

No. 34550-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

LEWIS COUNTY,
Appellant and Cross-Respondent,

v.

MICHAEL T. VINATIERI, et al.,
Respondents and Cross-Petitioners,

WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD,
Agency Respondent.

LEWIS COUNTY'S OPENING BRIEF

FILED
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
06 SEP 25 PM 3:40
BY _____

Attorneys for Appellant Lewis County

Alexander W. Mackie, WSBA #6404
PERKINS COIE LLP
111 Market Street NE, Suite 200
Olympia, WA 98501
360-956-3300

Douglas E. Jensen, WSBA #20127
Chief Civil Deputy Prosecutor
JEREMY RANDOLPH
Lewis County Prosecuting Attorney
360 NW North Street MS: PRO01
Chehalis, WA 98532
360-740-1240

CONTENTS

I. INTRODUCTION1

II. ASSIGNMENTS OF ERROR AND ISSUES
ASSOCIATED WITH THE ASSIGNMENTS OF ERROR1

III. STATEMENT OF THE CASE.....2

IV. ARGUMENT9

 A. The Standard of Review.....9

 B. The Board of County Commissioners Properly
 Considered the Abplanalp Request.....10

 C. The Petitioners Had Ample Notice and Opportunity
 to Participate on the Issue of Resolution 03-368 and
 Ordinance 1179E16

 1. Public participation was extensive and
 adequate.17

 2. The trial court’s decision was based on
 evidence not in the record.....19

V. SUMMARY AND CONCLUSION22

APPENDICES

TABLE OF AUTHORITIES

Cases

<i>Burrow v. Kitsap County</i> , CPSGMHB No 99-3-0018, March 29, 2000, Final Decision and Order	14, 16
<i>Butler, et al. v. Lewis County</i> , WWGMHB Nos. 98-2- 0011c, 99-2-0027c, and 00-2-0031c, Compliance Order, July 10, 2002.....	3
<i>Lewis County v. Western Washington Growth Management Hearings Board</i> , ___ Wn.2d ___; 139 P.3d 1096 (2006).....	3, 5, 9
<i>Vinatieri, et al. v. Lewis County</i> , WWGMHB No. 03-2- 0020c, Final Decision and Order, May 6, 2004.....	3, 8, 18
<i>Vinatieri, et al. v. Western Washington Growth Management Hearings Board</i> , Lewis County Superior Court No. 04-2-00861-0, Decision on Petition for Review	8, 19

Statutes

Chapter 36.70 RCW.....	2, 16
Chapter 36.70A RCW	8, 16
RCW 34.05.570	1, 9
RCW 34.05.570(3).....	9
RCW 34.05.570(3)(c)(d).....	23
RCW 34.05.570(3)(d)(e).....	15
RCW 36.70A.035(2).....	passim
RCW 36.70A.035(2)(a)	2, 15, 17, 19
RCW 36.70A.035(2)(b)	17

RCW 36.70A.190(4).....	10
RCW 36.70A.320(1).....	13, 20, 23
RCW 36.70A.320(1)-(3).....	10, 15, 21
RCW 36.70A.320(3).....	11, 20, 23
RCW 36.70A.330(2).....	2

County Legislative Sources

LCC 17.10.126.....	8
Ordinance 1179E	passim
Resolution 03-368.....	passim

I. INTRODUCTION

This case involves an appeal by Lewis County from the decision of Lewis County Superior Court (Hall, J.) January 30, 2006 affirming in part and reversing in part the decision of the Western Washington Growth Management Hearings Board (“Growth Board”) issued May 6, 2004. Lewis County has appealed the Superior Court ruling and seeks an order reversing the decision pertaining to the exclusion of the Abplanalp property from lands designated as lands of long-term commercial significance, and the decision as to public process in the adoption of the Resolution and Ordinances in question. The case is an appeal governed by the terms of the Administrative Procedure Act, RCW 34.05.570, judicial review of quasi-judicial administrative positions.

II. ASSIGNMENTS OF ERROR AND ISSUES ASSOCIATED WITH THE ASSIGNMENTS OF ERROR

1. The trial court erred in holding that the Board of County Commissioners (“BOCC”) may not make changes to a proposed zoning map based upon testimony received during the BOCC’s public hearing.

Issue: Whether the BOCC, considering the Planning Commission’s recommended zoning map designating agriculture lands of long-term commercial significance, may make changes to the map based on testimony about proper inclusions and exclusions heard for the first time at the BOCC’s hearing held before they take final action (the Abplanalp issue).

2. The trial court erred in reversing the decision of the Growth Board and holding that the adoption of comprehensive plan amendments concerning acres designated and enabling zoning codes about farm houses and farm centers were noncompliant (RCW 36.70A.330(2)) for failure to comply with RCW 36.70A.035(2)(a) (the public process issue).

Issue: Whether the recommendation of a Planning Commission in a County compliance proceeding under Chapter 36.70 RCW must be in a specific resolution or ordinance format, or may the Board of County Commissioners choose the format after the Planning Commission recommendation has been made.

Issue: Whether the trial court erred in reversing a decision of the Growth Board on the adequacy of public process based solely on a statement, without citation or evidence in the record, as to the availability of Resolution 03-368 and Ordinance 1179E for public review prior to BOCC action when there is no evidence in the record that such materials were not available for review and the matter of availability was not raised until well after proceedings had closed.

III. STATEMENT OF THE CASE

The case arises out of a complex set of compliance proceedings and final decisions issued by the Western Washington Growth

Management Hearings Board concerning compliance by Lewis County with the State's Growth Management Act.¹

The compliance order arises out of a July 10, 2002 Growth Board decision finding Lewis County in substantial compliance with GMA requirements except for matters pertaining to the designation of agriculture lands as lands of long-term commercial significance, and the uses permitted on resource lands. (*See* combined cases *Butler, et al. v. Lewis County*, WWGMHB Nos. 98-2-0011c, 99-2-0027c, and 00-2-0031c, Compliance Order, July 10, 2002, AR 1-27.²)

Lewis County acknowledged it needed to complete that task and embarked on a year-long process to bring that portion of its comprehensive plan and development regulations into compliance. The Growth Board provided a schedule for adoption which as amended called for Lewis County to provide its compliance report by September 9, 2003, AR 557-561. A series of detailed workshops and public hearings were

¹ A good summary is found at pp. 3-5 and summary of issues at pp. 5-15 of the Growth Board's 5/6/04 decision. Copy at CP 35-45.

² The Administrative Record (AR) comprised of briefing and exhibits (the "XII" documents) to the Growth Board, includes a shared record with Clark County Superior Court No. 04-2-00477-1, appealed to the Supreme Court under No. 76553-7, wherein the Court recently made its ruling on August 10, 2006. At the time of the designation of Clerk's Papers the Administrative Record was in the possession of the Supreme Court on the related matter, *Lewis County v. Western Washington Growth Management Hearings Board*, ___ Wn.2d ___; 139 P.3d 1096 (2006), and is in the process of being remanded to the Growth Board at the conclusion of the Supreme Court proceedings.

held on the question of the proper criteria for the designation of lands, the lands to be designated, and proposed uses on such lands.

The Planning Commission efforts culminated in a series of maps; a Planning Commission Report and Findings (Ex. XII-42p; AR 672-675; copy at CP 422-426); a preliminary report (Ex. XII-41h; copy at CP 379-397) submitted to the public on August 12, 2003; a supplemental report (Ex. XII-42L; copy at CP 407-409) on issues raised by the Planning Commission and made public during the Planning Commission's public hearing on August 26, 2003 (meeting notes at Ex. XII-42h; copy at CP 401-405), and finally, a hearing before the BOCC on September 8, 2003 (meeting notes at Ex. XII-43b; copy at CP 432-439), wherein the BOCC adopted Resolution 03-368 (Ex. XII-44b; AR 583-584) and Ordinance 1179E (Ex XII-44a; AR 676-677). Petitioners were active participants at the Planning Commissioner's public hearing, including the hearing preceding the final recommendations on September 8, 2003. *Id.* Further background and explanation is also in the County briefing to Superior Court at CP 247, 254-257.

The Board of County Commissioners were under a deadline to respond to the Growth Board with its resource lands recommendation by September 9, 2003. As a result, it noted its own public hearing to hear comments from the public on the Planning Commission's recommendations. It also had the Planning Commission's recommendations formatted into a proposed resolution, Resolution 03-368 text (AR 583-584) and maps A-H (AR 738-759), and Ordinance 1179E

(AR 676-677), for the purpose of public hearing, discussion, and action.

There were no substantive changes from the recommendations of the Planning Commission. The recommendations were simply converted from the Planning Commission report.

The notice stated:

The hearing will be for the purpose of taking testimony concerning proposed amendments to the Comprehensive Plan and zoning regulations, designating agricultural land of long-term commercial significance. Those wishing to testify concerning this matter should attend.

Ex. XII-43; copy at CP 428.

During the September 8, 2003 public hearing, members of the public, including petitioners below in this proceeding, testified as to matters pertinent to the County's proposed compliance actions—lands designated as agricultural lands of long-term commercial significance and proposed uses.

During the course of the hearings the petitioners below presented testimony on the criteria they wanted the County to use for designation (i.e., all lands with prime soils capable of being farmed). They objected strenuously to the Planning Commission's recommendation, based on needs of the industry versus lands capable of being farmed, which was at the core of the Planning Commission's recommendation.³

³ This issue was ultimately resolved in the County's favor in *Lewis County v. Western Washington Growth Management Hearings Board*, ___ Wn.2d ___, 139 P.3d 1096 (2006).

During the hearings Mr. Abplanalp, a local dairy farmer asked to have his property removed from the lands zoned for long-term commercial agriculture on the grounds his lands were similar to other lands the Planning Commission had recommended be removed from designation as reflected in the proposed maps. These interactions are further summarized in County's Response to Petitioners Trial Brief, at CP 251-252 and in the 9/8/03 BOCC meeting minutes (Ex. XII-43b; copy at CP 432-439; audiotape is Ex. XII-43c, included in AR, but not assigned a document number; tape excerpts have been transcribed, CP 442-450).

In response to a question from the Commission, Mr. Johnson, the County planner, advised that Mr. Abplanalp had requested an individual rezone, which was on hold. Mr. Johnson voiced no objection to the change. During the public hearing the BOCC inquired as to whether they could consider Mr. Abplanalp's requests made at the public hearing and upon being advised that they could, took action to remove Mr. Abplanalp's property from the lands designated for long-term commercial significance. *See* BOCC 9/8/03 minutes (Ex. XII-43b; copy at CP 432-439; Ex. XII-43c is audiotape, contained in AR and transcribed excerpts at CP 442-450).

The BOCC then went on to consider the proposed recommendations from the Planning Commission and proposed changes to implement its compliance report, which had been the subject of the hearing, and thereafter adopted Ordinance 1179E and Resolution 03-368 (Ex. XII-44a and XII-44b; AR 583-584 and 676-677).

The Growth Board scheduled a compliance proceeding in the *Butler* (WWGMHB No. 99-2-0027c) and *Panesko* (WWGMHB No. 00-2-0031c) cases, and accepted petitions for review from the same petitioners sub nom Knutsen, Yanisch, Smethers, Vinatieri, and other members of the appealing group, as new challenges to the same ordinance. A consolidated hearing was held January 14-15, 2004, with a supplemental hearing in the *Butler/Panesko* compliance proceeding on April 26, 2004.

Subsequently, on May 6, 2004 the Growth Board issued the decision in the *Vinatieri* (WWGMHB No. 03-2-0020c) portion of the case. CP 31-83. It is this decision which is under review in the current proceedings. After a detailed report, they made the following Conclusion and Finding:

Conclusion: As to this challenge, the County is in compliance with respect to notice provided.

19. Notice of the proposed farm home and farm center changes had been provided in the public meeting in early August 2003. The rezone of the Abplanalp property and the change to the comprehensive plan language were all addressed by Petitioners at public hearings. There was an opportunity to speak to those issues at one subsequent Planning Commission hearing and at a hearing before the County Commissioners. Given the circumstances of this case, there was lengthy public participation and a fully developed record, the notice of hearing for adoption of Resolution 03-068 [sic] and Ordinance 1179E contained sufficient information to inform the public the County was considering Section B.4 of Resolution 03-368 and Section 2 of Ordinance 1179E to be codified in LCC 17.10.126.

Vinatieri, et al. v. Lewis County, WWGMHB No. 03-2-0020c, Final Decision and Order, May 6, 2004, at pp. 46-47, 50. CP 76-77.

G. The County is in compliance with the Growth Management Act (Ch. 36.70A RCW) as to:

...

- The County's public participation procedures during the challenged adoptions
- The notice of hearing for adoption of Resolution 03-368 and Ordinance 1179E

Id. at p. 53. CP 80.

Petitioners below appealed to Superior Court for review of the May 6, 2004 Growth Board decision, and on January 30, 2006, Judge Hall affirmed in part and reversed in part the Growth Board decision.

Vinatieri, et al. v. Western Washington Growth Management Hearings Board, Lewis County Superior Court No. 04-2-00861-0, Decision on Petition for Review. The positions in the Superior Court's Decision on Petition for Review pertinent to this appeal are:

- Reversed the approval of the Abplanalp decision, pp. 8-12 (CP 19-23).
- Reversed the determination of the Board that the public participation in the adoption of Resolution 03-368 and Ordinance 1179E were consistent with the public participation requirements of RCW 36.70A.035(2), pp. 13-14 (CP 24-25).

This appeal followed.

IV. ARGUMENT

A. The Standard of Review

The Court of Appeals stands in the same shoes as Superior Courts in the review of Growth Board decisions under RCW 34.05.570(3). *Lewis County v. Western Washington Growth Mgmt. Hearings Bd.*, ___ Wn.2d ___, 139 P.3d 1096, 1100 (2006). Under the Administrative Procedure Act, the essential questions at issue in this case are set forth as follows:

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

RCW 34.05.570.

Petitioners in this case elected to proceed by petition to raise the issues in this case, rather than by joining the compliance proceedings in *Butler v. Lewis County* (WWGMHB No. 99-2-0027c) and *Panesko v. Lewis County* (WWGMHB No. 00-2-0031c) decided February 13, 2004. As such, the Growth Board review was bound by the presumptions and burdens set forth in the statute for new petitions:

(1) Except as provided in subsection (5) of this section, comprehensive plans and development

regulations, and amendments thereto, adopted under this chapter are *presumed valid upon adoption*.

(2) Except as otherwise provided in subsection (4) of this section, the *burden is on the petitioner* to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

(3) In any petition under this chapter, the board, after full consideration of the petition, shall determine whether there is compliance with the requirements of this chapter. In making its determination, the board shall consider the criteria adopted by the department under RCW 36.70A.190(4). *The board shall find compliance* unless it determines that the action by the state agency, county, or city is *clearly erroneous in view of the entire record* before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(1)-(3), emphasis supplied.

A review of the matters discussed below demonstrate Judge Hall's decision fails to meet the required tests and the Growth Board decision is entitled to be reinstated and stand as decided.

B. The Board of County Commissioners Properly Considered the Abplanalp Request

The first question is whether the Growth Board was correct in affirming the County Commissioners' actions concerning the request of Mr. Abplanalp as consistent with GMA requirements for public process. The answer must be yes.

The facts are not in dispute. The Planning Commission acted on a county-wide series of maps, identifying which properties should and should not be designated as agricultural lands of long-term commercial

significance and forwarded that recommendation to the Board of County Commissioners for final action.

The BOCC scheduled a public hearing for September 8, 2003 to secure the public comment on the proposed changes.

During the course of the hearings, Mr. Abplanalp questioned why his property was not removed from long-term agriculture along with other comparable properties, and asked that it be removed. Mr. Butler, on behalf of the petition group below asked the Board of County Commissioners to include a substantial number of additional lands. At the close of the public hearings, the Board of County Commissioners took all testimony under consideration. They did not agree with petitioners' view of the criteria and did not act favorably on the petitioners' request to designate additional lands. They did remove the Abplanalp property from designated lands. BOCC 9/8/03 minutes (Ex. XII-43b; copy at CP 432-439, and transcribed excerpts at CP 442-450); see also *infra* at pp. 5-6.

On the question of adequacy of public participation under RCW 36.70A.035(2), the Growth Board looked at the totality of the circumstance to see whether the public process goals were met. In this case, the issue before the County was the GMA duty to identify and conserve lands designated as agriculture lands of long-term commercial significance in Lewis County, and whether or not certain lands should be included in the mapped resource lands. The burden on appeal is on petitioners to demonstrate the County action was clearly erroneous. RCW 36.70A.320(3). The Growth Board noted that petitioners had had

ample opportunity to testify on this point, and concluded that as to that issue, the public process responsibilities of GMA allowed the BOCC to make modifications to the map to exclude property identified during the final public hearing. (Finding 19 of the WWGMHB's 5/6/04 FDO). *See infra* at pp. 3-5.

The sole objection by Vinatieri, et al., which Judge Hall concurred with in reversing Finding 19 and Conclusion G, was that the published notice did not set out that the Board of County Commissioners would specifically consider the inclusion or exclusion of the Abplanalp property. The undisputed fact is that the issue of inclusion and exclusion of lands on the zoning map had been the subject of this year-long program and subject to numerous public hearings. During its hearing, the BOCC afforded the public the opportunity to testify on the Planning Commission's recommendation before finally adopting the maps designating agriculture resource lands. In this case they elected to specifically approve Mr. Abplanalp's request. The Growth Board properly found that the petitioners below had been active participants in the overall process and in fact, Mr. Butler (one of the *Vinatieri* petitioners) spoke right after Mr. Abplanalp, and made no objection to Mr. Abplanalp's request for exclusion. (Minutes at Ex. XII-43b; copy at CP 435.) Interestingly, Mr. Butler was also asking the County to make changes to the Planning Commission maps not specifically identified in the public notice, but his request was to add a significant number of properties to the long-term agriculture designation.

The action of the County in adopting the final map, based on all the testimony, is presumed valid. RCW 36.70A.320(1). Growth Board Finding 19 found that the petitioners had ample time to testify on the substance of lands being included or excluded on the key maps. The *Vinatieri* appeal does not challenge that fact of their participation in the proceedings as a general matter and points to no structural barrier or other illegality which would have prevented them from commenting on any request during the Board of County Commissioners' final hearing on September 8, 2003. They simply argue that to make any parcel-specific change raised for the first time during the Board County Commissioners final hearing, the County should have noticed and scheduled a new hearing on that change.

The position of the petitioners and the Superior Court below is that the County Commissioners are powerless to respond to public comment during its final hearings; here, that RCW 36.70A.035(2) requires any parcel-specific change from the Planning Commission's recommendation to be separately noticed for a supplemental public hearing. Such result has never been the law, and the Superior Court reversed the Growth Board's finding of compliance without citation to any authority, statutory or case law, that such individualized specificity is a required result under Washington state law.

Addressing the facts of this dispute, the public process concerning agricultural lands (both criteria and maps) was extensive. The question of whose lands were in and whose were out based on the standards adopted

was a fair question and one for which the County Commissioners were justifiably concerned. The BOCC properly exercised its authority using the guidelines established by the Planning Commission. The BOCC public hearing was the last in a long line of well-attended proceedings designed to establish the County's recommendations. Given the size and complexity of a county-wide process, any map is subject to give and take during the public review process. This Court should rule that the notice and public requirements apply to the general process and not each specific individual request raised during the public hearing process which may result in amendments within the overall scope of matters before the County prior to final action.

The issue is best addressed in a Central Puget Sound Growth Management Hearings Board ("Central Board") decision in which the Central Board noted in response to a claim that the notice was not specific enough as to an exact change made.

There is no GMA requirement that the County must have prepared a document for public inspection specifically proposing all elements of the amendments ultimately adopted by the County; it is enough that the changes to the County-proposed amendments were within the scope of alternatives available for public comment.

Burrow v. Kitsap County, CPSGMHB No 99-3-0018, March 29, 2000, Final Decision and Order at 6.

Here, the decision of the Board of County Commissioners to include or exclude the Abplanalp property is well within the scope of alternatives available for public comment.

The Growth Board below found that the petitioners were given ample opportunity to testify on the proposed maps and criteria for adoption. *See infra* at pp. 3-6. RCW 36.70A.035(2) looks to the overall plan of participation and the opportunity to be heard on key issues. The petition group below was certainly afforded that opportunity. The decision of the Superior Court to reverse the Growth Board on the facts of this case would defeat the purpose of holding widely noticed public hearings to elicit public response to recommendations and would discourage public participation by forcing multiple trips to the courthouse to make the same testimony.

The Board of County Commissioners heard all comments on September 8, 2003 as a continuation of the mapping discussion which had been ongoing for many months. The Growth Board properly concluded that petitioners had been given the opportunity of public participation, which they in fact exercised and that the County had achieved compliance with RCW 36.70A.035(2)(a). The decision of Superior Court to the contrary must be reversed, in that it failed to presume validity of the County action and failed to identify any sound legal basis for reversal. The decision of the Superior Court applied the wrong standard of review, is erroneous as a matter of law, and is without support of substantial evidence in the record and should therefore be reversed. RCW 36.70A.320(1)-(3); RCW 34.05.570(3)(d)(e).

C. The Petitioners Had Ample Notice and Opportunity to Participate on the Issue of Resolution 03-368 and Ordinance 1179E

The second overall public process “notice” question in this case addresses the form of the Planning Commission recommendation. The issue raised is whether a BOCC is required to receive a recommendation from the Planning Commission in the form of a specific resolution and ordinance before they may take action in a compliance proceeding. As noted above, the Growth Boards have said public participation does not require such a result. *Burrow v. Kitsap County, supra*. In the proceedings below, petitioners mixed claims of noncompliance with public participation requirements of RCW 36.70A.035(2) (an issue of compliance or noncompliance) and certain claims of constitutionality and procedural defects arising under Chapter 36.70 RCW which would lead to a “voiding” of the resolution and ordinance. The Growth Board held it had no authority to consider claims arising outside of Chapter 36.70A RCW as they were outside of the purview of the limited authority granted to the Growth Boards by the Legislature (Growth Board FDO at p. 28), and the Superior Court agreed (Decision on Petition for Review, p. 17, CP 28).

This leaves only the issue of public participation under RCW 36.70A.035(2), on which the Court reversed the decision of the Growth Board, holding Finding 19 and conclusions pertaining to public process were not supported by the record. The Superior Court erred in this determination and must be reversed.

1. Public participation was extensive and adequate.

RCW 36.70A.035(2) addresses public participation as follows:

(a) . . . if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change.

RCW 36.70A.035(2)(a).

That is the language relied upon by petitioners below. But, the statute goes on to provide:

(b) An additional opportunity for public review and comment is not required under (a) of this subsection if:

(ii) The proposed change is within the scope of the alternatives available for public comment;

RCW 36.70A.035(2)(b).

The resolution section at issue incorporated the text set forth by the Planning Commission dealing with needed agricultural lands. The ordinance provision at issue addressed certain exemptions for farm homes and other uses on agricultural land. The substance of both were taken straight out of the Planning Commission report. *Compare* Ord. 1179E and Res. 03-368 *with* the 8/26/03 Planning Commission Recommendation, and the Preliminary and Supplemental Reports (copy of these documents are attached hereto as Appendices A-C and F-G).

It is difficult to argue that the County compliance proceedings for the designation of long-term commercially significant agricultural lands did not have wide spread public notice or that the matters incorporated into the resolution or ordinance did not reflect specific recommendations of the Planning Commission. In fact, the Growth Board specifically made reference to the process (pp. 45-46 of *Vinatieri* FDO, 5/6/04, CP 75-76).

The alleged “new materials” (Res. 03-386 and Ord. 1179E, copies attached at Appendices E and F) now objected to by the *Vinatieri* petition were part of the ongoing public hearing process for agriculture lands compliance, and formulated in specific response to claims and debates arising during the public hearing process.

The public had ample notice of the proceedings, and the specifics of the lands necessary to sustain commercial agriculture and the farm home and farm center proposals through the Planning Commission proceedings and recommendations. They participated at length and with notice. Certainly a proposal may change or shift during the public process—that is the very essence of the public process. But such changes do not require that the County begin all over again. The designation of 40,000 acres and farm homes and centers were clearly discussed in the Preliminary Report at pp. 14-16 and at p. 3 of the Supplemental Report (copies attached at Appendices A and B). These documents were relied upon for the Planning Commission recommendation. *See* paragraphs 4 and 5 and Finding 1 of the Commission’s 8/26/03 Recommendation (copy attached at Appendix C).

The resolution language amending the comprehensive plan simply incorporated the Planning Commission recommendation on the amount of land necessary to support agriculture into the comprehensive plan to give it legal affect.

The farm home and farm center proposals were detailed in the Preliminary Report. The ordinance at the September 8, 2003 Board of County Commission's hearing simply put the recommendation into ordinance form.

The matters addressed by the BOCC were the same matters addressed by the Planning Commission and were well within the range of matters discussed. Accordingly, the Growth Board made no error in finding compliance in Finding 19.

2. The trial court's decision was based on evidence not in the record.

The decision of the trial court is driven by the statement:

The amendments to development regulations and the comprehensive plan adopted by the BOCC pursuant to Resolution 03-368 and Ordinance 1179E on September 8, 2003 were *first* proposed by the BOCC *after* closure of the public hearing after closure on the same date. . . . Although petitioners had prior knowledge of the Planning Commission recommendations, the BOCC proposals were *submitted* and adopted after the opportunity for review and comment had passed under the county procedures. RCW 36.70A.035(2)(a) requires an opportunity for review and comment on the proposed changes before the BOCC votes on them.

Decision on Petition for Review, p. 13 (CP 24), emphasis supplied.

The problem with the statement is that it is made without citation to the record and there is absolutely no evidence in the record that the statement concerning the BOCC proposals being submitted “after closure of the public hearing” is true. In fact, the entire September 8, 2003 public hearing was designed to address proposed changes to the comprehensive plan and county ordinances, and the substance of those changes were fully disclosed in the County Planning Commission’s recommendations. The draft form ordinance and resolution as well as maps were available for public review and comment at the hearing. Unfortunately, as the matter of the availability of the ordinance was not specifically raised at any early stage of the proceedings in this case by petitioners, there is no specific record of where or how the materials were distributed.⁴

Judge Hall reversed the Growth Board, concluding the evidence was “insufficient” to support the Growth Board’s decision. Decision on Petition for Review at p. 14 (CP 25). But his decision turns the burden of proof on its head. The actions of the County are presumed valid. RCW 36.70A.320(1). The Growth Board is required to uphold the actions of the County unless the petitioner demonstrates (on the record) that the actions of the County are clearly erroneous. RCW 36.70A.320(3). Petitioners, and not the Growth Board or County, have the burden to prove the

⁴ The County practice was to make such materials available on a table where people could also sign in to speak at the outset of any hearing or workshop, which for the September 8, 2003 hearing was the County Commissioners hearing room.

materials were not present. This burden is particularly applicable in the absence of any objection at the time.

Simple statements about availability or unavailability of certain materials at a hearing, particularly when the absence of documents at the BOCC hearings was not raised at the BOCC hearings or before the Growth Board does not constitute evidence sufficient to warrant reversal. Here, the unsupported statement was raised for the first time in the Superior Court briefs, more than two years after the fact.⁵ The absence of evidence in the record to support petitioners' view cannot be used as grounds for finding error in the County process. Yet that is what happened here.

Petitioners' extensive participation in the relevant portions of the County and Growth Board decisions is amply supported in the record. They should not now be heard to complain that public participation was inadequate. Petitioners have not demonstrated the County action in making changes specifically in response to issues they raised during the public hearing proceedings to be clearly erroneous. As such, petitioners' complaint on public participation under RCW 36.70A.035(2) must be dismissed. RCW 36.70A.320(1)-(3).

⁵ A review of the Petitioners' Brief-Vinatieri Issues to the Growth Board (found at Tab 11 of AR for WWGMHB No. 03-2-0020c) reveals no reference to documents arriving only after the public hearing had closed. And, as petitioners below, it was their duty to assure the record was complete on any matter they wished to litigate. No effort was made at the Growth Board to address evidence on this point and their failure to provide a record cannot be used at this stage to find error on behalf of the County by the Superior Court.

V. SUMMARY AND CONCLUSION

The case below arose from the actions of Lewis County in establishing criteria and maps for compliance with the GMA requirement to designate agriculture resource lands of long-term commercial significance and to conserve resource lands.

The County did so through a long process in which petitioners below participated at length and with full disclosure of the recommendations which were incorporated into the County comprehensive plan and enabling ordinances. Petitioners below participated fully and addressed the issues on the merits. Petitioners have failed to demonstrate that public participation was clearly erroneous, both as to the Abplanalp property and the Resolution and Ordinance matter, and the decision of the Growth Board should be upheld.

The Court is requested to provide the following relief:

1. Reverse the decision of the Superior Court that a County Commission may not amend a proposed zoning map, prior to adoption, based upon testimony of a property owner seeking a change to include or exclude property from a particular zone based on the criteria for inclusion or exclusion recommended by the Planning Commission.
2. Reverse the finding of noncompliance order of the Superior Court on the proceedings adopting Resolution 03-368 and Ordinance 1179E on the grounds (a) that the materials adopted were well within the range of matters discussed in depth by the Planning Commission, and (b) that petitioners have provided no evidence in the record supporting the

claim that materials were not available for comment. As such, petitioners failed to adduce sufficient evidence to overcome the presumption of validity in RCW 36.70A.320(1) or meet the evidence tests of RCW 36.70A.320(3), which are prerequisites to be met before petitioners below may prevail in this case. The Growth Board Finding 19 and supporting conclusions were based on petitioners' failure to meet that test. Accordingly, the Superior Court's reversal was the erroneous application of the law to the facts of this case and is not supported by substantial evidence, and must be reversed. RCW 34.05.570(3)(c)(d).

DATED: September 25, 2006.

Attorneys for Appellant Lewis County

PERKINS COIE LLP

By



35556

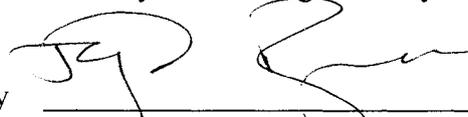
for

Alexander W. Mackie, WSBA #6404

JEREMY RANDOLPH

Lewis County Prosecuting Attorney

By



35556

for

Douglas E. Jensen, WSBA #20127
Chief Civil Deputy Prosecutor

Douglas H. Hayden
Annette H. Yanisch
198 Archer Drive
Cinebar, WA 98533

Karen Knutsen
3414 Centralia-Alpha Road
Onalaska, WA 98570

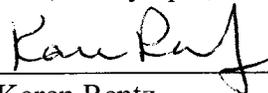
John T. Mudge
190 Sanderson Road
Chehalis, WA 98532

Edward G. Smethers
1516 Sunset Way
Centralia, WA 98531

Dorothy L. Smith
641 Lucas Creek Road
Chehalis, WA 98532

Deanna M. Zieske
139 NW Chehalis Avenue
Chehalis, WA 98532

DATED this 25th day of September, 2006, at Olympia, Washington.



Karen Rentz

APPENDIX LIST

Lewis County's Opening Brief, *Lewis County v. Vinatieri, et al.*, No. 34550-1

No.	Document	Date	Ex. No. before Growth Board	AR¹ cite	CP² cite
A	Preliminary Report (excerpt)	8/8/03	XII-41h	No specific AR pages assigned	379-397
B	Supplemental Report	8/36/03	XII-42l	No specific AR pages assigned	407-409
C	Planning Commission Recommendation to BOCC	8/26/03	XII-42p	672-675	422-425
D	Minutes of Board of County Commissioners meeting (BOCC)	9/8/03	XII-43b	No specific AR pages assigned	432-439
E	Transcript of excerpts from audiotape of BOCC meeting	9/8/03	None [XII-43c is the actual audiotape]	No specific AR pages assigned	442-450
F	Ordinance 1179E (text only)	9/8/03	XII-44a	676-677	None
G	Resolution 03-368 (text only)	9/8/03	XII-44b	583-584	None

¹ The Administrative Records were compiled by the Growth Board clerk and sent to Superior Court: (1) after some of the initial briefing had already been filed, (2) and did not assign all of the documents specific AR page numbers; therefore, the parties continued (and still continue) to cite from the record below using its original exhibit numbering system. Additionally, there are two groups of Administrative Records (both were submitted 8/31/04): one for WWGMHB Nos. 99-2-0027c, 00-2-0031c, 02-007c, and a second Administrative Record for WWGMHB No. 03-2-0020c. The AR excerpts attached in this Appendix are derived from the former. These Administrative Records are shared among these cases.

² Some of the exhibits from the record below were attached to briefing done for the Superior Court, and thus now also have Clerks Papers numbers assigned to the pages. The attached pages in this Appendix use conformed pages from existing files, rather than copied directly from the Clerks Papers or Administrative Record.

APPENDIX A

Agriculture in Lewis County

A Preliminary Report to the Lewis County Planning Commission for Purposes of Public Hearing

The purpose of this report is to summarize recent findings concerning agriculture in Lewis County, and particularly in connection with the responsibility of the County to designate and conserve agriculture resource lands of long-term commercial significance. The Planning Commission has been holding hearings for six months and have requested that staff summarize the findings, update any technical information with current data where available, and report back with recommendations concerning the designation of agricultural lands and the tools necessary to conserve such lands and to protect agricultural activity as required by Chapter 36.70A RCW. Our findings and recommendations follow.¹

I. THE DUTY

Lewis County is under order of the Western Washington Growth Management Hearings Board to "reevaluate the designations of ARL (agricultural resource lands), with adequate consideration of the guidelines found in WAC 365-190 within 150 days."² Additionally, "In order to comply with the GMA, Lewis County must complete its duty to designate appropriate ARLs under DCTED guidelines and GMA requirements. Lewis County must also revise its DRs to eliminate nonresource uses allowable in RL designated areas." The order to reevaluate the designations pertains only to agriculture lands of long-term commercial significance (referred to as "ARLs" in the Compliance Order. As such, this review is limited to designation and conservation of agricultural resource lands. Review of other resource lands will be part of the periodic update of the County comprehensive plan, which will be in 2005 for Lewis County.

A. Legislative Requirements and Regulatory Guidelines

The duty as described by the Legislature is for Lewis County to "designate"

¹ The report is a joint effort of Bob Johnson, Erika Conkling, and Craig Swanson, Lewis County staff; Mike McCormick, Planning Consultant; and Sandy Mackie, County counsel.

² *Butler FDO*, June 30, 2000, WWGMHB No. 99-2-0027c, Order No. 9, and *Mudge et al*, Compliance Order July 10, 2002, WWGMHB No. 01-2-0010c, *et. seq.*

be grown on a wide variety of soils and in a wide variety of locations. No additional steps are required to conserve and protect lands for either activity. Grass hay in particular is a marginal operation, in that in good years the return is often barely enough to pay taxes on the property, and frequently may provide an income only over net operating costs, but provide no real return to the cost of land and labor involved. Local grass hay is used for silage and low value uses, as it does not have high food value found in Eastern Washington hays. Due to low food value and high storage and transport costs, little out of area markets exist.

Poultry are not soil dependent and often a degree of dispersal is preferable to concentrations to avoid the risk of soil contamination through excess nitrate loading. Such use does require protection from adjoining activity that may consider the poultry operation offensive. For this reason, it is very important that poultry activities be permitted uses in the R 1-10 and 1-20 zones (more than 100,000 acres in Lewis County) and that where a suitable site is found by an operator, with adequate water and other facilities available, that such land can be designated as long-term commercially significant through the "opt in" process. The opt in process permits the farmer to make a significant investment in facilities necessary for the poultry activity and to have such activity protected from incompatible uses on adjoining property.

Other non soil-related agricultural activity can be conserved and promoted by making such uses permitted activities through the rural area of the County and particularly in the Residential 1-10 and 1-20 areas, as they now are, and to provide the opportunity for any land owner in either of those zones to designate a particular parcel through the "opt in" process and achieve protection for facilities that may be constructed, installed, or brought into cultivation to serve a particular long-term agriculture need. Again, the "opt in" process allows a farmer the protection of long-term commercially significant agriculture designation, as lands that may be, but are not dependent on soil type and quality or the availability of irrigation. (Note: Chapter 17.107 LCC, the "Agriculture and Forest Protection Overlay District," specifically provides additional protection for agricultural activities in the RDD zones.)

D. Identify the needs of farmers and lenders to assure the continuation of commercial agriculture on County farm lands and make sure the County regulations support such needs to protect the agricultural activity, as well as the land.

A common theme throughout the proceedings has been a recognition that most farms are not economically self sufficient, and that "on farm non farm income" and the ability of the farm to provide non farm economic opportunities are both essential

to the survival of long-term agriculture in Lewis County. To address these critical needs, the County recommends two steps:

1. The family home on the farm is not farmed and is often used for numerous activities that provide economic return to the farm family other than farm agriculture. Each designated farm in excess of 40 acres would be allowed one five-acre tract (to maintain the rural 1-5 density) around the farm home and such land would be zoned R 1-5 and not long-term commercially significant agriculture. Such tract may be identified by boundary line adjustment to specify the appropriate tract.

2. Farms in Lewis County have areas developed by paved or gravel level areas, barns, sheds, storage facilities, equipment and machine storage and maintenance areas. Often such facilities and barns have historically supported ancillary, non-farm economic activities. Such areas support the farm activity, but are not cropped, tilled, or generally used for soil-based agriculture, nor are they likely to in the future. Such developed areas are referred to as "farm centers." Each designated farm will be able to identify and designate a farm center, including existing impervious or gravel area, up to five acres, centered around the existing barn and shed facilities. Such properties shall be zoned as "farm center" and not long-term commercially significant agriculture. The farm center may be identified through a boundary line adjustment, provided such lands are limited to lands already covered with impervious or gravel surfaces. Within farm centers permitted uses will include all uses permitted in rural industrial zones identified in Chapter 17.75 LCC, Rural Area Industrial, provided, however, that size limits on the square footage of buildings shall not apply. This factor reflects the existence of buildings in existing farm centers from 10,000 to 50,000 square feet in size, often employing 10-50 employees or more on a seasonal basis. Additional uses for farm centers include (a) home-based business, (b) isolated small business, (c) any resource-related manufacturing, processing, storage, or transportation, (d) rural resort or recreation (related to agritourism), and (e) equestrian facilities and support activities.

The designation of the farm home and the farm center from long-term commercially significant lands will not have a major impact on the conservation and protection of long-term commercially significant agricultural lands because

- a. Such lands are commonly not in production; and

- b. The land removed from the total designation is estimated to be approximately 2,000 acres, still leaving ample reserve for current agricultural production and future growth.

The provision of alternate economic activity, not tied to the agricultural market, allows banks and appraisers to identify value to the farm-land, the farm home, and the farm center buildings on a separate basis. The latter two are not directly tied to the current agricultural markets, which will often result in a higher appraised value. This permits appraisers to recognize the potential for other non-agricultural uses, and as a result, provides a higher land value base to support both farm loans and non-farm loans. This ability to identify alternate economic uses on farm-lands, to support on farm non-farm income, is essential to the preservation of the agricultural economy in Lewis County.

E. Use the minimum guideline considerations as the basis for decisions.

All of the recommendations made in this report are based on the considerations set forth in WAC 365-190-050.

III. SUMMARY

Land should be designated in blocks, providing ample room to serve the existing crop and animal mix and to provide for future expansion and new crops or animals grown on a commercial basis. The key element of the agriculture industry may be summarized as follows:

Irrigated crop lands 5,000 acres in current production with a 100% reserve total need, 10,000 acres, plus an additional 10,000 acres in hay, grain, or Christmas tree production.

Domestic livestock 20,000 acres in current production or capable of serving the industry, including ancillary hay and waste disposal fields, with an equivalent reserve capability on non designated lands.

Specialty crops (organic farms, new experimental crops, and minor crop capability) at least 5,000 acres of lands capable of serving such needs (more than triple current production).

Under the analysis, the total designated lands of approximately 40,000 acres would fully meet all current production demands and any reasonably foreseeable future needs for designated lands. To achieve the necessary designation and

concentration, the County has identified a number of agriculture blocks for designation.

A. Panel 1 – West (west of I-5)

1.	Lower Lincoln Creek Block	2,111 acres
2.	Chehalis/Newaukum Block	8,055 acres
3.	Boistfort Block	7,237 acres.
4.	Other “B” land	815 acres
5.	Other “A” land	<u>727 acres</u>
	Subtotal ag lands	18,492 acres

B. Panel 2 – I-5 Corridor (east of I-5)

1.	Lower Cowlitz	4,849 acres
2.	North Fork Newaukum Block	1,117 acres
3.	Other “B” land	3,333 acres
4.	Other “A” land	<u>2,468 acres</u>
	Subtotal ag land	11,767 acres

C. Panel 3 – Lakes Region

1.	Mossyrock Block	1,903 acres
2.	Other “B” land	388 acres
3.	Other “A” land	<u>220 acres</u>
	Subtotal ag land	2,511 acres

D. Panel 4 – East End

1.	Randle Cowlitz Block	11,470 acres
2.	Other “B” land	<u>71 acres</u>
	Subtotal ag land	11,541 acres

County Total Ag Land Designated	44,311 acres
Less farm housing and farm center	<u>-2,000-4,000 acres</u>
	40,000 acres

The County finds that the lands designated contain over 12,000 lands of prime soil irrigated lands, which provide both for current needs for existing and new crops in designated lands. The County further finds that the designation of more than 30,000 acres for pasture providing hay, pasture, or feed to a variety of animals or poultry. The designated lands, combined with the availability of an equal or greater acreage in the RR 1-10 and 1-20 zone, with strong pro agriculture protections and an “opt in” provision where farmers need additional protection that will serve the existing and future needs of the animal/poultry component of the local agriculture industry in Lewis County.

In addition, the survey supports a finding that Christmas trees and grass hay may be planted in many locations, are not soil dependent, and are grown on both designated and undesignated lands. No need is found to designate additional lands to conserve and promote grass hay, Christmas trees, or grazing field to be used occasionally to support the agriculture industry in the County.

Many of the farms taken out of designation from the 1996 maps were either lands for which long-term commercial agriculture were not feasible, such as the isolated farms in the Onalaska and Highway 508 areas, or lands that were undergoing structural changes such as the loss of vegetable contracts or transition away from dairy and the subject of significant development pressures due to proximity to I-5 and existing and growing urban areas. The lands west of I-5 and between the Cities of Winlock and Napavine meet this criteria. Given the blocks identified above, the record supports a finding that designating such lands is not essential to the conservation of long-term agriculture in Lewis County and is much more suitable to meet other land needs and demands.

References

- a. 1997 Census of Agriculture
- b. Washington Agriculture statistics
- c. Four detailed panel maps showing additions and deletions
- d. Summary of lands added and deleted, (Currently Designated Agricultural Resource Lands)

References are on file in the Lewis County Community Development Department.

APPENDIX B

M/S/A

PC X11-421
8/26/03
RAJ

Agriculture in Lewis County

A Supplemental Report

As we discussed at the time of the preliminary report, staff has continued to compile additional information on agriculture in Lewis County in an effort to better define the nature and needs of the industry.

We were able to identify additional information on crops in years more recent than the 1997 census discussed in the preliminary report. In addition, we were able to identify additional information concerning both crop and livestock farming, which will aid in your efforts to best define the industry.

1. Crop lands

- a. Wheat, barley, and oats have seen marked reduction in production, with wheat and barley at about 400 acres and oats at 700 acres in recent years. The crops are marketed in Portland, which makes transportation expensive, and we lack the combines and large machinery found in the large agriculture areas because the County acreage is small. Overall County production is unlikely to exceed 2,500 acres at any one time and 5,000 acres is sufficient reserve to allow for rotation.
- b. Corn for silage is a dairy-related program and acreage is 400 at best and dropping with the movement of dairy to eastern Washington and elsewhere.
- c. Row crops—In recent years National has no pea contracts, Simmons has 800 acres, and sweet corn is holding steady at about 2,000 acres. The Lewis County row crop farmers have two disadvantages not experienced by other competitive farms: (1) the season is between two and four weeks later than the Willamette Valley and thus the County gets its crops into the ground later than many competing farms, and (2) the late wet spring makes Lewis County riskier in that if crops do not get into the ground until June due to a wet spring, the July heat comes too soon before the crops are hardy and a significant portion of the harvest will be lost. This does not happen every year, but often enough to make contracts a higher risk venture than in the Willamette Valley to the south. Local canneries now contract for and import carrots and other vegetables from other locations outside Lewis County.

- d. The County has no commercial orchards.
- e. The organic farms and specialty crops rarely, if ever, get to 1,000 acres and are found in two places: (1) in areas formerly used for row crop contracts that are now not used for such purposes, and (2) in incidental farms throughout the rural areas in the County, but in no pattern or given area, and not dependent upon zoning for protection or continuation. The nature of this business is that it is constantly changing and rarely successful for any long period. The proposed designated lands, together with the protections in the Rural R1-10 and I-20 zones, with right to farm protection, fully satisfy the needs. The "opt in" provisions aid the farmer desiring additional protection.
- f. There are only local markets for grass hay and the supply greatly outstrips demand. Much of the grass hay is grown to qualify for "agriculture" property tax rates, which has the benefit of keeping the land open and undeveloped, but is not grown and marketed on a commercial basis. Much of the current crop is used for horses, a local hobby actually found throughout the County, or left unharvested. There is no shortage of hay ground in Lewis County.

2. Livestock and Poultry

- a. 40,000 head total for beef and dairy. The beef production is one of the principal "hobby farm" activities in the County, with less than 30 farms out of the 694 identified engaging in livestock on a fully commercial basis
- b. More than one half of the animals in the auctions are from the hobby farms, many of which are found on relatively small acreage, and are not soil or irrigation dependent, but simply a convenient use of existing ground for tax and income purposes. Much of the designated land not cropped is grazed and conversion from one to the other is common, depending on markets, so there is overlap. Also, the Rural R1-10 and I-20 zones will continue to serve a continuation of this market and fully serve County needs, both now and in the future.
- c. The 1/1 cow/calf rate for grass is for dry areas. In the lowlands where most summer pasture occurs, the ratio is up to 4 cow/calf units per acre and the overall County average is 2 cow/calf units per acre. The lowland "summer pasture" provides the necessary grazing base for the

industry (good grass without the need to water). Upland pastures are rented on a rotating basis, with herds of approximately 10-20 animals pastured in an upland area, commonly 10-40 acre fields), but moved from field to field over the year. Again, the Rural R-1-10 and 1-20 provide all of the lands needed now or into the foreseeable future to support the industry in addition to the designated lands. Industry uses about 10,000 acres of bottomland, which is designated, and an equal amount of uplands throughout the County. The balance of the animals are found on farms in herds of up to 10 or 20 animals scattered throughout the County

Summary of acreage requirements:

The agriculture industry in Lewis County would be fully served by designating a combination of Class B and Class A agriculture lands in excess of 30,000 acres and providing substantial protection for agriculture activities in the balance of the County.

Crops

5,000 acres, plus 5,000 acre rotation, plus 2,000 acres for organic and specialty crops, including future reserves, shows a demand currently and in the future in the range of 12,000 acres, with a substantial portion irrigated.

Livestock, including beef, dairy, poultry, and expansion

10,000 acres of bottom lands, summer pasture

10,000 acres of grazing and dairy lands

2,000 acres of poultry lands and reserves

22,000 acres total designated lands, with the balance served in rural lands.

Additional designated lands, including Christmas tree lands and hay lands available for agricultural use and serving the current and foreseeable agricultural needs

5,000-10,000 acres

Overall target for agricultural lands as designated lands

39,000-44,000 acres

APPENDIX C

LEWIS COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT

ket Blvd. Chehalis, WA 98532

Planning Commission Material

Date: 7/26/03

Permit Center
Environmental Services * Planning
Building & Fire Safety * Code Enforcement

X11-42

(360) 740-1146

TRANSMITTAL

TO: Board of County Commissioners

FROM: Lewis County Planning Commission
Tom Cleary, Chairman TC

XC: Mike McCormick
Sandy Mackie
Doug Jensen

DATE: August 26, 2003

SUBJECT: Recommendation adopted by the Planning Commission following their August 26, 2003 Public Hearing and August 26, 2003 final workshop on proposed amendments of the Comprehensive Plan Resource Land maps and Chapter 17.200 LCC, Maps, to amend Agricultural Resource Lands designations.

SEE ATTACHED RECOMMENDATION

BEFORE THE LEWIS COUNTY PLANNING COMMISSION

IN RE:
RECOMMENDATION OF THE PLANNING)
COMMISSION TO THE BOARD OF LEWIS)
COUNTY COMMISSIONERS TO AMEND)
COMPREHENSIVE PLAN RESOURCE LANDS)
MAPS AND CHAPTER 17.200 LCC BASED ON)
RECONSIDERATION

TO: LEWIS COUNTY BOARD OF COUNTY COMMISSIONERS
FROM: LEWIS COUNTY PLANNING COMMISSION
DATE: AUGUST 26, 2003

The planning commission was asked to provide additional consideration for designation of agricultural land designations based on information from public hearings and from additional information from staff and the public. The planning commission received a report from staff, *Agriculture in Lewis County: A Preliminary Report to the Lewis County Planning Commission for Purposes of Public Hearing* on August 5, 2003 along with preliminary maps for consideration in designation of agricultural land of long-term commercial significance in Lewis County.

The planning commission held a supplemental workshop on August 12, 2003 to consider the additional material, and a public hearing on the additional material and proposals on August 26, 2003. Based on information received, the planning commission, by motion, took the following actions:

1. The planning commission defined the nature and needs of long-term commercially significant agricultural industry in Lewis County as the industry described in the *Preliminary Report* and refined in a supplemental report, *Agriculture in Lewis County: A Supplemental Report*, copies of which were approved by motion and are included as attachments to this recommendation.

2. The planning commission affirmed that the existing rules currently in place are sufficient for the protection of agriculture on rural lands.

3. The planning commission affirmed that the "Opt in" provisions of LCC 17.30 provide additional protection for agriculture in areas not presently designated for agricultural lands of long-term commercial significance.

4. The planning commission recommended adding farm home designations, allowing a 5-acre farm home designation.

5. The planning commission recommended adding a farm center designation on long-term commercial lands to provide additional income potential for farmers, consistent with historical and traditional practices in Lewis County, as a means to protect the financial viability of the farm and farm families.

6. The planning commission mapped land appropriate for designation as agricultural land of long-term commercial significance. The four maps, amended to reflect the final recommendation,

and a summary showing current and recommended acreage, were approved by motion and are attached.

FINDINGS IN SUPPORT OF THE RECOMMENDATION:

1. The *Preliminary Report* and *Supplemental Report* have been subject to a great deal of discussion and controversy. As a whole said reports accurately reflect the present and future condition and needs of long-term "commercially significant" agriculture in Lewis County.

2. The maps designating lands as long-term commercially significant agricultural lands, as amended and approved, designate irrigated and non irrigated lands with prime soils, bottom lands, and other lands sufficient to serve the needs of the Lewis County agricultural industry for the present and foreseeable future. Soils were considered, as were other elements and nature of the industry.

3. The lands removed from the 1996 designations reflect detailed review, discussions, and conclusions that such lands are not necessary to support long-term significant agriculture and are commonly isolated, lack water for irrigation, and/or are in areas where other growth activities make long-term commitment to agricultural activities unlikely or inappropriate or both, consistent with the guidelines contained in Ch. 365-190 WAC. New water rights for significant irrigation in the area are not available.

4. The deletions from Class B Agricultural Lands approved in the amending motions are based on the finding that the lands removed are not used for commercial agriculture and are unlikely to be so used because of steep terrain or riparian features inconsistent with long-term commercial agriculture.

5. For lands removed from long-term commercially significant agricultural designation a two-part test was identified to determine the new zoning for those areas so removed:

A. Where property boundaries are more than 75% encompassed by a single rural development district zone, the entire property should be zoned consistent with that surrounding zone.

B. Where property boundaries are less than 75% encompassed by a single rural development district zone, the property should be zoned consistent with the abutting rural development district zone, keeping logical boundaries and blocks.

As Chairman of the Lewis County Planning Commission, I have summarized the Commission's actions and refer our recommendations to you, the Lewis County Board of County Commissioners, with a request to consider and adopt our recommendations.

Tom Cleary 8/26/03
Tom Cleary, Chairman

FINAL DESIGNATED LANDS CONSIDERATION

1. Total lands required to meet long-term commercially significant agricultural land needs in Lewis County, including reserves:
 - a. Designated lands: See map recommendations.
 - b. Farm protection on rural lands. Existing rules sufficient.
 - c. "Opt in" provision for new uses where owner needs additional protection. Existing rules sufficient.
 - d. Recommend adding farm home designation, 5 acres.
Yes No
 - e. Recommend adding farm center designation on long-term lands
Yes No

2. Designated lands
 - Map 1. West End as modified
 - Map 2. I-5 Corridor as modified
 - Map 3. Lakes Area as modified
 - Map 4. East County as modified

Area	Planning Commission	Staff Considerations	Final Recommendations
West End	16,936	18,136	16,936
I-5 Corridor	21,392	21,952	21,352
Lakes Area	4,283	4,823	3,823
East County	14,225	12,465	12,465
Total	56,836	57,376	54,576

W
8/26/03

CP 425

AR 672

APPENDIX D

X11-43b

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON
BOARD MEETING MINUTES

September 8, 2003

The Board of County Commissioners for Lewis County, Washington met in regular session on Monday, September 8, 2003; at 10:00 a.m. COMMISSIONERS ERIC JOHNSON, and RICHARD GRAHAM were in attendance. The meeting was called to order by CHAIRMAN JOHNSON who determined a quorum and proceeded with the flag salute. COMMISSIONER GRAHAM moved to approve the minutes from the meeting held on Monday, August 25, 2003. CHAIRMAN JOHNSON seconded. Motion carried.

PUBLIC COMMENT:

No one signed up to speak.

NOTICE:

COMMISSIONER GRAHAM moved to approve Notice agenda items 1 through 4. CHAIRMAN JOHNSON seconded the motion. Karisa Duffey, Clerk of the Board, read the items aloud.

1. **PROCLAMATION:** Declaring September 11, 2003 as "9-1-1 Day" in Lewis County.
2. **PROCLAMATION:** Declaring September as "Weather Radio Awareness Month" in Lewis County.
3. **PROCLAMATION:** Declaring September as "Alcohol and Drug Addiction Recovery Month" in Lewis County.
4. **NOTICE OF HEARING:** Regarding the approval of various land classifications. Hearing will be held on Monday, September 22, 2003 on or after 10:30 a.m.

Motion carried 2-0.

CONSENT:

COMMISSIONER GRAHAM moved to approve Consent agenda items 5 through 12. CHAIRMAN JOHNSON seconded the motion. Karisa Duffey, Clerk of the Board, read the items aloud.

5. **Resolution #03-359** Regarding the proposed sale of surplus property off of Meyers Road near Mossyrock, Washington.
An unidentified audience member asked if legal access has been obtained for the proposed properties to be sold. Larry Unzelman, Property Management, stated the properties would be sold without legal access.
6. **Resolution #03-360** Approving additional funds for the Southwest Washington Fair's Revolving Account to prepare change for the Harvest Swap Meet event to be held September 20 and 21, 2003.
7. **Resolution #03-361** Cancellation of a municipal warrant in the amount of \$1,122.23.
8. **Resolution #03-362** Approving two amendments to a contract between Lewis County and the Washington State Military Department for E911 Operational Assistance.
9. **Resolution #03-363** Approving an agreement between Lewis County and Pacific International Engineering for consulting services to continue work on the Chehalis Basin Flood Reduction Project.
10. **Resolution #03-364** Approving a contract between Lewis County and the Washington State Department of Community, Trade and Economic Development to provide funding for prevention of violence and substance abuse in the amount of \$46,692.00.
11. **Resolution #03-365** Approving an amendment to the consolidated contract with the Washington State Department of Health to change funding allocations for various programs.

12. Resolution #03-366 providing a contract between Lewis County and the Human Response Network to provide funding for a prevention program for children and youth of domestic violence.

Chairman Johnson asked for questions. Motion carried 2-0.

Chairman Johnson recessed the meeting until 10:30 a.m.

HEARING:

10:30 a.m.

HEARING: Regarding the Special Event Application submitted by the Lewis County Drift Skippers

Chairman Johnson called the meeting back to order. He announced the purpose of the review. He asked for a staff report.

Tony Barrett, Deputy Health Officer, stated the Health Department has reviewed the application. He stated the applicants have made all of the necessary arrangements. He stated based on the Health Department's review, he recommends approval of a provisional permit.

Chairman Johnson asked for comments from the applicant. The applicant was not present.

COMMISSIONER GRAHAM moved to approve the Special Event Application submitted by the Lewis County Drift Skippers for the grass drags to be held on October 4, 2003. CHAIRMAN JOHNSON seconded. Motion carried 2-0.

10:30 a.m.

HEARING: Regarding the proposed vacation of the Fuller Road Right of Way Resolution #03-367

Chairman Johnson announced the hearing and asked for a staff report.

Larry Unzelman, Property Management, stated in April of 2003 the Public Works Department received a request from the affected property owners to vacate. He stated on June 2, 2003 the Board of County Commissioners approved a resolution to proceed, ordering the County Engineer to examine the road. He acknowledged that the road is not presently maintained by Lewis County and the requesting parties are the only people affected by the vacation. The County Engineer recommends compensation in the amount of \$200.00 plus administrative and publication costs. He stated notice was posted on road. He indicated the property owner had submitted payment. He then stated the Public Works Department recommends vacation of the Fuller Road right of way.

Commissioner Graham asked if all fees been paid in full.

Mr. Unzelman acknowledged the department has received payment.

Chairman Johnson asked for questions. There were none. He then asked for testimony. There was no testimony. He asked for a motion.

COMMISSIONER GRAHAM moved to approve Resolution #03-367, vacating a portion of Fuller Road right of way. CHAIRMAN JOHNSON seconded the motion. Motion carried 2-0.

10:30 a.m.

HEARING: Amending the Lewis County Comprehensive Plan and Development Regulations

Chairman Johnson announced the purpose of the hearing and asked for a staff report from Robert Johnson, Principal Planner.

Mr. Johnson stated the county has come a long way in the last four to five years. He acknowledged the county has adopted a number of amendments to the Comprehensive Plan and Development Regulations. He stated the county has been involved in this process for approximately one year. He noted staff completed a field trip. He explained the Planning Commission held public hearings and made a recommendation to the Board. He briefly reviewed the maps submitted for the Board's consideration.

Mike McCormick, Consultant, acknowledged the extensive efforts made to review the agriculture character in Lewis County. He stated a significant amount of work was undertaken by the Planning Commission, which encompassed several workshops and included great

participation from various stakeholders. He noted the Planning Commission tried to nail down the nature of agriculture in Lewis County by considering economics. He noted the Board attended many of those Planning Commission workshops and may have heard this testimony already. He feels the recommendation from the Planning Commission truly responds to the designation of Agricultural Lands of Long Term Commercial Significance. He stated he feels this is a responsible conclusion.

Chairman Johnson asked for questions from the audience.

An unidentified audience member asked what the zoning was for his particular property. **Mr. Johnson** reviewed the map with the citizen.

Bill Carlson asked what his property was zoned.

Mr. Johnson reviewed the map.

Mike McCormick stated the proposal is to remove Mr. Carlson's property from the Agriculture Lands of Long-term Commercial Significance designation.

Walter Abplanalp asked to have his land removed from the Long-term designation.

Mr. Johnson explained that applications to change designations would not be reviewed until a decision has been rendered from the Growth Board. They reviewed the current map proposal.

Mr. Abplanalp asked why his property has been selected to be in the Long-term designation when dairy farmers with more land in the vicinity have not.

Mr. Johnson stated the Planning Commission reviewed the land that had been designated previously to comply with the Growth Management Act.

Mr. Abplanalp asked what criteria was used to determine which lands were Agriculture Lands of Long-term Commercial Significance.

Mr. Johnson stated the criteria is listed in the County Comprehensive Plan and was done in 1996.

Mr. Abplanalp stated he was told he would always have the option to subdivide his property into five acre pieces.

Sandy Mackie, Consulting Counsel, stated the Board could always review his designation. He asked for his name and address of the subject property.

Mr. Abplanalp gave the requested information to Robert Johnson, Principal Planner.

Chairman Johnson began the public testimony portion of the hearing. He noted the County Commissioners had attended many of the Planning Commission hearings.

Todd Christensen stated that the Centralia-Chehalis Chamber of Commerce encourages and supports a conclusion with favorable action on the transmittal submitted by the Planning Commission. He stated the Chamber feels the Planning Commission's transmittal is a good recommendation. He stated they feel this is an accurate reflection of agriculture in Lewis County. He indicated the Chamber supports breaking the county into four separate areas for mapping purposes. He commended the Planning Commission for their efforts. He asked the Board to move expeditiously.

Bill Randle acknowledged that many of the decision makers involved in this effort might not have a professional background. He stated he gave testimony at the August 26, 2003 Planning Commission hearing. He gave several examples of farming with little or no irrigation and the failure of the crops involved. He stated the most important fact is that his soil does not meet the criteria for Ag Lands of Long-term Commercial Significance. He noted a commercial crop could not exist on his lands. He stated he felt the one in twenty designation was reasonable. He gave another example of farming without irrigation. He thanked the Board.

Bill Carlson of Winlock stated there is little good farming land in Lewis County. He congratulated the Commissioners for choosing good members of the Planning Commission. He commended the Planning Commission for their professionalism, courteous and patient behavior, and their knowledge of the subject and lands of Lewis County. He praised County staff and stated they were very helpful throughout this process.

ohn Mudge stated there is an apparent misconception presented by Sandy Mackie, counsel for Lewis County. He stated Mr. Mackie has indicated there are two types of farms, commercial or hobby. He stated a small farm might be operated in a business-like manner.

He discussed the tax filings of the types of farms. He stated the point is that there are small farmers that operate to supplement their income. He stated the county should encourage agriculture. He stated farmers need flexibility. He urged creation of a larger amount of agricultural land. He then noted Bob Johnson did not respond to an earlier question regarding what criteria were used to determine which lands are considered Agriculture Lands of Long-term Commercial Significance. He stated the public is owed that explanation.

Walter Abplanalp stated he has a 100-acre dairy farm near Ethel. He stated the purchase price was negotiated on the ability to develop the land. He explained if his land is designated as Agriculture Lands of Long-term Commercial Significance then he will not be able to develop. He noted the surrounding neighbors already complain about the smell and the noise from his farming operation. He acknowledged he does not know how he can continue farming surrounded by five and ten acre neighbors. He acknowledged it has become a real challenge to stay in the farming/dairy business and admitted he would like to hand his land down to his children, however, he does not feel they will be able to farm it profitably in the future.

Commissioner Graham asked if the smaller parcels surrounding his farm are starting to develop?

Mr. Abplanalp mentioned the sizes of the surrounding parcels and the housing associated with those lands.

Commissioner Graham asked for an estimate of his loss if the property were left with the current designation.

Mr. Abplanalp explained it would be very difficult in the first place to find someone interested in purchasing a 100-acre dairy farm. He then stated he felt a reasonable price would be \$2,000 to \$3,000 an acre and smaller parcels \$5,000.00 an acre or more.

Chairman Johnson asked if he had the opportunity to attend any of the previous meetings held by the Planning Commission.

Mr. Abplanalp stated he was not able to attend any of the other meetings but did apply for a change in designation last year.

Eugene Butler of Chehalis stated the county is required to designate Agricultural Lands. He stated he had prepared a map and introduced it into the record. He explained he had examined aerial photos of the county, soil samples, and population density maps. He stated there are approximately 238,000 acres of prime soils. He briefly discussed the USDA Survey. He stated the County claims farming for under \$25,000.00 in profit a year is considered a hobby farm. He stated this dollar amount is not appropriate. He stated the County is not reserving the most capable lands for farming. He noted the County claims there is no market for hay. He stated virtually all of the land reserved is reserved based on the premise they have water rights. He stated the County's efforts do not support agriculture. He stated he believes public participation is still a serious issue. He noted he would like to see the river valleys protected. He reviewed the map and asked to protect the Hanaford Valley, Independence Valley, King Road area, North Fork, Newaukum, Cowlitz River Flood Plain, the Tilton Valley near Morton, the Chehalis River Valley between Dryad and Chehalis, and the Bunker Creek area. He stated the uplands need to be protected because they are more suitable agriculture lands. He indicated the Napavine to Vader area has a band of agriculture land on both sides of the railroad tracks. He mentioned the area southeast of Toledo near the Cowlitz River also needs to be protected. He stated the area from Ethel to Salkum has agricultural soils and there is no reason these should not also be designated as Agriculture Lands of Long-term Commercial Significance. He noted the Onalaska area has a large percentage of agricultural soils. He noted the area east of Mossyrock has not been included in the designation. He stated these are the things that should be done to improve the agriculture in the County. He suggested the Board's recommendation to the Planning Commission was superior to the current recommendation submitted by the Planning Commission.

Chairman Johnson asked if the 1997 Census of Agriculture referred to by Mr. Butler recognized lands of Long-term Commercial Significance as the designation would?

Mr. Butler acknowledged the census showed lands used for agricultural purposes to generate income. He stated it is still commercial land used for commercial significance.

Glenn Aldrich thanked the Board. He acknowledged he operates a farm in the Mossyrock area. He stated he has heartfelt disagreement with the Growth Management Act in general, but he commended the Board for their efforts. He thanked the Planning Commission for their education. He thanked County staff for all of their work. He thanked the group of objectors, stating they have forced a lot of thinking that might not have occurred otherwise. He thanked the Lewis County Farm Bureau for their participation. He acknowledged the Chamber of

Commerce also did a very good job of reviewing the current proposal. He stated he felt the Board now has the opportunity to increase agriculture activity in Lewis County. He stated this could allow farms with good soils to operate with efficiency. He asked for a plan to foster the agriculture opportunities within Lewis County. He mentioned the importance of irrigation for farming and agriculture. He stated he feels the whole I-5 corridor is incompatible with farming.

William Smith stated during all of the testimony he had not heard anything about people. He stated rural Lewis County has grown so much it has become very hard to farm without agitating the neighbors. He asked for some protection for those farmers who want to farm their land.

Commissioner Graham mentioned the Right to Farm Ordinance. He stated he feels if someone buys land in an agricultural area, they should understand there would be farming activities.

Chairman Johnson closed the testimony portion of the hearing and announced a recess until 1:30 p.m. to consider Ordinance 1179E and Resolution #03-368.

Chairman Johnson brought the meeting out of recess at 1:33 p.m. on Monday, September 8, 2003. He introduced Sandy Mackie, consulting counsel.

Mr. Mackie explained the Ordinance and Resolution would protect agriculture of Long-term Commercial Significance in Lewis County. He stated the work that has been done is not just a one-time snapshot of farming but also a history of agriculture and a view of the future of agriculture in Lewis County. He noted there are two types of agriculture in Lewis County. There is land dependent and agriculture that is not land dependent. He noted an equal amount of land is on rotating pastureland. He acknowledged the County has a significant Right to Farm ordinance. He indicated poultry farmers are not dependent on land; however, they need the ability to opt-in to the designation. He acknowledged the 1997 Farm Census had over 1000 farms in Lewis County. He stated some of these were on very small acres of land. He noted these smaller farms typically didn't continue when the property was transferred and the rate of returns on these small farms was between 8-15 percent. He noted returns of less than \$2,500.00 were considered "hobby farms". He explained that was all but about 130 farms in Lewis County in 1997. He reiterated that small farms tend to come and go. He asked where the commercial farms and commercial farmers are that are passed down from generation to generation. He indicated Mike McCormick would walk through those areas for the Board and explain why some aren't being considered for this designation.

Mike McCormick, Consultant, stated he wanted to highlight for the Board the methodology the Planning Commission and County staff used in making decisions. He indicated all aspects of farming were reviewed. He listed various entities involved in the process including Lewis County Farm Bureau, state agencies, and Farm Services. He noted all of the information gathered developed a picture of Agriculture Lands of Long-term Commercial Significance in Lewis County. He noted they began with a review of the 1997 Census of Agriculture. He stated they then looked at significant revenue and other information provided by Farm Services. He noted Farm Services helped identify which agricultural lands were more significant than others. He noted one staff person said on the record, "...The most important thing you can do for Lewis County is to have right to farm provisions." He stated the future of farming in Lewis County would be entrepreneurs. He acknowledged Lewis County already has an excellent set of ordinances providing considerable protection for farmers. He then noted the Planning Commission reexamined the entire County using aerial photos. He stated they then took that information and reviewed the set criteria to come up with the amount of acreage to support Agriculture Lands of Long-term Commercial Significance. He stated all of the information was gathered, including suggestions from the petitioners, and the Planning Commission went on a field trip to view the agriculture lands in the County. The recommendation was then revised. He indicated there was a lot of ground being used as pasturelands. He noted the recommendation from the Planning Commission provides for a significant margin of error. He indicated the tax information provided during earlier testimony was philosophical and general. He indicated that information is not relevant to the decision before the Board. He acknowledged the County Commissioners are aware of the cost to provide services. He briefly noted the different of the areas of the county, and mentioned the areas identified by Mr. Butler during testimony. He stated the Planning Commission looked at all of those areas. He briefly reviewed the Lincoln Creek area and explained the nature of agriculture has changed there. He stated there might have been commercially significant agriculture there 30 years ago, but it doesn't exist today. He noted the agricultural activity there doesn't meet the criteria used by the Planning Commission.

Robert Johnson, Principal Planner for Lewis County, noted that staff at the County includes not only himself and Mr. McCormick but also Craig Swanson and Erica Conkling as well. He stated staff reviewed every section of the county using aerial photos. He noted this information was used in conjunction with the set criteria and the actual events taking place in Lewis County. He explained the textual designation considers things such as transportation and proximity of land to Urban Growth Area's to name a few. He then reviewed the maps. He began with the area south of Napavine.

Mr. Mackie asked if there were questions from the Board.

Commissioner Graham noted that at one time the Board was told the County needed to provide between 39,000-44,000 acres of Agricultural Lands of Long-term Commercial Significance. He stated at the hearing on August 26, 2003, staff and the Planning Commission ended up with over 54,000 acres.

Mike McCormick explained the Planning Commission and County staff reviewed the agriculture on a crop-by-crop basis to find out how much land was being used. They also needed to provide a conservative margin to ensure sufficient land was provided to allow agriculture uses to continue. He noted the agricultural community has always been very quick to adapt. He noted there is some margin of error in the recommendation from the Planning Commission. He indicated this is prudent and justifiable. He also stated this provides more than sufficient land to allow agriculture to continue in Lewis County.

Mr. Mackie noted the Planning Commission and staff looked at not only what was planted this year but also what the history of the land has been and what is the potential? He stated in addition to the historical information, they tried to identify what is capable in the foreseeable future. He noted this is an additional flexibility.

Commissioner Graham noted the "opt-in" alternative for those who want to increase the size of their farms.

Mr. Mackie acknowledged this would be especially helpful for poultry farmers.

Mr. McCormick reiterated the statement made by staff at Farm Services, "...the most important thing you can do is to protect the right to farm in Lewis County." He indicated there is plenty land for future uses.

Mr. Mackie discussed some geographic features of the County and possibilities of farming without being soil dependent.

Chairman Johnson noted the statute talks about growing capacities, productivity, soil composition, and land proximity to population. He stated the context is broader than soils and water. He asked what the discussion involved regarding Long-term Commercial Significance.

Mr. Mackie stated the Planning Commission did some work and then asked for input. He noted land capable of being farmed is an important criteria. He noted it is important to protect the agriculture industry. He stated the lands that have been designated would cover the existing and possible row crops.

Commissioner Graham mentioned the two bankers that spoke to the Planning Commission indicated how difficult it is for a farmer to get loans to continue operating.

Chairman Johnson agreed there is an uncertainty in the industry.

Commissioner Graham noted that without loans, after a couple of years of losses, a farm might not be able to continue operations.

Mr. Mackie stated when land is zoned for agriculture that doesn't have an economic use, the lender needs to loan not only against the land but also against the farmer.

Mr. Graham noted several corn farmers who have begun to supplement their income using corn mazes.

Mr. Mackie stated the farm tourist businesses are things that will help the farmer's income.

Chairman Johnson asked what the relationship is of Mr. Abplanalp's application for rezoning and the current process. He asked if his request should be considered at this time.

Mr. Mackie stated he felt the Board should consider his application at this time.

Bob Johnson stated it was decided early in the process to table all of the resource designations until the Growth Board rendered a decision.

The Board reviewed the map and specifically Mr. Abplanalp's dairy farm.

Mr. Mackie stated it is the Board's ability to remove this from the current designation.

The Board discussed the procedure to amend and remove Mr. Abplanalp's dairy.

Chairman Johnson asked about the SEPA and other environmental requirements associated with this Comprehensive Plan and Development Regulations amendment.

Mr. Mackie explained the SEP. It concurred with the previous designations. He noted this amendment would further define those designations. He also noted the recommendation is that these are consistent with those environmental designations. He then noted the Board had received the findings and recommendation from the Planning Commission. He stated the consultants have tried to summarize the materials that have been submitted. He noted the Board had reviewed the information and he asked if they had any other questions.

Commissioner Graham stated under Item 6, the area between Napavine and Winlock has been cited as the area most likely for activity to occur.

Mr. Mackie noted the County currently has a proposal for a planned community there and also a destination resort. He noted there is a long detailed process before those can be approved.

Chairman Johnson asked if by approving the "Findings" the Board is finding that this is an area for growth?

Mr. Mackie stated the term "potential" could be added.

Chairman Johnson thanked the consultants for supplying the information in time for the Board's review before the hearing.

Mr. Mackie asked if the Board would like any changes before adoption.

COMMISSIONER GRAHAM moved to approve Resolution #03-368. CHAIRMAN JOHNSON seconded.

Commissioner Graham also asked to remove Mr. Walt Abplanalp's farm from the designation.

Mr. Mackie noted it is not long-term significant and is isolated since it is surrounded by designations of 5, 10 and 20.

Amendment was approved by a vote of 2-0.

Chairman Johnson asked to identify a way to waive the opt-in fee for the agricultural designation.

Motion carried 2-0, approving Resolution #03-368.

Mr. Mackie introduced Ordinance 1179E.

Commissioner Graham noted the zoning for parcels removed from this designation should be zoned as the abutting lands. He asked if this had been added in the Ordinance.

COMMISSIONER GRAHAM moved to approve Ordinance 1179E. CHAIRMAN JOHNSON seconded.

Chairman Johnson asked for clarification under Item 2b. He asked if it is a Conditional Use Permit or Special Use Permit?

Mr. Mackie stated it should be Special Use Permit. He noted the Board also wanted to include the zoning map change for Mr. Abplanalp.

COMMISSIONER GRAHAM moved to approve the amendments. CHAIRMAN JOHNSON seconded. Ordinance 1179E was approved 2-0.

CHAIRMAN JOHNSON moved to change Special Use Permit on 2b. COMMISSIONER GRAHAM seconded. Motion carried 2-0.

Chairman Johnson read a letter from Commissioner Hadaller into the record. A copy of this letter is attached to these minutes.

The ordinance was approved 2-0.

COMMISSIONER GRAHAM moved to approve the Motion and Findings in Support of the compliance Report on Designation, Conservation and Protection of Long-Term Commercially Significant Agriculture Lands in Lewis County. CHAIRMAN JOHNSON seconded with the additional change of inserting the word "potential" and inserting the Resolution #03-368. Motion carried 2-0.

Mr. Mackie stated staff would submit the approved actions to the Western Washington Growth Management Hearings Board.

Chairman Johnson asked for a clean copy of the motion and findings, which include the amendments.

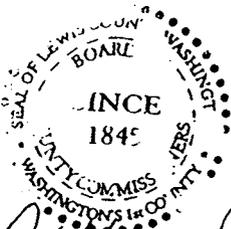
Mr. Mackie stated a clean copy, including the map changes, would be provided to the Board.

Chairman Johnson thanked staff for their efforts. He also thanked the citizens for their input.

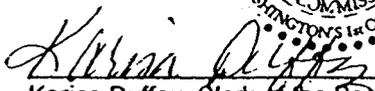
There being no further business, the Commissioners' public meeting was recessed at 2:53 p.m., Monday, September 8, 2003. The next public meeting will be held on Monday, September 15, 2003.

Please note that minutes from the Board of County Commissioners' meetings are not verbatim. A tape of the meeting may be purchased at the Commissioners' office.

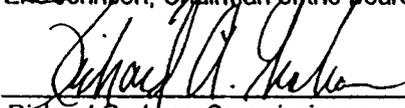
BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY WASHINGTON

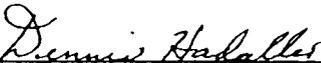


ATTEST:


Karisa Duffey, Clerk of the Board
Lewis County Commissioners


Eric Johnson, Chairman of the Board


Richard Graham, Commissioner


Dennis Hadaller, Commissioner

APPENDIX E

BOARD OF COUNTY COMMISSIONERS
(EXCERPTS FROM THE SEPTEMBER 8, 2003 MEETING)

MR. ABPLANALP: My name is Walter Abplanalp. I live on 238 Tucker Road. And I put in a written proposal to have my land taken out of ag. And I was just wondering if that was approved or if that was -- if that has been looked at at all.

MR. JOHNSON: The individual applications for rezones are on agricultural land and forest lands aren't going to be looked at until after the Growth Board decisions. So your application is still there, but it's pending review by the Growth Board. And that will take place at a -- later this year. By the County, excuse me. That will be looked at at a later date.

MR. ABPLANALP: So can I make sure that mine is still in -- in ag land at this point?

MR. JOHNSON: If you'd like. Do you know what -- Why don't you go help him find his property, and provide him the answer?

(CONVERSATION OUTSIDE MICROPHONE RANGE.)

MR. ABPLANALP: Could I have a question then?

MR. JOHNSON: Sure.

MR. ABPLANALP: I'm wondering why my property has been selected for -- to be in long-term ag where there's other dairy farmers just down the road that have more land than I do that were not put in that type of zoning. And I am totally surrounded by five- and ten-acre parcels.

MR. JOHNSON: Sandy, view on that from staff's perspective?

MR. MACKIE: The Planning Commission looked at the agricultural land that was designated previously, and the purpose of that was to determine whether or not that complied with the requirements of the Growth Management Act. As a part of that process, there was recommendation that some lands be put in and some lands be taken out. Individual applications that were submitted last year were not done at this time. They will be looked at at a later date.

MR. ABPLANALP: What was the criterion for looking from -- from looking from one lease [sic] of -- you know, that is currently being farmed and is actually larger than mine, and -- and opposed to mine that was rezoned in farm land? I mean, it's according to this GMA plan --

MR. JOHNSON: I'm not sure I understand your question.

MR. ABPLANALP: What was the criterion for putting mine into ag land where larger farms were not put into ag land?

MR. JOHNSON: Your -- your proposal was not looked at specifically at this time. It will be looked at at a later date. So I can't answer the question until the Planning Commission --

MR. ABPLANALP: The other ones have already been answered. They've already been put in five- and ten-acre parcels where mine was not.

MR. JOHNSON: The criteria for designation is in the County Comprehensive Plan and in the Development Regulation. And that designation was done 1996, for the most part. And I can't answer your question specifically. I wasn't here in '96.

MR. ABPLANALP: Well, I know that I was -- I spoke to a couple of the people in the Growth -- somewhere in this office, and they were saying, well, don't worry about it. You can always put in the five-acre parcels. That's always going to be a option. This was probably five years ago or so.

MR. MACKIE: And this is Sandy Mackie, Counsel. The commissioners always have the opportunity to look at this particular parcel during their workshop.

MR. ABPLANALP: Okay.

MR. MACKIE: The Planning Commission did spend several months going through all of the various alternatives, and they made a recommendation as to which property goes in and which property goes out. We'd actually have to go back and listen to tapes to find the precise reason. But if you could give me your name again and the location of the property.

MR. ABPLANALP: My name is Walt Abplanalp.

MR. MACKIE: Okay

MR. ABPLANALP: And the address is 238 Tucker Road, Ethel.

MR. MACKIE: Okay. All right.

MR. ABPLANALP: Thank you.

MR. JOHNSON: Thank you

(END OF EXCERPT)

BOARD OF COUNTY COMMISSIONERS
(EXCERPT FROM THE SEPTEMBER 8, 2003 MEETING)

MR. JOHNSON: Next is Mr. Walt -- and, Walt, I'm going to do a terrible job on your last name here. Is it Abplanalp?

MR. ABPLANALP: (outside microphone range).

MR. JOHNSON: Okay. Why don't you come on up?

MR. ABPLANALP: My name is Walt Abplanalp. And I have a -- well, a little bit under a hundred-acre dairy farm in Ethel. I purchased this property in 1993. And at that time I purchased it from my father. And built into the price of that property was -- was not just farming, but the right to be able to develop it, which was being able to break it into five-acre parcels, because that was the designated -- that was the general rule at that time.

And if my property is put into long-term ag property -- you know, this may be after the fact, but there will be no compensation to myself for that -- for that being taken away.

Also, I'd just like to say that I do have my -- my acreage is a little bit under a hundred acres and is totally surrounded by five- and ten-acre parcels. When these parcels are developed, I don't really see how realistically I can continue to farm with all of my neighbors complaining about the noise and the smell. We already have some of that now. But once that development does occur, I don't really see how that -- how the person could realistically farm on that -- on that small of acreage.

Also, farming on this scale is not -- is becoming less and less viable. We see -- we see the large dairies going into Eastern Oregon with 30,000 cows. This was not the case in 1993. We've also experienced several dairy farmers in the area, i.e., Hank Gowman that went out of business here lately. He was a very large farmer, a good dairy farmer. Wasn't able to make it. Times are very tough. So it is very -- it's a real challenge to stay in the business, and then it is also, you know, long term, it's going to be even tougher, I would assume.

Also, you know, if -- I've worked through this land my entire life and I would like to be able to hand it down to my children without having them have the restrictions on it, because I feel that -- that they most likely will not be able to farm it, and -- well, probably won't be able to farm it. And I'd just like to question the long-term significance of a small acre -- small farm like this surrounded by five- and ten-acre parcels that are hobby farms or little farms.

And that's about it. Thank you.

MR. GRAHAM: I have a question. You say you're surrounded by five- and ten-acre parcels now.

MR. ABPLANALP: Right.

MR. GRAHAM: Are they starting to develop, some of those five- and ten-acre pieces starting to sell?

MR. ABPLANALP: No, not -- well, uhm, just up the road from me, I know there's like in a five-acre parcel, there were like -- there was a two-acre parcel. There's another two-acre parcel. And then there's a five-acre parcel behind that.

MR. GRAHAM: Okay. Well, I guess what I'm trying to find out is what you believe is the -- being surrounded by five- and ten- acre parcels and maybe some a little bit smaller, what your loss would be if you were left -- compared to what the asking price, I guess, is of the lands that surround you, uh, per acre price, what would -- how much of a loss do you think you would be taking, if you were left as 100-acre -- or slightly under 100-acre dairy or a farm of some type?

MR. ABPLANALP: Well, first you'd have to find somebody that wanted to dairy that, of course, and I think that would be a real challenge. I think, you know, for the land, just for the land itself, I think, you know, realistically you'd have to go to 2- to \$3,000 an acre for, you know, for farm property, whereas the -- you know, the develop -- if you could put it into five-acre parcels, I would think it would be worth, you know, 5,000 or more.

MR. GRAHAM: Okay. Thank you.

MR. JOHNSON: Walt, I had one question, too. I'd call you Mr., but I couldn't pronounce your last name again. So, excuse me.

Did you have a chance to -- and I know we potentially have your application in for change under another -- under another separate process, but did you have an opportunity to go to any of the Planning Commission meetings or any of the other processes that led up to this point, or is this really the first -- your first venture in?

MR. ABPLANALP: Uhm, yeah, I planned on attending it, and then, I don't know, something came up, I didn't make it. So --

MR. JOHNSON: Okay. I -- that was just --

MR. ABPLANALP: -- this is more or less --

MR. JOHNSON: -- put it in context.

MR. ABPLANALP: Yeah.

MR. JOHNSON: Okay.

MR. ABPLANALP: But, as I said, I did apply for it --

MR. JOHNSON: Right.

MR. ABPLANALP: -- last year.

MR. JOHNSON: Okay. Great. Thank you very much.

UNIDENTIFIED: Which is still in the works.

MR. JOHNSON: Which is still in the works. Right. Okay. Thank you very much.
(END OF EXCERPT)

BOARD OF COUNTY COMMISSIONERS
(EXCERPT FROM THE SEPTEMBER 8, 2003 MEETING)

CHAIRMAN JOHNSON: I just had two questions. One was very specific, the **issue** that -- I'm not going to -- still not going to be able to pronounce his name -- Mr. Walt Abplanalp brought to us -- he's not here to defend his -- my mispronunciation. He asked a very specific **question**, seemed very direct. The question was, the relationship to this process that we're **doing** now versus the relationship that he has a submittal in to -- for the County to review that at a **later** time.

Is this something we should consider at this time, or is this something we should wait?

MR. MACKIE: I think you should consider it this time, because the designation of long-term commercially significant agriculture is occurring today. The request for a rezone, **those** are the ones that are being looked at at a later time are the ones who are saying, I'm in R1 to 20, and I should be R1 to 5, or changes like that.

So, if Bob could identify the property, the guidelines to you indicate that dairy farms should have more than 100 acres, if that's the principal basis for the designation, and I **don't** know what the surrounding properties were.

MR. JOHNSON: Early on it was decided to table all of those resource lands, **rezones**, from not only agriculture but forest and mineral as well. So there is a separate -- the **only** one that we -- that would be addressed would be Mr. Abplanalp's at this point, because we **haven't** even looked at the other ones.

UNIDENTIFIED: Are there other examples where they are --

UNIDENTIFIED: Well, I'd like to -- somebody -- I'd like to go over and see where **he** is on the map, because he said he's surrounded by all fives and tens, and I think I agree that **this** would be the time to change that one if he's surrounded all --

UNIDENTIFIED: Yeah, and I think that's appropriate. So, why don't --

UNIDENTIFIED: On Tucker Road?

UNIDENTIFIED: Yep.

(THE BOARD REVIEWS MAP OUTSIDE MICROPHONE RANGE)

MR. MACKIE: Mr. Chairman, you certainly have the flexibility, that's the purpose of the public hearing, to determine if there's a given property which you think doesn't fit the **overall** criteria to take it out of agriculture zoning.

UNIDENTIFIED: (Inaudible).

MR. MACKIE: And I would recommend, if you were to do that and give your reasons, is, there is a sort of a uniform then underlying zone that would be assigned to the property. He certainly has the ability if he wanted to suggest that something else is appropriate to have that heard through a public hearing process which is coming up in the future. So.

UNIDENTIFIED: Well, that's just what we're talking about, (inaudible), is to -- he could make -- or application or whatever, if you will, to change, but it looks like that the area all around

him would probably have to apply, if you will, or go in a block, or something. Otherwise he has to -- he's, what, 75 percent of the lands around him would have to be changed before he could be changed. It appears that they're all 20s that are around him now. So, he could go from -- to five 20s, I guess, or roughly, whatever.

UNIDENTIFIED: Well, I mean, that's what you -- I mean, the Planning Commission would look at that. All you're doing here in response to his request is asking -- is making the decision as a legislature whether you believe it was appropriately retained in or if you find it to be isolated and too small to be commercially significant for a dairy farm, and there's been no testimony as to other use of the property. You -- one of the reasons you have a reserve is because some of these properties, you know, may have been on the margin. You may find that one should not be designated, and then you'd allow it go back to the default zone, which, as I understand, is R1 to 20 in this case, which is consistent with the way you've treated all of the other properties that have come out of ag, and then people can deal with a different zone change if they want to make that request. But that would require a hearing in front of the Planning Commission.

UNIDENTIFIED: Well, I guess my question is, he's surrounded by nothing larger than 20-acre pieces, and down, and it looked like one might even be two or three acres, kind of kitty-corner across the road. Most of them are fives and tens in the general area. But he happens to be -- all around him it looks like -- or at least on two sides it's 20s. Across the road it's probably 10s, I'm not sure, and then --

UNIDENTIFIED: Kitty-corner (inaudible) fives.

UNIDENTIFIED: -- Yeah.

UNIDENTIFIED: I would think that the criteria is that, is a stand-alone property, and given the guidelines that the Planning Commission has used for inclusion and exclusion, this would seem to fall in the bubble, and if you chose to just recommend that this be removed on the grounds that it's an isolated property surrounded by other development and not necessary for long-term commercially significant ag, because you do have enough lands designated to handle a dairy industry for the foreseeable future. Then that's certainly a supportable position for you to take.

UNIDENTIFIED: You need a motion for that? Or how do you --

UNIDENTIFIED: One of the things we'll do is, as we proceed, I will ask if -- on the resolution, if there's a motion to amend the resolution, and at that time there'd be a motion amend the map that went with the resolution, and you could make the motion at that time.

UNIDENTIFIED: Okay. The only other question I had was associated with the environmental impact statement and SEPA.

(END OF EXCERPT)

BOARD OF COUNTY COMMISSIONERS
(EXCERPT FROM THE SEPTEMBER 8, 2003 MEETING)

COMMISSIONER GRAHAM: ...in order of December 11th, 2002.

MR. MACKIE: I think it's 2003, but I think you're right with 2002.

COMMISSIONER GRAHAM: I was -- we've got an amended one here. Here's --

MR. MACKIE: Right. Okay. I'll second that for a discussion. And you want to amend --

COMMISSIONER GRAHAM: I would like to -- and I assume that's -- is that Item 3 under Agriculture Resource Land Maps, Attachment C?

MR. MACKIE: It's actually all of those maps.

COMMISSIONER GRAHAM: All of them?

MR. MACKIE: So, you're amending all of the maps that would contain -- is it the gentleman's name that we can't pronounce, is that --

COMMISSIONER GRAHAM: Oh, I've got --

MR. MACKIE: -- what we're talking about?

COMMISSIONER GRAHAM: -- it here someplace. I'll -- can you say it, Ap -- Mr. Walt Apland -- Allup or something.

MR. MACKIE: All right. The Clerk of the Board does have the name correctly.

CLERK: Abplanalp.

MR. MACKIE: And it will be so reflected in the minutes.

COMMISSIONER GRAHAM: That's to remove him from the Class A ag land.

MR. MACKIE: And, as I recall the discussion, number one, the property is currently used as dairy. And in your findings, that is smaller than a long-term commercially significant dairy. Number two, that it's an isolated property surrounded by lands of other development.

COMMISSIONER GRAHAM: Right.

MR. MACKIE: It is not --

COMMISSIONER GRAHAM: The --

MR. MACKIE: -- likely or appropriate to remain or be long-term commercially significant agricultural land.

COMMISSIONER GRAHAM: It is isolated, surrounded by current zoning of 5, 10 and 20.

MR. MACKIE: Okay. All right. And that the underlying zoning for that property would be

1 in 20 at this time. Okay. The change is understood.

COMMISSIONER GRAHAM: I'll call for a first, I guess, a vote on the proposed amendment. All those in favor -- is there further discussion?

MR. MACKIE: No.

COMMISSIONER GRAHAM: All those in favor please signify by saying aye.

ALL: Aye.

COMMISSIONER GRAHAM: Amendment carries. Okay. Further discussion or additional amendments to Resolution Number 03-368. I don't have an amendment. We've talked about this before...

(END OF EXCERPT)

APPENDIX F

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

AN ORDINANCE OF THE COUNTY OF)
LEWIS ADOPTING AMENDMENTS TO) ORDINANCE NO. 1179 E
TITLE 17 OF THE LEWIS COUNTY CODE)

WHEREAS, the Board of County Commissioners received recommendations from the Planning Commission concerning amendments to the Lewis County development regulations; and

WHEREAS, the Lewis County Planning Commission and Board of County Commissioners have held public hearings and work sessions; and

WHEREAS, the Board of County Commissioners have reviewed the recommendations of the Planning Commission and the environmental determination made, together with such recommendations; NOW THEREFORE

BE IT ORDAINED by the Board of Lewis County Commissioners that:

1. Lewis County adopts the additions and changes to Ch. 17.200.020(19a), (19b) and (19c) of the Lewis County Code Zoning Maps as shown in Exhibits A through H, as amended by the Board this day.

2. Lewis County adopts the following definition as 17.10.126:

17.10.126. Long-term agricultural resource lands.

a. "Long-term agricultural resource lands" are those lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils.

b. Long-term commercially significant designations do not include (a) the "farm home" (a house currently on designated lands as of the date of designation and a contiguous 5 acres, to be segregated by boundary line adjustment for separate financing purposes; and (2) "farm centers," being those lands existing at the time of designation, marked by impervious (gravel or paved) surfaces, including buildings and sheds and storage areas) not to exceed 5 acres, which shall be available for rural commercial and industrial uses under guidelines established as a conditional use. (Non-farm development on the farm center shall not be effective until the County completes the terms of the special use permit.)

3. Lewis County adopts zoning for all parcels removed from agricultural designation by reason of this ordinance as follows: All such lands shall be zoned entirely as the abutting land where three-quarters or more of the boundary of the abutting land is a single zone. Where less than three-quarters of the abutting land is a single zone, the parcels removed shall be rezoned equitably with the adjoining zone, as shown on the attached maps, Exhibits E through H.

4. Lewis County adopts the findings of the Planning Commission in its Transmittal, dated August 26, 2003, included hereto at Attachment A, as their own, as an expression of important principles in the state mandated GMA program.

5. Lewis County adopts the DNS and Adoption of Existing SEPA Documents, arising from comprehensive plan and development regulations amendments proceedings, included hereto at Attachment B, dated March 5, 2003.

6. Lewis County adopts the "Motion and Findings in Support of the Compliance Report on Designation, Conservation and Protection of Long-Term Commercially Significant Agriculture Lands in Lewis County" attached as Attachment C.

7. This Ordinance amends, repeals or supercedes only the referenced provisions of Title 17 LCC and Ordinance Nos. 1179 and 1179A-D, the remainder of which shall remain in full force and effect.

8. If any portion of the materials adopted herein is found invalid by a Board or Court of competent jurisdiction, the remainder of the provisions shall remain in full force and effect. Further, if such invalidated portion repeals any existing rule or regulation, the replaced rule or regulation shall be reinstated until modified or replaced by the County Commissioners.

9. These amendments are in the public interest and shall take effect immediately upon adoption by the Board.

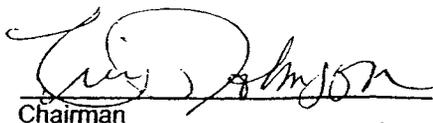
PASSED IN REGULAR SESSION THIS 8th day of September, 2003, after a public hearing was held September 8, 2003, pursuant to Notice published on the 27th day of August, 2003 in both *The Chronicle* and the *East County Journal*.

ATTEST:

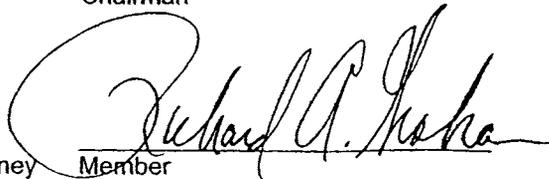


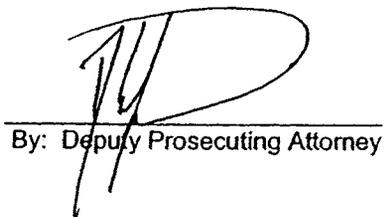
BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON


Clerk of the Board


Chairman

APPROVED AS TO FORM:
Jeremy Randolph, Prosecuting Attorney


Member


By: Deputy Prosecuting Attorney

Absent
Member

APPENDIX G

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

IN RE:

AMENDMENT TO THE COMPREHENSIVE PLAN)
 IN RESPONSE TO THE WESTERN WASHINGTON) RESOLUTION NO. 03- 368
 GROWTH MANAGEMENT HEARINGS BOARD)
 FINAL DECISION AND ORDER OF DECEMBER)
 11, 2002)

A resolution of the Board of County Commissioners of Lewis County amending the Lewis County Comprehensive Plan, June 1, 1999 edition, as amended December 18, 2000 and April 4, 2002.

A. The purpose of the comprehensive plan amendment is a compliance action to address the redesignation of long-term agricultural lands as required by the decisions of the Western Washington Growth Management Hearings Board.

B. Based upon due consideration of the public proceedings and recommendations of the Planning Commission, public hearings of the Planning Commission, public hearings of the Board of County Commissioners, and upon consideration and approval of applicable environmental documents, the Board of Lewis County Commissioners does hereby adopt the following amendment to the Lewis County Comprehensive Plan:

Additions and changes to the following maps based on the additions and changes shown on the four maps attached as Exhibits A through H, as amended by the Board this day:

1. FIGURES 4.16B (1), (2), and (3), RESOURCE LANDS (attached as ATTACHMENT A)
2. FIGURES 4.17(a), (b), and (c), FUTURE LAND USE RURAL LANDS (to reflect changes due to agricultural resource lands designations) (attached as ATTACHMENT B)
3. FIGURES 4.18(a), (b), and (c) AGRICULTURAL RESOURCE LANDS MAPS (attached as ATTACHMENT C)
4. The following amendment is made to page 4-56 of the Natural Resource Lands Sub-Element of the Comprehensive Plan (added text shown as double underline):

Agricultural Lands Classifications

Lewis County has adopted the Land Capability Classification System of the U.S. Department of Agriculture Handbook No. 210 as its classification system. The classes of agricultural lands are defining categories of agricultural lands of long-term commercial significance, the reference standard is the use of the classification of prime and unique farmland soils as mapped by the Natural Resource Conservation Service (NRCS), USDA. Exhibits 14.4(1)a through c depict the potential Class A Farmlands of Long Term Commercial Significance.

Lands Necessary for Designation as Agricultural Lands of Long-Term Commercial Significance

The long terms needs of Lewis County commercially significant agriculture industry are served by the designation of 40,000 acres or more of lands, including bottom lands and lands with good soils and irrigation.

C. The Board of County Commissioners adopts the Determination of Nonsignificance and Adoption of Existing SEPA Documents issued March 5, 2003 as adequate and appropriate consideration for the recommended comprehensive plan changes, a copy of which is attached as Exhibit I.

D. The Board of County Commissioners adopts the "Motion and Findings in Support of the Compliance Report on Designation, Conservation and Protection of Long-Term Commercially Significant Agriculture Lands in Lewis County" attached as Exhibit J.

This resolution is in the best interests of the citizens of Lewis County and shall take effect at such time as the Growth Management Hearings Board finds that they are compliant with the Growth Management Act.

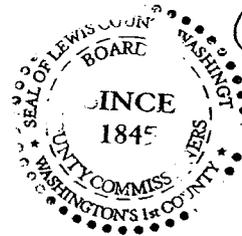
NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of County Commissioners of Lewis County, Washington that the amendments identified above be and hereby are adopted and the comprehensive plan be amended accordingly. The amendments shall take effect at such time as they are deemed compliant by the Western Washington Growth Management Hearings Board.

DATED this 8th day of September, 2003

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON


Chairman


Member

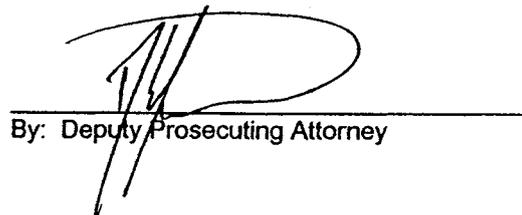


Absent
Member

ATTEST:


Clerk of the Board of County Commissioners

APPROVED AS TO FORM:
Jeremy Randolph, Prosecuting Attorney


By: Deputy Prosecuting Attorney

AR583