

In its response Petitioners pointed out that the present petition deals with amendments to the Comprehensive Plan adopted on July 9, 1996, and the conflicts created within the Plan and between the Plan and development regulations readopted on the same date.

In its January 8, 1997, Reply Brief, the County stated:

"The County does not in any way on this motion seek to preclude Hudson and Huber from challenging enactments by the County on July 9, 1996. However, those enhancements do not in any way affect underlying densities that were part of the adopted Comprehensive Plan. More important, the amendments in July 1996 do not as a matter of law reopen the entire Comprehensive Plan for challenges outside the 60-day appeal period."

Since the County's Reply Brief stated the reason for dismissal quite differently from its December 18, 1996, motion and memorandum, we decided to allow further briefing and to delay oral argument until March 6, 1997.

Petitioners in their February 27, 1997, brief further clarified their position:

"The petitioners challenge only one part of the County's comprehensive plan directly: the use of an agricultural overlay with underlying densities. AG-160 (July 9, 1996, Plan amendments). The County incorrectly argued that the petitioners had no basis on which to challenge the comprehensive plan because the July 9, 1995 amendments did not change the underlying densities. A close reading of the SQD Plan amendment, however reveals an important change that drew a connection between the agricultural designations and zoning. This is shown by the language in the July 9 Plan amendments which reads:

Land meeting the following criteria ~~should be~~ is designated as Agricultural on ~~an interim~~ the land use map utilizing an Agricultural Overlay with underlying densities shown and as an Agricultural Overlay on the zoning map....

Id. At 4. The underlined phrase, added on July 9, shows the agricultural overlay concept making use of underlying zoning already in existence on agricultural lands. The existing zoning allows urban growth to occur on agricultural resource lands, in violation of RCW 36.70a.020(8), 040, .060, .110, .170.

We agree with the County that GMA does not allow a party to use an amendment to the Plan as an excuse to attack other portions of the Plan not affected by the amendment. The July 9 amendment does not reopen the entire Plan for appeal. However, the Plan said "the interim designation and regulation of agricultural lands shall sunset on November 7, 1995...." (Section 31.03.230.4.e) (emphasis added). This would lead any potential petitioner to believe that after November 7, 1995, and before the July amendment there was no designation or regulation of agricultural lands in Clallam County. Clallam County, therefore, could be challenged for failure to conserve that which it designated in its July 9 amendment."

Section 31.03.280.3 of the July 9 amendment states:

"Land meeting the following criteria ~~should be~~ is designated as Agricultural on ~~an interim~~ the land

use map utilizing an Agricultural Overlay with underlying densities shown and as an Agricultural Overlay on the zoning map...."

This amendment directly incorporates the land use map and zoning map with the designation. Not only the agricultural designation but the land use map and zoning map pertaining to the Agricultural Overlay area were readopted and therefore appealable.

The Agricultural Overlay was designated on July 9 with readoption of the land use map providing for 1 dwelling unit/1, 2.4, and 4.8 acres in the overlay area. The issue of whether that act created an inconsistency within the Plan is timely appealed to this Board.

The County's argument that the Petitioners should have raised these issues in their previous petition is not persuasive. The Petitioners are appealing a new action taken July 9, 1996, and have timely appealed the issues raised.

ORDER

Clallam County's motion to dismiss Legal Issues 3.1 and 3.2 is denied.

Dated this 21st day of March, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

Les Eldridge
Board Member