

We congratulate Mason County on taking strides toward compliance with regard to its agricultural land designation and conservation responsibilities under the Growth Management Act (GMA, Act). To move from its original 1995 finding that no agricultural lands of long-term commercial significance (LTCS) exist in Mason County to the designation of more than 4,400 acres is a strong statement that the County intends to comply fully with the requirements of the Act.

Some further adjustments need to be made, however, before we can enter a finding of compliance. The process by which designation was accomplished did not examine unique soil types. An analysis of the extent to which any acreage in unique soil might be of LTCS is necessary before compliance can be achieved. WAC 365-190-050(2). Additionally, the County must reexamine lands that were excluded solely on the basis of no current agriculture use. Further, the minimum density attainable under the designation ordinance and the buffer widths provided under Section 1.03 of the Mason County Development Regulations (Revised) August 1998 (DRs) do not assure the conservation of agricultural lands. RCW 36.70A.060.

The County has designated agricultural land of approximately 1,300 acres in the Skokomish Valley. It has removed the sunset clause from that 1,300 acres designation. This represents a strong step toward full compliance.

We find that portions of Ordinance 152-97 and Ordinance 82-96 substantially interfere with Goal 8 of the Act in that they allow densities of 1 unit per 5 acres and subdivision of agricultural resource lands to parcels smaller than 10 acres. The County determined in its own findings that parcels smaller than 10 acres remove the expectation of LTCS.

Designation

McDonald Land Company, et al., argued that agricultural compliance should await the completion of the sections of the comprehensive plan on critical aquifer recharge areas and frequently flooded areas. The County acknowledged that it could be found in continued noncompliance, but contended that there was no substantial interference with the goals of the

GMA and therefore the ordinance should not be declared invalid.

Petitioner Diehl asserted that the County's limitation of designation criteria to prime soils, without evidence of consideration of unique soils and justification for their exclusion, was not in compliance with WAC 365-190-050(2). He stated “It is possible that designating less than half the farm lands for conservation may be justified, but there is nothing in the record to provide such justification.” He maintained the exclusion violated GMA for designating agricultural lands of LTCS.

Nothing in the record, and in particular, in the minutes of the Growth Management Advisory Committee Ad Hoc Agricultural Subcommittee of November 3, December 30, or October 27 (Exhibits No. 1247, 1264, and 1244 respectively) contained any mention of consideration of unique soils or rationale for their exclusion as a designation criterion. The record does not contain a copy of a rationale for that decision or its inclusion in the annual report that is required to be sent to the Department of Community, Trade, and Economic Development. We conclude that the County was clearly erroneous in failing to comply with WAC 365-190-050(2). The agriculture ordinance is remanded to the County for its consideration of unique soils as an additional criterion for designation.

Intended Use of the Land

Petitioner Diehl asserted that the County’s requirement that land be in current agricultural use in order to be considered for designation was contrary to the holding of the Washington State Supreme Court in *City of Redmond v. Growth Hearings Board*, 136 Wn.2d 38 (1998), (*Redmond*). The County contended that *Redmond* allows County flexibility and does not require designation of lands not in current agricultural use.

The *Redmond* case may not require designation, but it does preclude non-designation based solely on the lack of current use as agricultural land. The Court held that land is “devoted to” agricultural use under RCW 36.70A.030 if it is an area where the land is actually used or capable of being used for agricultural production. It further held that a jurisdiction must not define agricultural land in a way that allowed landowners intent or use to control designation.

We conclude that the *Redmond* decision requires the County to consider designation under RCW 36.70A.030(10) and WAC 365-190-050 even if land is not in current use. *See also Achen v. Clark County*, #95-2-0067.

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Parcel Size and Density

Petitioner argued that the County’s “scheme is fatally flawed by a failure to restrict subdivision of the larger, more economically viable parcels into units so small as to have little value for agricultural production, which would then be further hampered by allowing incompatible residential uses of such parcels.” Exhibit 1266, Findings of Fact, No. 8 states that acreage smaller than 10 acres “could not be reasonably expected to have LTCS for agricultural use with limited exceptions.” Petitioner pointed out that Ordinance #152-97 allows subdivision into 10-acre parcels and then allows 2 residences on each parcel, leaving 7.5 acres for agriculture. The Ordinance also allows a third residence in the cluster if one is already on the parcel.

The question here is the discrepancy between the County’s finding of fact (that parcels under 10 acres could not be expected to have commercial significance) and the fact that the innovative techniques provision allows creation of under 10-acre parcels, a discrepancy which rises to the level of noncompliance. We hold that it is clearly erroneous to allow such a discrepancy to exist within the ordinance and remand these sections of the ordinance to the County to resolve the inconsistency.

Petitioner Diehl noted that the 1 unit per 5-acre density allowed in 1.03.032 for agricultural resource lands was identical to that of rural lands in general. He expressed concern that the current 76-acre average for Mason County farms could be reduced to “hobby farm” size by this provision. We have previously held in *Hudson & Huber v. Clallam County*, #96-2-0031, and other cases, that non-clustering average densities of 1 unit per 5 acres in resource lands do not comply with the Act.

Larger Parcels

Petitioner Diehl argued that there was inadequate provision for reaggregation of smaller lot farmland in common ownership. Petitioner Diehl asserted that this inadequacy also conflicted with Finding of Fact #8. He pointed out that in Ex. 1247, the minutes of the November 3, 1997, Agricultural Subcommittee Meeting, the County planner said that 20-acre units would be that much more useable for agriculture than 10-acre units, a recognition that large lots are more viable than smaller.

Larger parcels appear to exist. A review of the Watershed Summary of Lands affected by the proposed designation of agricultural lands in Mason County, Exhibit 1412, (and part of Exhibit 1263) showed the following:

Average parcel sizes:

Watershed #1 – 18 acres

Watershed #2 – 46 acres

Watershed #3 – 21 acres

Watershed #4 – 30 acres

Watershed #5 – 25 acres

Watershed #6 – 8 acres

Watershed #7 – 28 acres

This exhibit also showed 941 acres in current farm use without prime soils. We therefore remand for the County to consider: 1) a reaggregation provision which would aid in maintaining the high average acreage currently existing and, 2) review of the non-prime-soil current use acreage to determine how much of it is categorized as unique soils. Should the County opt not to amend its ordinances after such consideration and review, the record must demonstrate a rationale for that decision.

Buffer Widths

RCW 36.70A.060 states that regulations adopted for the conservation of agricultural lands

designated under section .170 shall assure that the use of the lands adjacent to agricultural 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 and agricultural products. Petitioner Diehl pointed out that Section 1.03 of Ordinance 82-96 requires a buffer width of only 5 to 20 feet for lands with such uses as detached single family dwellings, assessorly apartments, home occupations, child daycare facilities, or multi-family dwellings adjacent to agricultural lands. Figures 1.03.036 and 1.03.038, Ordinance 82-96.

Petitioner Diehl contended that the buffers called for in those figures adjacent to agricultural designated lands are simply not adequate and do not comply with the Act. Petitioner Diehl pointed out that short plats and development permits issued for development activities within 300 feet of designated agricultural lands must inform the permittee that a variety of activities may occur which are not compatible with residential development. RCW 36.70A.060(1). Given the requirements of this section, he argued, 5 to 20 foot buffer widths are clearly noncompliant.

The County responded that Mr. Diehl had failed to cite specific individual buffers which did not comply and that the development regulations of the County provide for varying buffer widths.

Based on the complete record before us we conclude that the County was clearly erroneous when it identified buffer widths from 5 to 20 feet as being sufficient to assure that lands adjacent to agricultural lands would not interfere with continued use of those agricultural lands. Section 1.03.030, Resource Areas, of the Mason County Development Regulations is remanded to the County to be brought into compliance with Section .060 of the Act.

Invalidity

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In Petitioner Diehl's September 23, 1998, brief he incorporated by reference parts of his briefs of January 26, February 18, and May 13, pertaining to agricultural lands. He again requested our consideration of a finding of invalidity. We do so in our review of parcel size and resource land density.

County Finding of Fact, #8 states that parcels smaller than 10 acres could not reasonably be

expected to have LTCS for agricultural use. Yet, the Ordinances allow for subdivision to parcels smaller than 10 acres remaining for agricultural use. Further, parcels which might otherwise qualify under the designation criteria but are not in current agricultural use are eligible for subdivision to parcels smaller than 10 acres. Average parcel sizes in 6 of 7 county watersheds exceed 10 acres, by 180 to 400 percent. Once subdivided into parcels smaller than 10 acres agricultural lands of LTCS are irrevocably shorn of their long-term agricultural value.

Many agricultural resource land parcels are currently of sufficient size to continue LTCS. All are subject to subdivision to sizes where LTCS will be lost.

We find that those portions of the Ordinances which allow subdivision of agricultural lands of LTCS into parcels smaller than 10 acres substantially interfere with RCW 36.70A.020(8). Accordingly, those portions of MCC 16.23, Cluster Subdivisions, and Section 1.03.037 of Ordinance 82-96, which allow subdivision of agricultural resource land into nonresidential parcels smaller than 10 acres are declared invalid.

The allowance of non-clustering average densities of 1 unit per 5 acres in resource land also irrevocably removes LTCS value. We find that Section 1.03.032 and .037 substantially interfere with Goal 8 of the Act and are invalid.

ORDER

Compliance:

We find Mason County in compliance with the GMA for the agricultural lands of LTCS that have been designated and the removal of the sunset clause regarding agricultural lands in the Skokomish River Valley.

Noncompliance:

We find Ordinance 152-97 and the August 1998 revisions of the Mason County development regulations, Ordinance 82-96, noncompliant in the following respects:

§ County Findings of Fact designating agricultural lands state that “acreage smaller than 10 acres could not be reasonably expected to have long-term significance for agricultural use” yet the ordinances allow subdivision of agricultural lands into parcels smaller than 10 acres and allow subdivision of land qualifying for designation to acreages below the designation threshold.

§ No report or rationale for a decision not to use unique farm lands soils as a criterion for designation is part of the record.

§ The County has not considered qualified lands not in current use.

§ Buffer widths do not comply with the requirements of RCW 36.70A.060.

§ Densities of 1 unit per 5 acres in resource lands do not comply with the Act.

Invalidity:

We find that provisions of Ordinances 152-97 and 82-96 that allow divisions into less than 10-acre parcels substantially interfere with Goal 8 of the Act.

We find that densities of 1 unit per 5 acres in resource lands substantially interfere with Goal 8 of the Act.

The County shall bring these development regulations into compliance with the Act within 120 days of this order.

Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) are adopted and appended as Appendix I.

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 18th day of December, 1998

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

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Board Member