evidence of an error in the designation of the land as agricultural resource lands of long-term commercial significance.
2. The absence of an obvious mapping error.
3. No showing that the lands are not agricultural resource lands or that the change to residential uses is needed. The GMA requires a long-term view, preserving land suitable for agricultural production by future generations, even if the current owner prefers to not use the land for production.

The Board does not view this action as complying with GMA goals to reduce sprawl and preserve the agricultural industry in Yakima County. The Board, however, does not make a finding of invalidity.

IV. FINDINGS OF FACT

1. In 1982, the subject property consisting of 1086 acres, was zoned Exclusive Agriculture by Yakima County.
2. The subject property has for much of the past two decades been enrolled in the Federal Conservation Reserve Program (CRP). This program preserves environmentally sensitive agricultural lands for future agricultural use.
3. In 1997, the subject property was rejected for re-enrollment in the CRP because it failed to meet the environmental benefits criteria at that time.
4. In 1997, the subject property was given the designation of Agriculture Resource land by Yakima County's GMA Comprehensive Plan, Plan 2015

5. The subject property is taxed at a lower rate in a category for open space, farm and agricultural land pursuant to RCW 84.34.020.
6. On February 5, 2002, the Board of County Commissioners adopted Ordinance 1-2002 changing the designation of the subject property from Agricultural Resource to Rural Self-Sufficient, and Amendment ZON 01-14, rezoning the property from Agricultural to Valley Rural.
7. Yakima County cited as its justification for the changes noted as (1) the amendment corrects an obvious mapping error, and (2) the amendment better implements the Comprehensive Plan, or (3) a need for more Rural Self-Sufficient zoned lands.

V. STANDARD OF REVIEW

The Growth Management Hearings Board has a duty to determine whether the County has complied with the requirements of the Revised Code of Washington, Chapter 36.70A. Under the Growth Management Act, comprehensive plans, development regulations, and amendments thereto are presumed valid upon adoption. The petitioner challenging the GMA actions bears the burden of demonstrating non-compliance with the Act. (RCW 36.70A.320(2)). The Growth Management Hearings Board must find compliance with the Act, unless it determines that the action by the County is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the Act. For the Board to find the County's action clearly erroneous, the Board must be left with the firm and definite conviction that a mistake had been made.

VI. LEGAL ISSUES AND DISCUSSION

In their brief and arguments, the Petitioners consolidated issue No. 1, 2 and 9 from the Prehearing Order. The Board will address them in the same manner.

Consolidated Issues 1, 2 & 9:

Does Yakima County Ordinance 1-2002 violate RCW 36.70A.020(8) because Amendment 01-14 fails to maintain and enhance natural resource based industries, including productive agricultural industries, and fails to encourage the conservation of productive agricultural lands and discourage incompatible uses? Does Yakima County Ordinance 1-2002 violate RCW 36.70A.020(8) because Amendment 1-14, combined with other amendments since initial adoption of the Plan 2015, cumulatively result in the

elimination of productive agricultural lands? Does Yakima County Ordinance No. 1-2002 violate RCW 36.70A.060 by approving development regulations that fail to assure the conservation of agricultural resource lands and fail to assure that the use of lands adjacent to agricultural lands do not interfere with their continued use of the designated lands for the production of food or agricultural products? (Modified to exclude Amendment 1-12.)

Petitioner's position:

The Petitioners contend ZON 01-14 does not meet Yakima County's Criteria for Amending Resource Designations. The Petitioners cite Yakima County Code (YCC), which requires:

- (e) To change a resource designation, the plan map amendment must do one of the following:
 - (i) Respond to a substantial change in conditions beyond the property owner's control applicable to the area within which the subject property lies; or
 - (ii) Better implement applicable comprehensive plan policies than the current map designation; or
 - (iii) Correct an obvious mapping error; or
 - (iv) Address an identified deficiency in the plan.

The Petitioners claim there is no evidence, findings or conclusions in the record that support a substantial change in conditions. The Petitioners further claim there is no evidence that the amendment "better implement[s] applicable comprehensive plan policies than the current map designation."

The Petitioners listed the concerns of the County staff about the ability of this property to be served as the criteria of the Yakima County Code 16B.10.040 (1) was not satisfied. The Petitioners cite other concerns by the staff including an adequate water supply.

The Petitioners also cite the Yakima Health District's concerns that the predominant soils underlying the proposed amendment were rated as "moderate to severe" for septic system absorption. The Petitioners acknowledge the Health District did revise their opinion by stating there may be "several" suitable sites on the 1,086 acre property but the statement is not supported by any site specific soil

analysis.

The Petitioners contend that Amendment ZON 01-14 does not correct a mapping error. The Caton property has been designated and zoned agriculture since at least 1977. The Comprehensive Plan Agricultural Resource designation of 1997 followed earlier agricultural designations. The Catons requested a change in map designations during the 1996-1997 comprehensive plan process, but were denied by both the Planning staff and the Planning Commission. The Petitioners point out the Catons did not appeal the 1997 Agricultural Resource designation and believe they should not be allowed to challenge it four years later.

The Petitioners contend the record is clear that the Caton property is an important and valuable agriculture land of long-term commercial significance. The Petitioners claim land does not have to include "prime farmland soils" to be agricultural land of long-term commercial significance. They argue that reliance on the presence of "prime" soils would eliminate a significant portion of Yakima County's Agricultural Resource lands. The Petitioners claim the result of analysis confirms that soils on the Caton property subject to the map amendment fall within the top 30 percent of countywide rangeland production during favorable and normal years and within the top 19 percent of countywide rangeland production values during unfavorable years.

The Petitioners claim that YCC 16B.10.040(4) requires the county to consider the "cumulative impact of all plan amendments, including those approved since the original adoption of the plan" for each proposed plan amendment. They contend this has not been done.

The Petitioners claim the County removed a net total of 2,139 acres from its Agricultural Resource areas between 1998 and 2001. At the same time, the County added a net total of 303 acres to its Rural Transitional designation and 1,976 acres to its Rural Self-Sufficient designation.

The Petitioners further claim there is also no record that the County Planning Commission or County Commissioners considered the impact of amendment ZON 01-14 on adjacent agricultural lands. The Petitioners claim no finding was made and in fact, the record demonstrates the opposite – that this amendment will lead to additional

pressure to de-designate more of Yakima County's dryland Agricultural Resource lands. The Petitioners claim Amendment ZON 01-14 created an island of low-density rural lands in the middle of surrounding agricultural lands. The Petitioners further claim the land involved in Amendment ZON 01-14 contains some of the best soils for rangeland production on the entire ridge separating the Naches Valley and the Selah area from the Wenas Valley floor, an area involving almost 5 miles. The Petitioners also claim that by de-designation of the Caton property from Agricultural Resource lands, the County is in effect inviting owners of virtually all dryland Agricultural Resource areas in Yakima County to seek de-designation.

Respondent's position:

The County contends the planning commission did find the Caton application met the criteria for amending resource land designations. They say the planning commission specifically found the proposed amendment better implements the comprehensive plan than the current resource land designation and that the amendment corrects an obvious mapping error.

The County believes the Petitioners do not address the planning commission findings but rather rely on the staff report written prior to the modified application. The Planning Commission found the modified application significant, particularly in addressing the suitability of the property for onsite sewage disposal.

The Respondent states that, following the modified application, Larry Finster of the Yakima Health District submitted a new letter addressing onsite sewage disposal issues and finding that there are several sites for building and placing septic tank drain fields.

The Respondent also points out the planning commission found the land has reasonable all weather access to established county roads. Adam Adolf, the Yakima County Public Works Department of Transportation Planner submitted a revised memorandum to the planning commission as a result of the modified application making such a finding.

The County believes a detailed study need not be undertaken in advance of a non-project action such as the comprehensive plan amendment. Issues such as access, adequacy of onsite sewage disposal, and availability of potable water are addressed at

the project stage during the process of preliminary plat approval under RCW 58.17.110. The assessment of the potable water requirements of any proposed development can be made after a specific project is submitted.

The Respondent contends the fact the Catons did not appeal the 1997 comprehensive plan designation of the property does not preclude treating the designation as a mapping error subject to correction under the County ordinance. They state that both the County ordinance, as well as, WAC 365-190-040(g) allows resource land designations to be amended to correct an error in designation.

The Respondent contends the record is that the 1997 designation, at least in the opinion of the planning staff, was not to conserve true agricultural lands of long-term commercial significance but rather to afford the Catons more flexibility in the use of the property. The Respondent further states all during the processing of the Caton application, planning staff, the planning commission, and the County Commissioners were all convinced that the agricultural resource designation was inappropriate. Respondent's Brief p.14.

The Respondent contends that, having concluded the Caton property is not agricultural land of long-term commercial significance, there are no cumulative impacts associated with its re-designation. They believe the designations made by the County should be changed to reflect reality.

The Respondent believes the fact the County has re-designated a net 2,139 acres of agricultural resource land since the initial adoption of Plan 2015 in 1997, represents significantly less than one percent of the approximately one-quarter million acres which the County has designated as agricultural resource lands. The Respondent further states that other than the Caton property, the facts and circumstances surrounding those applications are not before the Board.

The Respondent contends there is no serious argument that the re-designation of these properties has caused the County's inventory of agricultural resource lands to fall below the "critical mass" necessary to sustain Yakima County's agricultural industry. They believe there is no showing or argument that the re-designation of the Caton property, which has not been farmed in nearly 20 years, has negatively impacted the County's agricultural economy.

Intervenor's position:

The Intervenor contends the Caton Property is not Agricultural Resource Land of Long-Term Commercial Significance Under either Plan 2015 or the GMA and the guidelines of GMA mapping were followed. The Intervenor contends the mapping criteria is consistent with legislative and judicial directives regarding designation of resource lands, and the Petitioners do not challenge the criteria or factors considered by the public officials but disagree with the conclusion reached by the Board of County Commissioners.

The Intervenor states Plan 2015 mapping criteria considers whether the land is "within an irrigation district and receiving water." The Caton property is not located within an irrigation district and does not receive water from any outside source, nor has any existing irrigation water rights.

The Intervenor contends the Planning Commission found the re-designation of the subject property to Rural Self-Sufficient (RSS) would tend to preserve existing prime farmlands by relieving pressure for conversion of irrigated farmland located on the valley floors.

Intervenors state the Planning staff, Planning Commission, and Board of County Commissioners all concluded the Caton property "is not consistent with the Agricultural Resource classification."

The Intervenor states YCC 16B.10.040(1) and WAC 365-190-040(g) recognize separate circumstances under which it is appropriate to amend a resource designation and Amendment ZON 01-14 meets Yakima County's Criteria for amending resource designations.

The Intervenor contends Yakima County determined the Rural Self-Sufficient land use designation better implements applicable comprehensive plan policies and consideration of the mapping criteria for Rural Self-Sufficient is appropriate under the circumstances. They believe the Caton property meets all the mapping criteria established by Plan 2015 for Rural Self-Sufficient land use designation, and the fact that the property may be "assessed as farm, forest or open space" is not determinative of the designation regarding resource land of long-term commercial significance.

The Intervenor provided well records for six (6) wells located on properties adjacent to the Caton property. The wells had an average depth of approximately 500 feet and a static water level of between 250 feet and 600 feet. Vernon L. Rank, the

well driller, confirmed that the aquifer “is substantial, for any amount of homes that the Catons or anyone else want to build.” The Intervenor also points out the property is located within a fire district and within 5 road miles of a fire station.

The Intervenor states Yakima County Public Works confirmed there is sufficient capacity on the road to meet the needs and requirement of a change associated with the re-designation of the property.

Further the Intervenor states the Planning Commission and Board of County Commissioners concluded there was a mistake in the mapping of the Caton property as Agricultural Resource.

The Intervenor argues the prior designation was given as an accommodation to allow more flexibility in the division of the property. It was not, however, a deliberation based upon the strict application of mapping criteria. The Intervenor states all lands that had been historically designated either General Agricultural or Exclusive Agricultural was designated in the Comprehensive Plan as Agricultural Resource lands. As a result of the original designation process, the annual review mechanism has regularly focused upon the site-specific consideration of resource designations based upon mapping criteria contained in Plan 2015, and the annual amendment process has served as a vehicle for correction of prior erroneous determinations.

The Intervenor claims the Petitioner has not shown that the total land area receiving agricultural designation cannot serve to meet the requirements of Goal 8; has not described, quantified or otherwise characterized the agricultural industry in Yakima County impacted by the re-designation; and has not shown why the re-designation negatively impairs the industry.

Discussion:

Yakima County is required to designate and conserve agricultural resource lands within their jurisdiction. Here the County has failed to do so. In their brief, the County contends the re-designation of these lands from Agricultural Resource lands to Rural Self-Sufficient was to correct a mapping error and this change better implements applicable comprehensive plan policies. The Board finds that this is not so.

RCW 36.70A.020(8) requires Counties to:

Maintain and enhance natural resource – based industries, including productive timber, agricultural, fisheries industries. Encourage the conservation of productive forestlands and productive agricultural lands, and

discourage incompatible uses.

In order to meet this goal, GMA planning Counties were required, by September 1, 1991, to designate:

- (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(1)(a).

RCW 36.70A.060(1) Mandates

, once these lands are designated they must further be protected:

[e]ach county ... shall adopt development regulations ... to assure the conservation of agriculture, forest, and mineral resource lands designated under RCW 36.70A.170. ... Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use ... of these designated lands for the production of food, agricultural products, or timber ...

The Washington Supreme Court has summarized these three provisions as follows:

[w]hen read together, RCW 36.70A.020(8), RCW 36.70A.060(1) and RCW 36.70A.170 evidence a legislative mandate for the conservation of agricultural land. King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn.2d 543, 562 (2000).

The Supreme Court's summary in King County, was premised on a lengthy review of the plain language of the GMA and its legislative history.

In seeking to address the problem of growth management in our state, the Legislature paid particular attention to agricultural lands. One of the 13 planning goals of the GMA addresses 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). The purpose is to "assure the conservation" of these lands. RCW 36.70A.060(1). A more recent indication of the Legislature's concern for preserving agricultural lands is a new section the Legislature added in its 1997 amendments to the GMA, RCW 36.70A.177,

which urges employment of “innovative zoning techniques” to conserve agricultural lands.

The GMA set aside special lands it refers to as “natural resource lands,” which include agricultural, forest, and mineral resource lands. “Natural resource lands are protected not for the sake of their ecological role but to ensure the viability of the resource-based industries that depend on them. Allowing conversion of resource lands to other uses or allowing incompatible uses nearby impairs the viability of the resource industry.” Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. Puget Sound L. REV. 867, 907 (1993).

City of Redmond v. Central Puget Sound Growth Management Hearings Board, 136 Wn.2d 38, 47-48 (1998). See also Williams v. Kittitas County, EWGMHB No. 95-1-0009 (Order of Noncompliance, November 6, 1998); Grant County Association of Realtors v. Grant County, EWGMHB No. 99-1-0018 (FDO, May 23, 2000).

Thus, there can be no dispute that the GMA mandates Counties to take action to conserve their agricultural lands. As this Board has found before, local governments are required to “make efforts to include, rather than exclude, agricultural lands, preserving those parcels for future natural resource-based industries.” Grant County. *Supra*.

This Board has also found that agricultural lands are not “conserved” if they are not “maintained.” English v. Columbia County, EWGMHB No. 93-1-0002 (FDO, November 12, 1993, (defining “conservation” to mean “intended to maintain agricultural and forest resource lands.”); Save Our Butte Save Our Basin Society v. Chelan County, EWGMHB No. 94-1-0015 (FDO, August 8, 1994.)

Central Puget Sound Growth Management Hearings Board has addressed the seriousness of “de-designation” of agricultural lands as follows:

“[D]e-designation” of agricultural matters is a serious matter with potentially very long term consequences. De-designation may only occur if the record shows demonstrably and conclusive evidence that the Act’s definitions and criteria for designation are no longer met. The documentation of changed conditions that prohibits the continued designation, conservation, and protection of agricultural lands would need to be specific, and rigorous. If such a de-designation action were

challenged, it should be subject to heightened scrutiny by the Board.

Grubb v. City of Redmond, CPSGMHB No. 00-3-0004 (FDO, August 11, 2000.)

The Board finds there is no evidence in Yakima County's record to support a change in circumstances, nor any discussion in the findings and conclusions issued by the Planning Commission and the County Commissioners that identify adequate changed circumstances. See PC 82 (Planning Commission Findings and Conclusions); Ordinance 1-2002. The Board also finds there is no mapping error warranting a change.

The Catons made three primary arguments in support of the application for de-designation: (1) that their property is not underlain by "prime farmland soils;" (2) is not currently farmed; and (3) is not served by irrigation water.

This Board in English v. Columbia County, EWGMHB No. 93-1-0002 (FDO, November 12, 1993) concluded, "Thousands of acres of less-than-prime agricultural land is more productive and higher yielding than land classified as 'prime.'"

Second, current use is not a controlling factor in designating Agricultural Resource lands. As the Washington Supreme Court has stated:

First, if current use were a criterion, GMA comprehensive plans would not be plans at all, but mere inventories of current land use. The GMA goal of maintaining and enhancing natural resource lands would have no force; it would be subordinate to each individual landowner's current use of the land. The Legislature intended the land use planning process of GMA to be area-wide in scope when it required development of specific plans for natural resource lands and, later, comprehensive plans.

Second, if landowner intent were the controlling factor, local jurisdictions would be powerless to preserve natural resource lands. Presumably, in the case of agricultural lands, it will always be financially more lucrative to develop such land for uses more intense than agriculture. Although some owners of agricultural land may wish to preserve it as such for personal reasons, most, like Benaroya and Comos, will seek to develop their land to maximize their return. If the

designation of such land as agricultural depends on the intent of the landowner as to how he or she wishes to use it, the GMA is powerless to prevent the loss of natural resource land. All a land speculator would have to do is buy agricultural land, take it out of production, and ask the controlling jurisdiction to amend its comprehensive plan to remove the "agricultural land" designation. Under the Board's interpretation, the controlling jurisdiction would have no choice but to do so, because the land is no longer used for agricultural purposes.

Redmond v. Growth Hearings Bd., 136 Wn.2d 38, 52-53 (1998); Williams v. Kittitas County, EWGMHB No. 95-1-0009 (Order of Noncompliance, November 6, 1998).

The Board notes the Caton property has been in the Conservation Reserve Program (CRP) for the best part of the past 20 years. This is through the Farm Service Agency with the USDA. The CRP is a voluntary program that offers annual payments, incentive payments and annual maintenance payments for certain activities, and cost-share assistance to establish approved cover on eligible cropland. The program encourages farmers to plant long-term resource-conserving covers to improve soil, water, and wildlife resources. To be eligible for placement in the CRP land must be:

- § Cropland that is planted or considered planted to an agricultural commodity 2 of the 5 most recent crop years (including field margins) and which is physically and legally capable of being planted in a normal manner to an agricultural commodity; or
- § Marginal pastureland that is either:
 - § Certain acreage enrolled in the Water Bank Program; or
 - § Suitable for use as a riparian buffer to be planted to trees.

Landowner's offers for CRP contracts are ranked according to the Environmental Benefits Index (EBI). Contrary to the Intervenor's contention, the fact that the property did not rank high enough on the environmental benefit index for re-enrollment in the CRP, does not support the argument that these are not agricultural resource lands. This ranking would only mean the land was not environmentally sensitive enough to meet the enrollment criteria. It could still be excellent farmland. The Board further notes this same land has been included under the beneficial taxation designation authorized under RCW 84.34.020.

The Catons in their application for re-designation misstate the facts when the County asked; "Has the site been used for Agriculture? If so, describe." The Catons state, "Yes,

the property was used for dryland farming 18 years ago.” The Respondent states the Catons have not sold the property since its designation in 1997, and have not farmed it. Respondent’s Brief p. 14. The County must recognize that enrollment in the CRP is an agricultural use. The owners cannot sign up for a federal government program, to preserve land for future agricultural use, get paid to not farm the land, and later say it is not agricultural land. This land must be planted with cover crops so that the land may be protected. The landowner is paid for this action.

While any Reclamation water does not serve this land, this Board has found in several cases that agricultural land of long-term significance does not have to be irrigated lands. This Board has stated that junior water rights and non-irrigated lands can be as productive if not more productive than lands that are irrigated.

Conclusion:

The County is found out of compliance with the GMA on Consolidated Issue No. 1 as amendment ZON 01-14 fails to properly designate and conserve agricultural resource lands

Petitioner’s Issues No. 4, 6, 7 and 8:

Having found non-compliance in Issue No. 1, the Board needs not address Issues 4, 6, 7 and 8. At the Hearing on the Merits, the parties all agreed the key issue is “Are these lands agricultural lands of long-term commercial significance.” The Board concludes they are.

Petitioner’s Issue No. 11

Whether Amendment ZON 01-14 substantially interferes with the fulfillment of the goals of the Growth Management Act and should be declared invalid?

Discussion:

The Petitioners assert that the County’s actions substantially interfere with the goals of the Act and urge the Board to enter a determination of invalidity.

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan

or development regulation are invalid if the board:

- (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
- (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
- (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

This Board found the County out of compliance with the Growth Management Act. The question now becomes whether the continued validity of Amendment 01-14 and Ordinance 1-2002 during the period of remand would substantially interfere with the fulfillment of Goals 2, 8 and 9. The Board's review of the facts and circumstances present in this matter leads the Board to conclude that such a determination is not appropriate. While the County's action is noncompliant, the continued validity of the Ordinance during the period of remand would not substantially interfere with these Goals.

Conclusion:

The Board does not now make a finding of invalidity. The Board expects the County will preserve the status of these lands until they bring themselves into compliance.

ISSUES NO. 3, 5 AND 10 OF THE Prehearing Order HAVE NOT BEEN BRIEFED AND WILL BE DEEMED ABANDONED.

V. ORDER

1. The County's actions were clearly erroneous and do not comply with the GMA and is found out of compliance for its failure to properly designate and preserve their Agricultural Resource Lands. See consolidated Issue 1 herein.
2. The Board does not at this time make a finding of invalidity.
3. The Board remands Yakima County Ordinance 1-2002 and ZON 01- 14 to Yakima County to come into compliance with the GMA by February 1, 2003. The Board purposes the following compliance schedule:

By **February 1, 2003**, the County shall conduct the necessary hearings and take appropriate legislative action regarding the subject property to comply with the requirements of RCW 36.70A.020(2), (8), and (9), RCW 36.70A.060 and RCW 36.70A.170.

On **February 5, 2003**, the County shall file a Statement of Action taken to comply with the GMA. The Board requests copies of legislation enacted in order to comply.

February 10, 2003, at 10:00 a.m. the Board will hold a telephonic status conference. The parties will call **360-709-4881**. Ports are reserved for Mr. Mann, Mr. Austin, and Mr. Carmody.

On February 24, 2003, the Petitioners shall file any Comments they have on the County's Statement.

On March 5, 2003, the County shall file their Response to Petitioner's Comments.

The Board will hold the Compliance Hearing in this matter on **March 10, 2003**, at **10:00 a.m., 15 W. Yakima Ave., large conference room, Yakima, Washington.**

If the County takes legislative compliance actions prior to the February 1, 2003, deadline, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

Pursuant to RCW 36.70A.300(5), this is a Final Order for purposes of appeal.

Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this Final Decision and Order.

SO ORDERED this 4th day of November 2002.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Judy Wall, Board Member

D.E. "Skip" Chilberg, Board Member