

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 EUGENE BUTLER, et al,

4 Petitioners,

5 v.

6
7 LEWIS COUNTY,

8 Respondent,

9 And

10 CITY OF CENTRALIA, et al,

11 Intervenor.

12
13 VINCE PANESKO, et al,

14 Petitioners,

15 v.

16
17 LEWIS COUNTY,

18 Respondent,

19 And

20 LEWIS COUNTY ECONOMIC DEVELOPMENT
21 COUNCIL & INDUSTRIAL LANDS ADVISORY
22 TASK FORCE,

23 Intervenor.

24
25 DENNIS HADALLER, et al.,

26 Petitioners,

27 v.

Case No. 99-2-0027c

**ORDER OF CONTINUING
NONCOMPLIANCE**

Case No. 00-2-0031c

**ORDER OF CONTINUING
NONCOMPLIANCE**

Case No. 08-2-0004c

**ORDER OF CONTINUING
NONCOMPLIANCE**

1 LEWIS COUNTY,

2 Respondent.
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6 **I. PROCEDURAL HISTORY**

7 The joint Compliance Order and Final Decision and Order (FDO) in these consolidated
8 cases was issued on July 7, 2008. Under the compliance schedule established by the
9 Board, areas of noncompliance were to be addressed by February 6, 2009. On February
10 13, 2009 the County filed a Motion for Compliance Deadline Extension.¹ In its motion for an
11 extension, the County stated that it has been diligently moving toward compliance.² The
12 County staff and consultants have researched and analyzed data to identify all non-soil-
13 dependant uses in the County to ensure that they can be evaluated for possible agricultural
14 resource land (ARL) designation. In addition, the County sought to determine if water rights
15 existed for “prime-if-irrigated” soils.³ The County conducted a review for possible ARL
16 designation of those lands excluded from the 2007 review and those lands in the vicinity of
17 I-5.⁴ As a result, the County made specific recommendations to the Planning Commission
18 at workshops held on January 13, 27 and February 10.⁵ The Planning Commission was
19 expected to hold a final workshop on April 14 and make its recommendation to the Board of
20 County Commissioners. Legislative action was anticipated by June 1, 2009. Because of
21 the additional time required for review and action, the County requested a revised
22 compliance schedule.
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26 The Board denied the County’s Motion.⁶ The Board noted that while the Board is able to
27 grant extensions in the compliance schedule, RCW 36.70A.330(1) requires that “After the
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31 ¹ Lewis County’s Motion for Compliance Deadline Extension.

² County Motion at 2.

³ Id.

⁴ Id. at 3.

⁵ Id.

⁶ Order on County’s Motion for Extension of Compliance Deadline, entered February 26, 2009.

1 time set for complying with the requirements of this chapter under RCW 36.70A.300(b) has
2 expired,. . . the board shall set a hearing for the purpose of determining whether the state
3 agency, county or city is in compliance with the requirements of this chapter.” The date set
4 for compliance was February 6, 2009. Because the County filed its request for an extension
5 of the compliance period *after* the compliance period expired, the Board could not grant an
6 extension but instead was statutorily required to conduct a compliance hearing.⁷ That
7 compliance hearing was held telephonically on April 15, 2009. Present were Andrew Lane
8 on behalf of Lewis County, Robert Beatty on behalf of Futurewise, and Petitioners Vince
9 Panesko, Eugene Butler, and Dennis Hadaller. Board members Nina Carter, William Roehl
10 and James McNamara were also present.
11

12 **II. DISCUSSION OF THE ISSUE**

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14 The issue before the Board is whether or not the County remains out of compliance.
15 The County acknowledges it has not yet achieved compliance, but instead argues that it has
16 been diligently moving towards compliance yet needs additional time. It submitted a
17 proposed compliance schedule with its motion for compliance extension. However, at the
18 April 15, 2009 Compliance Hearing, the County reported that the Planning Commission
19 determined during its April 14th meeting that it wished to take more time to discuss public
20 comments on the County’s proposed compliance efforts. The County does not yet have a
21 revised work plan, but suggested that an additional 180 days to complete its compliance
22 work would be sufficient (from April 15, 2009).
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25 Although the Petitioners questioned whether an additional 180 days would be necessary for
26 the County to achieve compliance, they acknowledged the need for the County to take more
27 time, and did not object to the County’s request.
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30 As noted above, the County was ordered to come into compliance with the GMA by
31 February 6, 2009. RCW 36.70A.300(3) provides that the Board shall specify a reasonable
32 period of time, not in excess of 180 days, within which the jurisdiction must comply with the

⁷ RCW 36.70A.330 requires the Board to hold a compliance hearing after the time for complying has expired.

1 requirements of the GMA. However, the Board may grant a longer period in cases of
2 unusual scope and complexity. Based on the history of these consolidated cases, the task
3 of designating Lewis County's agricultural resource lands is a case of unusual scope and
4 complexity. The Board therefore grants the County an additional 180 days from the
5 compliance due date set out in the July 7, 2008 FDO. While that is less time than the
6 County requested, it should be sufficient provided the County continues its diligent efforts to
7 achieve compliance with the GMA. In addition, the Board will expand the time normally
8 allowed for Petitioners to respond to the County's compliance report based on the request
9 made at the compliance hearing.
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12 The relevant Findings of Fact and Conclusions of Law set forth in the July 7, 2008 FDO are
13 incorporated herein by reference. The Board's earlier order of invalidity remains in place.
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15 III. ORDER

16 Lewis County shall take the necessary legislative action to comply with the GMA as set out
17 in the Board's July 7, 2008 FDO in accordance with the following schedule:
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19 August 6, 2009	Compliance Due
20 August 21, 2009	County's Report of Action Taken Due with Index
21 September 4, 2009	Additions to Index Due
22 September 11, 2009	Written Objections (if any) to a finding of compliance
23 October 2, 2009	County's Response (if necessary) to any Objections to Compliance Due
24 October 16, 2009	Compliance Hearing (location to be determined)

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26 Entered this 16th day of April, 2009.

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James McNamara, Board Member

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30 _____
William Roehl, Board Member

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Nina Carter, Board Member