

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

FRIENDS OF SKAGIT COUNTY,)	
)	No. 95-2-0075
Petitioner,)	COMPLIANCE ORDER
vs.)	REGARDING A FINDING
)	OF PARTIAL COMPLIANCE
SKAGIT COUNTY,)	(NRL)
)	
Respondent.)	
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SYNOPSIS OF THE ORDER

The County has made great strides in bringing its natural resource lands (NRL) ordinance into compliance with the Growth Management Act (Act, GMA) We find that the decision to exclude acreage from 20 acres to 40 acres in size from the rural resource designation (Issue 1, A) is reasoned and within the discretion of the County Commission, but is inconsistent with the allowance of subdivision of 40 acre blocks into 20 acre blocks within the rural resource area. We require the County to either designate 20 acre blocks meeting other designation criteria outside the rural resource area or preclude subdivision of 40 acre blocks within the rural resource area. The same consistency requirement applies to Issue 1, D - excluding parcels between 20 acres and 40 acres contiguous to other natural resource lands from rural resource criterion 2. If those parcels are to be so excluded, then parcels of 40 acres within the rural resource area may not be subdivided to 20 acre parcels. We find that the exclusion of prime upland soils, if artificially drained, from the rural resource designation is a reasoned decision and within the scope of discretion of the County Commission (Issue 1, B). We find that the omission of parcels in Private Forest Land Grade (PFLG) 4-5 from rural resource criterion 1 is reasoned and within the discretion of the County Commission (Issue 1, C). We find that the exclusion of the future Bayview/County Urban Growth Area (UGA) from resource conservation designation is in compliance with the Act (Issue 1, E) because the lands within the proposed UGA failed to meet resource land criteria. We find that the allowance of one unit per 5 acre subdivisions and one unit per 2.5 acre planned unit developments adjacent to designated mineral resource lands still fails to comply with the Act and should be corrected at the adoption of the Comprehensive Plan (CP) (Issue 2).

Under the evidence found in this record, we find this Ordinance to be in partial compliance and partial continued noncompliance with the Act.

PROCEDURAL HISTORY

On January 22, 1996, we entered an Order remanding Ordinance 15841 and requiring Skagit County to bring its NRL Ordinance into compliance with the GMA. A first Compliance Hearing was held on June 26, 1996. Subsequently, we entered an Order of Continued Noncompliance and denied a Request for Recommendations

for Sanctions and a Declaration of Invalidity. A second Compliance Hearing was scheduled for October 1996. On October 9, 1996, the parties stipulated two issues to be considered at that Compliance Hearing. The issues brought by the Petitioners and agreed to by the County challenged Ordinance 16291 and Ordinance 16287, both adopted in response to our original remand. Owing to the filing of a new petition with issues closely aligned to this case, Case 96-2-0034, Island Meadows, et. al., vs. Skagit County, the November 21 - 22, 1996, Compliance Hearing was rescheduled for February 26, 1997.

DISCUSSION

Friends argued that some 30,000 acres of viable natural resource lands had been excluded from designation by actions of the Planning Commission which were contrary to recommendations from Planning staff. The Planning Commission action, approved by the Board of County Commissioners (BOCC), removed prime upland soils, if artificially drained, and parcels smaller than 40 acres from consideration as designated rural resource land. Friends also maintained that the County failed to comply because it had excluded Private Forest Lands Grades (PFLG) 4 and 5 from consideration for rural resource designation. Friends argued that the County also removed from consideration parcels between 20 acres and 40 acres contiguous to other natural resource lands and that this action failed to comply with the Act. Friends also contended that the County had failed to comply by excluding the future Bayview/County UGA from rural resource designation. Friends asserted that the allowance of one unit per 5 acre subdivisions and one unit per 2.5 acre planned unit developments adjacent to designated mineral resource lands failed to comply with the Act. Friends maintained that the County put more stringent requirements on its new rural resource designation than it has on its original agriculture, industrial, and secondary forest designations.

The County outlined its compliance with the requirements of the January 22, 1996, Order remanding Ordinance 15841. It noted that it had made documents available to the public in a timely fashion during the development of the ordinances in response to our remand. Further, it had no longer relied on preexisting ordinances nor exclusionary criteria for designation of forest lands. It pointed out that it had demonstrated the reason for the exclusion of prime upland agricultural areas and in fact had included prime upland soils unless they were artificially drained. The County pointed out that it had abandoned "ability of the land to provide sole support for a family" as a requirement for designation of agricultural lands. It had redrawn its IUGAs to correspond with city limits until the adoption of the CP. Further, the County noted that it had modified preexisting ordinances to comply with the Act.

The County asserted that it had dealt openly and completely with designation. It contended that while the protection of mineral lands from conflicting uses was still an issue, the vast majority of mineral lands were found in resource lands where they were protected by a minimum of one unit per 20 acres on adjacent land. Further the County noted it was allowing no new mining until new development regulations regarding right-to-mine and mining permits had been adopted subsequent to the adoption of the CP. It conceded that, in an

instance or two, abutting rural lands might not provide adequate protection. It contended that the CP would address those issues.

The County maintained that its decision to exclude prime upland soils requiring artificial drainage, and parcels between 20 and 40 acres from consideration for rural resource designations, was "well within the range of reasonable options directed by the goals and requirements of GMA." It cited evidence in the record that the County had been informed by experts at the Soil Conservation Service that prime upland soils if artificially drained require parallel drainage in order to be considered prime soils for growing crops and there is no evidence of that type of drainage in Skagit County. Further, it asserted that these soils possess characteristics that reduce range of choice of plants or that require special conservation practices. Therefore, the County felt that the prime upland soils, if artificially drained, were not appropriate for rural resource designation.

Regarding 20 acre parcels which meet other rural resource criteria not being designated, the County pointed out that Mr. Osborn, an expert in the eyes of both Friends of Skagit County (Friends) and the County, had opined that "you will have tremendous amount of problems with brush control (on a 20 acre parcel) and be battling the brush in the first ten years and probably lose out." The County noted that another forestry representative indicated that forest management costs increase substantially with tracts smaller than 40 acres and that the economies of scale level off at about 80 acres. The County pointed out that PFLG 4-5 soils are contained in 40 percent of the lands designated as industrial and secondary forest by the County. They argued that other circumstances such as "scattering" dictated the exclusion of PFLG 4-5 lands not designated. This, the County argued, was clearly within the discretion of the Planning Commission and the County Commissioners. The County maintained that it did not exclude lands in the Bayview Area because it was proposed for an IUGA but that they were excluded because they did not meet the criteria for designating resource lands. The County did not brief the question of failure to protect mineral lands.

The County maintained that the transcripts of the Planning Commission indicated considerable discussion which led to changes from the recommendations of the Planning Staff. The questions of parcels on the edges of rural resource lands, scattering of parcels, and conflicting use were considered. Experts noted the difficulty in managing 20 acre resource land blocks unless the management services of a professional forester were available. The County pointed out that the Commission took a broad approach to the rural resource designation and did not go parcel-by-parcel. It did consider factors such as soil, parcel size, tax status, conflicting interests, and availability of utilities. The County maintained that its judgment on the rural resource designation was made in consideration of all these factors for long-term commercial significance. The Commission concluded that the 20-acre scattered parcels simply had too many obstacles to overcome to be of long-term commercial significance.

CONCLUSION

We conclude that with regard to Issue 1, A. (excluding parcels with sizes between 20 acres and 40 acres from rural resource criterion 1) and D. (excluding parcels between 20 acres and 40 acres that are contiguous to other natural resource lands from rural resource criterion 2) that the County must make these exclusions consistent with its allowance of subdivision of 40 acre parcels within the rural resource designation area. It must either preclude subdivision of 40 acre parcels into 20 acre parcels or include 20 acre parcels in the rural resource area. The same "obstacles" it cites (Ex 103, 95) as reasons for excluding 20 acre parcels from the rural resource area (conflicting maintenance approaches, economies of scale, windthrow, spray drifting, difficulty of effective management) are present after subdivision to 20 acres within the rural resource area.

We find the County in compliance regarding Issues 1, B, and C, and we find the County in compliance regarding Issue 1, E. (excluding lands within the Bayview/County urban growth areas) as those lands were excluded because they failed to meet rural resource criteria.

We find that the provisions of the ordinance conserving mineral lands (Issue 2) are in continued noncompliance and must be brought into compliance concurrent with the passage of the CP.

ORDER

The section regarding mineral lands is found in continued noncompliance and shall be brought into compliance concurrent with the adoption of the County CP. The County must either preclude subdivision of 40 acre parcels within the rural resource designation or require designation of 20 acre parcels outside of the rural resource designation which otherwise meet the criteria for designation. The resulting amendment to the Ordinance must be adopted within 120 days of this Order.

SO ORDERED this 9th day of April, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member

Nan A. Henriksen
Board Member