WESTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS
BOARD

DIGEST OF DECISIONS

FINAL EDITION – through June 30, 2010

Washington State Growth Management Hearings Boards

In 1990, the Legislature enacted the Growth Management Act, RCW 36.70A so as to create a state-wide method for comprehensive land use planning that would prevent uncoordinated and unplanned growth. The Legislature subsequently established three independent Growth Management Hearings Boards – Eastern Washington, Western Washington, Central Puget Sound - and authorized that these boards "hear and determine" allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the Shoreline Management Act (SMA), RCW 90.58, and the State Environmental Policy Act (SEPA), RCW 43.21C.

During the 2010 Legislative session, with Senate Bill 6214, the Legislature restructured the Growth Management Hearings Boards, eliminating the previous structure and establishing a single seven-member board to hear cases on a regional basis; this new structure became effective on July 1, 2010. **Therefore, this Digest of Decisions represents a historical synopsis by keyword of the substantive decisions issued <u>only</u> by the Western Washington Growth Management Hearings Board from its inception until June 30, 2010**. Decisions issued by the regional panels after July 1, 2010 are contained in a new Digest which will combine decisions of all three regions (Western, Eastern and Central Puget Sound). Historical synopsis of Board decisions from Eastern and Central Puget Sound issued prior to July 1, 2010 are contained in those Boards respective individual Digests of Decisions.

Along with a synopsis of substantive decisions, this Digest of Decisions provides a listing of petitioners and respondents with the associated case number, a glossary of acronyms, GMA legislative history, and relevant published court cases. **Users of this Digest are reminded that decisions of the Board are subject to a court appeal and thus some of the excerpted cases may have been impacted by subsequent court and/or Board holdings. It is the responsibility of the user to research the case thoroughly prior to relying on its holdings.**

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DIGEST OF DECISIONS

180 DAYS

- A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)
- Where new ordinances were adopted during the PFR process and the time for filing challenges to the new ordinances has not expired, a GMHB will issue a FINAL FDO on the ordinances that have been challenged and disregard the new ordinances in order to fulfill the statutory duty of a GMHB to rule on properly presented PFR issues. A GMHB has no authority to extend the 180-day deadline for filing a FDO unless the parties stipulate to an extension for settlement purposes. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)
- Where the parties have previously stipulated to an extension of time for issuance of a FDO and as part of that extension order a date was fixed for the time of issuance of a new request for extension and no such request was made the case is dismissed. *Carlson v. San Juan County* 99-2-0008 (MO 2-29-00)
- Under the provisions of RCW 36.70A.300 a GMHB must issue a written decision within 180 days of the filing of the petition. The only exemption from that requirement is for the purpose of facilitating settlement under the provisions of subsection (2)(b). No other delay in the issuance of a FDO is authorized. *Vines v. Jefferson County* 98-2-0018 (MO 2-12-99)

ABANDONED ISSUES

- With the exception of setting forth Issue 2 within an introductory section, it does not appear to the Board that [Petitioner] has presented any argument, written or oral, as to this issue … In addition, the Board finds no argument supporting Issue 7 … Although cursory reference to this issue was made in a footnote and an excerpt of the challenged provisions was noted within OSF's brief, this does not amount to briefing of the issue. Therefore, pursuant to WAC 242-02-570, the Board deems these issues abandoned. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 6 (Nov. 19, 2008)
- An issue not addressed in petitioner's brief is considered abandoned. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- When petitioners choose not to argue an issue in their brief it is considered to be abandoned. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)

ACCESSORY DWELLING UNITS (ADU)

- [The Western Board stated] that where the regulations permit detached ADUs on substandard rural lots (of 1 to 4 acres) they establish non-rural densities, creating urban growth and promoting sprawl. [San Juan County

Code] allows detached ADUs on rural lots that are already of non-rural densities. By allowing additional residences on those lots, that regulation contributes to even more intense uses on nonconforming rural lots. With a second residence on a small rural lot, the regulations allow residential uses to predominate over rural uses and rural levels of development… [The County's code provision] is not compliant with the County's own comprehensive plan and the definitions of rural uses and rural development in the GMA. Further, the intensive residential uses on substandard rural lots constitute urban growth in rural lands in violation of RCW 36.70A.110(1). *Friends of San Juan, et al v. San Juan County,* Case No. 3-2-0003c coordinated with *Nelson, et al v. San Juan County,* Case No. 06-2-0024c, FDO/Compliance Order, at 3 (Feb. 12, 2007).

- The problem of pre-existing substandard lots is not prevalent in designated resource lands. However, the question in those lands is not so much one of compliant densities as one of conservation of those lands for purposes of resource production. In resource lands, the Board finds the size and location requirements will ensure that permitted detached ADUs do not convert agricultural and timber land to other uses or create uses on resource lands that are incompatible with the production of agriculture and timber. Further, the small number of ADU permits issued annually will be spread out over both rural and resource lands resulting in very few detached ADUs in resource lands. *Friends of San Juan, et al v. San Juan County,* Case No. 3-2-0003c coordinated with *Nelson, et al v. San Juan County,* Case No. 06-2-0024c, FDO/Compliance Order, at 3 (Feb. 12, 2007).
- Allowing freestanding ADUs to build at this density permits an ADU in resource lands to be built on lots that do not meet the underlying density needed for two single-family dwelling units in resource lands. This provision as it applies to resource lands substantially interferes with RCW 36.70A.020(8), because it fails to conserve productive agricultural and forestry lands. It allows a conversion of those lands to residential purposes beyond the limits for a single residence in designated resource lands. *Friends of the San Juans et al. v. San Juan County,* Case No. 03-2-0003c (Compliance Order, June 21, 2005)
- Attached or internal accessory dwelling units do not increase the density of structures on a parcel of property and therefore need not be counted as separate dwelling units in determining residential dwelling densities in rural zones. *Yanisch v. Lewis County,* 02-2-0007c (Order on Compliance Hearing – 2004 3-12-04)
- A freestanding ADU is a separate dwelling unit and has all the structural characteristics of a dwelling unit, whether it is owned by the owner of a principal residence or not. *Friends of the San Juans, Lynn Bahrych, and Joe Symons v. San Juan County*, 03-3-0003 (Corrected FDO, 4-17-03)
- Densities of greater than one dwelling unit to five acres are not rural densities. Both this Board and the Central Board have consistently said that densities of more than one unit per five acres constitute urban growth.

(The Eastern Board has indicated that densities of more than one unit per *ten* acres of land is not a rural density.) Therefore, allowing freestanding ADUs together with a principal residence on lots of less than ten acres in rural areas constitutes inappropriate urban growth in a rural area. *Friends of the San Juans, Lynn Bahrych, and Joe Symons v. San Juan County*, 03-3-0003 (Corrected FDO, 4-17-03)

- To allow a freestanding accessory dwelling unit on every single-family lot without regard to the underlying density in rural residential districts, including shoreline rural residential districts, fails to prevent urban sprawl, contain rural development, and, instead, allows growth which is urban in nature outside of an urban growth area. These sections do not comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) and are clearly erroneous. *Friends of the San Juans, Lynn Bahrych, and Joe Symons v. San Juan County*, 03-3-0003 (Corrected FDO, 4-17-03)
- A county may request a "clarification" of a previously issued determination of invalidity under RCW 36.70A.302(6). A FDO dated 11-30-00 which included a determination of invalidity was perspective only and did not affect vested permits. Additionally, it was not the intention of the order to prohibit a single-family residence from being built on a lot where an existing guesthouse was already permitted or had been built. *Friday Harbor v. San Juan County* 99-2-0010 (MO 4-6-01)
- Allowance of a second "guesthouse" as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially interferes with the goals of the Act and is determined to be invalid. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- RCW 36.70A.400 requires a county to comply with RCW 43.63A.215(3). Thus, the CTED recommendations for "development and placement of accessory apartments" submitted to the 1993 Legislature must be incorporated, subject to limitations for local flexibility as determined by the local legislative authority. *Friday Harbor v. San Juan County* 99-2-0010 (RO 8-25-99)
- A county's change in the previous definition of "family," which was consistent with the adoption of the CTED model ADU ordinance, complied with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- A tiering concept along with significant up-zones that authorize multi-family housing in single family residential districts and manufactured homes in single family residential districts, and that provide for 200 additional acres for multi-family use in addition to allowing accessory dwelling units throughout the city, complies with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97).

ADAPTIVE MANAGEMENT

- [The Western Board held that] …because the City has adopted precautionary measures based on BAS to protect wetlands, [the Board does not] need to reach the issue of whether its adaptive management problem complies with RCW 36.70A.172. *Evergreen Islands/Futurewise, et al v. Anacortes,* Case No. 05-2-0016, Compliance Order, at 5 (April 9, 2007)
- In light of the limitations of its ground water model and the data assembled to date, the studies done do not conclusively show that the increased densities of the UGA will not result in saltwater intrusion into the water supply. The adaptive management program recommended by the advisory group is a necessary part of the County's protection strategy. Until the County completes these missing pieces, the Lopez Village UGA fails to comply with RCW 36.70A.070(3)(a)-(d), RCW 36.70A.070(1), and RCW 36.70A.020(10) and (12). *Stephen F. Ludwig v. San Juan County,* WWGMHB Case No. 05-2-0019c (FDO, Compliance Order, April 19, 2006)
- [T]he County's monitoring and adaptive management program for the NRCS BMPs it has adopted to regulate farming activities in critical areas meet the scientific standards for such programs. The County's program sets monitoring parameters that are reasonably related to the protection of the functions and values of critical areas affected by agricultural activities. The program will establish baseline conditions, monitor water quality according to State standards, tie any contamination to the source, and refer this information to the Planning Director for action. *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, September 1, 2006); *WEAN v. Island County*, WWGMHB Case No. 06-2-0012c (FDO, September 14, 2006).

ADOPTION – *SEE* SEQUENCING

AFFORDABLE HOUSING

- The Board recognizes too that the County is not obligated to add to the stock of low income housing but instead to set the framework in which the market can provide housing for all segments of the population. *Campbell v. San Juan County,* Case No. 09-2-0104, FDO at 14 (Jan. 27, 2010)
- In order to implement this goal [RCW 36.70A.020(4)], cities and counties are directed to do the necessary planning to perform an inventory and analysis of existing and projected needs, make adequate provisions for the needs of all economic segments of the community, and identify sufficient land for low income housing. *Campbell v. San Juan County,* Case No. 09-2-0104, FDO at 15 (Jan. 27, 2010)
- RCW 36.70A.020(4) is included among the goals of the GMA intended to guide "the development of comprehensive plans and development regulations" … There is nothing in this goal that requires that the steps

taken by a local jurisdiction in support of this goal must "necessarily *result* in affordable housing" as Petitioners argue. Instead, it appears to be well within the City's discretion to have decided that limiting the conversion of MHPs to some other type of land use, thereby preserving this type of housing, would "encourage the availability of affordable housing." Nor has it been demonstrated by Petitioners that the City, with its action, "actually reduce[d] affordable housing opportunities by excluding three smaller MHPs from regulation." *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, FDO (October 13, 2009)

- While the Petitioners are correct that the City did not create financial or other incentives, such as increased density for providing affordable units, the GMA does not mandate the creation of such incentives. Therefore, it is not a clear error that the City chose to encourage affordable housing by another means, nor has it been proven that the means chosen are contrary to Goal 4. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, FDO (October 13, 2009)
- Under the record in this case, the County has complied with the goals and requirements of the Act as to affordable housing. A GMHB does not have authority to direct a local government to fund affordable housing policies and requirements. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A CP policy regarding affordable housing must be specific and must be implemented by DRs to comply with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- A county's change in the previous definition of "family," which was consistent with the adoption of the CTED model ADU ordinance, complied with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- The allowance of a guesthouse as an ADU to satisfy affordable housing requirements does not comply with the GMA in the absence of any analysis of existing conditions, projections of future guesthouse needs and the potential cost of public facilities and services. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- An affordable housing element is not a requirement of the GMA at the time of establishing IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- A tiering concept along with significant up-zones that authorize multi-family housing in single family residential districts and manufactured homes in single family residential districts, and that provide for 200 additional acres for multi-family use in addition to allowing accessory

dwelling units throughout the city, complies with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)

- A rural lands policy in a CP which encourages expansion of urban clusters, virtually assuring the need for urban infrastructure and services, is not a method of providing affordable housing throughout the county. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Urban density goals and requirements of the GMA relate primarily to anti-sprawl and compact development. They do not, in and of themselves, address affordable housing goals and requirements. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- The purpose of a CP requirement for the county and all of its cities to impose a 60% single family to 40% multiple family ratio is to comply with affordable housing and infill goals and requirements of the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

AGRICULTURAL LANDS

1. Designation and Conservation

- [In responding to Hadaller's claim that designation should be re-opened, the Board stated:] The fact that Hadaller has generated additional [site-specific] soils data for his property since the Board's prior orders is not relevant and is not a sufficient basis for re-opening the County's 2007 designation of the Hadaller property as ARL. As explained above, in 2008 the Board found that the County's designation of the Hadaller property as ARL, on the record before the County, was compliant with the GMA. The County had no obligation to revisit that designation and, in fact, it did not look at the Hadaller property when enacting [the challenged legislative action]. *Hadaller v. Lewis County,* Case No. 09-2-0017, Order on Motion to Dismiss at 5 (Jan. 27, 2010)
- B]oth Panesko and Butler rely upon a parcel specific approach to the ARL process – inviting the Board to examine the fine details of a particular site's soil typology to determine GMA compliance. However, the Board has previously rejected such an approach. In the recently decided case of *CCNRC v. Clark County,* this Board questioned whether a jurisdiction could enhance natural resource-based industries and encourage the agricultural economy by focusing solely on the characteristics of a parcel or a limited number of parcels of land. As Lewis County correctly points out, "If the Legislature has intended a parcel-by-parcel analysis, the GMA would explicitly require ARL designation for every parcel that meets specific, objective criteria." *Coordinated Cases – Butler (99-2-0027c), Panesko (00-2-0031c), Hadaller (08-2-0004c) v. Lewis County,* Compliance Order, at 14 (Dec. 29, 2009)
- Panesko argues that the County's efforts are deficient because it might not be possible for the Board to "drive down the road and verify with their own eyes that the decisions made by the County agreed with what was observed". Nothing in the GMA mandates such a result and it is unlikely that a "windshield survey" of that sort would pass muster as a GMA

compliant ARL designation process. *Coordinated Cases – Butler (99-2-0027c), Panesko (00-2-0031c), Hadaller (08-2-0004c) v. Lewis County,* Compliance Order, at 15 (Dec. 29, 2009)

- A de-designation of agricultural land decision must follow an analysis comparable to that for designation of such lands. *CCNRC v. Clark County,* Case No. 09-2-0002, FDO at 23 (Aug. 10, 2009)
- If a jurisdiction fails to take a broader view, and chooses to de-designate agricultural lands on a parcel by parcel basis, it is inevitable that the jurisdiction eventually reaches a point where the agriculture production base decreases to such an extent that elements of the support industry cannot survive economically. That process continues as the production side of the industry is unable to obtain services, thus leading to further conversion of agricultural lands to non-agricultural uses. The long-term result is the disappearance of the agricultural industry [in violation of .020(8), 060, and .170]. *CCNRC v. Clark County,* Case No. 09-2-0002, FDO at 21 (Aug. 10, 2009)
- [I]n analyzing the County's decision to de-designate the Warta properties, the Board finds that the key question to be addressed is whether the de-designation decision can be made based on a parcel by parcel analysis or whether the analysis must be of a broader nature, an analysis encompassing an agricultural *area*. The GMA emphasis is broader than conservation of parcels of agricultural land on a site-specific basis. Rather, in order to preserve or foster the agricultural economy, one needs to focus on the agricultural industry as a whole … The scope of that focus would be dictated by the nature of the agricultural activity conducted, or capable of being conducted, on the properties considered for de-designation. The viability of the agricultural industry involves more than the mere conservation of land for production. There must be a significant base of land and production to support all of the agriculturally based businesses that are part of the industry, including processors, suppliers, shippers, cold storage plants, equipment repairers, and so on. In combination, the lands, producers and support businesses constitute the agricultural economy. *CCNRC v. Clark County,* Case No. 09-2-0002, FDO at 20 (Aug. 10, 2009)
- Although the acreage of farmland contained in the 2002 Census of Agriculture may provide some guidance to the County, a comparison with designated LTA land does not necessarily result in a violation of the GMA. RCW 36.70A.170 does not require the designation of all lands being farmed; rather the GMA requires designation of only agricultural lands *of long-term commercial significance.* The mere fact the 2002 Census concluded a working farm was located on a parcel of land does not result in a determination that such a farm has long term commercial significance. *Futurewise v. Thurston County,* Case No. 05-2-0002, Compliance Order, at 6 (April 22, 2009)
- [Reiterating the Board's holding from *WEAN v. Island County,* Case No. 06-2-0023]: Creating additional substandard lots in agricultural lands

converts portions of those lands to residential uses rather than conserving them for agriculture [in violation of RCW 36.70A.060(1)(a)]. The County has already determined that 20 acres is the minimum lot size for agricultural lands of long term commercial significance. By further subdividing agricultural lands, the County violates its own determinations about the conservation of commercial agriculture. Further, the addition of non-agricultural uses in agricultural lands converts agriculture land to other uses and creates potential conflicts with agriculture – the very thing that designation of agricultural lands is designed to prevent … the exemption created by Ordinance C-117-08 provides that tax lots created by public right-of-way separation prior to January 24, 2007 are not required to meet base density or the minimum lot size requirements and an implementing provision at ICC 17.03.100 codifies this exemption in the zoning code. This is exactly the same type of clearly erroneous action the Board found in Case No. 06-2-0023. The County again violates its own determinations about the conservation of commercial agriculture, creates an environment to convert agricultural land to other uses, and creates potential conflicts with continued use of the land for agriculture. *WEAN v. Island County,* Case No. 08-2-0032, Final Decision & Order, at 8-9 (May 15, 2009)

- For Board's perspective on the designation of Agricultural Lands of Long-Term Commercial Significance based on RCW and WAC provisions and Supreme Court cases, *see* Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 22-26 (July 7, 2008).
- [B]y commencing their review based solely on the presence of prime soils, the County failed to consider a key element of the GMA's definition for agricultural land – that the land is primarily devoted to commercial agriculture, which our Supreme Court has concluded means that land is actually used or capable of being used for agricultural production. As noted supra, the first focus for a jurisdiction in making its designation determinations is to look at the general characteristics of the property itself and whether it can be used for any of the types of agriculture enumerated in .030(2). Although, soils play a significant role in determining whether land is capable for agricultural uses, it is not the exclusive method since some types of agriculture are not soil dependent. Therefore, by failing to initially base its methodology on an evaluation of parcels within Lewis County that are actually being used or are capable of being used for agriculture, the County inappropriately narrowed the universe of land beyond that anticipated by the Legislature when it defined agricultural land. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 29-30 (July 7, 2008). Although the Census of Agriculture is a tool that can be helpful in identifying farms that are currently being farmed and the

amount of farmland eligible for designation, counties are not mandated to use it in the designation process. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 30 (July 7, 2008).

- [In response to Petitioners' assertion that the phrase "capable of being farmed" must be included within the County's definition of agriculture, the Board stated:] What Petitioners seek is to have the County provide the definition language our Supreme Court has applied to the phrase "primarily devoted to". The Board believes this to be unnecessary as where the Supreme Court has interpreted a statutory definition, the County's use of that definition necessarily includes the Court's interpretation. It is not necessary to amend a definition to include the Court's language. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 33 (July 7, 2008).
- [In response to Petitioners' assertion that the County failed to properly consider poultry farms and Christmas tree farms, the Board concluded:] The GMA seeks to enhance and maintain natural resource industries, not merely the prime soils upon which many, but not all, such industries depend. By excluding from consideration for ARL designation non-soil dependant uses the County failed to maintain and enhance those natural resource uses. The County is not required to designate all non-soil dependant agricultural uses ARL, but it may not exclude them solely on the basis that non-prime soils underlie the use. In this context the need to focus on the maintenance and enhancement of natural resources industries, rather than merely preserving prime soils, poultry farming serves well to illustrate the point. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 35 (July 7, 2008).
- [The USDA's] Soil Conservation's Service (SCS) Handbook 210 has been updated by the NRCS November 2006 publication. While WAC 365-190-050 references USDA Handbook 210, CTED states that until it amends this WAC, its interpretation is that a county using the updated USDA publication for the purpose of classifying ARLS fulfills the intent of the WAC provision. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 41 (July 7, 2008).
- *See* Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 41-43 (July 7, 2008). discussion in regards to soil classification within the designation process.

- The GMA does not assign or dictate the weight of each [WAC] factor and, therefore, a jurisdiction has some discretion regarding how to apply them. The Board notes that while a jurisdiction has discretion, these ten factors must be evaluated in light of the conservation imperative set forth by the GMA. In contrast to the analysis of capacity, productivity, and soils, the focus of these factors is on the development prospects of the site and, as the Supreme Court found in *Lewis County,* may potentially pertain to factors not specifically enumerated in RCW 36.70A.030(10), including the economic needs of the agricultural industry for the county as a whole, so long as these considerations are within the mandates of the GMA and pertain to the characteristics of the agricultural land to be evaluated. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 46 (July 7, 2008).
- [In addressing the County's use of the WAC factors, the Board noted:] Although the County's review was based on an area by area analysis so as to take into account "geographical and economical considerations," it is the inconsistent application of the criteria which concerns the Board the most, not review based on subarea. While the Board recognizes that the County has discretion on how much weight to give each criteria, applying criteria in an inconsistent manner leads to arbitrary decision-making. It is evident from the Record that the County did not consistently apply the criteria when analyzing varying subareas, with criteria being given differing weight based … primarily in the name of economic development … As this Board has previously stated, the GMA creates a mandate to designate agricultural lands by including goals with directive language as well as specific requirements and that the GMA's economic development goal does not supersede this agricultural mandate set forth by the Supreme Court. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 49-50 (July 7, 2008).
- [T]he Board notes that the GMA recognizes that agricultural lands can be de-designated if these lands are no longer commercially significant and provides mechanisms for economic development opportunities in designated rural and agricultural lands through the use of Master Planned Developments (MID) and Master Planned Locations for Major Industrial Activity (MPLMIA), Master Planned Resorts (MPR), and Fully Contained Communities (FCC), all available to Lewis County. In allowing for these uses in rural and agricultural lands, the Legislature set up a well defined process to ensure that these developments would not detract from the goal of directing urban growth to urban areas and creating sprawl. The GMA is focused on concentrating all types of growth – residential, commercial, and industrial – in urban areas because it is these areas that have the supporting public facilities and services critical to economic

development. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 51 (July 7, 2008).

- [T]he continuation of lands suitable for agricultural production should be retained until such time as the County has no other option but to consider whether these lands are no longer capable of serving in a commercially viable way and that these lands are in fact needed to accommodate growth. What Lewis County is doing is removing agricultural lands based on speculative, future economic development and seeking to utilize these lands to provide for potential expansion areas. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 52 (July 7, 2008).
- [Petitioner's] argument that his property has never produced a profitable crop does not demonstrate that the County was clearly erroneous in designating it ARL. Although the *Lewis County* Court did note that the GMA was not intended to trap anyone in economic failure, when it comes to agricultural lands, it is the economic concerns of the agricultural industry not an individual farmer's economic needs that are to be considered. Whether a competent commercial farmer would go broke trying to farm the land is not the test the Legislature or the Courts require the County to apply when designation agricultural lands of long term commercial significance. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 57 (July 7, 2008).
- [WAC 365-190-050(1)] advises that the appropriate place for the classification scheme and designation policies is in the comprehensive plan. There is no clear error in including the designation criteria in the Comprehensive Plan rather than within the County Code. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 60 (July 7, 2008).
- [In finding that the County was classifying accessory uses as primary uses, the Board stated:] … RCW 36.70A.177 permits the use of innovative zoning techniques but specifically prohibits non-farm uses of agricultural land and relegates other non-agricultural uses to the status of *accessory* and to those areas with poor soils or otherwise unsuitable for agricultural purposes. The Board reads this provision, in conjunction with the GMA's mandate for agricultural conservation, to mean that the only primary use of ARL lands is one that is agricultural, all other uses are subordinate to this [accessory/subordinate uses are intended to provide supplementary, not primary, income to the farm]. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case

No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 64-65 (July 7, 2008).

- [U]nder the GMA agricultural is not limited to crop production but includes such non-crop related activities as dairies, poultry farms, and fish hatcheries - all of these activities require structures which may overlay prime soils. To allow for conversion of previously converted prime soils based on "non-crop" related uses effectively negates the GMA's mandate to maintain that portion of the agricultural industry which does not produce crops and, in essence, permits a poultry barn on prime soils to become a residential subdivision merely because it does not involve crop production despite the fact that the use is agricultural and has prime soils. If conversion should be permitted to occur, it should occur to favor the retention of those areas with prime soil, not for the long-term removal of lands from agricultural use. Coordinated Cases of *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 68 (July 7, 2008).
- [T]he economic development goal [does not] direct action as the agricultural conservation goal does. Nor does the economic development goal have any corresponding requirements. Also, the economic development goal stresses that growth should be encourage in areas "experiencing insufficient economic development growth, *all within the capacities of the state's natural resources, public services, and public facilities*. Therefore, in using its discretion to balance the agricultural and economic development goals, the County's economic development goals cannot outweigh "the duty to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural industry". *Karpinski et al v. Clark County,* Case No. 07-2-0027, Amended FDO, at 37-38 (June 3, 2008)
- The Board finds that the County's rationale for excluding from Agricultural Resource Lands (ARL) designation consideration that those lands that are drained or irrigated, because no data is available to identify which lands with prime soils are drained is not sufficient. If "prime if drained/irrigated lands" are in fact drained or irrigated then they are prime soils which under the County's methodology are qualified for further consideration for designation the County must make an effort to identify these lands. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c Compliance Order/FDO, at 3 (July 7, 2008).
- The Board also finds that by excluding from consideration for ARL designation non-soil dependant uses such as poultry operations and Christmas tree farming, the County failed to maintain and enhance the agricultural industry. The County is not required to designate all non-soil dependant agricultural uses ARL, but it may not exclude them solely on the basis of non-prime soils. Additionally, the County's ARL designation

process failed to consider for ARL designation lands currently designated as forest lands of long-term commercial significance. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c Compliance Order/FDO, at 3 (July 7, 2008).

- The Board recognizes Lewis County's need for economic development. Nevertheless, the Board finds that Lewis County erred when it placed its potential needs for future economic development and the cities' undocumented needs for future expansion of its UGAs above all other considerations when applying its use of proximity to the "I-5 Corridor" and relationship or proximity to urban growth areas when determining which lands should be designated as ARL fails to comply with the goals and requirements of the GMA. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c Compliance Order/FDO, at 3 (July 7, 2008).
- [The Board found that] …when placing soils into capability classes the NRCS already accounted for the slope of the area as well as other limitations such as erosion, drainage, and flooding. In other words, when the NRCS assigned a classification of Class IIe, which the County has adopted as "prime" soil, to an area this classification was based on considerations of various limitations and, therefore, for the County to remove these areas based on committee members or commissioners' opinion that are area was too steep or experienced flooding, effectively discounted for limitations which had already been taken into consideration when assigning the soil classification. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c Compliance Order/FDO, at 43 (July 7, 2008).
- Hadaller's argument that his property has never produced a profitable crop does not demonstrate that the County was clearly erroneous in designating it ARL. Although the *Lewis County* Court did note that the GMA was not intended to trap anyone in economic failure, when it comes to agricultural lands, it is the economic concerns of the agricultural industry not an individual farmer's economic needs that are to be considered. Whether a competent commercial farmer would go broke trying to farm the land is not the test the Legislature or the Courts require the County to apply when designation agricultural lands of long term commercial significance. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c Compliance Order/FDO, at 57 (July 7, 2008).
- The County had a duty to apply the revised criterion (Criterion Three) to lands which were not designated for conservation and protection previously, and not just to adopt revised criteria. Designation criteria that are not applied to map or otherwise specify the lands that are designated

for conservation fail to meet the requirements of RCW 36.70A.060 and 36.70A.170(1)(a) to designate those lands…To simply amend a non-compliant designation criterion without utilizing it to make designation decisions is a meaningless act … If a non-compliant designation criterion is amended, it follows that it also must be used to make designation decisions. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order at 14 (Oct. 22, 2007).

- In Resolution 07-104 and Ordinance 1179R, the County did not merely repeal those provisions of its code and comprehensive plan that were found non-compliant previously; it also repealed portions of LCC 17.200.020 and LCC 17.30.580(3)-(11). LCC 17.200.020 contained the implementation provisions for designation of agricultural resource lands. Without those provisions, there is no mechanism for actually applying the designation criteria to agricultural resource lands and thus no way to designate and conserve them. This fails to comply with RCW 36.70A.060(1), 36.70A.170(1)(a) and 36.70A.040. *Vince Panesko v. Lewis County,* WWGMHB Case No. 00-2-0032c and *Eugene Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, Order on Compliance and Invalidity (June 8, 2007)
- [S]ubstandard lots created by public right-of-ways … in agricultural lands converts
  portions of those lands to residential uses rather than conserving them for agricultural. The County has already determined that 20 acres is the minimum lot size for agricultural lands of long-term commercial significance. By further subdividing agricultural lands, the County violates its own determinations about the conservation of commercial agriculture. Further, the addition of non-agricultural uses in agricultural lands converts agricultural land to other uses and creates potential conflicts with agriculture – the very thing that designation of agricultural lands is designed to prevent. *WEAN v. Island County,* Case No. 06-2-0023, FDO, at 13 (Jan. 24, 2007)
- By expanding the UGA on a parcel-by-parcel basis, the County is failing to plan for growth and to balance the goals of the GMA as it determines where the future urban growth should occur. The property owners and the public have no idea where urban growth will extend to accommodate the need for commercial and industrial lands set out in the Hovee Report. Thus, the expansion here is extended with no certainty that the abutting agricultural lands will be conserved. *Futurewise v. Skagit County,* Case No. 05-2-0012c, Consolidated FDO/Compliance Order, at 22 (April 5, 2007)
- [U]ntil the 20-year planning decisions are made with respect to the agricultural lands which will be conserved, incremental UGA encroachments into designated agricultural lands act to discourage rather than encourage their conservation. *Futurewise v. Skagit County,* Case No. 05-2-0012c, Consolidated FDO/Compliance Order, at 23 (April 5, 2007)

- Lands otherwise eligible for designation as agricultural lands of long-term commercial significance may not be excluded simply on the basis of current use. Our State Supreme Court has ruled on this point (citing *City of Redmond v. Central Puget Sound Growth Management Hearings Board,* 136 Wn.2d 38, 53, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998)). *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, July 20, 2005)
- Parcel size itself does not correspond to farm size because it is not indicative of the amount of acreage that would be farmed together. Using predominant parcel size of 20 acres as a designation criterion may exclude viable farms in which the total acreage farmed is in excess of 20 acres in size but each of the parcels making up the farm is less than 20 acres. If size is to be used as a factor in designating agricultural lands, farm size rather than parcel size is the relevant consideration. *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, July 20, 2005)
- The moving concern underlying the GMA's requirement for designation and conservation of agricultural lands is to preserve lands capable of being used for agriculture because once gone, the capacity of those lands to produce food is likely gone forever. *See City of Redmond v. CPSGMHB,* 136 Wn.2d 38, 48, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998)("…requiring designation of natural resource lands at the outset of the GMA process protects the irreversible loss of those lands to development.") *Butler, et al. v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004); *Panesko, et al. v. Lewis County*, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04).
- The GMA calls for designation of agricultural lands based on characteristics of the land affecting its capability for long-term use in producing agricultural products. GMA factors include growing capacity, productivity and soil composition, as well as proximity to population areas, and the possibility of more intense uses of the land. RCW 36.70A.030(2) and (10). The challenged provision improperly creates a criterion for designation of agricultural lands (the needs of the local agricultural industry) that depends upon an assessment of an economic activity that is inherently unpredictable and which may well change with market conditions, regulatory controls, newcomers to the area, and many other factors, not to mention the weather. *Butler, et al. v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04); *Panesko, et al. v. Lewis County*, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04)
- A requirement to hold water rights on agricultural land in order for these lands to be designated agricultural lands of long-term commercial significance in Lewis County would be clearly erroneous. There is ample evidence in the record, (in addition to the County's own code provisions)

to demonstrate that commercial crops such as hay and Christmas trees can be (and are) grown without irrigation in Lewis County. *Butler, et al. v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004); *Panesko, et al. v. Lewis County*, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04)

- A county may not include a requirement in its designation criteria that land may not be identified as agricultural resource land unless it is "currently devoted to agricultural activities." A development regulation such as this excludes areas capable of being used for agricultural production that are not currently engaged in agricultural activity from consideration. This criterion is in direct opposition to the Supreme Court holding in *Redmond* and does not comply with the Act. *Mudge, Panesko, Zieske, et al. v. Lewis County*, 01-2-0010c (Compliance Order, 7-10-02) Also *Panesko v. Lewis County*, 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (Compliance Order, 7-10-02)
- A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Agricultural lands that satisfy designation criteria may not be disqualified simply because the land is not currently in agricultural use. *Diehl v. Mason County* 95-2-0073 (RO 12-9-99)
- The record failed to show that qualifying agricultural RLs that were not in current use were designated. Therefore, failure to designate such areas did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- The record demonstrated that a previous SCS map, which pointed out unique soils in Mason County, was incorrect and that no unique soils exist. Therefore, exclusion of unique soils as a designation criterion complied with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- The record demonstrated that a previous SCS map, which pointed out unique soils in Mason County, was incorrect and that no unique soils exist. Therefore, exclusion of unique soils as a designation criterion complied

with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)

- Where the CP provided for an opportunity to challenge the original designation of a property during the first amendment cycle, a reclassification from agriculture to rural residential complies with the GMA where the evidence demonstrated that the property did not meet the original agricultural RL criteria. *Anacortes v. Skagit County* 99-2-0011 (FDO, 6-28-99)
- Under the GMA a local government must designate and conserve agricultural RLs and then take action to discourage incompatible uses. A county must not put the emphasis upon protection of the rural area from RL uses. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- An owner's current use and/or intent for future use is not a conclusive determination of whether land qualifies for agricultural RL designation. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- The case of *Redmond v. Growth Hearings Board* 136 Wn.2d. at 38 (1998) clarified the term "primarily devoted to" to be one where the designation was to be "area wide" in scope and did not require that the land be currently in agricultural production. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- The case of *Redmond v. Growth Hearings Board* 136 Wn.2d. at 38 (1998) clarified the term "long-term commercial significance for agricultural production" beginning at page 54 to include the definition found at RCW 36.70A.030(10) and WAC 365-190-050. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- Where the record demonstrated that the local government had used inappropriate criteria in failing to designate RLs and that the criteria that were used were used incorrectly, the petitioner sustained its burden of proving that the county action failed to comply with the GMA under the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- Removal of approximately ½ square mile north of the UGA and 85% of the open space/agricultural designation south of the UGA, along with a record showing reasons for inclusion of the remaining agricultural lands within the UGA of Sedro-Woolley, complied with the GMA. *Abenroth v. Skagit County* 97-2-0060 (Compliance Order, 3-29-99)
- The failure to include a criterion of unique soils for consideration in designating agricultural lands, or a rationale contained in the record for the exclusion of unique soils as a designation criterion, violated WAC 365-190-050(2) and did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)
- The exclusion of land from agricultural designation based solely on the lack of current use as agricultural land did not comply with the GMA under the authority of *Redmond v. Growth Hearings Board* 136 Wn.2d 38 (1998). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)

- A county decision to not designate prime upland soils if artificially drained and to not designate parcels smaller than 40 acres and to exclude private forestland Grades IV and V from designation was within the discretion of the local government and complied with the GMA. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 4-9-97)
- A designation ordinance that required a minimum 40-acre parcel, but also allowed subdivision into two 20-acre parcels, was inconsistent with a criterion to eliminate 20-acre parcels for resource designation. One or the other must be changed to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 4-9-97)
- A city cannot designate property as agriculture within its municipal boundaries unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- The failure of the local government to examine growing capacity, productivity, soil composition, proximity to population areas nor any data to show that current farmland failed to meet the criteria set forth in the GMA, did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- The use of a criterion involving the necessity of the farmland to provide the "sole support for a family" in designating agricultural land did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- Where the record reflected evidence of existing farming, over 7,000 acres of prime soil and ongoing farming activities, the failure to designate any agricultural lands of long-term commercial significance did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- Agricultural lands of long-term commercial significance do not depend on the ability of the land to provide the entirety of an owner's income in order to qualify for such designation. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- The term "primarily devoted to" under RCW 36.70A.170 and WAC 365-190-050 and –060 involves classification for area-wide lands rather than specific individual parcel determinations. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Where a local government designated agricultural lands that included portions which were not in current agricultural uses, there was no violation of GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A local government must designate agricultural lands not already characterized by urban growth that have long-term significance for commercial production of food or other agricultural products. The GMA requires a county to maintain and enhance agricultural based industries, encourage the conservation of productive agricultural lands, and discourage incompatible uses. RCW 36.70A.020(8). *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- A local government is required to designate and conserve agricultural lands while going through the process of analysis and balancing for a CP

and DRs. Failure to designate such agricultural lands did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)

2. Development Regulations

- As for LCC 17.30.610, the Board concurs with the County's interpretation of its ordinance in that hydroponic greenhouses fall within the definition of "horticulture" and "other agricultural activities and therefore are allowed as primary uses in ARL. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c, Compliance Order/FDO, at 64 (July 7, 2008).
- The Board notes that RCW 36.70A.177 permits the use of innovative zoning techniques but specifically prohibits non-farm uses of agricultural land and relegates other non-agricultural uses to the status of *accessory* and to those areas with poor soils or otherwise unsuitable for agricultural purposes. The Board reads this provision, in conjunction with the GMA's mandate for agricultural conservation, to mean that the only primary use of ARL lands is one that is agricultural, all other uses are subordinate to this… Therefore, under the GMA and the County's own regulations, family day cares and home business must be considered either "accessory" or "incidental" as such uses are intended to provide supplementary, not primary, income to the farm. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c, Compliance Order/FDO, at 64-65 (July 7, 2008).
- [The Board noted that] ...the County is permitting the subdivision of parcels 20 acres and greater but does provide that lots under five acres in size may be subdivided so long as the total density on the entire contiguous ownership (the "parent" farm), including existing dwellings, does not exceed 1 dwelling unit per 20 acres (1 du/20acres). The Board notes that with the application of clustering a residential development may appear urban, but the GMA permits clustering and, with a required density of 1 du/20 acres, the overall density of the site will be consistent with the County's overall ARL zoning density. The Board finds no error in this approach. Coordinated cases of *Butler et al. v. Lewis County*, Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c, Compliance Order/FDO, at 67 (July 7, 2008).
- In addition, the County is requiring, with the exception of lands where the prime soils have previously been converted to non-crop related agricultural uses, that the subdivision does not affect the prime soils on the contiguous (parent farm) holding. What this provision fails to recognize is that under the GMA agricultural is not limited to crop production but includes such non-crop related activities as dairies, poultry farms, and fish hatcheries - all of these activities require structures which may overlay prime soils. To allow for conversion of previously converted

prime soils based on "non-crop" related uses effectively negates the GMA's mandate to maintain that portion of the agricultural industry which does not produce crops and, in essence, permits a poultry barn on prime soils to become a residential subdivision merely because it does not involve crop production despite the fact that the use is agricultural and has prime soils. If conversion should be permitted to occur, it should occur to favor the retention of those areas with prime soil, not for the long-term removal of lands from agricultural use. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c, Compliance Order/FDO, at 68 (July 7, 2008).

- The County's solid agricultural conservation measures including large minimum lot sizes for Agricultural and Forest Resource Lands, buffering requirements for lands adjacent to agriculture, Right to Manage Resource Lands provision, and periodic notification to property owners of adjacent agricultural activity help mitigate the effects of lots that will be developed under this ordinance…Enforcement of the County's code requirements for concurrency flood damage prevention, drinking water systems , on-site sewage, shorelines protections, and critical areas regulations helps mitigate the environmental impacts and the need for urban services…The County also requires lot certification to ensure substandard lots are legally platted. A certified lot can be conveyed but it cannot be developed unless the property owner can comply with all the other County development regulations, except minimum lot size. Additionally, the County disallowed the development of substandard lots of less than an acre on Fidalgo Island and Guemes Island until subarea plans for those areas are completed. *Evergreen Islands, et al. v. Skagit County*, Case No. 00-2-0046c (Compliance Order, May 19, 2005)
- The definition of "long-term commercial significance" cannot, therefore, be read to allow *any* more intense use of the land to constitute a rationale for removing agricultural lands from conservation and protection as resource lands. However, the major industrial development urban growth area is specifically allowed by the GMA and, by the terms of RCW 36.70A.365, contains its own conditions for approval. An MID UGA is not just any "more intense" use; it is a statutorily created and limited "more intense" use. *Butler v. Lewis County,* WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis County,* WWGMHB Case No. 00-2-0031c (Order Rescinding Invalidity as to Cardinal MID Site, May 12, 2005)
- As we review the County's development regulations concerning uses allowable in resource lands, we are mindful of the statutory purpose of those regulations; they must "assure the conservation" of resource lands. RCW 36.70A.060; RCW 36.70A.040(3). Where allowed uses in agricultural lands are not resource-related, they must be restricted so that they do not take the place of or interfere with agricultural uses. *Butler, et al. v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004); *Panesko, et*

al. v. Lewis County, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04)

- We agree that home-based businesses can be a supplementary source of income to farm families. However, we hold that home-based businesses in agricultural lands must be limited by regulations that ensure that those businesses are of a size and scope that does not interfere with agricultural activities (or any prime soils) and are compatible with the primary use of the farmlands for farming. *Butler, et al. v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004); *Panesko, et al. v. Lewis County*, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04)
- Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- A DR that precludes densities more intense than 1 du per 10 acres for ARLs within FFAs complies with the Act. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- A DR which allows non-agricultural uses in an agricultural RL and does not require such use to be temporary and does not prohibit leaching of toxins, does not comply with the GMA and the county's own agricultural conservation policies. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Where a DR allows a number of uses in RLs, which fail to comply with recent State Supreme Court decisions such uses fail to comply with the GMA. Requiring a special use permit does not remedy this failure to comply. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- If a lot aggregation DR within an adjacent to RL lands is amended, the county must adopt other measures that prevent incompatible development and uses from encroaching on RLs and to encourage conservation of

forest and agricultural lands. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)

- A DR which clarifies uncertain terminology and which adopts criteria to satisfy the GMA requirement that qualified ARLs not in current use be included in the designation, complies with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-4-00)
- An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- A 25-foot riparian buffer zone even if it is a managed, compact buffer zone for ongoing agricultural activities in a designated ALR was below the range of BAS as shown by the record. It did not fall within the range of peer tested BAS in the record. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- Allowance of a 10-acre minimum lot size within agricultural RLs with the associated possibility of 1 du per 5 acre densities in some areas as part of a clustering program, complies with and does not substantially interfere with the goals of the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- Use of a 50-foot buffer in rural lands and a 100-foot buffer in UGAs and rural lands of more intense development to segregate agricultural RLs from incompatible uses complies with the GMA. There is no specific GMA requirement for the minimum width of such buffers. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- Under the record here, allowing densities more intense than 1 du per 5 acres surrounding RL designated areas substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Allowing densities more intense than 1 du per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Under the record in this case, where it is clear the county must reconsider certain parts of its rural agricultural designation for potential RL designation, invalidity will apply to those areas in the Rural-Ag designation which allow greater density than that allowed in the agricultural RL zone. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- An ordinance which allowed subdivision of agricultural lands into parcels smaller than 10 acres in conjunction with a finding by the county that acreage smaller than 10 acres could not be reasonably expected to have long-term commercial significance for agricultural use did not comply with the GMA. Additionally, such an ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)

- A DR which allowed 1 unit per 5-acre density within agricultural RLs did not comply with the GMA. Additionally, such ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)
- Buffer widths from 5 to 20 feet for lands adjacent to agricultural lands did not assure that such adjacent lands would not interfere with continued use of the RL and therefore did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)
- The GMA gives protection to designated agriculture RLs from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industry and protection of CAs. The price paid for that deference is removal of development potential. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- The Legislature has recently clarified the allowance of cluster development in agricultural lands. As long as the long-term viability of agriculture lands is not threatened by conflicting uses, clustering is an allowable option. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- In order to comply with the GMA a DR must have provisions to reserve the balance of a developed agricultural land for future long-term agricultural use rather than as a holding pattern for future sprawl. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- RCW 36.70A.177 is a new section of the GMA and directs that in agricultural lands of long-term commercial significance innovative zoning techniques, including cluster zoning, are appropriate. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- A DR that exempted all existing agricultural activities from coverage did not comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- The mere adoption of a pre-existing land use map and underlying residential densities within designated agricultural lands without a review for consistency did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- The GMA requirement to conserve agricultural lands from conflicting uses requires a local government to find ways to protect such agricultural lands. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- An action designating agricultural lands of long-term significance but thereafter readopting underlying rural residential densities created an inherent conflict and did not satisfy the consistency requirement of the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- Allowance of 1 dwelling unit per 1 acre, 2.4 acre, and 4.8-acre densities in a designated agricultural zone did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- The process of balancing goals at the CP stage cannot include abandoning the conservation of designated agricultural lands. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)

- One of the major reasons for the enactment of the GMA was to stop the conversion of RLs into sprawling low-density development. Densities within designated agricultural resource areas must not interfere with the primary use of the lands for production of food or other agricultural products or fiber. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- A county is required to adopt DRs on or before September 1, 1991, that assure the conservation of agricultural RLs previously designated. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)

AIRPORTS

- In this order, we find that the County has sufficiently analyzed the risk factors and conditions specific to the OIA and reduced development potential in those airport safety zones that carry the greatest risk. Important to our findings in this regard is the fact that the Washington Department of Transportation, Aviation Division, supports the County in its choice of methods for protecting the OIA from incompatible uses. *Michael Durland v. San Juan County* 00-0-0062c and *Fred Klein v. San Juan County* 02-2-0008 (Compliance Order/Extension of Time 12-18-03)
- A county must ensure that notification regarding siting of general aviation airports reaches beyond residents living within 1,000 feet from any point on a proposed landing area. *Yanisch, et al. v. Lewis County*, 02-2-0007c (FDO, 12-11-02)
- A county is not compliant with GMA requirements regarding siting of general aviation airports if it fails to preclude non-compatible uses within the final approach areas. *Klein v. San Juan County,* 02-2-0008 (FDO, 10-18-02)
- A residential zone within airport property does not comply with RCW 36.70A.200(5). *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- A local government may not preclude the siting of EPFs. Siting includes use or expansion of airport facilities for airport uses. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01) & *Des Moines v. CPSGMHB* 98 Wn. App. 23 (1999)
- An airport is an EPF under the definition found in RCW 36.70A.200. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- RCW 36.70A.510 requires a local government to adopt land use policies and DRs that preclude incompatible land uses adjacent to airports. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- An airport is an essential public facility under the definition of RCW 36.70A.200(1). *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The requirement that a local government may not preclude the siting of EPFs under RCW 36.70A.200(2) involves a duty to maintain current airport facilities. DRs are appropriate vehicles to prevent encroachments on surrounding airport property that make siting and maintenance of existing airports difficult. Residential designation of surrounding properties is usually inappropriate. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

ALLOCATION OF POPULATION

- While the sizing of the UGAs was compliant, the resulting densities were woefully inadequate to satisfy the GMA requirement to achieve urban growth within UGAs. A county does not comply with its own CPPs nor with the GMA when it directs more than 50 % of the allotted population projection to rural areas. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A county has the responsibility under the GMA of providing for regional coordination and the sole responsibility for allocation of population projections. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- A town may not unilaterally reduce the county-assigned allocation of population. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)
- A city has discretion to allocate its future population through a variety of densities provided that a proper analysis, and compliance with GMA goals and requirements, is achieved. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

AMENDMENT

1. CP Amendment

- The requirement of RCW 36.70A.130 is clear - Winlock was required to review and revise, if necessary, its comprehensive plan by December 1, 2008. While it adopted a revised comprehensive plan in early 2006, there has been no action taken by the City to address the concerns raised in the previous matter before the Board [*Harader, et al. v. Winlock,* WWGMHB, Case Number 06-2-0007]; concerns which appear to remain as review of the 2005 Comprehensive Plan in this case reflects many of the same facts. As with the prior case, there is no evidence in the Record reflecting that there was public notice that the .130 mandated review and revision was under consideration nor was there a finding in any ordinance (1) of the review that had taken place or (2) that revisions were or were not undertaken as a result. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [In finding that the County's decision to deny property owner's application for a comprehensive plan amendment does not amount to a violation of the GMA, the Board stated:] RCW 36.70A.280 grants the boards' jurisdiction to hear and determine only those petitions alleging a jurisdiction is not in compliance with the GMA as it relates to the *adoption* of plans, development regulations or amendments of same. If a County, in exercising its GMA permitted discretion, does not take action to amend its Comprehensive Plan, the Growth Management Hearing Boards cannot over-ride a County decision and amend a Comprehensive Plan. Unless required by the GMA, it is in the County's discretion to decide to amend its comprehensive plan. *Chimacum Heights LLC v. Jefferson County,* Case No. 09-2-0007, Order Dismissing Case, at 3 (May 20, 2009)

- [Holding Petitioners' challenge was not untimely because the County's Comprehensive Plan and Land Use Map were never amended to reflect a decision of the County Commissioners, the Board stated:] The 1998 Ordinance apparently failed to reflect the BOCC vote to redesignate the Schwarz Family properties and the County failed to amend its Comprehensive Plan and zoning maps after passage of the 1998 Ordinance. Furthermore, the County adopted a 20 year Comprehensive Plan update in 2007 and did not incorporate the 1998 decision. Finally, and of greatest significance, the County undertook review and reconsideration of the Schwarz Family properties in 2008 … That 2008 review and legislative decision clearly resulted in redesignation of the Schwarz Family properties, was required to comply with the GMA, and challenges based on a failure to designate in a GMA compliant manner are now appropriate. *Clark County Natural Resource Council/Futurewise v. Clark County,* Case No. 09-2-0002, Order on Motion – Schwarz, at 3 (April 23, 2009)
- [Petitioner challenged un-amended portions of the City's Comprehensive Plan; the Board held…] Contrary to Petitioner's unsupported assertion of "the ambiguity of the statute" there is nothing in the GMA that would suggest that the entire comprehensive plan is opened for challenge during every annual review. Petitioner cites no authority that would support such an unprecedented argument. While Petitioner alludes to "a vigorous debate" over the limitations upon the right to appeal contained in the GMA now being considered by the State Supreme Court, that debate concerns the scope of matters subject to appeal of the review and evaluation required by RCW 36.70A.130(1) and (4). As has been clearly established, that is not the nature of Olympia's recent amendments. Therefore, as Issue 1 addresses matters not within the scope of the City of Olympia's recent amendments, we do not have jurisdiction over them. Any challenge to those provisions should have been brought following Olympia's comprehensive review and revisions in 2005. *West v. City of Olympia,* Case No. 08-2-000, Order on Motions, at 6 (April 2, 2008)
- [Petitioners' challenge an amendment to Battleground's code provisions, asserting that with this amendment all provisions of the City's Comprehensive Plan and Development Regulations were available for challenge, the Board held …] Based on the language in Ordinance 07-016, the Board concludes that Ordinance 07-016 is not an "update" required by RCW 36.70A.130(1) and (4), and is an amendment to the City's plan adopted pursuant to RCW 36.70A.130(2)(a). While this type of amendment is subject to Board review for compliance of the amendment with the GMA, this type of amendment is not required to ensure that the local jurisdiction's entire comprehensive plan and development regulations comply with all the provisions of the GMA … The Board lacks jurisdiction over challenges to unchanged provisions of the comprehensive plan. *Wise v. City of Battleground,* Case No. 07-2-0031, FDO, at 6 (June 18, 2008)

- The question presented by the County's motion is the scope of the Board's review of a comprehensive plan amendment which is not made pursuant to a RCW 36.70A.130(1) and (4) update. The County argues that a challenge to the sufficiency of the rural densities requirements for the Rural Element is an update question and cannot be raised when the amendment does not repeal or revise the entire Rural Element … were the Board to decide that there could be no challenge to the sufficiency of the variety of rural densities unless the entire Rural Element were repealed, it would mean that an otherwise compliant Rural Element could be made non-compliant without review simply because the amendment did not repeal and revise the entire Rural Element. The Board finds no basis for such a limitation on board review in the GMA. *Bayfield Resources Co./Futurewise v. Thurston County,* Case No. 07-2-0017c, Order on Motion to Dismiss, at 4 (Jan 17, 2008).
- [T]he purpose of the enactment does not foreclose a challenge to the impact of the enactment on another requirement or goal of the GMA. At the same time, the [Board's] jurisdiction to review a comprehensive plan amendment extends only to the changes adopted. Matters which were not altered by the comprehensive plan amendment are not open to challenge simply because there was a comprehensive plan amendment. The changes themselves are what is at issue … [W]hile the compliance of those changes with the GMA includes any impacts of those changes on the plan overall, the fact that the County has amended its Rural Element does not necessarily put the entire Rural Element at issue. *Bayfield Resources Co./Futurewise v. Thurston County,* Case No. 07-2-0017c, Order on Motion to Dismiss, at 6 (Jan 17, 2008).
- Based on the direction from the Court of Appeals that the Memorandum of Understanding (MOU) constitutes a *de facto* comprehensive plan amendment, this Board found that the MOU fails to comply with the public participation requirements of the GMA. The County's promise not to implement or enforce the provisions of the MOU does not constitute a repeal of the comprehensive plan amendment. The MOU remains in effect and the County's agreement not to enforce it does not alter its effectiveness. *Alexanderson/Dragonslayer, et al v. Clark County,* Case No. 04-2-0008, Order Finding Continuing Non-Compliance, at 4 (Feb 20, 2008).
- To determine whether or not an action constitutes a comprehensive plan amendment, the Board must determine if the agreement has the same effect as a comprehensive plan amendment. *City of Anacortes v. Skagit County and Washington Department of Ecology,* WWGMHB Case No. 07-2-0003, Order Dismissing PFR (July 2, 2007)
- For an agreement to "effectively" amend a comprehensive plan under the *Alexanderson* standard, it is not enough that it be merely "inconsistent" with the plan. It must clearly and directly supersede a plan provision so that "what was previously forbidden is now allowed." *City of Anacortes v.*

Skagit County and Washington Department of Ecology, WWGMHB Case No. 07-2-0003, Order Dismissing PFR (July 2, 2007)

- A *de facto* comprehensive plan amendment must do more than create an inconsistency between the agreement and the plan. It must actually force or prohibit action in direct contrast with a plan policy directive. *City of Anacortes v. Skagit County and Washington Department of Ecology,* WWGMHB Case No. 07-2-0003, Order Dismissing PFR (July 2, 2007)
- The change in designation of the Karma Gardens site is a change in the designation on the Skagit County Comprehensive Plan map and is therefore a comprehensive plan amendment. The Board finds that the County has erroneously used the administrative interpretation process to make the designation change. *Skagit County GrowthWatch v. Skagit County* 04-2-0004 (FDO, 8-24-04)
- The memorandum of understanding between the Tribe and the County (MOU) simply represents an agreement as to how the Tribe will work with the County on a variety of issues if the land is placed in trust status. It does not itself amend the comprehensive plan … [although] it is true that a change in status of the subject property would require the County to take action to amend its comprehensive plan because it would remove some land from the County's jurisdiction. *Alexanderson et al. v. Clark County* 04-2-0008 (Order on Motion to Dismiss 7-23-04)
- A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)
- A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- RCW 36.70A.470 prohibits the use of the "permitting process" for land use planning decisions. The stature requires the maintenance of an annual docketing list of proposed amendments to the CP or DRs. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- A DR which demonstrates the clear intent of a county to continue the 1997 CP amendment process for technical errors or misapplication of CP criteria to a limited number of individual homeowners, complies with the Act. *FOSC v. Skagit County* 01-2-0002 (FDO, 6-13-01)
- The use of RCW 36.70A.390 to adopt actions without a public hearing apply only to DRs and do not apply to CPs. Amendment of a CP through the use of this section does not comply with the Act. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a

specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- An ordinance which merely schedules the CP amendment processes does not comply with the requirements of RCW 36.70A.130. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- RCW 36.70A.040(3)(d) in conjunction with RCW 36.70A.130 establishes a requirement that implementing DRs must be amended as a result of amendments to the CP. *Birchwood v. Whatcom County* 98-2-0025 (MO 3-18-99)
- A full CP amendment process is required by the GMA for any designation changes. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Once the CP and implementing DRs are adopted they direct where growth will be allowed, giving a level of predictability and consistency to property owners, rather than their being left to the whim of changing elected officials and staff. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- RCW 36.70A.130(2)(a) provides that proposed amendments to the CP may not be considered more frequently than once every year except in limited circumstances. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- The repeal of a CP prior to its effective date does not constitute an amendment and thus does not violate RCW 36.70A.130. *Ellis v. San Juan County* 97-2-0006 (FDO, 6-19-97)
- The purpose of RCW 36.70A.130 directing that all amendments be adopted on an annual basis is to place such proposed amendments before local government at one specific time so the cumulative effect of the proposals can be ascertained. *Ellis v. San Juan County* 97-2-0006 (FDO, 6-19-97)
- Where an initial CP action was taken and not challenged within the 60-day time limit provided in the GMA, a GMHB does not have jurisdiction to review the alleged failure to adopt an amendment because of an alleged deficiency of the original action. *Quail v. Vancouver* 97-2-0005 (MO 5-6-97)
- The GMA does not allow a party to use an amendment to the CP as a vehicle to challenge other portions of the plan not affected by the amendment. *Hudson v. Clallam County* 96-2-0031(MO 3-21-97)
- No CP will be the best it can be on its original adoption. Improvements and clarifications will always need to be made throughout the amendment process over the life of a 20-year plan. *MCCDC v. Shelton* Case No. 96-2-0014, Final Decision and Order (11-14-96)

2. DR Amendment

- [In response to Petitioner's Issue Statement that RCW 36.70A.470 precluded Skagit County from amending its development regulations, the Board concludes that this provision] was not intended to expand the preclusion of development regulation amendment to a point in time prior to submission of a completed permit application. Neither the courts nor the

Legislature has expressly expanded [the vested rights] doctrine and the Board does not believe that was the intent of the Legislature when it adopted RCW 36.70A.470. That conclusion is supported by the legislative finding adopted with RCW 36.70B.030 that refers to the time when" . . . an applicant applies for a project permit . . ." … The record contains no evidence of the filing of a completed permit application, nor evidence of the payment of an application fee. The Petitioners do not dispute this fact. Any expansion of the vested rights doctrine is a topic for the Legislature or the courts. *Skagit Hill Recycling v. Skagit County,* Case NO. 09-2-0016, Order on Motions (Jan. 8, 2010)

- Respondent's argument appears to be premised on a mistaken belief that RCW 36.70A.130 only establishes a time line for cities and counties planning under the GMA. This provision does more than that as it establishes, among other things, limitations and conditions on amendments. *RE Sources Inc. v. City of Blaine,* Case No. 09-2-0015, Order on Motions (Jan. 5, 2010)
- Petitioner's issues are based on an allegation that the Respondent has failed to include BAS when amending its CAO … RCW 36.70A.130 does require that development regulations comply with the requirements of the GMA in its entirety. *RE Sources Inc. v. City of Blaine,* Case No. 09-2-0015, Order on Motions (Jan. 5, 2010)
- To be a *de facto* development regulation, the agreement must have the same effect as an official control and not merely constitute an agreement to adopt regulations in the future. *City of Anacortes v. Skagit County and Washington Department of Ecology,* WWGMHB Case No. 07-2-0003, Order Dismissing PFR (July 2, 2007)
- Where a threshold determination was required for an amendment to a DR and none took place, the ordinance was void. The entire process must begin again at the point where the initial SEPA review was required. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- An amendment to a CAO that occurs prior to the adoption of a CP and implementing DRs requires full compliance with all aspects of the GMA. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- Under the Whatcom County Code a referendum challenging a previously adopted CAO is considered an amendment to that regulation. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- RCW 36.70A.470 prohibits the use of the "permitting process" for land use planning decisions. The statute requires the maintenance of an annual docketing list of proposed amendments to the CP or DRs. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- Where a county adopts a position for many years that interlocal agreements adequately substituted for DRs to accomplish the purpose of transformance of governance, it cannot now complain that it does not have the ability to amend those interlocal agreements in order to achieve compliance. *FOSC v. Skagit County* 00-2-0050c (RO 3-5-01)
- It is part of the responsibility of a GMHB to look carefully at any DR or amendment for clarity. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- A change to a DR must be consistent with and implement the CP. RCW 36.70A.130(1). *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- RCW 36.70A.130 requires that any amendments to DRs shall be consistent with and implement the CP. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)

3. PFR

- WAC 242-02-260 allows amendment of a PFR, but such shall not be freely granted. A showing of hardship by a nonmoving party is sufficient grounds for denial. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

AMICUS CURIAE

- *Evans, et al v. City of Olympia,* Case No. 09-2-0003, Order Denying Amicus Brief (January 5, 2010), reconsideration denied (January 15, 2010)(WAC 242-02-280 addresses amicus briefs, party provide no justification for additional legal argument)
- Where no objection to *amicus curiae* status is received, participation will be granted but will be limited to submission of a written brief. *OEC v. Jefferson County* 94-2-0017 (MO 11-30-94)
- Where there is no objection to the granting of *amicus curiae* status and the motion demonstrates that *amicus* status should be granted, participation will be limited to a written brief. *Berschauer v. Tumwater* 94-2-0002 (MO 3-16-94)
- Where intervention is not approved, the granting of *amicus curiae* status involving written briefs only is appropriate. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Where the requirements for intervention are not met, a GMHB may authorize *amicus curiae* under the provisions of WAC 242-02-280. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

ANNEXATION

- *Skagit D06 LLC v. City of Mount Vernon,* Case No. 10-2-0011, Order on Motion to Dismiss (May 20, 2010)[Discussion as to Board's jurisdiction and annexation issue)
- *Karpinski, et al v. Clark County,* Case No. 07-2-0027, Compliance Order (Oct. 28, 2009)(Prior to issuance of Board's AFDO, some of the land was fully annexed by the City of Camas; therefore, the County no longer has authority over this land as it is now within the municipal boundaries of the city)

- *Panesko, et al v. Lewis County,* Case No. 08-2-0007c, Compliance Order at 8-9 (July 24, 2009)(Annexation of land to city during compliance proceedings removes the land from the County's jurisdiction, mooting the issue before the Board).
- A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)

APPEAL TO COURT

- The question for the Board is what is the effect of the Clark County Superior Court's order when an appeal is pending before the Court of Appeals. In analyzing the GMA, the Board's rules, the Administrative Procedures Act, and the Court rules, the Board noted it was serving in the capacity of a trial court and therefore had the authority to enforce its decision during the appeal unless a stay has been issued by a reviewing court. Since neither the Superior Court or the Court of Appeals had issued a stay in regards to the Board's AFDO, this decision remained in effect until a final decision terminating review is entered by the Courts. *Karpinski, et al v. Clark County,* Case No. 07-2-0027c, Order Denying Reconsideration of Limited Stay (Sept. 3, 2009)
- *Karpinski, et al v. Clark County,* Case No. 07-2-0027c, Order Denying Reconsideration of Limited Stay (Sept. 3, 2009)[The Board noted that since the purpose of invalidation is to preclude non-GMA compliant development from occurring until such time as the jurisdiction has taken responsive action to remedy its non-compliant action and, given the abeyance afforded Clark County by the August 6 Order, retaining invalidity was appropriate until the issue of compliance has been thoroughly addressed by the courts]
- The Board finds that the Rules on Appeal (RAP) apply when the Administrative Procedures Act (APA) is silent regarding procedures that apply during appeals of growth hearings board decisions. This means that the Superior Court decision is not effective until the appeal to the Court of Appeals is resolved. *Evergreen Islands, Futurewise, and Skagit County Audubon v. Skagit County,* WWGMHB Case No. 5-2-0016, Compliance Order (April 9, 2007).

- Where previous FDOs have been affirmed in Superior Court and an appeal has been filed in those cases, the newest compliance order and FDO, which involved many of the same arguments, satisfy the criteria of RCW 34.05.518(3) and a certificate of appealability is issued. *Panesko v. Lewis County* 00-2-0031 (MO 6-28-01)
- A GMHB retains jurisdiction over noncompliant actions regardless of and independent of any appeals that are filed, absent an order from the court of jurisdiction. *FOSC v. Skagit County 96-2-0025* (MO 3-8-01)
- Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- Once an appeal to court has been made, a GMHB loses jurisdiction over the issues relating to the court appeal for reconsideration purposes. *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- A decision regarding motions for reconsideration becomes the FDO for purposes of court appeal. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)
- A GMHB does not participate in a court appeal except for jurisdictional and procedural issues. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Where no appeal to court was taken from a FDO of noncompliance, a GMHB will not reverse that decision through a request for reconsideration of a compliance order entered some 13 months later. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

APPEALABILITY, CERTIFICATE OF

- *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Order [Denying] Application for Certificate of Appealibility (Feb. 8, 2010)

ARCHEOLOGY

- RCW 36.70A.020(13) directs that local governments (1) identify and (2) encourage preservation of archeologically significant lands, sites and structures. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- In order to comply with the GMA, a local government must adopt an identification process for known and potential archeological sites. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)

AVERAGE NET DENSITY

- In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Because of regionality within the counties and cities of the WWGMHB jurisdiction, it is impossible to establish a standard average density per acre or other mathematical baseline to determine compliance with the

GMA in the sizing or location of IUGAs. The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)

BEST AVAILABLE SCIENCE (BAS) (SEE ALSO CRITICAL AREAS)

- [When establishing buffers for streams, Petitioner, in citing to *Swinomish* and *Ferry County* asserted that the Record needs to contain evidence demonstrating that the County —undertook the required reasoned process of balancing the various planning goals against BAS. The Board disagreed and stated:] … the Board does not read these two cases as requiring a balancing between the GMA's mandate to protect critical areas and the non-prioritized goals jurisdictions are to use as a guide when developing comprehensive plans and development regulations. Rather, both *Swinomish* and *Ferry County* set forth the principle that if a jurisdiction seeks to deviate from BAS it must provide a reasoned justification for such a deviation. In addition, the Court of Appeals in *WEAN v. Island County* stated that it is when a jurisdiction elects to adopt a critical area requirement that is outside the range that BAS would support, the jurisdiction must provided findings explaining the reasons for its departure from BAS and identifying the other goals of GMA which it is implementing by making such a choice. Here, Jefferson County's choice of buffer width did not deviate from BAS; rather the County selected a width within the range of BAS and as such, although the balancing of GMA goals is always required in the context of GMA planning, the justification sought by OSF is not needed for a decision supported by BAS. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 19-20 (Nov. 19, 2008).
- [In response to a finding of non-compliance by the Board, the County reinstated previous provisions related to dike monitoring. Petitioners/Intervenors asserted that those provisions were not based on BAS and the program did not adequately protect critical areas. The Board held:]. Petitioners have failed to present any argument why the Skillings-Connolly report is no longer relevant BAS and have failed to present evidence of new BAS. Nor have they shown why the dike monitoring program, previously held to be compliant, is at odds with new BAS. Therefore, the Board concludes that neither the Petitioners nor the Intervenor have demonstrated that the County's actions in reinstating its dike monitoring program are clearly erroneous based on a failure to consider BAS or other unspecified "additional information". Furthermore, to the extent that the Petitioners or Intervenor are suggesting that the dike monitoring program is insufficient because it is not being properly implemented, the parties are reminded that the Board's role is to determine if the County's Comprehensive Plan and development regulations are in compliance with the GMA. The Board does not have any role in ensuring that the County fully implements its regulations.

ARD/Diehl v. Mason County, Case No. 07-2-0010, Order on Compliance, at 9-10 (Oct. 20, 2008).

- ICC 17.03.040 [a provision of the County's zoning code] was not amended by the challenged enactment and, since its adoption in 1998, RCW 36.70A.172(1), has not been subject to an amendment which would require Island County to update its zoning code. Thus, although on initial review it would appear WEAN's challenge to the definition set forth in ICC 17.03.040 is untimely, WEAN is not challenging ICC 17.03.040 in isolation but the incorporation of this provision into the critical areas ordinance (CAO) which is required to include BAS. The use of BAS would necessarily correlate to the most current science. *WEAN/CARE v. Island County,* Case No. 08-2-0026c, FDO at 16 (Nov. 17, 2008).
- [As to the GMA's requirement for the use of BAS, the Board noted:] … the adjective "available" generally meaning to be present or ready for immediate use. Therefore, the word "available" would be pointless if construed to mean science that is expected to be available at some future date, especially given the GMA's requirement to include BAS - as how can the County include that which does not exist? *WEAN/CARE v. Island County,* Case No. 08-2-0026c, Order on Reconsideration at 4 (Dec. 22, 2008).
- The Board recognizes that a graduate-level research study, such as the Pantier Thesis, may satisfy WAC 365-195-906's criteria for a valid scientific process. However, parties should not take for granted that any document will be automatically considered BAS under the GMA just because it is scientific in nature. Petitioners asserting that a jurisdiction has failed to utilize BAS and are countering the jurisdiction's actions with a competing document must ensure that the document conforms to the WAC criteria for BAS so that it will be properly considered by the Board. *WEAN/CARE v. Island County,* Order on Reconsideration at 10 (Dec. 22, 2008).
- WEAN wants the Board to ignore all other numbers in favor of the numbers presented in the Pantier Thesis. In other words, WEAN requests that the Board grant the Pantier Thesis the status of BEST available science and argues that Island County was required to use the results of that research when developing its definitional criteria for MF wetlands. RCW 36.70A.172 requires Island County to include and consider BAS when developing critical area regulations. In doing so, the County is permitted to not adopt WEAN's scientific recommendations and resources in favor of other valid scientific information. In fact, this is the discretion the Legislature has granted the County and to which the Board is directed to defer. It is not for the Board to decide what is the BEST science or to displace the County's judgment about which science to rely upon with its own. *WEAN/CARE v. Island County,* Order on Reconsideration at 12-13 (Dec. 22, 2008)
- For further discussion as to qualifications for BAS *See WEAN /CARE v. Island County,* Case No. 08-2-0026c, FDO at 49-54 (Nov 17, 2008).

- Criteria for determining which information is BAS are described in the Procedural Criteria for Adopting Comprehensive Plans and Development Regulations, Chapter 365-195 WAC. In WAC 365-195-905(5), there are listed six elements that a local jurisdiction should consider to determine whether the scientific information that has been produced was obtained through a valid scientific process such that it is the best available science. The "characteristics of a valid scientific process" are: peer review, methods, logical conclusions and reasonable inferences, quantitative analysis, context, and references. *ADR/Diehl v. Mason County,* Case No. 07-2-0010, FDO, at 7 (Jan. 16, 2008).
- [In considering "references" as provided in WAC 365-195-905(5)(a)(6), specifically "other pertinent existing information," the Board held]: [I]t is for the County to determine to what extent the Skillings-Connolly reports may be relevant, and to disclose the basis for either relying upon or departing from studies that have been accepted as BAS. Until that is done, the CMZ Study cannot be accepted as BAS. To the extent that the amendments to [the ordinance] rely upon a study that cannot yet be accepted as BAS, they fail to comply with RCW 36.70A.172(1). *ADR/Diehl v. Mason County,* Case No. 07-2-0010, FDO, at 8 (Jan. 16, 2008).
- [In considering "peer review' as provided in WAC 365-195-906(5)(a)(1), the Board, relying on *Concerned Friends of Ferry County v. Ferry County,* 155 Wn2d 824 (2005) held]: [T]he CTED guidelines provide guidance for the scientific methodology of the evidence. We need not decide whether peer review is mandated in *every* case. The failure of the CMZ Study to consider the Skillings Connolly reports or the relevant information regarding future flows from the Cushman dam demonstrates that peer review is necessary in *this* case. *ADR/Diehl v. Mason County,* Case No. 07-2-0010, FDO, at 11-12 (Jan. 16, 2008).
- [If a jurisdiction adopts a program as part of its critical areas protections, then the program] [M]ust comply with the provision of the GMA that dictates that "In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas." The County cannot make such a change to its critical areas' protections unless BAS is included in the record … Here, the record does not include BAS, a reasoned analysis of BAS by the decision makers, or an identification of the risks of departing from BAS and measures to minimize these risks. Therefore, the County's decision to abandon its dike monitoring program does not comply with RCW 36.70A.172. *ADR/Diehl v. Mason County,* Case No. 07-2-0010, FDO, at 14-16 (Jan. 16, 2008).
- The issue of allowing new residential construction in frequently flooded areas is a question of protection of critical areas. Pursuant to WAC 365-195-825(2)(b), "protection" of critical areas also means "to safeguard the public from hazards to health and safety." Whether to allow new residential construction in a frequently flooded area is a matter of hazards

to public health and safety. Therefore, the adoption of regulations allowing such residential construction must include BAS. *ADR/Diehl v. Mason County,* Case No. 07-2-0010, FDO, at 19 (Jan. 16, 2008).

- WAC 365-195-900 allows counties and cities to use information that local, state, or federal natural resource agencies have determined represented the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. Those provisions require that scientific information be produced through a valid scientific process subject to peer review and setting out methods, logical conclusions, quantitative analysis, context, and references. *ARD/Diehl v. Mason County,* Case No. 07-2-0006, FDO at 31 (Aug. 20, 2007)
- The requirement to include BAS in development critical areas regulations means that such BAS must be in the County's record … The requirement to included BAS does not shift the burden of proof in a case before the growth management hearings boards; the burden is not on the County to prove it used BAS. The County must show its work in its record but it is the Petitioner's burden to show that the science in the record is inadequate – to show where and how the best available science is missing, by analyzing what is the record and presenting the science Petitioner alleges has not been included. *ARD/Diehl v. Mason County,* Case No. 07-2-0006, FDO at 34 (Aug. 20, 2007)
- Based on the County's reasoned review of the factors in WAC 365-195-905(5) for determining if the NRCS BMPs constitute best available science; and the assessment of the state agencies with expertise in this area – Ecology, Fish and Wildlife, and CTED – we find that the NRCS BMPs constitute best available science for the regulation of ongoing noncommercial agricultural practices in Island County, so long as they are accompanied by monitoring and an adaptive management program. *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, September 1, 2006); *WEAN v. Island County*, WWGMHB Case No. 06-2-0012c (FDO, September 14, 2006).
- [T]he Board must still find that the wetland buffers and exemptions do not comport with best available science (BAS). They do not comport with the only BAS included in the record, provided by the Petitioners and the Washington State Department of Ecology (Ecology). The City has neither provided a reasoned discussion of why it has departed from the BAS offered by an agency with expertise nor provided an alternative source of BAS. *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, 12/27/05)
- RCW 36.70A.172(1) requires that BAS must be substantively included in the formulation of development regulations. We do not read RCW 36.70A.172(1) to require another BAS investigation for issuing permits. *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, 12/25/07)

- While we find that RCW 36.70A.172(1) does not require a new BAS investigation at the time of permitting, we find, as we have in previous cases, that discretion in issuing permit decisions should be guided by specific criteria. The City's requirements for an extensive critical areas report by a qualified biologist, coupled with the requirement that habitat alterations or mitigations must protect the quantitative and qualitative functions and values of habitat conservation areas when permits are issued, make these regulations compliant. *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, 12/27/05)
- Petitioners' argument that RCW 36.70A.172 must apply to all development regulations that may impact critical areas since other regulations could nullify the protections of the critical areas ordinance has no foundation in the GMA. First and foremost, the Board cannot impose a requirement that the GMA does not create. On its face, RCW 36.70A.172 only applies to the designation and protection of critical areas. "In designating and protecting critical areas under this chapter…" Therefore, inclusion of best available science and special consideration of anadromous fisheries is only required in the adoption of critical areas designations and protections. While a best available science analysis of the impact of zoning regulations on critical areas might be useful, the GMA does not require it. *Overton et al. v. Mason County,* WWGMHB Case No. 05-2-0009c (FDO, 11/14/05)
- If newly adopted regulations impact the effectiveness of the critical areas regulations, then the challenge to those new regulations would be that they violate the requirement to protect critical areas. However, this does not mean that they violate the requirement to include best available science in those protections. A challenge to development regulations that change the protectiveness of critical areas regulations would rest on RCW 36.70A.060 rather than on the failure to include best available science pursuant to RCW 36.70A.172. *Overton et al. v. Mason County,* WWGMHB Case No. 05-2-0009c (FDO, 11/14/05)
- In the adoption of Ordinance No. 2623, the City provided in the record neither scientific evidence, analysis by local decision makers of scientific evidence, nor other factors involved in a reasoned process, including local circumstances. RCW 36.70A.172 requires BAS to be applied both to the designation process and to the protection measures, *1000 Friends of Washington, Evergreen Islands, and Skagit County v. City of Anacortes*, 03-2-0017 (FDO, 2-10-04)
- In adopting Ordinance No. 2623, the City has not included BAS or a discussion of local circumstances in developing protection measures for FWHCAs in accordance with RCW 36.70A.172(1). For these reasons, we find that the protection measures for FWHCAs provided in Ordinance No. 2623 do not comply with the GMA, including RCW 36.70A.060(2), RCW 36.70A.040, and RCW 36.70A.172. *1000 Friends of Washington, Evergreen Islands, and Skagit County v. City of Anacortes*, 03-2-0017, (FDO, 2-10-04)

- The record for the adoption of Ordinance No. 2623 does not show that the City included best available science ("BAS") in the adoption of protection measures for FWHCAs … required by RCW 36.70A.172(1) of the GMA. *1000 Friends of Washington, Evergreen Islands, and Skagit Audubon Society v. City of Anacortes* 03-2-0017 (FDO, 2-10-04)
- While the Legislature could have imposed a more precise standard, the requirement to base the protection standard on BAS recognizes that science will change over time and the standards and protection measures will need to be revised. Standards and protection measures that are informed by BAS also provide cities and counties more flexibility to craft regulations that reflect local conditions. Nevertheless, this flexibility imposes on the County the complex responsibility of both setting a protection standard consistent with BAS, when the sources are sometimes conflicting, and harmonizing the goals and requirements of the GMA, while taking into consideration local conditions. *Swinomish Indian Tribal Community et al. v. Skagit County*; 02-2-0012c (Compliance Order, 12-8-03)
- When a less-than-precautionary approach is chosen for protection, that approach requires an effective monitoring and adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions adopted by the County achieve their objectives. *Swinomish Indian Tribal Community et al. v. Skagit County*; 2-2-0012c (Compliance Order, 12-8-03)
- A county which has considered the best available science and adopted less stringent protection standards that balance the need for protection of potable water supplies against the chilling effect of regulation against development has complied with the GMA only if the county also adopts a monitoring strategy that includes stricter development regulations that will be implemented at once if the less stringent protection standards prove to be inadequate to protect against seawater intrusion. *Olympic Environmental Council, et al. v. Jefferson County,* 01-2-0015 (Compliance Order, 12-4-02)
- The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continues to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new

development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)

- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under the record in this case, the County included a wide range of science and appropriately included BAS in its decision. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)
- Reduction of distance from a GHA location that required geological reports and assessments, was not in conformance with BAS and did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-13-01)
- A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO, 5-21-01)
- The designations of priority species and species of local importance that include areas associated with or inhabited by threatened, endangered, and/or sensitive species as well as state candidate and monitor species, under the record in this case complies with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- FWHCAs buffers are below the ranges required by BAS under the record in this case. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- The adequacy of a riparian buffer proposal is ultimately measured not by the characteristics of the buffer, but by the effect of that buffer on the fish habitat. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)

- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v.Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- The WDFW PHS does not constitute the only BAS for stream buffer widths. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- 'Available' means not only that the evidence must be contained in the record, but also that the science must be practically and economically feasible. 'Best' means that within the evidence contained in the record a local government must make choices based upon the scientific information presented to it. The wider the dispute of scientific evidence, the broader the range of discretion allowed to local governments. Ultimately, a local government must take into account the practical and economic application of the science to determine if it is the 'best available'. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- BAS was not satisfied where the record contained no scientific support of reduced buffers for activities defined as minor new development. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)
- Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- Where the record contains the only BAS that was available on a particular question, petitioner failed to sustain his burden of proving noncompliance by merely claiming the science was outdated. *Carlson v. San Juan County* 00-2-0016 (FDO, 9-15-00)
- The GMA requires a local government to adopt DRs that protect designated CAs. In discharging its duty to protect CAs a local government must include BAS and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- In deciding whether BAS has been accomplished a GMHB will review the scientific evidence contained in the record, determine whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reason process and whether the decision by the local government was within the parameters of the GMA under RCW 36.70A.172(1). *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- The provisions of BAS directing both preservation and enhancement of anadromous fish limits the discretion available to local governments and

requires a more heavily weighted towards science decision. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)

- Under *HEAL v. GMHB,* 96 Wn. App. 522 (1999) a local government has the authority and obligation to take scientific evidence and balance it among the goals and requirements of the GMA. However, the case inaccurately refers to the burden on petitioners to prove a local government acted "arbitrarily or capriciously." The case also apparently holds that scientific evidence must play a major role in the context of critical areas. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- In determining what is "science" under BAS a process that consists of four stages of (1) making observations, (2) forming hypothesis, (3) making predictions and (4) testing those predictions is fundamental to the establishment of an appropriate "science." A major principle of scientific inquiry is replication. The principle of replication is most generally used in the scientific community as "peer review". *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A 25-foot riparian buffer zone even if it is a managed, compact buffer zone for ongoing agricultural activities in a designated ALR was below the range of BAS as shown by the record. It did not fall within the range of peer tested BAS in the record. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A CAO that exempts Type 4 and 5 non salmon-bearing waters and does not provide for any buffering of those types of streams is not within the range of BAS and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A CAO that exempts any stream buffer with armoring from CA protection is not BAS and does not comply with the GMA. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- In deciding whether BAS has been accomplished a GMHB will review the scientific evidence contained in the record, determine whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reason process and whether the decision by the local government was within the parameters of the GMA under RCW 36.70A.172(1). *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A local government that ignores BAS recommendations from agencies with expertise, applies BAS for healthy streams to degraded ones and precludes the timely submission of agency BAS recommendations does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)

- The “special consideration” language relating to anadromous fish under RCW 36.70A.172(1) requires a result more heavily weighted towards science than might otherwise be required under the BAS provisions of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government may not ignore BAS in favor of the science it prefers simply because the latter supports the decision the local government wants to make. See *HEAL v. GMHB* 96 Wn. App. 522 (1999). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- A local government may not choose its own and/or outdated science and disregard BAS in order to support the choice it wants to make. See *HEAL v. GMHB* 96 Wn. App 522 (1999). *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- BAS includes both a procedural and a substantive element. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)
- If the local government fails to comply with the GMA because it does not adopt appropriate and specific standards and/or criteria to protect CAs, the question of BAS is not reached. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)
- Where certain aquifer recharge areas were not “critical” because they were not vulnerable to contamination, their lack of designation was within BAS as shown by the record. *ARD v. Shelton* 98-2-0005 (Compliance Order, 6-17-99)
- The discretion of a local government in designating and protecting CAs is limited by the requirements to: (1) ensure compliance with the GMA, (2) protect CAs, (3) ensure no net loss of CA functions, and (4) include BAS. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- The record contained no evidence that anadramous fish were given *any* consideration in the development of the FFA DRs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- Under the record in this case, inclusion of BAS meant that the FFA DRs must contemplate the likelihood of river avulsion. A moratorium prohibiting most development in the affected areas is only a temporary measure. Permanent regulatory measures are necessary to fulfill the

GMA requirement to protect FFAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)

- BAS requires that a local government also give special consideration to conservation and protection measures necessary to preserve or enhance anadramous fish. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- A local government cannot rely on a plan not yet developed to claim compliance with the GMA requirement to give special protection to anadromous fish. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- The broader the scientific evidentiary dispute, the greater discretion a local government has in choosing its course of action. *Storedahl v. Clark County* 96-2-0016 (Compliance Order, 12-17-97)
- Where a range of recommendations from sources with expertise was considered and wetland buffers were established at the minimum end of the scientifically accepted scale but were within the BAS range, GMA compliance was achieved. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- A standard 50-foot buffer for type IV and V waters, while at the low end of the range of scientific recommendations, achieved compliance because the buffers were within the range of BAS shown in this record. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Where BAS in the record showed that the County excluded designation and protection of important habitat areas without any detailed reasoned analysis, except a claim of insufficient time, the action did not comply with the GMA. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The requirements of RCW 36.70A.172(1) require a local government to use BAS when designating and protecting CAs to protect their functions and values. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- A local government is required to substantively include BAS in the designation and protection of CAs. Consideration only is not sufficient to comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- A GMHB should determine whether compliance with the requirement of BAS has been achieved by looking at the scientific evidence contained in the record and then determining whether the analysis by the local decision-maker involved a reasoned process and whether the decision was within the parameters established by RCW 36.70A.172. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- Local conditions have an impact in determining what is the “best” science. The goals of the GMA, the practicality of the science and the fiscal impact must be balanced by a local government in determining how to designate and protect CAs. The scientific evidence must be contained within the record but also must be practical and economically feasible. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- Local governments are required under RCW 36.70A.172(1) to include conservation and protection measures “necessary to preserve or enhance

anadromous fisheries." Local government discretion is restricted when dealing with anadromous fish. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)

- The provisions of RCW 36.70A.172 apply only to CAs and do not apply to purely stormwater issues. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- Definitionally RCW 36.70A.172(1) applies to designating and protecting CAs, but does not apply to a review of the CAO for consistency with the CP. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Future amendments to a noncompliant CAO must address BAS under RCW 36.70A.172. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- The requirements of RCW 36.70A.172 do not apply to the issue of compliance of a CAO adopted before the BAS requirement became effective. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)

BEST MANAGEMENT PRACTICES (BMPS)

- For agricultural practices, the state agencies recommend BMPs rather than buffers. In the 2005 publication *Wetlands in Washington State: Vol 2: Guidance for Protecting and Managing Wetlands* (R-8769-12c), the state Departments of Ecology and Fish and Wildlife clearly express this view: BMPs should be used to regulate ongoing agricultural activities… Where the agencies with expertise and responsibility for addressing protection of critical areas unequivocally recommend the use of BMPs instead of standard buffers, Petitioner has a heavy burden to show that the BMPs are not adequate protection under RCW 36.70A.170 and 36.70A.060. *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, September 1, 2006).
- Where standard buffers widths respond to a variety of possible circumstances, BMPs and farm plans are able to target more specifically the practices that are actually in use on each farm. *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, September 1, 2006).
- A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO, 5-21-01)
- Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)
- In order for BMPs to be the basis for exemptions from a CA ordinance there must be effective monitoring and enforcement provisions to ensure that BMPs are implemented and followed. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)

- If BMPs are relied upon for protection of CAs, some type of monitoring and enforcement must be included to ensure that the BMP plans are actually implemented and followed. BMPs may be voluntary and individually developed but benchmarks, timeframes and monitoring must be established to ensure actual protection. There must also be a non-voluntary fallback approach. BAS applies directly to such BMPs. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)

BOARD RULES (SEE ALSO PRACTICE BEFORE THE BOARD)

- *Gagnon/Olympic Peninsula Development Co. v. Clallam County,* Case No. 09-2-0004, Order on Dispositive Motion, at 6 (May 4, 2009)(Noting that the Boards' published rules do not make exceptions for *pro se* or novice petitioners. All parties coming before the Board are held to the same standard and must comply with all procedural rules).
- Although we do not agree with the County's argument that the Board has the authority to dismiss a petition on the grounds that it raises issues that are already being addressed in a compliance order, we do agree that the same result should apply to the same issues, regardless of the case name or number in which they arise. We also agree that it is unnecessarily burdensome for the parties to juggle several cases rather than to be able to address all the related issues in a single case. *Vinatieri, Smethers and Knutsen, et al. v. Lewis County,* 03-2-0020c (FDO, 5-6-04)
- The filing of a motion is deemed complete upon actual receipt at the Board's office. WAC 242-02-330(1). A responding party must ascertain the actual date of filing and either respond within ten days or request an extension to respond. *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)
- A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)
- An argument raised for the first time at the HOM under the record in this case will not be considered. *FOSC v. Skagit County* 00-2-0048c (FDO, 2-6-01)
- A County may not raise an issue at the issue at the HOM that it did not present in its responsive brief. WAC 242-02-570(1). *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- The reconsideration rules provision of WAC 242-02-832 does not authorize the filing of a reply brief to a response to the motion for reconsideration. Each side gets one opportunity to set forth arguments on reconsideration. The reply brief will be stricken. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)
- A cross-motion filed after the date fixed in the PHO for filing motions will be stricken from the record and not considered. *Servais v. Bellingham* 00-2-0020 (MO 8-9-00)

- The provisions of WAC 242-02-522(8) authorizing joinder of additional parties has never been used. A GMHB will balance the fair treatment of those who have expressed an interest in the matter with ensuring the prompt and orderly disposition of a case and assuring that the rules do not overburden parties with limited resources. A GMHB will avoid any chilling effect on citizen involvement. Under the record here, the motion is denied. An informational packet for potential intervenors was sent to the parties for whom the county requested joinder. *FOSC v. Skagit County* 99-2-0016 (MO 6-10-99)
- WAC 242-02-558(10) authorizes a GMHB to enter orders that address any matters that may expedite a hearing. Under the circumstances in this case, a prehearing order requiring a notice of appearance by an attorney to be filed not later than seven days in advance of the hearing on the merits is essential for the proceedings to advance in an orderly and fair manner. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)
- Where an attorney appeared seven days before the hearing on the merits on behalf of a pro se petitioner and the arguments made at the hearing were significantly more specific than the opening brief, the respondents will be allowed an opportunity to supply post-hearing briefs. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- The GMA establishes a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. It is within the purview of the joint Boards to adopt a rule defining actual receipt of a petition for the establishment of the date of filing. *Weber v. Friday Harbor* 98-2-0003 (MO 4-16-98)
- RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure" does not authorize a GMHB to impose a jurisdictional requirement for service of a PFR when no such specific authority is provided in the GMA. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- WAC 242-02 does not contain a requirement for a party submitting a motion to be given an opportunity to rebut the response. *FOSC v. Skagit County* 95-2-0065 (MO 8-13-97)
- Amendments to RCW 36.70A.270(7) found in ESB 6637 adopted in 1996 show a legislative intent that the Administrative Procedures Act (RCW 34.05) is to be the primary focus of a GMHB for procedural issues, rather than WAC 242-02. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- The GMA does not have a requirement of service other than filing with a Board office. WAC 242-02-230 provides that substantial compliance is sufficient. In order to justify a dismissal for failure to serve, a local government must demonstrate that it has suffered prejudice. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)
- The requirement to list the addresses of the petitioners in the PFR is not jurisdictional and failure to do so did not warrant dismissal. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)

- WAC 242-02-110 allows a non-attorney who is a member of the group to represent such a group but does not authorize a non-attorney to represent a person. *FOSC v. Skagit County* 95-2-0065 (MO 5-26-95)

BOARDS

- Presentation by planning staff and planning consultants for the county was clear, informative and responsive and was within our original expectation that planning personnel, rather than attorneys, would represent local governments in GMHB hearings. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Accommodation of regional differences is a factor built into the GMA and is often reflected in differences among the holdings of the three boards. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)

BUFFERS (SEE ALSO BEST AVAILABLE SCIENCE AND CRITICAL AREAS)

- [W]e find that in forest lands, determination of buffer widths for habitat areas on a case-by-case basis is consistent with the best available science in the record - the advice given by the Washington Department of Community, Trade and Economic Development (CTED) Critical Areas Assistance Handbook… we find that the City's requirements that an extensive critical area report must be prepared by a biologist with experience in the type of habitat being regulated and the general standard that the review will be based upon protecting the functions and values of habitat make this regulation compliant. *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, 12-27-05)
- Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area

to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)

- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)
- FWHCAs buffers are below the ranges required by BAS under the record in this case. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- The adequacy of a riparian buffer proposal is ultimately measured not by the characteristics of the buffer, but by the effect of that buffer on the fish habitat. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)

- The WDFW PHS does not constitute the only BAS for stream buffer widths. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- BAS was not satisfied where the record contained no scientific support of reduced buffers for activities defined as minor new development. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Reducing buffers for minor new development defined in the CAO to widths smaller than those adopted for major activities substantially interfered with Goals 10 and 14 of the Act. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- In order to remove a previously imposed finding of invalidity the County must make a 50-foot buffer requirement applicable to all Type 5 streams. The County in this case has not sustained its burden of showing its action removed substantial interference with the goals of the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- A CAO that exempts Type 4 and 5 non salmon-bearing waters and does not provide for any buffering of those types of streams is not within the range of BAS and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A CAO that exempts any stream buffer with armoring from CA protection is not BAS and does not comply with the GMA. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- An administrative discretion to reduce buffers by 25% and preclude gathering of information to justify greater buffer widths does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Use of a 50-foot buffer in rural lands and a 100-foot buffer in UGAs and rural lands of more intense development to segregate agricultural RLs

from incompatible uses complies with the GMA. There is no specific GMA requirement for the minimum width of such buffers. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)

- Exempting "functionally isolated" buffers (divided by roads, etc.) from protection does not comply with the GMA under this record. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Buffer widths from 5 to 20 feet for lands adjacent to agricultural lands did not assure that such adjacent lands would not interfere with continued use of the RL and therefore did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)
- While elimination of nonconforming lots adjacent to RLs may be impossible because of prior vesting, under the record here the county must take some action to buffer and keep conversion pressure away from the RLs. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Where a range of recommendations from sources with expertise were considered and wetland buffers were established at the minimum end of the scientifically accepted scale but were within the BAS range, GMA compliance was achieved. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- A standard 50-foot buffer for type IV and V waters, while at the low end of the range of scientific recommendations, achieved compliance because the buffers were within the range of BAS shown in this record. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- A separate CA permit is not required by the GMA, but in order to comply with the GMA the ordinance must be clear that no adverse alteration to CAs or their buffers' functions and values can occur and that, if damaged, buffers must be allowed to rehabilitate to their pre-damaged purpose and function. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The reduction of riparian habitat buffering recommendations without a scientific basis, nor with a reasoned analysis did not comply with the BAS requirement of the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The elimination of buffer protection for class IV and V waters and a limited buffer for class II and III waters under the record in this case did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- The requirement of RCW 36.70A.060 that local governments shall assure the use of lands adjacent to RLs shall not interfere with their continued use as RLs, provides the basis to require adequate buffering between RLs and incompatible uses. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A local government decision that distinguishes the size of a wetland buffer in an urban area from the size of a wetland buffer in a rural area complies with the GMA. *CCNRC v. Clark County* #92-2-0001 (FDO, 11-10-92)

BUILDABLE LANDS REPORT

- A *Buildable Lands Report* (BLR) is a requirement arising from RCW 36.70A.215 for six counties and their cities – Clark, King, Kitsap, Pierce, Snohomish, and Thurston. Any other county may prepare a BLR, but it is not required. The primary purpose of the BLR is to review whether a county and its cities are achieving urban densities within the UGAs by comparing growth and development assumptions, targets, and objectives set forth in the countywide planning policies and comprehensive plans with actual growth and development that has occurred over the past five years in the county and its cities. The BLR is retrospective – looking back over the past five years of development to see how well the county and its cities have performed. The information developed through the BLR provides important information for updating and, perhaps, revising a County's Land Capacity Analysis. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c, Order on Reconsideration, at 16 (June 18, 2008). [A BLR is not required in Skagit County but the Board discussed this report since the parties, both Petitioner and the County, appeared confused over the difference between a BLR and a LCA].

BURDEN OF PROOF

1. In General

- [In responding to Futurewise's assertion that the County failed to designate some land as Agricultural Land when it met the County's criteria, the Board noted:] Futurewise merely cites an exhibit and makes no argument to demonstrate how these areas in fact meet the County's criteria and were, therefore, improperly excluded. It is Futurewise's duty, not the Board's, to demonstrate through evidence contained in the record how these areas satisfied the County's designation criteria for LTA. The bare assertion that there is evidence in the record to support Futurewise's argument fails to sustain their burden of proof. *Futurewise v. Thurston County,* Case No. 05-2-0002, Compliance Order, at 6 (April 22, 2009)
- When a petitioner alleges that an agreement or other official document is a *de facto* comprehensive plan amendment or development regulation, the burden is on the petitioner to demonstrate that the document does in fact constitute a *de facto* comprehensive plan amendment or development regulation. *City of Anacortes v. Skagit County and Washington Department of Ecology,* WWGMHB Case No. 07-2-0003, Order Dismissing PFR (July 2, 2007)
- Any allegation must be supported by the relevant evidence. Here, Petitioner has not provided the Board with enough evidence to enable the Board to assess the County's [SEPA] determination. In fact, Petitioner never mentions the County's determination other than to say that an environmental impact statement should have been prepared. Since all of Petitioner's arguments on this point were submitted in prior hearings, it is not clear whether the County's determination itself is part of the evidence

in this case, and to what extent (if any) the DNS relied upon prior environmental reviews. Under these circumstances, the Board finds that Petitioner has not met its burden of proof on this issue. *WEAN v. Island County*, WWGMHB Case No. 06-2-0012c (FDO, 9-14-06).

- In this decision, the Board finds that Petitioner has not met its burden of proof that the County's new regulation is less effective than the County's old lot aggregation ordinance for reducing substandard lots in NRLs and Rural Lands for the purpose of conserving agricultural lands, preventing sprawl, and precluding the need for urban services. *Evergreen Islands, et al. v. Skagit County*, Case No. 00-2-0046c (Compliance Order, May 19, 2005)
- The Board's earlier finding of noncompliance addressed uses that are not resource-related. Since the listed accessory uses must be limited to those which are resource-related, the burden is on Petitioners to show that these uses do not comply with the GMA. *Butler, et al. v. Lewis County,* 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04).
- The burden is not on the County to show consistency; the burden is on the challenger to show *inconsistency***.** The GMA does not require the County to demonstrate that it harmonized all of its planning documents when it undertakes an amendment of them. This does not mean that the County is free to enact legislation that is inconsistent with the requirements of the GMA and its own planning policies; it just means that the burden is on any petitioners to show that the inconsistency exists. It is not enough for the Petitioner to allege that the record is deficient in demonstrating the County's review of its planning documents. The Petitioner must show where the alleged inconsistency lies. *Cal Leenstra v. Whatcom County,* 03-2-0011 (FDO, 9-26-03)
- When a County has done an excellent job of showing its work, that diligence makes it difficult for petitioners to overcome their burden of showing the County's choices are clearly erroneous. *People for a Liveable Community et al. v. Jefferson County*; 3-2-0009c (FDO, 8-22-03)
- The legislative action taken by a local government is presumed valid upon adoption. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. RCW 36.70A.320*.* *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their

burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (ComplianceOrder,10-26-01)

- Where petitioners fail to sustain their burden of proof of showing that the redesignation of petitioners' property did not comply with the Act, the county is found to be in compliance. *Gudgell v. San Juan County* 00-2-0053 (FDO, 4-10-01)
- An action is clearly erroneous if a GMHB is left with a firm and definite conviction that a mistake has been made. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- A GMHB must find compliance unless the petitioner sustains its burden of proof of showing the action is clearly erroneous in view of the entire record and the goals and requirements of the GMA. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- Where the record contains the only BAS that is available on a particular issue, petitioner fails to sustain its burden of proving noncompliance. *Carlson v. San Juan County*00-2-0016 (FDO, 9-15-00)
- Ordinance amendments made in response to a finding of noncompliance are presumed valid. Petitioners bear the burden of proving under the clearly erroneous standard noncompliance with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- Where the record showed compliance with RCW 36.70A.070(5) in designating rural centers because the county started at the correct beginning point, adopted appropriate criteria, and applied those criteria on a consistent basis and minimized and contained existing areas of more intense development, petitioner had not sustained its burden of showing the county's action was clearly erroneous. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- Where the record demonstrated that the local government had used inappropriate criteria in failing to designate RLs and that the criteria that were used were used incorrectly, the petitioner sustained its burden of proving that the county action failed to comply with the GMA under the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to make a final decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- Under the clearly erroneous standard the relevant consideration is "has petitioner demonstrated by competent evidence that the county is clearly erroneous in its adoption of the current ordinance as it relates to the issues properly under consideration in this compliance hearing." *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)

- RCW 36.70A.320(2) establishes that the burden is on petitioners to prove noncompliance under the clearly erroneous standard. *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- The burden of showing noncompliance rests with the petitioner. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- The failure to brief or supply oral argument supporting the legal and factual basis of a claim leads to the inescapable conclusion that petitioners have failed to meet their burden of proof. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- When a local government action was taken prior to July 27, 1997, the effective date of ESB 6094, but the GMHB hearing and decision was subsequent to that date, the procedural provisions of the new amendments apply to the decision in the case. Such provisions include substitution of the clearly erroneous standard for the previous preponderance burden. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Where the hearing and decision for compliance postdate the effective date of ESB 6094, the petitioner has the burden of proof under the clearly erroneous standard. *Storedahl v. Clark County* 96-2-0016 (Compliance Order, 12-17-97)
- Under the new provisions of ESB 6094, the burden of showing noncompliance is on the petitioners. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Once or if a local government meets its burden of showing it no longer substantially interferes with the fulfillment of the goals of the GMA, the petitioner then bears the burden under the clearly erroneous standard of proving the action does not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- The procedural aspects of ESB 6094, including the new burden of proof, apply to an action taken prior to the effective date of ESB 6094 where the GMHB hearing and decision postdates the effective date. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- Regardless of whether a GMHB decision issued after July 27, 1997, involves either a new petition or compliance hearing, the new clearly erroneous standard of review applies. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- Under the clearly erroneous standard a GMHB, after reviewing the entire record submitted by the parties in light of the policies, goals and requirements of the GMA, will find a state agency or local government in compliance unless and until the person challenging the action persuades the GMHB that, with a definite and firm conviction, a mistake has been made. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- The clearly erroneous standard applies in all situations except those dealing with invalidity or the shoreline element. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)

- Where a county adopts its CP and implementing DRs prior to July 27, 1997, and the last petition challenging those actions was filed August 4, 1997, the procedural requirements of ESB 6094 apply to a GMHB hearing and decision. *Abenroth v. Skagit County* 97-2-0060 (MO 10-8-97)
- The substantive provisions of ESB 6094, effective July 27, 1997, clarified ambiguities and can provide useful and instructive demonstrations of legislative intent, even when a local government took action prior to July 27, 1997. Under the specific language of Section 53, a GMHB may not find noncompliance based upon the legislative changes. *Abenroth v. Skagit County* 97-2-0060 (MO 10-8-97)
- [*The GMA was subsequently amended to change the burden of proof from a preponderance of the evidence to clearly erroneous. This excerpt remains in the Digest of Decisions to show the history of the Boards*] The petitioner has the burden of demonstrating by a preponderance of the evidence in the record that the methods chosen by the local government to designate and protect CAs and their buffers do not comply with the goals and requirements of the GMA. It is not the role of a GMHB to determine if the ordinance might have been done differently or better. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- *For other historic cases addressing the presumption of validity within the context of Preponderance of the Evidence, see: MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96); *Diehl v. Mason County* 95-2-0073 (RO 2-22-96); *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94); *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)
- Local government CPs and DRs are presumed valid upon adoption. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- A respondent jurisdiction previously found to be noncompliant with the GMA has the burden of showing compliance. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- The GMA requirement for an IUGA land capacity analysis does not shift the burden of proof to a local government but simply provides an analytic framework to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used or that it was used in a way that did not comply with the GMA is on a petitioner. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Once a determination of noncompliance has been made, the presumption of validity has been overcome and the local government thereafter has the burden of showing compliance has been achieved. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 2-28-95)
- The record is the source of evidence upon which a GHMB bases its decision about compliance or noncompliance. Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute valid challenges, the preponderance test will be met. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)

- The parties to this compliance hearing agreed that the burden of proof rested upon the county. The GMA is unclear as to the burden of proof in a compliance hearing because of the presumption of validity versus the logic of having a local government come forward with evidence of compliance once noncompliance has been established. *Port Townsend v. Jefferson County* 94-2-0006 (ComplianceOrder,12-14-94)
- The burden of showing noncompliance rests with the petitioner. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

2. Invalidity

- *WEAN v. Island County,* Case No. 08-2-0032, Compliance Order (Nov. 9, 2009)(Petitioners failed to attend the compliance hearing but, since the Board's FDO had found that the County's action substantially interfered with Goals 2 and 8 of the GMA, the County bore the burden of demonstrating that the action taken to achieve compliance resulted in regulations which no longer substantially interfered with those GMA goals).
- BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (ComplianceOrder,10-26-01)
- A local government has the burden of proof to demonstrate that an ordinance it enacted in response to a determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- Where a subsequent LAMIRD ordinance reduced the areas that were established in the CP, the burden of showing substantial interference rests with the petitioners. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county has the burden of showing that the ordinance that was enacted "in response" to a determination of invalidity will no longer substantially interfere with the goals of the Act under RCW 36.70A.320(4). Where ordinances have been adopted prior to a finding of invalidity, a county accepted its burden for a request to rescind or modify those determinations of invalidity. Where no motion to rescind or modify was

filed, the 45-day time limitation of RCW 36.70A.330(2) did not apply. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- A local government has a burden of proof, under RCW 36.70A.320(4), that its action removes substantial interference with the goals of the Act in order to rescind or modify invalidity. *Panesko v. Lewis County* 00-2-0031c (MO 2-26-01)
- Pursuant to RCW 36.70A.320(4) a local government subject to a determination of invalidity has the burden of demonstrating that the ordinance that it enacted in response to the initial determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act under the standard expressed in RCW 36.70A.302(1). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)
- Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- Where invalidity has previously been found, a local government has the burden to show that it no longer substantially interferes with the goals of the GMA. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- Where the petitioners overcame the presumption of validity and proved that changes to an ordinance in response to a finding of invalidity did not comply with the GMA, and the county failed to meet its burden of demonstrating that substantial interference with the goals of the GMA had been removed, rescission was denied. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- For those elements of the CP and DRs previously subject to a determination of invalidity the local government has the burden of demonstrating that the ordinance or resolution enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the GMA. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- On a motion to rescind invalidity a local government has the burden of showing that the legislative action adopted in response to a determination of invalidity no longer substantially interferes with the goals of the GMA. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- Where a portion of the CP and/or DRs relate to a prior determination of invalidity, a local government had the burden of demonstrating the amended provisions no longer substantially interfered with the fulfillment of the goals of the GMA. If the county meets this burden the amendments are then presumed valid and the burden shifts to the petitioner to show that the county's action is not in compliance with the GMA. RCW 36.70A.320. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)

- Under recent amendments to RCW 36.70A.320(4), in a rescission of invalidity hearing the local government has the burden of showing that it no longer substantially interferes with the fulfillment of the goals of the GMA. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- A local government subject to a determination of invalidity has the burden of demonstrating that an ordinance adopted in response to the invalidity no longer substantially interferes with the goals of the GMA under the 1997 amendments found in ESB 6094, effective July 27, 1997. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- A GMHB will apply the presumption of validity found in RCW 36.70A.320(1) regardless of which party has the burden of proof. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- Petitioner has the burden of proof of demonstrating substantial interference with the goals of the GMA. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 7-31-96)
- At the hearing on the merits or at a compliance hearing the party asserting substantial interference with the goals of the GMA has the burden of proof. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 2-28-95)

3. State Environmental Policy Act (SEPA)

- Petitioners cannot merely assert a challenge to the threshold determination and thereby shift the burden to the City to prove that its SEPA threshold determination was correct. The burden is on Petitioners to prove their claims. *Camp Nooksack Association v. City of Nooksack*, 3-2-0002, (FDO, 7-11-03).
- Petitioners have the burden of showing a lack of SEPA compliance for GMA purposes based on the clearly erroneous standard. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a County significantly amended its 1992 CAO, adopted several existing environmental documents under WAC 197-11-630 and issued a DNS, petitioners did not sustain their burden of showing the DNS was clearly erroneous. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- The clearly erroneous standard applies to a determination of non-significance. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- A review of a DNS by a GMHB is conducted under the clearly erroneous standard. The burden of proof is on petitioners. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)

- The burden of showing that an EIS is inadequate rests with the petitioner. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)

4. Shoreline Management Act (SMA)

- A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- In an appeal of a proposed amendment to the local SMP for shorelines of the state, the scope of review addresses the question of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- Under RCW 90.58.190(2)(d) the appellant has the burden of proof in a GMHB hearing. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- RCW 90.58.190(2)(b) does not specify whether a GMHB is to review the decision of DOE or the initial decision of the local government. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- RCW 90.58.190 requires a GMHB to uphold the decision of DOE unless an appellant sustains the burden of proving that DOE's decision did not comply with the requirements of the SMA, including the policies of RCW 90.58.020 and applicable guidelines, the goals and requirements of the GMA, and the SEPA requirements for adoption of amendments under RCW 90.58. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)

CAPITAL FACILITIES ELEMENT (SEE ALSO SEWER, STORMWATER, ETC)

- [In finding the General Sewer Plan adopted by reference in the County's Comprehensive Plan complied with the GMA, the Board stated:] The Board has held that counties can rely on water and sewer districts to provide capital facilities to UGAs as long as the plan is incorporated into the comprehensive plan to fulfill GMA requirements. The Board agrees with the County that the sources of money to which Petitioner objects [District's user fees, surcharges, and capital reserve funds] are commonly used to fund sewer plans and that the District is authorized by RCW 57.08.050 to fix rates, assess connection charges, and sell bonds. Coordinated Cases of *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance at 12 (Jan. 30, 2009).
- While the Board has no jurisdiction over County approval of the District's Plan pursuant to RCW 57.16.10, it does have jurisdiction to determine whether the County's Comprehensive Plan's capital facilities element, of

which the District's sewer plan is now a part, complies with the GMA. Coordinated Cases of *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance at 16 (Jan. 30, 2009).

- [T]he Board disagrees with [Petitioner] that the County's Comprehensive Plan should propose sewer lines outside of a UGA where a documented health hazard may occur in the future. Coordinated Cases of *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance at 18 (Jan. 30, 2009).
- By including the District Plan's proposed extensions [of sewer lines] outside the UGA, including an extension to a nonexistent LAMIRD, where no documented health hazard exists, and no investigation of other alternatives to sewer service has been discussed in its capital facilities element, the County's capital facilities element for sewer service does not comply with RCW 36.70A.110(4). Such extensions increase the pressure to urbanize in rural areas and increase the potential for sprawl in violation of RCW 36.70A.020(2) … according to RCW 57.16.010, the County only needed to adopt certain parts of the District's plan. More specifically, the County only needed to incorporate the parts of the District's Plan necessary to fulfill GMA requirements and comply with the GMA. Coordinated Cases of *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance at 18-19 (Jan. 30, 2009).
- The Capital Facilities Plan, including the referenced Belfair and Allyn Stormwater Plans, provides no narrative that shows the sources for funds in the grant category of the six-year plans. While the March 24, 2008 Planning Advisory Commission and the June 17, 2008 Staff Report on adopting a stormwater utility indicate that grants have been secured to support the six-year stormwater capital facilities plan, the six-year capital facilities plan does not indicate the sources of the grant funding, whether they have been secured, or evaluate the likelihood of obtaining these grant resources. Also, "Other Sources" are not identified so is impossible to determine if stormwater utility rates will be needed to finance stormwater capital facilities, or what these other sources might be. Because the County's six-year capital facilities plan does not clearly identify sources of public money needed to finance the stormwater plans , it does not comply with RCW 36.70A.070(3)(d). *ARD/Diehl v. Mason County,* Case No. 06-2-0005, Compliance Order, at 12-13 (Dec. 9, 2008)
- The County has now adopted a development regulation, MCC17.03.030 B (1), that allows for commercial and industrial development on temporary holding tanks within the UGA. These regulations conclude that temporary holding tanks are not considered an "on site septic system". While temporary holding tanks are not an "on-site system" that does not mean

they are an urban service pursuant to RCW 36.70A.030(20) … The Board has the same concerns about temporary holding tanks that we had about community septic systems. MCC 17.030.030 B(1) continues to allow urban growth before urban services are available. Therefore, Mason County has failed to carry its burden of proof that it no longer allows urban development without the availability of urban services. *ARD/Diehl v. Mason County,* Case No. 06-2-0005, Compliance Order, at 18 (Dec. 9, 2008)

- Even though this Board has held almost since its inception that the GMA required counties to show how it planned to serve its entire UGA and that these plans should not be speculative, the Board also recognized that policies, regulations, and plans needed more flexibility in later years of the plan [noting that Goal 12 requires reasonable assurances, not absolute guarantees, and that funding strategies will need to be more flexible in later years and more definitive in the immediate future]. *ARD/Diehl v. Mason County,* Case No. 06-2-0005, Compliance Order, at 23 (Dec. 9, 2008)
- RCW 36.70A.020(9) is a GMA goal. Consideration of that goal needs to be grounded in the assessment of the UGA's capital facilities needs for recreational facilities as evidenced in the Record. Although the evidence in the Record shows a great desire for a soccer complex and that advocates believe there is a need for such a facility, there is no evidence in the Record that shows what the County's level of service for soccer fields is, whether a deficiency for these recreational facilities exist, whether other suitable properties were considered and rejected, and that there is a need to expand the UGA in this location for just this single-purpose reason. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, FDO at 13-14 (Oct. 13, 2008)
- In addressing Skagit County's 11-year effort to establish a non-municipal Urban Growth Area (UGA), the Board noted how difficult it is to establish a non-municipal UGA especially in regards to providing urban services to the UGA when relying on multiple non-County owned service providers. The Board addressed the capital facilities for the UGA including parks, fire, school, and sewer service. *Abernoth, et al and Skagit County Growthwatch, et al v. Skagit County,* Coordinated Case Nos. 97-2-0060c and 07-2-0002, Compliance Order (Dec. 23, 2008).
- [T]he Board finds the GMA does not require the County to provide urban services immediately to the entire UGA or prohibit the County from providing reasonable options for development in the UGA before they arrive. Nevertheless, these options [such as sewer connection standards, concurrency requirements, zoning regulations, and existing land use patterns] must be provided consistent with GMA requirements and goals. *Abernoth, et al v. Skagit County,* Coordinated Case Nos. 97-2-0060c and 07-2-0002, Compliance Order, at 23 (Dec. 23, 2008).
- [In the original FDO(s), the UGA element did not contain the necessary capital facilities planning. On compliance, the Board found:] … that the

County's capital facilities plan re-adopts the PUD Water System Plan by reference. This amendment adds the necessary inventory, locations, and capacities of future water system facilities needed to comply with RCW 36.70A.070(3)(a)(b) and (c). Additionally, the County has removed the earlier language suggesting that further amendments in the PUD Water System Plan could occur without independent review and approval by the County through the Comprehensive Plan amendment process. *ICAN v Jefferson County,* Coordinated Case Nos. 03-2-0010, 04-2-0022, 07-2-0012, Order on Compliance, at 6 (Oct. 22, 2008).

- [A county regulation that requires a development on a community septic system to connect to the public sewer system when the sewer is within 500 feet] does not ensure that urban levels of sewer service will be available to serve the new urban development allowed. The most serious risks are posed outside the commercial core, where the proposed sewer mains are not funded and therefore not scheduled for construction. In addition, without a requirement that connectors be built from the new subdivisions to the sewer mains, there is no assurance that urban levels of sewer will ever be provided to new urban development located more than 500 feet from the planned and publicly funded sewer mains. *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 14.
- While the residences on community septic are required to hook up to public sewer once the sewer connector lines are within 500 feet, there is no mechanism for ensuring that the sewer connector lines will come within 500 feet of the new development. Further, without financing for the sewer mains to serve East and North Belfair, new urban development on community septic systems could wait indefinitely for public sewer. *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007).
- While we do not doubt Mason County's good faith in pursuing its sewer plan, it does not have a compliant sewer plan for the Belfair UGA yet. Since the amendments to MCC 1.30.030 and 1.30.031 are predicated upon the existence of a sewer plan for the entire Belfair UGA and do not set minimum urban densities, we cannot find they achieve compliance at this time. They are clearly erroneous and continue to violate RCW 36.70A.110(3), 36.70A.020(2) and 36.70A.020(12). *ADR/Diehl v. Mason County,* WWGMHB Case No. 06-2-0005, Order on Compliance (May 14, 2007)
- The Board declines to accept a universal principle that a non-compliant capital facilities plan necessitates invalidating all development regulations. Petitioners must specify the development regulations that are alleged to be non-compliant and invalid and show how each fails to comply with the requirements and goal of the GMA. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 62 (Aug. 6, 2007)
- The Board has long held that these two requirements [RCW 36.70A.070(3)(b) and 36.70A.110(3)] read together obligate counties and

cities to include in the comprehensive plan's capital facilities element the proposed locations, capacities, and funding for the 20-year planning period covered by the comprehensive plan. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 17 (Aug. 6, 2007)

- [A] comprehensive plan should either contain the relevant information from non-county owned capital facilities or reference the information clearly so that it is accessible to the public. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 20 (Aug. 6, 2007)
- [T]here must be a capital facilities funding plan for both Bayview Ridge and the County as a whole to cover the 6-year period from the date of the establishment of the Bayview Ridge UGA so that both plans are consistent. The absence of such a CIP fails to comply with RCW 36.70A.070(3)(d). *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 27 (Aug. 6, 2007)
- The capital facilities financing plan does not yet show how the County "will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes". RCW 36.70A.070(3)(d). The County's planning estimate is a good start but does not yet fulfill the requirement for a six-year financing plan. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, August 14, 2006)
- Reliance upon private purveyors of sewer and water utilities within the UGA is an acceptable means of bringing urban levels of service to the Lopez Village UGA. However, because the capital facilities plans of the private providers have not been incorporated into the County's comprehensive plan in a manner that fulfills the requirements of RCW 36.70A.070(3)(a)-(d), and because no agreement exists with the private water and sewer purveyors to provide service to the entire UGA, the Lopez Village UGA capital facilities planning is clearly erroneous pursuant to RCW 36.70A.320(3) and remains non compliant with RCW 36.70A.070(3)(a), (b), (c), (d) and RCW 36.70A.020(12). *Stephen F. Ludwig v. San Juan County,* WWGMHB Case No. 05-2-0019c (FDO, Compliance Order, April 19, 2006)
- A major deficiency in the County's remand work is the absence of a capital facilities plan showing the capacity and locations of sewer facilities to serve the entire UGA in the 20-year planning period; a six year financing plan that shows funding capacities and sources of public money, and how future facilities will be extended throughout the UGA during the 20-year planning period. To make the ESSWD plan part of the County's capital facilities element, the County must also incorporate compliant capital facilities information from the ESSWD plan that the County wishes to utilize for the Eastsound UGA into the County's comprehensive plan's capital facilities' element itself. Without such information, the County's record fails to show that urban densities can be achieved and sewer provided throughout the UGA over the 20-year planning period as required by RCW 36.70A.070(3)(a) – (d), RCW 36.70A.020 (12), and RCW

36.70A.110 (1) and (3). *Stephen Ludwig v. San Juan County,* WWGMHB 05-2-0019c and *Fred Klein v. San Juan County,* WWGMHB 02-2-0008 (Compliance Orders, June 20, 2006) and *John Campbell v. San Juan County*, WWGMHB Case No. 05-2-0022c (FDO, June 20, 2006)

- Instituting urban development regulations before the development of a compliant capital facilities plan will either preclude eventual future development at urban densities in the UGA when sewer is available, or permit densities that constitute sprawl. We understand the County's desire to establish this UGA to realize its legitimate economic development goals and its investment spent in years of planning for this area. Nevertheless, we cannot find the County's urban development code compliant or valid, until they have completed a compliant capital facilities plan. Development regulations that implement a non-compliant capital facilities plan do not themselves comply with RCW 36.70A.040, 36.70A.110(3), 36.70A.020(1), (2) and (12). *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, May 31, 2005)
- There are parameters to the City's obligation to see that infrastructure is provided within the UGA. By creating the UGA boundaries that it has, the City (in partnership with the County) has committed to public facilities necessary to support the planned development within the UGA. However, the time frame for providing those facilities is the twenty-year horizon of the comprehensive plan, not the six-year horizon of the Capital Improvements Plan. *Cedardale Property Owners v. Mount Vernon,* 02-2-0010 (FDO, March 28, 2003)
- The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)

- A CFE financing strategy cannot be speculative. Reliance on voter approval, under the record in this case, does not fall within that prohibition. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- A CFE which includes changing LOS standards, increasing use of other sources of revenue and decreasing demand for and use of capital facilities if voter approval is unsuccessful, complies with the GMA. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- A CFE which only forecasts future needs and proposed locations and capacities of new capital facilities on a 6-year projection does not comply with the GMA requirement that such a forecast be done on a 20-year cycle. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- Under the GMA, private funding is a reasonable alternative source of funding. *CCNRC v. Clark County* 98-2-0001 (FDO, 7-27-98)
- The general bonding capacity of a local government is available to determine whether adequate sources of funds are set forth in the CFE. *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- A local government may change its LOS standard to avoid a huge financial impact to its water system when the action is supported by the record and is based upon a reasoned decision-making process. WAC 365-195-510(3)(b). *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- A county has the responsibility to pull together all of the CFE information from other districts or agencies in its jurisdiction so that it can determine and make consistent the location, needs and costs of all capital facilities. It is the county's responsibility to make a regional analysis of all CFE needs, locations and costs so the public has an accurate assessment of what and where tax dollars are being spent, regardless of whether they go to the state, county or special districts. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- If the required analysis of a CFE shows a significant funding shortfall it is a county's duty to reassess land use and related elements of the CP so that the plan is internally and externally consistent. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- An excellent discussion of the LOS standards adopted by the city, potential revenue sources, identification of costs, and a prioritization process for action if probable funding sources become insufficient, complies with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)
- Establishment of specific UGAs with finite boundaries and a quantifiable allocation of population must first be made before any credible capital facilities analysis can occur. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Where existing schools have sufficient capacity to accommodate a six-year projected increase in enrollment, no funding source for capital facility improvements need be listed. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)

- RCW 36.70A.070(3)(d) requires that a CFE clearly identify funding sources. A generalized list of funding sources did not comply with such a requirement. However, use of other sections of the CP which are incorporated by reference and are sufficiently specific documents does comply with the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- The purpose of the capital facilities element of a CP is to see what is available, determine what is going to be needed, figure out what that will cost, and determine how the expense will be paid. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Local decision-makers are required by the GMA to review potential revenue avenues, determine if projected funding will meet the needs set forth in the CFE, and prioritize those projects to serve areas where growth is to be channeled. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

CLUSTERING

- [Regarding a challenge to the County's Conservation and Reserve Developments (CaRD) ordinance] Given that RCW 36.70A.070(5)(b) provides "*counties may provide for clustering*, density transfer, design guidelines, conservation easements, and other innovative techniques *that will accommodate appropriate rural densities and uses that are not characterized by urban growth and are consistent with rural character"* there is no inherent error in the County's clustering program provided for in the Long CaRD. (emphasis added) The Board acknowledges that the clustered design of the development appears denser when viewed in isolation, but because it is required to maintain the underlying density it is nonetheless a rural density when viewed in the context of the entire parcel; therefore, preserving rural character. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c (Order on Reconsideration, June 18, 2008) at 11.[For original discussion on the Long CaRD, see FDO at 47-48 (May 12, 2008)].
- The clustering provisions allow clustering of up to 24 dwelling units. Given the large tracts of forest lands designated in Lewis County, the potential for such large clusters of residences is very real. The concomitant potential for impacts on forestry and increased demands for services are also very real. Limitations on clustering are needed to ensure that residential subdivisions will not interfere with forestry activities. *Butler, et al. v. Lewis County,* 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04)
- A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-

density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- An urban reserve designation of a remainder area from a cluster development that is implemented throughout the county and at the owner's discretion does not comply with the Act. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Nothing in the GMA allows clustering to be used to the degree that would create new LAMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- The GMA requires that a county preclude sets of clusters of such magnitude that they will demand urban services. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- The use of bonus densities along with a failure to limit the number of clustering lots allows non-rural densities in rural areas at a magnitude that demands urban services. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- The Legislature has recently clarified the allowance of cluster development in agricultural lands. As long as the long-term viability of agriculture lands is not threatened by conflicting uses, clustering is an allowable option. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- RCW 36.70A.177 is a new section of the GMA and directs that in agricultural lands of long-term commercial significance innovative zoning techniques, including cluster zoning, are appropriate. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Compact new development in agricultural zones that allows appropriate conservation of agricultural lands is now specifically authorized by the GMA. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- A failure to provide minimum lot sizes and maximum number of lots per site in clustering provisions of a DR which continued to allow urban growth outside of properly established UGAs did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- An agricultural cluster provision which permits urban growth in designated RL areas, does not severely limit the total number of dwelling units and densities and allows a significant percentage of the agricultural land to be converted into residential use did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)

- An ordinance that simply refers to a PUD process to cluster density away from a CA, complies with the GMA. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Planned residential developments or other clustering schemes, properly designed and limited in scope may protect sensitive areas, riparian trails and green space in rural areas. If properly used they can constitute a tool for preservation of sensitive lands and open space. The GMA encourages such use. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- A local government's decision to not include any clustering in RLs, given the history of the past 15 years of clustering having the effect of reducing RLs, did not violate RCW 36.70A.020(6). *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The absence of a cap on PUD clusters in addition to a relaxation of aggregation standards to allow 8,400 square foot minimum lot sizes outside of an IUGA did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- The allowance of a transfer of development rights from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- A clustering scheme which allowed 40% of the designated forestland area for conflicting uses did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)

COMMUNITY, TRADE & ECONOMIC DEVELOPMENT (CTED), DEPARTMENT OF (EDITOR'S NOTE: IN 2009, CTED'S NAME WAS CHANGED TO THE DEPARTMENT OF COMMERCE)

- *Campbell v. San Juan County,* Final Decision and Order at 9 (Jan. 27, 2010)(RCW 36.70A.190(4)(b) requires Commerce to develop a technical assistance program, this provision imposed no duty on the county)
- *RE Sources Inc. v. City of Blaine,* Order on Motions (Jan. 5, 2010)(RCW 36.70A.050 does not create a duty for local jurisdictions, but for Commerce)
- A county must submit amendments to its development regulations to CTED at least 60 days prior to adoption. RCW 36.70A.106. Failure to do so puts the county in noncompliance with the GMA. Even though the County submitted the development regulations later, the County must submit the ordinance to CTED anew. The submission must be accompanied by a notice indicating that 60 days are available for review and that comments by "state agencies, including the department" will be considered as if final adoption had not yet occurred. *Cameron-Woodard Homeowners Association v. Island County,*02-2-0004 (Order on Dispositive Motion, 6-10-02)
- The requirement of RCW 36.70A.106(3) that a CP or DR be submitted to CTED 60 days prior to final adoption does not apply to strictly procedural amendments. *Pellett v. Skagit County* 96-2-0036 (FDO, 6-2-97)

- An ordinance which by its terms was adopted under the authority of the GMA, even though it was not submitted to CTED prior to adoption pursuant to RCW 36.70A.106(1)(a), invoked GMHB jurisdiction in spite of a subsequently adopted resolution that the ordinance was adopted under the authority of RCW 36.70 and not the GMA. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- Submission of the 10-year traffic forecast required by RCW 36.70A.070(6)(b)(iv) to CTED, but which was not included in the CP, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

COMPLIANCE

1. In General

- [In addressing the scope of the issues during a compliance proceeding] The Board finds [Futurewise's] objections are beyond the scope of these compliance proceedings … in the initial phase of this case, Futurewise filed a Petition for Review alleging Whatcom County had failed to revise various UGAs to accommodate the County's projected urban population growth and erroneously included land with extensive critical areas within its UGAs. At the same time, Futurewise sought intervenor status in support of the County for those issues raised by Caitac and Wiesen; issues which did not relate to agricultural lands. Thus, at no time in this matter has the issue of agricultural lands been raised and Futurewise is barred from bringing such issues forward for the first time during these compliance proceedings. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, Order on Motion at 2 (Feb. 1, 2010)
- In responding to Hadaller's assertion that the Board's prior orders did not preclude Lewis County from addressing the property, the Board stated:] While that may be true, it is also true that the County had no obligation to re-address *compliant* provisions of its comprehensive plan, especially given the fact that the County has been seeking GMA compliance on these issues for over a decade. *Hadaller v. Lewis County,* Case No. 09-2-0017, Order on Motion to Dismiss, at 5-6 (Jan 27, 2010)
- [In finding that the County had provided the required clarification, especially in regards to sewer service, the Board noted, as to the scope of the issues during compliance proceedings:] ICAN argues that because the County's obligation was to come into compliance with that GMA provision, it could argue that the County is now non-complaint with the cited RCW provisions in ways other than those considered in the recent CO (Compliance Order). The Board disagrees with ICAN's position. The August 2009 CO was clear as to the nature of the County's failure to comply with RCW 36.70A.110 and RCW 36.70A.020(1) and (12). The County's error was its failure to specify what development standards would apply in those areas of the Hadlock/Irondale UGA prior to sewer availability. Therefore, the scope of the Board's inquiry in this proceeding is whether Ordinance 09-1109-09 provided the needed clarification. *ICAN*

v. Jefferson County, Case No. 07-2-0012c, Compliance Order at 3-4 (Jan. 27, 2010).

- *WEAN v. Island County,* Case No. 08-2-0032, Compliance Order (Nov. 9, 2009)(County repealed the offending language and thus, there no longer existed a basis for finding the County out of compliance with the GMA).
- *Alexanderson/Dragonslayer, et al v. Clark County,* Case No. 04-2-0008, Compliance Order (Oct. 8, 2009)(Earlier orders of the Board noted two potential methods for achieving compliance; it is up to the local jurisdiction to choose the method of compliance – here, the County selected repeal)
- [In responding to Hadaller's argument that the County failed to de-designate his property, the Board stated:] Thus, the purpose of a compliance proceeding is to determine whether a local jurisdiction has cured those areas of noncompliance with the GMA identified during the HOM, as set forth in the FDO. A compliance proceeding is not an opportunity to argue, yet again, a position rejected in the FDO nor is it the place to make arguments that could have been made at the HOM but were not. The County's compliance efforts were not focused on the Hadaller property. The ARL designation of that property has already been upheld and was not being addressed during the compliance phase of this case. *Coordinated Cases – Butler (99-2-0027c), Panesko (00-2-0031c), Hadaller (08-2-0004c) v. Lewis County,* Compliance Order, at 18 (Dec. 29, 2009)
- *ICAN v. Jefferson County,* Case No. 07-2-0012c, Compliance Order at 10 (Aug. 14, 2009)(It is not appropriate for ICAN to raise a new issue in a compliance proceeding that was not previously raised in a Petition for Review)
- *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, Compliance Order (Aug. 14, 2009)(Petitioners are permitted to raise issues related to public participation in regards to the legislative actions taken in response to a Board's finding of non-compliance).
- *Panesko, et al v. Lewis County,* Case No. 08-2-0007c, Compliance Order at 11 (July 24, 2009)(Rescission of non-compliant legislation removes the basis for the Board's finding of non-compliance)
- Petitioner cannot raise this alleged internal inconsistency [an issue not raised in the original proceedings before the Board] for the first time at this [compliance] stage of the proceedings. *Panesko, et al v. Lewis County,* Case No. 08-2-0007c, Compliance Order at 4 (July 24, 2009)
- *Olympic Stewardship Foundation v. Jefferson County,* Case No. 08-2-0029c, Compliance Order at 6 (July 7, 2009) (Board will not address objections which are beyond the scope of the County's compliance requirements as set forth in the Board's Order).
- *Butler, et al v. Lewis County,* Coordinated Case Nos. 08-2-0004c, 00-2-0031c, 99-2-0027c, Order of Continuing Non-Compliance (April 16, 2009)(Extension of compliance period must be requested prior to expiration of compliance period or the Board is required to hold a

compliance hearing. Diligently moving towards compliance does not amount to compliance).

- The issues before the Board are whether or not the County remains out of compliance and whether or not invalidity should be continued. The Petitioners argue the County has done nothing to comply and urge the Board to maintain the findings of noncompliance and invalidity. The County acknowledges it has taken no action other than to participate in the appeal pending in Clark County Superior Court. The County further concedes that it has not sought a stay of the Board's Order and further asserts that whether or not it is in compliance is subject to determination by the courts. The Board can only conclude that the County remains non compliant and that invalidity should be continued. It is particularly troublesome to the Board that the County has in effect ignored the Board's directives as evidenced by the County's failure to pursue a stay or to file by the date required any report whatsoever regarding compliance … The Board expects local jurisdictions to comply with deadlines established for the filing of compliance reports. The County's lack of response to the Board's Order is not taken lightly. *Karpinski, et al v. Clark County,* Case No. 07-2-0027, at 4, Order on Compliance/Invalidity (Jan. 8, 2009)
- It is expected that the Respondent in all cases before the Board shall comply with that schedule, or seek an extension. It is unfortunate that in this case the County exceeded the time provided by the Board to adopt amendments to achieve GMA compliance. Nevertheless, this does not appear to be a case where the County was attempting to delay or avoid compliance, but rather the failure to achieve compliance was due to difficulty scheduling this matter before the County Planning Commission and Board of County Commissioners. Furthermore, the delay was a matter of some three weeks and the ordinance in question was adopted prior to the date set for the compliance hearing. The Board agrees with the parties that there is no sense in entering a finding of continued non-compliance when we have before us the measures the County has adopted to achieve compliance. To do so would only needlessly delay review of the merits. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c, Order on Compliance, at 4 (Jan. 21, 2009)
- RCW 36.70A.300(3)(b) is explicit. It requires Skagit County to comply with the GMA in areas where the Board's August 6, 2007 Order found noncompliance. On August 11, 2008 Skagit County submitted a compliance report detailing the actions that it had taken action to comply with the Board's August 6, 2007 Order. The Board took its responsibility authorized by RCW 36.70A.300(3)(b) seriously and reviewed the County's actions for compliance with the GMA … The issue in compliance proceedings is somewhat different than it is during an original adoption. In compliance proceedings, the Board has identified an area of the local jurisdiction's comprehensive plan or development regulations that do not comply with the GMA. The local jurisdiction is under an obligation to bring those areas into compliance and demonstrate that fact to the Board..

While the ordinance that is adopted to cure non-compliance is entitled to a presumption of validity, nevertheless, the local jurisdiction must still demonstrate to the Board that it has addressed the area of non-compliance identified in the FDO. A mere lack of objection by the petitioner does not demonstrate that the non-compliant provision has been cured. Any finding or conclusion in prior decisions of the Board to the contrary are overruled …The County's Compliance Report showed that the County had not taken action to assess its parks needs and identify future locations and capacities of park facilities. Nor did the County claim that it had taken that action … Even though Petitioners did not point out that the County had not taken action to comply pursuant to RCW 36.70A.300(3)(b), it does not relieve the County of its responsibility to comply with the requirements of the Growth Management Act or the Board of its responsibility to determine compliance pursuant to RCW 36.70A.330(1) and (2). *Abernoth, et al v. Skagit County,* Case No. 97-2-0060c coordinated with *Skagit County Growthwatch, et al v. Skagit County,* Case No. 07-2-0002, Order on Reconsideration, at 4-6 (Jan 21, 2009)

- *See Alexanderson/Dragonslayer, et al v. Clark County,* Case No. 04-2-0008, Order Finding Continuing Non-Compliance and Invalidity (Jan. 16, 2009) *for discussion RE:* The need for a jurisdiction to comply with both the GMA's and its own public participation requirements in the adoption of its *de facto* comprehensive plan amendment in the MOU and during compliance proceedings.
- [County requested extension of the compliance period five days after the date set for compliance established by the Board, in denying the County's request the Board stated:] [W]hile the Board is able to grant extensions in the compliance schedule, RCW 36.70A.330(1) requires that "After the time set for complying with the requirements of this chapter under RCW 36.70A.300(b) has expired, … the Board shall set a hearing for the purposes of determining whether the state agency, county, or city is in compliance with the requirements of this chapter." … Because the County filed its request for an extension of the compliance period *after* the compliance period expired, the Board may not grant an extension but instead is statutorily required to conduct a compliance hearing. *Panesko, et al v. Lewis County,* Case No. 08-2-0007c, Order Denying Extension of Compliance Period, at 3 (March 13, 2009).
- *See Petree, et al v. Whatcom County,* Case No. 08-2-0021c, Order Granting Extension of Compliance Period (March 30, 2009) *for discussion RE:* In cases of unusual scope and complexity, RCW 36.70A.300(3) permits the extension of compliance proceedings. This, in conjunction with a demonstration of the County's good faith efforts, the Board concluded extension of the compliance period was appropriate.
- The issue in the compliance order and before the Board now is how does the County intend to have sewer services provided to the Eastsound UGA in a compliant manner. Therefore, when the County adopts a new part of

its capital facilities element, it must be consistent with the other parts of the plan and comply with the GMA. When the County adopted the District's sewer plan as part of the County's Comprehensive Plan, it triggered the requirement that the sewer plan must be consistent with the County's land use element. Therefore, Petitioner did not have to file a new petition to challenge the capital facilities element to raise objections concerning the consistency of the District's sewer plan with the land use element. Coordinated cases: *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance, at 15 (Jan. 30, 2009).

- [In contrast], the Board will not respond to issues not address in the original FDO and Petition for Review. Thus, the Board had no jurisdiction to review Petitioners allegations that the legislative enactment in the compliance proceedings did not provide for affordable housing, enough industrial land, adequate water service. Coordinated cases: *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance, at 30 (Jan. 30, 2009).
- Standing requirements are different in a compliance proceeding. RCW 36.70A.330(2) states, in pertinent part:

  > A person with standing to challenge the legislation enacted in response to the board's final order may participate in the hearing along with the petitioner and the state agency, county, or city. Thus, to participate in a compliance proceeding, a party must have raised the issue and have standing in the original proceedings before the Board, or have participated in the compliance proceedings on the issue to which they are objecting.

  Dry Creek Coalition/Futurewise v. Clallam County, Case No. 07-2-0018c, Order on Compliance, at 12 (Jan. 30, 2009)
- Although the Board does not generally allow new issues to be raised in a compliance proceeding, an issue regarding adherence to public participation requirements during the County's attempt to achieve compliance is sufficiently related to the compliance proceeding itself and may be raised by a petitioner in the objections. Coordinated Cases *Butler, et al v. Lewis County*, Case No. 99-2-0027c, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, Compliance Order and FDO, at 17 (July 7, 2008)
- [The Board grants the County's request for additional time to achieve compliance. In granting this request, the Board states …] Because the request was filed within the compliance period, albeit very late in the compliance period, the compliance period has not expired. Therefore, because this is a case of unusual scope and complexity and because the County submitted its motion before the compliance period's expiration, the Board can entertain a motion for an extension of the compliance period that will last more than 180 days without holding a compliance hearing.

The Board finds that it is reasonable to grant the County an extension of time to complete its sewer planning. Further, the County's due diligence and the progress being made toward the adoption of a sewer plan for the Irondale/Port Hadlock UGA are also important to our granting the requested extension. *ICAN v. Jefferson County,* Case Nos. 03-2-0010/04-2-0022/07-2-0012, Order on Compliance, at 4 (April 16, 2004)

- [In denying the Petitioners request to file a Reply Brief to the County's Response to Compliance Objections, the Board found …] [I]t is not the practice of this Board to permit a reply brief by a petitioner to a jurisdiction's response to objections during the compliance period of a case. The Board recognizes that in matters of non-compliance, as opposed to invalidity, the burden remains on a petitioner; however this alone does not merit the suspension of the Board's long-standing practice especially given the opportunity for Petitioners' to voice opposition during the County's adoption process and at the Compliance Hearing itself and to subsequently file a Petition for Review if needed. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c, Order on Reconsideration, at 7 (June 18, 2008)
- There is no mechanism to undo a compliance finding when the delay period has expired and no statutory basis for the Board to enter a finding of temporary compliance. *Swinomish Indian Tribal Community v. Skagit County,* WWGMHB Case No. 02-2-0012c, Order Granting a Stay (July 9, 2007)
- The Board finds that the Rules on Appeal (RAP) apply when the Administrative Procedures Act (APA) is silent regarding procedures that apply during appeals of growth hearings board decisions. This means that the Superior Court decision is not effective until the appeal to the Court of Appeals is resolved. Therefore, since the Board has not been stayed by order of any court, the Board's order remains in effect. *Evergreen Islands/Futurewise, et al v. Anacortes,* Case NO. 05-2-0016, Compliance Order, at 1(April 9, 2007)
- The County has undertaken a lengthy process and hired expert outside help to meet its obligations under the various compliance orders of the Board. This has taken more time than originally anticipated by the Board but the County has kept the Board apprised of its efforts and the Board has allowed the County additional time to finish its compliance work. The County has acted to achieve compliance during the extended remand period. *Vinatieri, Smethers and Knutsen, et al. v. Lewis County,* 03-2-0020c (FDO, 5-6-04)
- The question on compliance is whether the jurisdiction has met the requirements of the Growth Management Act, not whether it complied with the specific directives of the Board's last order. *Butler, et al. v. Lewis County,* 99-2-0027c, (Order Finding Noncompliance and Imposing Invalidity 2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c, (Order Finding Noncompliance and Imposing Invalidity 2-13-04)

- The board does not have authority to order the County to take any particular actions to bring itself into compliance. Therefore, when the board lists actions to be taken in any given case, that list must be viewed only as guidance and not as the standard against which compliance is measured . . . . At a compliance hearing, the question is not whether the board's direction was followed but whether compliance was achieved. *Dawes v. Mason County*, 95-2-0073 (Compliance Order, 6-5-03)
- Under the GMA, the Board's authority to enter compliance orders is only triggered
  after the time period for compliance with a board's FDO entered under RCW 36.70A.300(3)(b) has lapsed, or at an earlier time at the request of the county to lift invalidity. RCW 36.70A.330(1). *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02)
- We find no authority in the Act to order the county to adopt any particular regulations
  to be in effect during the remand period. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02)
- A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- The due date for compliance begins at the time of the original order or upon issuance of an order on reconsideration, whichever occurs last. *Diehl v. Mason County* 95-2-0073 (MO 6-5-01)
- Where a county has requested review of ordinances within the context of a previous FDO remand, even though the appeal period has passed on the specific ordinances, review is taken with regard to whether or not a finding of compliance is warranted. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under the 30 day time constraint found in RCW 36.70A.302(6) the issues of rescission and/or modification of invalidity were bifurcated from the issues of noncompliance not involving invalidity, which would be addressed in a subsequent order. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 12-15-00)
- The provisions of RCW 36.70A.130(2)(b) that allows a local government to suspend its public participation process "to resolve an appeal" of a GMHB hearing does not apply to changes in RL designations that were not part of the original FDO. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- A compliance hearing addresses the issue of whether compliance with the Act has been achieved not necessarily whether a strict adherence to the remand order has been followed. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)

- Where a PFR restated issues already decided in a compliance hearing, a GMHB will review petitioner's brief and any supplemental exhibits properly submitted and issue an FDO without the need of a responding brief from the local government or a full HOM. *WEAN v. Island County* 00-2-0001 (FDO, 6-26-00)
- It is not the role of a GMHB to decide the best choice available, but only to decide compliance with the GMA. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)
- Compliance with the language of a local government's own ordinance is required before compliance with the GMA can be achieved. The availability of public water services only, without public sewer and other urban services, does not provide the basis for logically-phased and efficiently-served urban development. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)
- Compliance with the GMA, not necessarily with specific aspects of the remand order, is that which is required. Under RCW 36.70A.3201 a great deal of discretion in the methodology of achieving compliance is allowed. *ARD v. Shelton* 98-2-0005 (Compliance Order, 6-17-99)
- The task of a GMHB is to determine compliance with the GMA, not whether there could be better solutions by a local government. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Ensuring compliance with the GMA is the function of a GMHB. Failure of the local government to adopt a "state of the art" public participation program is a function of the ballot box. *CMV v. Mount Vernon* 98-2-0006 (Compliance Order, 5-28-99)
- It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to direct a specific decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- The responsibility of a GMHB is to decide whether a local government complied with the GMA, not whether a local government could have found a better solution than the one it adopted. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- The authority of a GMHB is limited to reviewing the action of the local government to determine whether or not compliance with GMA has been achieved. There is no authority to direct a local government to adopt a specific ordinance or take a specific action. *Ellis v. San Juan County* 97-2-0006 (FDO, 6-19-97)
- It is not the role of a GMHB to determine whether a CP could be improved. The role of the GMHB is to determine if the minimum requirements of the GMA have been met in the adoption of the CP. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)

- A GMHB does not have authority to direct the preparation of an EIS. An incorrectly adopted DNS will be remanded with a finding of noncompliance. It is up to the local government to determine the appropriate level of SEPA analysis and appropriate action after the remand. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- Compliance must be achieved with both the goals and specific requirements of the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- Compliance involves both the process and the substance of the goals and requirements of the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- Where a noncompliance finding was based upon a failure to adopt a CP, challenges to the adopted plan must be made by a PFR method. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 6-5-96)
- Where the record showed obvious noncompliance and invalidity in portions of the record supplied by the local government, a GMHB will not ignore such action during a compliance hearing. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- The review by a GMHB is not to determine whether a better planning strategy exists, but rather to determine whether the goals and requirements of the GMA have been achieved. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Strict adherence to the recommendations set forth in a FDO is not the test of compliance. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 2-28-95)
- The role of a GMHB is to decide whether an action is or is not in compliance with the GMA. A GMHB does not have authority to order a local government to take any particular action. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- A DR is presumed valid and compliance will be found unless petitioner sustains its burden of proof. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

2. Hearing

- While there are no specific provisions of Chapter 36.70A RCW or the Washington Administrative Code providing for settlement extensions on compliance, RCW 36.70A .330 (2) authorizes the Board to issue any order necessary to make adjustments to the compliance schedule. In light of the fact that all parties have agreed that an extension of the compliance schedule is appropriate for purposes of settlement discussions, and the fact that the Board is authorized to adjust the compliance schedule [the Board grants the stipulated request of the parties for an extension] *Alexanderson, et al v. Clark County,* Case No. 04-2-0008, Order , at 1-2 (Aug. 17, 2009)
- *Butler, et al v. Lewis County,* Coordinated Case Nos. 08-2-0004c, 00-2-0031c, 99-2-0027c, Order of Continuing Non-Compliance (April 16, 2009)(Extension of compliance period must be requested prior to expiration of compliance period or the Board is required to hold a

compliance hearing. Diligently moving towards compliance does not amount to compliance).

- [Petitioners request that the Board issue a ruling that "its policy is to hear and decide all issues of continued noncompliance, even on alternative grounds, in a Compliance Hearing such that a new petition is not required for arguments related to continued noncompliance, the Board held]: [I]t is the petition for review that defines the scope of the issues during the proceedings leading up the hearing on the merits, and in subsequent compliance hearings. Petitioners' suggestion that the Board hear arguments "on alternative grounds" would broaden the scope of issues beyond those raised in the original petition for review to the prejudice of the local jurisdiction. Alternative grounds for noncompliance are more properly brought as new issues in a petition for review challenging the action the local jurisdiction took to attain compliance. *ICAN v. Jefferson County,* Case Nos. 07-2-0012/03-2-0010/04-2-0022, FDO & Compliance Order, at 9 (Feb. 8, 2008).
- [T]he Board does not have the authority to foreclose a petitioner from filing a new petition for review based on the fact that there is a pending compliance case. RCW 36.70A.280 and 36.70A.290 set out the requirements for filing a petition for review. There is no basis in these provisions for barring a petition for review on a new legislative enactment on the grounds that there is a compliance case pending. The boards have the authority to consolidate petitions under RCW 36.70A.290(5) and a new party may choose to participate in the compliance proceeding pursuant to RCW 36.70A.330(2) rather than filing a new petition. However, the boards may not dismiss a new petition for review merely because it raises a challenge to an enactment adopted in response to a non-compliance finding. Because of these statutory constraints, the boards are relegated to addressing efficiency by attempting to consolidate and coordinate new petitions with compliance cases and, where possible, setting an expedited schedule for the new petition. *ICAN v. Jefferson County,* Case Nos. 07-2-0012/03-2-0010/04-2-0022, FDO & Compliance Order, at 10 (Feb. 8, 2008).
- This Board adheres to the view that an original party to the petition for review is not required to re-establish his or her standing in the compliance proceedings. RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as to any participant who has standing to challenge the legislation enacted in response to the FDO remand. .. [A] compliance proceeding should be limited to the issues on which noncompliance was found in the FDO… However, the County adopted amendments to TCC 20.56.020 as part of its compliance efforts … Thus, the County itself presented the amendments to the Board as part of its compliance efforts and they must be considered in that light. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007) at 22-23.

- While the Board agrees that the statute provides that a hearing under RCW 36.70A.330(2) "shall be given the highest priority of business to be conducted by the board", the Board does not find that every compliance case is governed by the 45 day schedule cited by the Tribe. The 45-day requirement applies to motions filed under subsection (1) of RCW 36.70A.330 which are motions "by a county or city subject to a determination of invalidity under RCW 36.70A.300." Here, the County is not subject to a determination of invalidity and has filed a motion for an extension of the time for compliance, rather than a motion to lift invalidity. The 45-day period (which runs from the filing of the motion to rescind invalidity) is not applicable here. *Swinomish Indian Tribal Community v. Skagit County,* WWGMHB Case No. 02-2-0012c, Order Granting a Stay (July 9, 2007)
- RCW 36.70A.300(3)(b) authorizes the Board to give the County more than 180 days to achieve compliance in cases of unusual scope and complexity. The Board finds that developing a compliant Sewer Facilities Plan, modifying the UGA boundaries and adopting development regulations for the Irondale/Port Hadlock UGA is a matter of unusual scope and complexity. Further, the County's due diligence and the progress being made toward the adoption of a sewer plan and the resetting of rural development regulations for the Irondale/ Port Hadlock UGA are also important to our granting the requested extension. *ICAN v. Jefferson County,* Case No. 03-2-0010 coordinated with Case No. 04-2-0022, Order on Compliance, at 8 (April 9, 2007)
- We are aware of no provision in the GMA which authorizes the Board to dismiss issues raised in a petition for review because those issues are also pending in a compliance case. RCW 36.70A.290 provides that the Board shall hold a hearing unless the Board dismisses the petition as frivolous or finds that the person filing the petition lacks standing. *Edward G. Smethers, et al. v. Lewis County,* 03-2-0018**,** (Order Re: County's Motion to Dismiss, 10-29-03)
- Under RCW 36.70A.330(1) a compliance hearing and independent review of the action taken is required regardless of whether any party objects to the request for a finding of compliance. *Carlson v. San Juan County* 00-2-0016 (Compliance Order, 4-10-01)
- RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under RCW 36.70A.280 and .330 a compliance hearing must relate to and is governed by the original issues set forth in the FDO, as well as any new issues arising from the actions taken by the local government during the remand period. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- A GMHB may bifurcate the compliance aspect of a case from the invalidity rescission motions because of the short time frame allowed for invalidity

rescission findings. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)

- The oft cited rule that the issue in a compliance hearing is compliance with the Act not necessarily with the FDO does not apply to a situation where a County revised its RL designations under the provisions of RCW 36.70A.130(2)(b) to "resolve" a GMHB appeal, where the RL designations were specifically not an issue in the FDO. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- Where a County adopts permanent DRs which are presumptively valid under RCW 36.70A.320, to implement a CP that was at the time also presumptively valid, compliance with the GMA requirement of permanent DRs was achieved. The issues of whether the DRs substantively complied with the Act would be resolved by separate hearing. *Panesko v. Lewis County* 98-2-0004 (Compliance Order, 8-21-00)
- The provisions of RCW 36.70A.330(2) do not provide for intervention standing during a compliance hearing. Intervention is governed by RCW 34.05.443(2) which authorizes a presiding officer to impose conditions upon an intervenor's participation at the time intervention is granted or at any subsequent time. *ICCGMC v. Island County* 98-2-0023 (MO 7-18-00)
- Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)
- Where a Superior Court determines that no substantial evidence existed to support a county's prior RL designation, the proper issue at the subsequent compliance hearing is whether petitioners met their burden under the clearly erroneous standard to demonstrate that the new RL designations did not comply with the GMA, regardless of the correlation between the new designations and the designations reversed by the Superior Court. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- Where a local government has taken action on remand and no challenge to that action was made for the compliance hearing, compliance will be found. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- The responsibility of a GMHB is to decide whether actions of a local government comply with the GMA rather than whether a better solution could have been found. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- Where noncompliance was based on a failure to act, a compliance hearing for a new ordinance involved facial good-faith evidence in the limited record which, when combined with the presumption of validity under RCW 36.70A.320, resulted in a compliance finding and a requirement for a PFR to challenge the new ordinance. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)

- RCW 36.70A.320(2) establishes that the burden is on petitioners to prove noncompliance under the clearly erroneous standard. *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- Amendments to the CP adopted in order to achieve compliance are presumed valid and the increased deference of RCW 36.70A.3201 is to be afforded to local government decisions. *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- The ultimate issue to be decided in a compliance hearing is whether the local government now complies with the GMA, not particularly whether adherence to each specific remand issue has been achieved. *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- Where a superior court remand post-dated the 1997 amendments to the GMA, a GMHB will review the matter taking into account amendments that were made subsequent to the original action by the local government, particularly where no party objects to that procedure. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Where there is no legislative action taken in response to a finding of noncompliance there is no presumption of validity to apply. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- The timelines established for compliance commence at the date that an order on reconsideration is entered. *CCNRC v. Clark County* 96-2-0017 (RO 1-21-98)
- The 1997 amendment to RCW 36.70A.300(3)(b) grants new authority to a GMHB to extend the time for compliance to a period greater than 180 days under certain circumstances. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Under the clearly erroneous standard in a compliance hearing a GMHB will examine the record in light of the policies, goals and requirements of the GMA to determine whether the local government has failed to comply. The ultimate issue is whether compliance with the GMA has been achieved, not necessarily whether specific adherence to the remand order was achieved. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Once or if a local government meets its burden of showing it [the challenged enactment] no longer substantially interferes with the fulfillment of the goals of the GMA, the petitioner then bears the burden under the clearly erroneous standard of proving the action does not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Regardless of whether a GMHB decision issued after July 27, 1997, involves either a new PFR or compliance hearing, the new clearly erroneous standard of review applies. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- Recent amendments to RCW 36.70A.330 now authorize a GMHB to hold multiple compliance hearings. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)

- Recent amendments to RCW 36.70A.330 now allow a local government subject to invalidity to bring a motion for the setting of a compliance hearing. The amendments do not prohibit a GMHB from setting a compliance hearing without a motion by the local government. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- When the parties have mediated their differences and a new ordinance has been adopted and all parties support a finding of compliance, one will be made. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 6-4-97)
- Where parties were provided notice and an opportunity to participate in a compliance hearing but did not do so, then later filed a PFR involving claims that should have been raised during the compliance hearing process, those claims will be dismissed. *Wirch v. Clark County* 96-2-0035 (MO 1-29-97)
- The ultimate question in a compliance hearing is whether there is compliance with the GMA, not necessarily whether there is specific compliance with the remand order. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- The burden of proof to show compliance is on the local government. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Where ordinances incrementally adopted during the remand period are all readopted, a compliance hearing held at the end of the 180-day period of remand will include substantive review of all the ordinances if challenged by petitioners. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- The GMA does not provide specific guidance to determine review within the scope of compliance hearings versus the necessity for a new PFR. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- A prior finding of noncompliance for failure to adopt implementing DRs is cured when such regulations are adopted. Review of those regulations is by a PFR not by a compliance hearing. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- When no previous determination of invalidity has been made, RCW 36.70A.330(3) requires a GMHB to consider whether invalidity should be found at the time of compliance hearing. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 7-31-96)
- When a local government on remand reanalyzes but readopts the same ordinance, where the remand was based on a lack of analysis for the initial adoption, a compliance hearing rather than a PFR is the proper vehicle for review. *Storedahl v. Clark County* 96-2-0016 (MO 7-25-96)

- RCW 36.70A.330 requires that a GMHB reconsider any previous decision concerning invalidity at the time of a compliance hearing. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- The GMA requires that all compliance matters be completed within 180 days of the FDO [citing to RCW 36.70A.330]. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 12-21-95)
- Ultimately a GMHB has discretion to decide whether a new PFR or a compliance hearing is a proper vehicle to review compliance with the GMA, even in a situation where the local government has previously failed to act. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- When a petitioner and local government agree that a remand is necessary and no review of the action by a GMHB occurred, any subsequent request for review must be by means of a PFR rather than a compliance hearing. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The purpose of a compliance hearing is to determine compliance with the GMA, not compliance with a GMHB FDO. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- A FDO does not direct a local government specifically how to achieve compliance, but does provide guidance and suggestions that formed the basis of a finding of noncompliance. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- Recent amendments to RCW 36.70A.330 provide that a GMHB shall schedule additional compliance hearings as appropriate. The legislation is remedial and therefore retroactive. Additional hearings may be scheduled even if a compliance hearing is completed prior to the July 23, 1995, effective date of the amendments. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 2-28-95)
- Under RCW 36.70A.330, when invalidity has previously been found, a GMHB is required to issue a finding of compliance or noncompliance within 45 days of the filing of a motion by the petitioner or by the GMHB. The 45-day time period begins on the date a GMHB notifies the parties that a hearing is scheduled. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)
- Matters which were not part of the original finding of noncompliance cannot be used at a compliance hearing to find a local government has failed to achieve compliance with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)

3. Good Faith

- In the past, we have honored the County's representations about the intended meaning of its code provisions and directed the County to make the clarifications without a finding of non-compliance. The County has always acted in good faith to make the corrections and we see no reason to doubt the County's good faith in undertaking to clarify the meaning of SCC 17.30.590(1)(e) here. Based on this practice, we will not enter a finding of non-compliance or invalidity at this time. However, we will

require the County to provide the Board with evidence of clarification of this provision of the county code. *Panesko v. Lewis County,* 00-2-0031c (Supplemental Compliance Order, 3-29-04); *Butler v. Lewis County,* 99-2-0027c (Supplemental Order on Compliance Hearing - LCC 17.30.590(1)(e), 3-29-04)

COMPREHENSIVE PLAN (CP)

- A CP and a SAP must fit together and no one feature of either plan may preclude achievement of any other feature of either plan. *Carlson v. San Juan County* 00-2-0016 (FDO, 9-15-00)
- The redesignation of properties formerly in rural reserve to a new designation of rural resource that involved a lack of application of a local government's own criteria and which was also inconsistent with the CP, failed to comply with the Act. *FOSC v. Skagit County* 99-2-0016 (FDO, 8-10-00)
- The redesignation of an area to rural residential within a "sea of rural resource land" which was done because the rural resource land allowed certain activities, does not comply with the Act. A county may not permit certain activities in resource areas and then use the existence of those activities as a reason to redesignate resource areas to other categories. *FOSC v. Skagit County* 99-2-0016 (FDO, 8-10-00)
- Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A County is required to resolve floodplain and stormwater issues between it and its cities and make the CP policies consistent as required by RCW 36.70A.070(1). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Where an ordinance is adopted after the filing of a PFR and after settlement discussions between the petitioner and the City, the provisions of RCW 36.70A.130(2)(b) allow a CP amendment to be adopted outside of the once per year CP revision requirement. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)
- Where an ordinance sets definitive standards to implement the CP and locational criteria for residential PUDs are set forth, compliance with the GMA is achieved. A local government is not required to structure PUD approval through a rezone process for every project. *CMV v. Mount Vernon* 98-2-0006 (Compliance Order, 5-28-99)
- Under RCW 36.70A.130(1) every CP is subject to continuing review and evaluation. Where a CP has been adopted, is being used and has no sunset date, it is considered permanent under the GMA even though the

CP referred to specific area as "interim" to be revisited after a study was completed. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)

- A CP policy directing minimum densities must be implemented by DRs that are consistent with it. Compliance cannot be found until both actions are complete. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- In light of the recent Supreme Court holding *Citizens v. Mount Vernon* 133 W.2d 861 (1997), a CP is merely a guide or blueprint. Thus it becomes necessary for local governments to be even more specific in fulfilling the requirement of RCW 36.70A.040(3)(d) to adopt DRs that are consistent with and implement the CP. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- Where an ordinance does not specify proposed locations of commercial and limited industrial districts it violates RCW 36.70A.070 that requires a map or maps and descriptive text location. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- A local government may not adopt language in its CP that is different than a specific requirement of the GMA. *TRG v. Oak Harbor* 97-2-0061 (FDO, 3-5-98)
- A CP is presumed valid upon adoption and a GMHB will find compliance with the GMA unless a petitioner or intervenor proves that the local government actions are clearly erroneous in view of the entire record and in light of the goals and requirements of the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- The readoption of RL designations in the CP process is subject to challenge by a PFR. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- A local government does not comply with the GMA when it adopts a CP that does not go into effect until a time beyond a GMA deadline. *Ellis v. San Juan County* 97-2-0006 (FDO, 6-19-97)
- The process of balancing goals at the CP stage cannot include abandoning the conservation of designated agricultural lands. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- The GMA requires conservation of designated agricultural lands to be included within the CP. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- The policies set forth in a CP have the same directive affect as DRs. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- Under RCW 36.70A.070(1) a CP must provide for protection of quality and quantity of groundwater used for public water supplies. Such protection is different than and separate from an ordinance for CAs. The protection may be specifically included in the CP by regulation or later implemented by DRs. Compliance cannot be found until one or the other has been accomplished. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- A previously adopted CAO must be reviewed by the local government at the time of adoption of a CP to ensure consistency between the two. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)

- The GMA does not require a "one size fits all" approach. A GMHB is to be guided by a common sense appreciation of the size and resources of a local jurisdiction and the magnitude of the problems to be addressed. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- No CP will be the best it can be on its original adoption. Improvements and clarifications will always need to be made throughout the amendment process over the life of a 20-year plan. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- It is not the role of a GMHB to determine whether a CP could be improved. The role of the GMHB is to determine if the minimum requirements of the GMA have been met in the adoption of the CP. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- Definitionally RCW 36.70A.172(1) applies to designating and protecting CAs, but does not apply to a review of the CAO for consistency with the CP. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- The failure of a local government to adopt all parts of its CP by the GMA deadline does not preclude GMHB review of the portions that have been adopted. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- Submission of the 10-year traffic forecast required by RCW 36.70A.070(6)(b)(iv) to CTED, but which was not included in the CP, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The entire city located partially within a GMA planning county and partially in a non-GMA planning county is required to plan under the GMA. *Woodland, Petitioner* 95-2-0068 (FDO, 7-31-95)
- A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)
- A CP is not a static document. Goals set forth in the plan are not guarantees. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- The GMA does not prohibit planning beyond the year 2012. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A CP must comply with the goals and requirements of the GMA. A CP must have uniform policies and standards throughout in order to achieve internal consistency. Any subarea plans are subject to the same level of scrutiny as the entire CP. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

CONCURRENCY

1. In General

- Once a local government adopts concurrency policies, implementing development regulations must be adopted that prohibit new development from causing previously established LOS standards to be violated. An exception exists if transportation improvements or strategies to accommodate the impacts of development are made concurrent with development…[Policy 6A-1.2(a) creates an exception to transportation LOS standards] …The difficultly with this exception is that it allows a

reduction below the adopted LOS where there is no reasonable assurance the regional improvement will be constructed [or funded]. A strategy must be I place to show how these planned improvements for maintaining the LOS will be funded and constructed within six years before such an exception is permissible. An exception to the lowering of LOS standards where the proponent "sign[s] an agreement to perform at a future date" is also non-compliant as it allows the LOS to be lowered indefinitely with no assurance of when the needed improvement will be constructed and the adopted LOS restored. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 56 (Aug. 6, 2007)

- Adoption of an impact fee ordinance is not mandatory under state law, but is optional. A local jurisdiction is not required to have in place authority to impose mitigation measures under both an impact fee ordinance and SEPA. Even were both in place, it would still be required to elect which of the two sources of authority to apply in a particular instance since it could not impose mitigation for system improvements under both. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 59 (Aug. 6, 2007).
- Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)
- A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- WAC 365-195-070(3) defines concurrency as a situation in which adequate facilities are available when the impacts of development occur or within a specified time thereafter. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- WAC 365-195-210 defines adequate public facilities as ones which have the capacity to serve development without decreasing LOS below locally established minimums. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- WAC 365-195-210 defines available public facilities as including both a situation where facilities and services are in place or where a financial commitment is in place to provide the facilities or services within a specified time. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- The WAC 365-195-210 definition of concurrency includes the concepts of both adequate public facilities and available public facilities. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- A local government has the discretion to determine which public facilities and services are necessary to support development. In exercising its discretion a local government must consider all aspects of public facilities and services and make a reasoned decision as to which are necessary

and how to subject those facilities and services to concurrency requirements. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)

- The word "ensure" found in RCW 36.70A.020(12) imposes a requirement on local governments to state what it plans to do and how that is to be accomplished in order to achieve concurrency compliance. More than a generalized policy statement is necessary to comply with the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- A local government has both the duty and the right to determine the adequacy of public facilities and services. Such a determination must first examine current adequacy level and then a local government's future ability to add to those facilities and services. A methodology to determine if sufficient capacity remains or can be added to serve a particular development application must be adopted. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- A local government has the discretion within the parameters of the GMA to determine proper phasing of concurrency. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- RCW 36.70A.020(12) imposes a requirement for local government to establish an objective baseline to determine minimum LOS standards for public facilities and services. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- RCW 36.70A.020(12) requires local governments to adopt either policies or regulations or a combination thereof that provide reasonable assurances, but not absolute guarantees, that the locally-defined public facilities and services necessary for future growth are adequate to serve that new growth, either at the time of occupancy and use or within an appropriately timed phasing of growth, connected to a clear and specific funding strategy. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- The concept of concurrency is not an end in and of itself, but a foundation for local governments to achieve the coordinated, consistent, sustainable growth called for by the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- Concurrency is not the same as infill. Infill relates to the phasing of growth and its primary purpose is to avoid inefficient use of land resources (sprawl). *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Concurrency is intended to ensure that at the time of new development public facilities and services are in place or are adequately planned. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Once a local government adopts concurrency policies, implementing DRs must be adopted that prohibit new development from causing previously established LOS standards to be violated. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

2. Traffic

- *See Irondale Community Action Neighbors v. Jefferson County,* Case No. 07-2-0012/03-2-0010/04-2-0022, FDO and Compliance Order, at 14-16

(Feb. 8, 2008) (Finding that the County has adopted development regulations that prohibit development which causes the LOS to decline below locally adopted standards and requires that the necessary transportation facilities be reasonably funded before development may proceed).

- A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Transportation policies contained in the CP must be consistent in order to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Under the language in RCW 36.70A.020(12), concurrency requirements for public facilities and services are not limited only to transportation concurrency. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)

3. Sewer

- The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01) -2-0023c (Compliance Order, 3-2-01)

CONSISTENCY

- [In response to Petitioner's assertion that the County's Plan was not consistent with the Housing Needs Assessment, the Board stated:] t As the Housing Needs Assessment is just that – an assessment, and not a plan to be implemented - the County argues that it and the housing element are not incompatible. The Board agrees with the County's position. The Housing Needs Assessment is a demographic and economic analysis of the County's housing stock. While it may inform County policy decisions made elsewhere in the Plan, it does not set that policy. Furthermore, the Board finds that the Petitioner has not set forth any aspect of the Needs Assessment that would thwart implementation of the Housing or Land Use elements. *Campbell v. San Juan County,* Case No. 09-2-0014, Final Decision and Order at 23 (Jan. 27, 2010)
- The role of the Growth Management Hearings Boards is not to second guess a jurisdiction's determination of how to implement the goals and policies contained within its comprehensive plan but to assure consistency with the goals and policies of the Growth Management Act (GMA). That assurance, in this instance, requires that adopted development regulations be consistent with and implement the jurisdiction's comprehensive plan.

Heikkila/Cook v. City of Winlock, Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)

- Perceived inconsistencies between a specific development regulation and specific, isolated comprehensive plan goals does not violate RCW 36.70A.040. Rather, a .040 violation results if the development regulations preclude attainment of planning goals/policies. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- While it can be fairly argued that some of the development regulations may make it more difficult to achieve specific goals, the Petitioners have not shown that any of those regulations thwart achievement of them. The goals cannot be viewed separately from one another and when considered in their entirety, the Board cannot conclude that the Petitioners have established that the regulations fail to implement the Comprehensive Plan; with one exception – [landscape greenbelts]. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- RCW 36.70A.070 requires consistency among elements of the comprehensive plan, not between the provisions of the adopting ordinance. The Board knows of no provision of the GMA that requires provisions of an adopting ordinance to be consistent. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, FDO at 54 (Oct. 13, 2008)
- [N]ot every area of vagueness or ambiguity in a comprehensive plan rises to the level of an internal inconsistency within the meaning of the preamble of RCW 36.70A.070. Consistency means that no feature of the plan or regulation is incompatible with any other feature of the plan or regulation; no feature of one plan may preclude achievement of any other feature of that plan or any other plan. *Brinnon Group, et al v. Jefferson County,* Case No. 08-2-0014, FDO, at 20 (Sept. 15, 2008)
- This provision of the GMA requires the comprehensive plan to be "an internally consistent document and all elements shall be consistent with the future land use map." Since the TIP is not part of the comprehensive plan, it is not subject to this "internal consistency" requirement. It is also not subject to the requirements that the comprehensive plan and development regulations be consistent with one another.31 These requirements would only apply if the TIP were part of the comprehensive plan and therefore this issue is dismissed as well. *Griffen Bay Preservation Committee v. San Juan County,* Case No. 07-2-0014, Order on Motion to Dismiss, at 13 (Jan 10, 2008).
- [In regards to RCW 36.70A.070] [T]his provision of the GMA (at its preamble) requires the plan to be an internally consistent document. Since the Resolution forms no part of the comprehensive plan, the failure of the Resolution to be consistent with the plan cannot constitute a violation of the internal consistency requirement of RCW 36.70A.070. *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023, Order on Motion to Dismiss, at 5-6 (Jan. 31, 2008).
- [The County's Comprehensive Plan Policy] now provides that the change for residential to commercial must have adequate capital facilities to

support it, which implies that capital facilities needs will be analyzed to approve the change. However, … [the policy] still does not link changes in residential designations to commercial designations to a county analysis of commercial needs … even as amended, [the policy] still allows for an inconsistency between the plan and the development regulations. Therefore, it remains non-compliant. *Irondale Community Action Neighbors v. Jefferson County,* Case No. 07-2-0012/03-2-0010/04-2-0022, FDO and Compliance Order, at 24 (Feb. 8, 2008)

- Once the plan has been found compliant or is presumed compliant after the period for appeal has expired, the goals and procedures adopted in the plan are presumed to comply with the GMA. When a local jurisdiction acts in conformity with its compliant comprehensive plan, there is no basis for a challenge to those actions as failing to comply with GMA goals and requirements. Once a comprehensive plan is adopted and is either found or deemed compliant with the GMA, challenges may not be brought to compliance with GMA goals but must be brought under the policies and objectives adopted by the comprehensive plan to meet GMA requirements. *Concrete Nor'West v. Whatcom County,* Case No. 07-2-0028, Order on Motions, at 13 (Feb. 28, 2008).
- [T]he County's action is still a legislative action affecting the overall plan for the County. If it were possible to evade GMA compliance by making comprehensive plan map changes on an individual basis, then there would be a patchwork of decisions, some of which must comply with the GMA and some of which need not. This would not make for "an internally consistent document [in which] all elements shall be consistent with the future land use map. *ARD/Diehl v. Mason County,* Case No. 07-2-0006, FDO at 45 (Aug. 20, 2007)
- There is a disparity between the [existing level of service- ELOS] as stated in the [Park Plan], the Land Use Methodology Report and the Capital Facilities Element. Each of these documents was formally adopted by the Bellingham City Council as parts of the City's Comprehensive Plan. This disparity is likely due to the City's failure to properly update population data at the time of the 2004 Park Plan update. The use of inconsistent ELOS standards in the comprehensive plan documents could well lead to confusion as to the actual parks ELOS standard and is in violation of the internal consistency requirements of RCW 36.70A.070. *MaComber, et al v. Bellingham,* Case No. 06-2-0022, FDO, at 18 (Jan. 31, 2007)
- The Park Plan that proposes a shooting club with extensive covered structures is not consistent with the County's comprehensive plan policies and land use map and development regulations as required by RCW 36.70A.070 (preamble). *Lake Cavanaugh Improvement Association v. Skagit County* 04-2-0011 (Order on Dispositive Motion 9-21-04).
- It is not essential that each land use decision address each goal or policy so long as no enactment precludes the County's ability to achieve other adopted goals or policies. Petitioner fails to show that the County cannot

meet the cited goals and policies and undertake the enactment challenged here. *Cal Leenstra v. Whatcom County,* 3-2-0011 (FDO, 9-26-03)

- The GMA requirement for internal consistency means that the planning policies and regulations must not make it impossible to carry out one provision of a plan or regulation and also carry out the others. The City's list of priorities for acquisition of private property in its parks and recreation strategy does not rise to the level of a comprehensive plan provision or development regulation. *Camp Nooksack Association v. City of Nooksack*, 03-2-0002, (FDO, 7-11-03)
- Consistency does not mean consistency of vision or philosophy. Rather, it means avoidance of an actual conflict between competing provisions in codes and plans. *Ray, Jacobs, Jacobs, Jorgensen, Lean and Friends of the Waterfront v. City of Olympia and Department of Ecology*; 02-2-0013 (FDO, 6-11-03)
- A county's development regulation calling for "consistency and compatibility with the intent of the comprehensive plan" may not be considered compliant. Tying consistency to the "intent" of the plan rather than to the plain words of the plan itself, invites a series of decisions by different administrators or Boards of County Commissioners which would preclude consistency. It is therefore noncompliant. *Advocates for Responsible Development, Mason County Community Development Council, Janet Dawes, and John E. Diehl v Mason County,* 01-2-0025 (FDO, 4-11-02)
- A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Where CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- A CP and a SAP must fit together and no one feature of either plan may preclude achievement of any other feature of either plan. *Carlson v. San Juan County* 00-2-0016 (FDO, 9-15-00)
- Where a DR imposes additional limitations on permitees for only one island in the county and no CP policy or DR exists for any other island, internal consistency and compliance with GMA have not been achieved. *Carlson v. San Juan County* 00-2-0016 (FDO, 9-15-00)
- A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Densities shown on official maps must be consistent with CP criteria and GMA standards. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)

- There is both a requirement of internal consistency within a CP, WAC 365-195-500, and of consistency between DRs and the CP as defined in WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- The consistency required between DRs and the CP means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- An ordinance which was designed to implement the goals and objectives of an economic development plan as an element of the CP, but which did not specify any locations of proposed commercial or limited industrial districts, did not comply with the requirement found in RCW 36.70A.040(3)(d) requiring consistency between the plan and DRs. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- If the required analysis of a CFE shows a significant funding shortfall it is a county's duty to reassess land use and related elements of the CP so that the plan is internally and externally consistent. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- RCW 36.70A.130 requires that any amendments to DRs shall be consistent with and implement the CP. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- A SMP element of a CP and/or DR must be internally consistent and consistent with all other aspects of a CP and DRs adopted by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth in RCW 90.58.060 relating to guidelines adopted by the DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- The mere adoption of a pre-existing land use map and underlying residential densities within designated agricultural lands without a review for consistency did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- An action designating agricultural lands of long-term significance but thereafter readopting underlying rural residential densities created an inherent conflict and did not satisfy the consistency requirement of the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- A designation ordinance that required a minimum 40-acre parcel, but also allowed subdivision into two 20-acre parcels, was inconsistent with a criterion to eliminate 20-acre parcels for resource designation. One or the other must be changed to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 4-9-97)
- When a CP amendment concerning [resource lands] is adopted a local government has an obligation under RCW 36.70A.060(3) to ensure consistency between the implementing DRs and the plan amendment. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)

- An agricultural overlay amendment adopted in conjunction with readoption of the land use map created an issue of inconsistency which was timely appealed. *Hudson v. Clallam County* 96-2-0031 (MO 3-21-97)
- A CAO must be consistent with regard to the effect of misinformation that may be provided by an applicant in a checklist and the remedies allowed local government once the application has been completed. There is no private property right to provide false or incorrect information. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Where a county CP has previously been determined to not comply with the GMA, under RCW 36.70A.100 a city does not need to make its CP consistent with that of the county. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- While a CAO must be consistent with the CP, it does not specifically need to be analyzed for consistency with a land capacity analysis. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Definitionally RCW 36.70A.172(1) applies to designating and protecting CAs, but does not apply to a review of the CAO for consistency with the CP. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- In order the achieve the consistency required by the GMA, a county and each of its cities must start from the same point and follow the agreements set forth in the CPPs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- Where each city agreed to adopt a CP and DRs consistent with the ones last adopted by the county, a later showing of inconsistency proves noncompliance with the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- A County has the responsibility to adopt an internally consistent CP and to adopt DRs that are consistent with and implement the CP. *CICC v. Island County* 95-2-0072 (FDO, 12-6-95)
- In order to comply with the GMA requirement of reviewing a CAO for consistency with the CP, local decision-makers must be aware of the DRs and provisions of the CP dealing with CAs, and must allow an opportunity for the public to comment upon and be involved in the review process. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The incorporation of a different entity's plan for capital facilities without review to ensure consistency to achieve the goals and requirements of the GMA does not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Where no timely appeal of a wetlands ordinance was taken, there is no jurisdiction for a GMHB to review that ordinance at the time of adoption of the CP except for consistency with the CP. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

- A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)
- A CP and any subarea plan contained therein must be internally consistent. Internal consistency is defined by WAC 365-195-500. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

CONSOLIDATION/COORDINATION

- Petitioner argues that, based on the language of RCW 36.70A.110(2) which requires that "The county shall attempt to reach agreement with each city on the location of an UGA within which the city is located," the County has the responsibility to "press this issue." Among the many tenets of the GMA is the requirement for neighboring cities and counties to plan and coordinate their comprehensive plans. This is reflected in RCW 36.70A.100. However, as this Board has held … and as Petitioner concedes, "coordination and consistency does not equate to plans being mirror images". In addition, comprehensive plans can achieve the same goals or purpose even though they may not be identical. *Campbell v. San Juan County,* Case No. 09-2-0014, *FDO, at 11* (Jan. 27, 2010)
- [T]he consolidation of petitions in this case does not affect the petition filing requirements of the Growth Management Act for each underlying petition. These include the requirements that a party file its petition for review within 60 days of the publication of the challenged legislative enactment (RCW 36.70A.290(2)) and that each party have standing as to each "matter" raised for review (RCW 36.70A.280(2) and (4)). Consolidation of petitions is a procedural efficiency; it does not waive the filing and standing requirements for each individual petition that was consolidated. A party to one petition does not become a party to a consolidated petition by virtue of the consolidation. *The Building Association of Clark County, et al v. Clark County* (Order Denying Motion to Dismiss, February 15, 2005)
- A county motion to consolidate will be denied where two separate cases involve some similar issues and some similar parties, but which would create an administrative nightmare in the event of necessity to certify the record for appeal, where parts of each case are already on appeal and where the county has failed to demonstrate any compelling reason to consolidate. *Diehl v. Mason County* 96-2-0023c (MO 8-24-01)
- A party who is a petitioner in a consolidated case does not qualify as a petitioner for purposes of standing for the compliance hearing where the compliance hearing issue was not part of the party's original PFR nor brief or argued by that party during the HOM process. *ICCGMC v. Island County 98-2-0023* (MO 2-18-00)
- Where three separate petitions challenge the same ordinance it is appropriate to consolidate under the provision of RCW 36.70A.290(5). *Smith v. Lewis County* 98-2-0011 (MO 7-14-98)
- Consolidation will be ordered, even over the objection of a party, when the cases are substantially the same and more efficient use of time for both

the parties and the GMHB will occur from consolidation. *CMV v. Mount Vernon* 97-2-0063 and 98-2-0006 (MO 4-2-98)

- Where cases are substantially identical and scheduling two hearings instead of one would be an inefficient process, consolidation will be ordered. *CMV v. Mount Vernon* 98-2-0006 (MO 4-2-98)
- Where 61 separate petitions were filed by 85 different petitioners against Clark County and each of the cities within it and 44 separate parties were thereafter granted intervenor status, an order of consolidation issued immediately prior to the FDO in order to avoid each petitioner having to serve pleadings on over 100 other parties, was an appropriate method of consolidation. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Once consolidation has occurred the individual petitions for review are merged and lose their independence. All issues presented by any of the petitions are available to be argued by any party to the proceeding. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- The authority to consolidate cases is found in RCW 36.70A.290(5) and WAC 242-02-522(10). A FDO shall be entered within 180 days of the receipt of the last PFR that is consolidated. *Port Townsend v. Jefferson County* 94-2-0006 (MO 4-13-94)

COUNTYWIDE PLANNING POLICIES (CPPS)

- CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPPs, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- While the CPPs do have a directive nature, a recent court of appeals decision (*King County v. FOTL)* also held that the CPPs must be consistent with the GMA in order to have such directive affect. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)
- A change in a market factor analysis from what was agreed to in a CPP did not comply with the GMA and could not be used as a basis for a rescission of invalidity. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)
- A CPP which assigns population to a noncontiguous UGA without any land capacity analysis showing a need for such allocation may not be used as a justification for failure to comply with the requirements of the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Only cities or the Governor may challenge a CPP adoption or amendment. *FOSC v. Skagit County* 96-2-0032 (MO 3-7-97)
- CPPs play a major role in determining proper IUGAs. CPPs must comply with the GMA and cannot be used as a justification for failure of an IUGA to comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- In order the achieve the consistency required by the GMA, a county and each of its cities must start from the same point and follow the agreements

set forth in the CPPs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)

- Cities and counties are both required to adhere to the CPPs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- CPPs are the framework for development of a CP and apply to GMA actions taken prior to adoption of the CP. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- CPPs and their offshoot, the community framework plan, establish goals and requirements that must be complied with in order to comply with the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- The absence of language within a DR that prohibits extension of urban governmental services outside an IUGA did not comply with the CPPs and therefore did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- A CP and any subarea plans contained therein must be consistent with the adopted CPPs. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

CRITICAL AQUIFER RECHARGE AREAS (*SEE CRITICAL AREAS*)

CRITICAL AREAS

1. In General

- [As to Petitioner's alleged error in regards to the City's two-step process, the Board clarified its FDO and stated:] What the Board did conclude [in the FDO] was that the City failed to adequately analyze all of the functions and values of its wetlands when creating the standard buffers but, given the site-specific detailed study process, the complete analysis of functions and values would be accomplished so as to protect these areas [Citing to various provisions of the City's CAO, BMC 17.82] … Thus, BMC 17.82's two-step detailed study process incorporates BAS on a site-specific level and ensures the existing functions and values of Blaine's critical areas will be protected from further degradation as required by RCW 36.70A.060(2) and 172. *RE Sources v. City of Blaine,* Case NO. 09-2-0015, Order on Reconsideration at 2-3 (April 27, 2010)
- [In response to the City's assertion that the Board's holding requires adoption of a numerical limitation, which not only misinterprets the REUX but ignores the applicable compensatory mitigation requirements] The Board has long recognized that although RUEXs may actually permit impacts to a critical area, they are an indispensable component of critical area regulations because they address the issue of regulatory takings claims. Thus, the presence of such provisions within Blaine's CAO are not, in and of themselves, the basis for non-compliance with the GMA. And, although RUEXs are necessary to prevent regulatory takings claims, it does not mean such provisions should not seek to prevent the protection of all the functions and values of wetlands. Thus, the Board agrees that setting a specific numerical requirement would not allow the flexibility necessary for a project proponent to work with the City to find a

reasonable use for their property. However, the Board does not believe the City's process, through its planning commission, is sufficiently clear so as to determine the reasonable use of the property while protecting *all* functions and values of the wetland. *RE Sources v City of Blaine,* Case No. 09-2-0015, Order on Reconsideration at 6 (April 27,2010).

- Petitioner's issues are based on an allegation that the Respondent has failed to include BAS when amending its CAO … RCW 36.70A.130 does require that development regulations comply with the requirements of the GMA in its entirety. *RE Sources Inc. v. City of Blaine,* Case No. 09-2-0015, Order on Motions (Jan. 5, 2010)
- *See OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO at 31-39 (Nov. 19, 2008) for general discussion on CMZs including designation, risk assessment, and development standards
- The guidance offered in [Wetlands in Washington] Volume 2, that was based on the BAS synthesized in [Wetlands in Washington] Volume 1, and was considered by the County, recognizes that viable data was not yet available on wildlife habitat or wildlife corridors. Without the needed scientific data, it is impractical for the County to develop regulations based on a landscape approach. For this reason, the Board finds and concludes that the County's decision to use a site-based approach to protect wetlands rather than a landscape-based approach is not a clearly erroneous violation of RCW 36.70A.040(3), RCW 36.70A.060, and RCW 36.70A.170(1). *WEAN/CARE v. Island County,* Case No. 08-2-0026c, FDO at 14 (Nov 17, 2008). *See also,* Dec 22, 2008 Order on Reconsideration for *WEAN/CARE v. Island County* where the Board clarified its holding in regards to the landscape approach.
- [T]he science in the Record noted that the performance of wetland functions is controlled by a number of environmental factors within the wetland boundary (site scale) as well as in the broader landscape (landscape scale) and that wetlands do not function in isolation, but rather a wetland's ability to provide certain functions is influenced by the conditions and land uses within their contributing basins. However, the Board noted that the data needed to develop a comprehensive, landscaped-based approach within Island County was not available at this point in time. [Citing to Ecology's Wetland Manual, the Board concluded:] In other words, although the science may suggest utilizing a landscape approach, there is no science in the record for implementing such an approach … the GMA requires the inclusion of the Best Available Science which is science that is presently available as well as practically and economically feasible so as to protect critical areas. The Board finds reliance on prescriptive buffers which incorporate readily available science and is a method supported by Ecology does not fail to protect the functions and values of wetlands. *WEAN/CARE v. Island County,* Case No. 08-2-0026c, Order on Reconsideration, at 4-5 (Dec. 22, 2008)
- For discussion as to measures for the protection of wetland functions and values, including buffers, mitigation, mature wetland forests, land use

intensity and fencing, *see WEAN/CARE v. Island County,* Case No. 08-2-0026c, FDO at 54-73 and, for further clarification, Dec. 22, 2008 Order on Reconsideration at 6-14 and 17-21.

- [B]ecause Island County is well along is establishing a baseline for certain wetland parameters due the completion of the assessment and survey completed for the *Phase 1 Report*, has adopted a system of protective buffers, and is following Ecology's recommendations on what kind of information to collect and report, the Board finds that an adaptive management and monitoring program with benchmarks and triggering mechanism that the Board found necessary in previous cases [such as *Swinomish Tribe v. Skagit County*, WWGMHB 02-2-0012, *Olympic Environmental Council v. Jefferson County* , WWGMHB 02-2-0015, and *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c] is not critical at this stage of the County's monitoring and adaptive management program. *WEAN/CARE v. Island County,* Case No. 08-2-0026c, FDO at 75 (Nov. 17, 2008).
- Therefore, we find that the County is precluded by SSB 5248 from taking appropriate action to bring its adaptive management program into compliance during the delay period established in SSB 5248. *Swinomish Indian Tribal Community v. Skagit County,* WWGMHB Case No. 02-2-0012c, Order Granting a Stay (July 9, 2007)
- We find nothing in RCW 36 70A.110 that prohibits the inclusion of a critical area or a floodplain in a UGA. *Futurewise v. Skagit County,* Case No. 05-2-0012c, Consolidated FDO/Compliance, at 17 (April 5, 2007)
- A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)
- A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO, 5-21-01)
- Blanket exemptions in CAs often create disincentives for adequate protection *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- A re-adoption of a previous CA ordinance that does not involve any changes after the consistency review does not invoke jurisdiction to review

the substance of the original CA ordinance. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- BAS was not satisfied where the record contained no scientific support of reduced buffers for activities defined as minor new development. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- A local government must regulate preexisting uses in order to fulfill its duty to protect critical areas. GMA requires any exemption for preexisting use to be limited and carefully crafted. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Where a CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- A CA exemption for ongoing agriculture in a rural residential zone where the record contains no information of how many acres within the zone are being "farmed", where those areas are and what the cumulative impact might be on CAs does not comply with the Act. The balancing of CA protections with RL conservation can only apply to lands designated RLs. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- The GMA requires a local government to adopt DRs that protect designated CAs. In discharging its duty to protect CAs a local government must include BAS and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- In deciding whether BAS has been accomplished a GMHB will review the scientific evidence contained in the record, determine whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reason process and whether the decision by the local

government was within the parameters of the GMA under RCW 36.70A.172(1). *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)

- The provisions of BAS directing both preservation and enhancement of anadromous fish limits the discretion available to local governments and requires a more heavily weighted towards science decision. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- Under *HEAL v. GMHB,* 96 Wn. App. 522 (1999) a local government has the authority and obligation to take scientific evidence and balance it among the goals and requirements of the GMA. However, the case inaccurately refers to the burden on petitioners to prove a local government acted "arbitrarily or capriciously." The case also apparently holds that scientific evidence must play a major role in the context of critical areas. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A 25-foot riparian buffer zone even if it is a managed, compact buffer zone for ongoing agricultural activities in a designated ALR was below the range of BAS as shown by the record. It did not fall within the range of peer tested BAS in the record. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A CAO that exempts Type 4 and 5 non salmon-bearing waters and does not provide for any buffering of those types of streams is not within the range of BAS and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- An ordinance which authorized demonstration projects for wetland mitigation banks was found noncompliant. The GMA does not require a County to adopt wetland mitigation bank provisions. Therefore, the repeal of the ordinance after a finding of noncompliance brought the County into compliance with the GMA. *WGHOG v. Pacific County* 99-2-0019 (Compliance Order, 5-22-00)
- A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- An administrative discretion to reduce buffers by 25% and preclude gathering of information to justify greater buffer widths does not comply

with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)

- The "special consideration" language relating to anadromous fish under RCW 36.70A.172(1) requires a result more heavily weighted towards science than might otherwise be required under the BAS provisions of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- The GMA requirement to protect CAs directs a local government to adopt appropriate and specific criteria and/or standards. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)
- Only "critical" ARAs are required to be designated and protected. *ARD v. Shelton* 98-2-0005 (Compliance Order, 6-17-99)
- DRs which are proportional, reasonable, and flexible are excellent goals as long as the functions and values of CAs are maintained. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- The prohibition found in RCW 36.70A.060 against interference with existing uses applies only to RLs and not to CAs. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- The discretion of a local government in designating and protecting CAs is limited by the requirements to: (1) ensure compliance with the GMA, (2) protect CAs, (3) ensure no net loss of CA functions, and (4) include BAS. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- If BMPs are relied upon for protection of CAs, some type of monitoring and enforcement must be included to ensure that the BMP plans are actually implemented and followed. BMPs may be voluntary and individually developed but benchmarks, timeframes and monitoring must be established to ensure actual protection. There must also be a non-voluntary fallback approach. BAS applies directly to such BMPs. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- The GMA gives protection to designated agriculture RLs from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industry and protection of CAs. The price paid for that deference is removal of development potential. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- While RCW 36.70A.060 precludes prohibition of legally existing uses, regulation is still required by the GMA. A blanket exemption of existing uses from all protection is a disincentive to adequate protection of CAs. *ARD v. Shelton* 98-2-0005 (FDO, 8-10-98)
- The protection of CAs is a function of RCW 36.70A.060 and .170, not the UGA provisions of .110. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)

- The protection of CAs is a function of a proper ordinance, not by the establishment of an UGA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- The petitioner has the burden of demonstrating by … the evidence in the record that the methods chosen by the local government to designate and protect CAs and their buffers do not comply with the goals and requirements of the GMA. It is not the role of a GMHB to determine if the ordinance might have been done differently or better. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- All CAs must be designated and while all CAs need not be protected a detailed and reasoned justification for any CAs not protected must be made. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Where CAs are designated and the Forest Practices Act provides a local government with some authority to act, the GMA requires a local government to protect CAs and their buffers within the scope of that authority. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- A CAO must be consistent with regard to the affect of misinformation that may be provided by an applicant in a checklist and the remedies allowed local government once the application has been completed. There is no private property right to provide false or incorrect information. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The provision of RCW 36.70A.060(1) that regulations cannot prohibit uses lawfully existing on the date of their adoption pertain to RLs and are not included in RCW 37.70A.060(2) pertaining to CAs. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- CAs may be designated by performance standards. WAC 365-190-040(2)(d). *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Even if there is a GMA provision that precludes prohibition of pre-existing uses in CAs, the GMA not only allows but also requires a local government to reasonably regulate existing activities that are shown in the record to be damaging to CAs and their buffers. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- CAs upon which exempted activities occur are still designated CAs. Exemptions are a means to lessen protection of CAs for certain activities. The real question is whether the exemptions are supported by reasoned choices based upon appropriate factors actually considered as contained in the record. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Under the evidence shown in this record, adoption of SEPA policies did not fulfill the mandatory requirement of RCW 36.70A.060(2) to adopt DRs that protect CAs. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The provisions of RCW 36.70A.172 apply only to CAs and do not apply to purely stormwater issues. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The requirements of RCW 36.70A.172(1) require a local government to use BAS when designating and protecting CAs to protect their functions and values. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)

- The designation of a CA should include a classification scheme and general location determination or performance standards for specific locations. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- A local government is required to substantively include BAS in the designation and protection of CAs. Consideration only is not sufficient to comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- A previously adopted CAO must be reviewed by the local government at the time of adoption of a CP to ensure consistency between the two. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- Simply listing pre-GMA statutes and regulations did not comply with the GMA requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- A DR that only stated an intention to develop criteria guiding the administrator's discretion did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- A CA DR is not "interim" in nature. Nothing in RCW 36.70A.060 requires local governments to amend or alter a previously adopted CAO at the time of adoption of the CP or implementing DRs. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- A review process for a previously adopted CAO for the purpose of ensuring consistency with a later adopted CP that resulted in readoption without substantive change did not grant jurisdiction to a GMHB to review the substance of the previously adopted CAO. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- The GMA requires a type of stewardship protection of CAs and conservation of RLs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- CAOs are not interim. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- CA DRs are neither temporary nor interim measures. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- All CAs must be designated and while all CAs need not be protected, a detailed and reasoned justification for any CAs not protected must be contained in the record. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- A local government may protect CAs by affording a measure of discretion to the administrator of the DR but such delegation must include clear and detailed criteria. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- A previously adopted CAO is not "interim" since the GMA does not require adoption of new designations and DRs in the CP, as is the case with RLs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

- For DRs adopted in 1991, after a later adoption of a CP the role of a GMHB is to determine whether such DRs are consistent with the CP. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- RL regulations and CA regulations are treated differently in the GMA. RL regulations have a certain expiration date at the time of adoption of DRs for the CP. No such expiration date is found in the CA DRs section. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- There is nothing in the GMA that requires or even allows CAs to be interim. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- RCW 36.70A.060(2) requires that <u>all</u> cities and counties in the state adopt DRs for CAs previously designated under Section .170. *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)
- The adoption of CA DRs immediately grants jurisdiction for review of compliance with the GMA. If jurisdiction did not attach until completion of the CP or implementing DRs, review at that time would be limited to consistency under RCW 36.70A.060(3). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)
- CA DRs are independent of, and different than, CP implementing DRs and are reviewable after adoption even if a CP has not yet been adopted. RCW 36.70A.060(2). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

2. Designations

- *See OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO at 31-39 (Nov. 19, 2008) for general discussion on CMZs including designation, risk assessment, and development standards.
- The Board views the GMA as effectively establishing two categories of critical areas – those areas whose functions and values are protected for the beneficial services they provide (i.e. Wetlands, FWHCAs, Aquifer Recharge Areas) and those areas for which protection is needed due to the threat these areas pose to persons and property (i.e. Frequently Flooded Areas, GHAs). *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 27 (Nov. 19, 2008).
- [In determining if the County's action of designating CMZs as a Geological Hazard Area was clearly erroneous, the Board concluded:] … designation of GHAs is based, in part, on an analysis of historical activity of the site and the potential or susceptibility of the site for future geological instability based on historical data in combination with present day scientific methodologies … It is this futuristic potential or susceptibility of damage that creates the risk for which critical area designation as a GHA is

needed. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 28 (Nov. 19, 2008).

- [In responding to Petitioner's assertion that the functions and values of a designated critical area must presenting existing, the Board stated:] … the Board disagrees with Petitioner's contention that the functions and values of a CMZ do not presently exist and therefore the GMA does not authorize the designation. To support this statement would be contrary to the very functions and values underlying a GHA - to protect against *future* loss of life and/or property due to the geological event being addressed. In other words, the functions and values sought to be protected by GHAs are the protection of life and property and those functions and values exist today. Here, Jefferson County, in considering the geological consequences of channel migration, namely the potential for stream bank erosion and channel migration within the historical and projected path of a stream or river, appropriately designated CMZs as a type of GHA given the geological nature of the impacts. As such, the County's designation of CMZs as a critical area is appropriate under the GMA. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 29 (Nov. 19, 2008).
- [The Board] find that the City did designate critical areas in the shorelines. The designation of "Areas With Which State or Federally Designated Endangered, Threatened, and Sensitive Species Have a Primary Association" and the designation of herring and smelt spawning areas as fish and wildlife habitat areas in Ordinance 2702 makes those areas in the shorelines "critical areas." RCW 36.70A.060. *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, December 27, 2005)
- Both the Growth Management Act and the county's own comprehensive plan require a county to protect not only those places where freshwater enters the ground, but also the aquifers that they feed. The county must classify and designate seawater intrusion areas as critical areas, including best available science in a substantive way. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- Although the county claimed that the data in the record were not adequate to designate vulnerable seawater intrusion areas, that does not nullify the county's obligation to take action to designate and protect CARAs including aquifers used for potable water. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- A county's decision to use a different approach then previously adopted does not necessarily make that choice non-GMA compliant. However, the new approach must comply with the Act. The county's approach of failing to designate any vulnerable seawater intrusion areas as critical areas does not comply with the Act. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- It makes great sense for the intergovernmental planning group to study water issues on a watershed basis. However, that group has no authority to take binding action on this issue. The county cannot abdicate its GMA

responsibility for seawater intrusion designation to the planning group. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)

- Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- A local government that ignores BAS recommendations from agencies with expertise, applies BAS for healthy streams to degraded ones and precludes the timely submission of agency BAS recommendations does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government's failure to include designation of species of local importance for FWHCAs does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- CAs may be designated by performance standards. WAC 365-190-040(2)(d). *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- CAs upon which exempted activities occur are still designated CAs. Exemptions are a means to lessen protection of CAs for certain activities. The real question is whether the exemptions are supported by reasoned choices based upon appropriate factors actually considered as contained in the record. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The designation of a CA should include a classification scheme and general location determination or performance standards for specific locations. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The GMA requires that all wetlands be designated as CAs. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)

a. Wetlands

- Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- Where a range of recommendations from sources with expertise was considered and wetland buffers were established at the minimum end of the scientifically accepted scale but were within the BAS range, GMA

compliance was achieved. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)

- Where a previous noncompliant buffer system for wetlands was actually reduced by a CAO amendment, the reduction did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- Where all wetlands receive designation and/or protection under an "interim" CAO or the SMP, compliance with the GMA on that point has been achieved. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- The GMA requires that all wetlands be designated as CAs. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- The exemption of 19% of all wetlands in Whatcom County without any evidence in the record of a reasoned consideration of such exclusion did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)

b. Frequently-Flooded Areas (FFAs)

- A DR that precludes densities more intense than 1 du per 10 acres for ARLs within FFAs complies with the Act. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- An FFA designation must be clearly mapped and must include buffers sufficient to protect critical area functions and values. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)

c. Geologically Hazardous Areas (GHAs)

- *See OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO at 31-39 (Nov. 19, 2008) for general discussion on CMZs [as a type of GHA] including designation, risk assessment, and development standards
- A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- The County's failure to designate geologically hazardous areas other than those involving 40% plus slopes under the record in this case did not comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)

d. Critical Aquifer Recharge Areas (CARAs)

- Both the Growth Management Act and the county's own comprehensive plan require a county to protect not only those places where freshwater enters the ground, but also the aquifers that they feed. The county must classify and designate seawater intrusion areas as critical areas, including best available science, in a substantive way. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)

- Although the county claimed that the data in the record was not adequate to designate vulnerable seawater intrusion areas, that does not nullify the county's obligation to take action to designate and protect CARAs including aquifers used for potable water. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- A county's decision to use a different approach then previously adopted does not necessarily make that choice non-GMA compliant. However, the new approach must comply with the Act. The county's approach of failing to designate any vulnerable seawater intrusion areas as critical areas does not comply with the Act. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- It makes great sense for the intergovernmental planning group to study water issues on a watershed basis. However, that group has no authority to take binding action on this issue. The county cannot abdicate its GMA responsibility for seawater intrusion designation to the planning group. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- WAC 365-195-030 defines CARAs as including a requirement only to designate areas that are vulnerable to contamination of drinking water. *ARD v. Shelton* 98-2-0005 (Compliance Order, 6-17-99)
- Where the record demonstrated the existence of class III CARAs but a lack of knowledge as to their actual extent and degree of vulnerability, a decision by local government to take no action did not comply with the GMA. *ARD v. Shelton* 98-2-0005 (FDO, 8-10-98)

e. Fish and Wildlife Habitat Conservation Areas (FWHCA)

- A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO, 5-21-01)
- The designations of priority species and species of local importance that include areas associated with or inhabited by threatened, endangered, and/or sensitive species as well as state candidate and monitor species, under the record in this case complies with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- A local government's failure to include designation of species of local importance for FWHCAs does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)

- Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- The record in this case supported the need to designate high quality and rare habitat areas to prevent isolated sub-populations of species and maintain plant communities and ecosystems. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Where the scientific evidence in support of designations of habitats of local importance was unrefuted and only a future designation process was established, compliance was not achieved. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- An ordinance which directed the adoption of Department of Fish and Wildlife's priority habitat and species areas did comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The failure to designate FWHCAs of local importance under WAC 365-190-080(5)(a)(ii) and (c)(ii) did not comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The omission of a shellfish area designation in Whatcom County, where shellfish harvesting is a significant enterprise, did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)

3. Development Regulations (DRs)

- [The Board reiterated its FDO holding] As the Board noted in the FDO in its discussion pertaining to administrator discretion, providing sufficient guidance for decision-makers is an important element of development regulations. *RE Sources v City of Blaine,* Case No. 09-2-0015, Order on Reconsideration at 6 (April 27, 2010).
- [In noting that development regulations intended to protect critical areas must be based on BAS, the Board held:] The Board finds that although the retention of vegetation [within a CMZ] is important, the importance of vegetation retention is based on bank stabilization and erosion protection and is therefore more relevant within high to moderate risk areas which are at a greater probability of being impacted by the river or stream's migration. A blanket restriction on the removal of vegetation that is not linked to the functions and values it is intended to protect is not supported by BAS. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 37-39 (Nov. 19, 2008).
- The Board recognizes that although they may actually permit impacts to a critical area, reasonable use provisions are an indispensable component of critical area regulations because they address the issue of regulatory takings claims. Regulatory takings have been an element of American jurisprudence since the 1920s and are founded on constitutional principles, seeking to provide a remedy when a regulation takes *all reasonable use* of a parcel of land. Given this grounding in constitutional law, the Board has no jurisdiction to determine Petitioners' claims as to whether the County's regulations exceed what is necessary to protect the

County from a constitutionally-based takings claim as this is a question for the courts. However, although reasonable use provisions are necessary to prevent a constitutional takings claim, that does not mean such provisions should not prevent the protection of all the functions and values of wetlands and do not need to be supported by BAS. *WEAN/CARE v. Island County,* Case No. 08-2-0026c, FDO at 23 (Nov. 17, 2008).

- Permitting uses based upon uses that were established, albeit legally, prior to the adoption of ordinances that required the protection of critical areas cannot be considered a regulation that includes BAS. Instead such a regulation improperly employs existing uses as the benchmark of what is appropriate in the vicinity of critical areas and merely perpetuates the establishment of uses that are incompatible with BAS. *WEAN/CARE v. Island County,* Case No. 08-2-0026c, FDO at 26 (Nov. 17, 2008).
- The county must substantively apply the best available science in the record in adoption of its final Unified Development Code as regards to seawater intrusion areas. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- Under GMA, the county must protect its groundwater consistent with best available science. Further, per GMA Goal 10, the county has the overriding responsibility to protect its groundwater quality whether or not it has officially designated seawater intrusion areas as CARAs. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- We are not persuaded by a county's argument that it has no authority to impose some form of water conservation measures, limiting the number of new wells allowed, or other measures to reduce the withdrawal of groundwater from individual wells if that withdrawal would disrupt the seawater/freshwater balance and lead to greater seawater intrusion. The exemption of RCW 90.44.050 does not limit a local jurisdiction from complying with its mandate for protection of groundwater quality and quantity under the GMA. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- If the county wishes to adopt less-than precautionary protection standards and Best Management Practices, an adaptive management program must be developed and implemented that would ensure that monitoring of new and existing wells would continue and more strict protective action were planned for and ready to implement at once if the adopted strategies are not adequate. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- Upon remand, the county must adopt regulations in its Unified Development Code which are consistent with and fully implement the comprehensive plan goals and policies related to aquifer protection. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- The GMA does not require counties to adopt strategic plans for the protection of anadromous fish. However, since the county has not adopted a mandatory fallback approach to ensure the protection of critical

areas and anadromous fish (in lieu of a compliant strategic plan), it remains in noncompliance. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0012c (FDO, and CO 12-30-02)

- A local government must regulate preexisting uses in order to fulfill its duty to protect critical areas. GMA requires any exemption for preexisting use to be limited and carefully crafted. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)
- An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- A CA exemption for ongoing agriculture in a rural residential zone where the record contains no information of how many acres within the zone are being "farmed", where those areas are and what the cumulative impact might be on CAs does not comply with the Act. The balancing of CA protections with RL conservation can only apply to lands designated RLs. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- In order to remove a previously imposed finding of invalidity the County must make a 50-foot buffer requirement applicable to all Type 5 streams. The County in this case has not sustained its burden of showing its action removed substantial interference with the goals of the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- A CAO that exempts any stream buffer with armoring from CA protection is not BAS and does not comply with the GMA. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- An FFA designation must be clearly mapped and must include buffers sufficient to protect critical area functions and values. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)

- Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- The GMA gives protection to designated agriculture RLs from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industry and protection of CAs. The price paid for that deference is removal of development potential. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- While RCW 36.70A.060 precludes prohibition of legally existing uses, regulation is still required by the GMA. A blanket exemption of existing uses from all protection is a disincentive to adequate protection of CAs. *ARD v. Shelton* 98-2-0005 (FDO, 8-10-98)
- A separate CA permit is not required by the GMA, but in order to comply with the GMA the ordinance must be clear that no adverse alteration to CAs or their buffers' functions and values can occur and that, if damaged, buffers must be allowed to rehabilitate to their pre-damaged purpose and function. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The provision of RCW 36.70A.060(1) that regulations cannot prohibit uses lawfully existing on the date of their adoption pertain to RLs and are not included in RCW 37.70A.060(2) pertaining to CAs. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Even if there is a GMA provision that precludes prohibition of pre-existing uses in CAs, the GMA not only allows but also requires a local government to reasonably regulate existing activities that are shown in the record to be damaging to CAs and their buffers. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- Under the evidence shown in this record, adoption of SEPA policies did not fulfill the mandatory requirement of RCW 36.70A.060(2) to adopt DRs that protect CAs. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- A previously adopted CAO must be reviewed by the local government at the time of adoption of a CP to ensure consistency between the two. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- Simply listing pre-GMA statutes and regulations did not comply with the GMA requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public

participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)

- A DR that only stated an intention to develop criteria guiding the administrator's discretion did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- A CA DR is not "interim" in nature. Nothing in RCW 36.70A.060 requires local governments to amend or alter a previously adopted CAO at the time of adoption of the CP or implementing DRs. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- A review process for a previously adopted CAO for the purpose of ensuring consistency with a later adopted CP that resulted in readoption without substantive change did not grant jurisdiction to a GMHB to review the substance of the previously adopted CAO. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- CAOs are not interim. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- CA DRs are neither temporary nor interim measures. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- A previously adopted CAO is not "interim" since the GMA does not require adoption of new designations and DRs in the CP, as is the case with RLs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- For DRs adopted in 1991, after a later adoption of a CP the role of a GMHB is to determine whether such DRs are consistent with the CP. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- There is nothing in the GMA that requires or even allows CAs to be interim. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- RL regulations and CA regulations are treated differently in the GMA. RL regulations have a certain expiration date at the time of adoption of DRs for the CP. No such expiration date is found in the CA DRs section. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- Critical Area DRs are independent of, and different then, CP implementing DRs and are reviewable after adoption even if a CP has not yet been adopted. RCW 36.70A.060(2). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

a. Wetlands

- The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes

substantial interference. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)

- BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)
- Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- The adequacy of a riparian buffer proposal is ultimately measured not by the characteristics of the buffer, but by the affect of that buffer on the fish habitat. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- In order to remove a previously imposed finding of invalidity the County must make a 50-foot buffer requirement applicable to all Type 5 streams. The County in this case has not sustained its burden of showing its action removed substantial interference with the goals of the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)

- Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- A separate CA permit is not required by the GMA, but in order to comply with the GMA the ordinance must be clear that no adverse alteration to CAs or their buffers' functions and values can occur and that, if damaged, buffers must be allowed to rehabilitate to their pre-damaged purpose and function. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The reduction of riparian habitat buffering recommendations without a scientific basis, nor with a reasoned analysis did not comply with the BAS requirement of the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The exclusion of protection for class IV wetlands where no scientific data nor discussions of the reasons for the exclusion were included in the record, did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- Exempting all agricultural activities which could lead to destruction of Category I and II wetlands did not comply with the GMA. The elimination of buffer protection for class IV and V waters and a limited buffer for class II and III waters under the record in this case did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- A CA wetland ordinance does not require re-adoption at the time of the adoption of CP implementing DRs. Such regulations are only reviewable for consistency with the CP. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- The change in language from the original "preclude inconsistent uses" to "protect" in 1992, allowed local governments a limited amount of discretion to exempt wetlands from regulation. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)
- The GMA does not require a county to treat various categories of urban wetlands the same as rural wetlands. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)
- Exemptions of wetlands from regulation under the GMA were in compliance, especially when other regulatory and nonregulatory

provisions are considered. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

b. Frequently-Flooded Areas (FFAs)

- In an area where dike failure is common, under the GMA a county has the duty to identify, inspect, monitor, and impose restrictions or conditions on the maintenance of existing dikes. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- A map which is an intricate part of a regulatory scheme to preclude new construction in certain FFAs must be adopted by formal action of the local government. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- A DR that precludes densities more intense than 1 DU per 10 acres for ARLs within FFAs complies with the Act. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- An FFA designation must be clearly mapped and must include buffers sufficient to protect critical area functions and values. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- Substantial interference with Goals 2, 8, and 10 were found where the local government failed to adopt permanent DRs to address risks of avulsion, together with the continued allowance of unmonitored diking activity, the continued allowance of an inappropriate level of construction in the floodway and the failure to include BAS. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- Under this record, the county must include in its permanent DRs a program to monitor dike construction and improvements for possible effects on FFAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- The record contained no evidence that anadromous fish were given *any* consideration in the development of the FFA DRs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- To comply with the GMA requirement to protect FFAs a local government must adopt permanent FFA DRs, preferably in one comprehensive ordinance rather than a plethora of amending ordinances. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- Under the record in this case, inclusion of BAS meant that the FFA DRs must contemplate the likelihood of river avulsion. A moratorium prohibiting most development in the affected areas is only a temporary measure. Permanent regulatory measures are necessary to fulfill the GMA requirement to protect FFAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)

- The lack of a DR on minimum lot size and density requirements in FFAs did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- Ordinances which merely regulated building requirements within a floodplain and did not address issues of whether and under what conditions building should occur in a floodplain did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)

c. Geologically Hazardous Areas (GHAs)

- Reduction of distance from a GHA location that required geological reports and assessments, was not in conformance with BAS and did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-13-01)
- Petitioner did not prove that the DRs for GHA areas fail to comply with the Act even though such DRs could have been more clearly set forth. *FOSC v. Skagit County* 00-2-0048c (FDO, 2-6-01)
- A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- The record demonstrated use of BAS in establishing flexibility in DRs for GHAs. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)

d. Critical Aquifer Recharge Areas (CARAs)

- The county must substantively apply the best available science in the record in adoption of its final Uniform Development Code as regards to seawater intrusion areas. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- Under GMA, the county must protect its groundwater consistent with best available science. Further, per GMA Goal 10, the county has the overriding responsibility to protect its groundwater quality whether or not it has officially designated seawater intrusion areas as CARAs. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- We are not persuaded by a county's argument that it has no authority to impose some form of water conservation measures, limiting the number of new wells allowed, or other measures to reduce the withdrawal of groundwater from individual wells if that withdrawal would disrupt the seawater/freshwater balance and lead to greater seawater intrusion. The exemption of RCW 90.44.050 does not limit a local jurisdiction from complying with its mandate for protection of groundwater quality and quantity under the GMA. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- If the county wishes to adopt less-than precautionary protection standards and Best Management Practices, an adaptive management program must be developed and implemented that would ensure that monitoring of new and existing wells would continue and more strict protective action were

planned for and ready to implement at once if the adopted strategies are not adequate. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)

- Upon remand, the county must adopt regulations in its Uniform Development Code which are consistent with and fully implement the comprehensive plan goals and policies related to aquifer protection. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO, 1-10-02)
- The GMA does not require counties to adopt strategic plans for the protection of anadromous fish. However, since the county has not adopted a mandatory fallback approach to ensure the protection of critical areas and anadromous fish (in lieu of a compliant strategic plan), it remains in noncompliance. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0012c (FDO, and CO 12-30-02)
- Only "critical" ARAs are required to be designated and protected. *ARD v. Shelton* 98-2-0005 (Compliance Order, 6-17-99)
- If BMPs are relied upon for protection of CAs some form of monitoring and enforcement must be included to ensure that the plans are actually implemented and followed. *ARD v. Shelton* 98-2-0005 (FDO, 8-10-98)
- A county's review of existing county, state, and federal regulations and adoption of DRs complied with the GMA under the clearly erroneous standard. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- A local government is required to adopt permanent regulations which address protection of CARAs. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- The lack of specific DRs or requirements to meet appropriate goals of a CAs ordinance did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- The GMA requires the County and the Board to give equal weight to agriculture and fisheries industries. Although RCW 36.70A.020(9), .040(2)(b) and .060(2) require that fish habitat be protected, RCW 36.70A.020(8) and RCW 36.70A.040(3)(b) and .060(1) also require that agricultural lands be conserved. *Swinomish Indian Tribal Community et al. v. Skagit County*; 02-2-0012c (Compliance Order, 12-8-03)

e. Fish and Wildlife Habitat Conservation Areas (FWHCAs)

- RCW 36.70A.060(2) and .040(1) do not require buffers on every stretch of every watercourse containing or contributing to a watercourse bearing anadromous fish to protect the existing functions and values of fish and wildlife habitat conservation areas in ongoing agricultural lands. *Swinomish Indian Tribal Community et al. v. Skagit County*; 02-2-0012c (Compliance Order, 12-8-03)
- The overall intent of the pertinent sections of the GMA and WAC 365-190-020 is to assure no further degradation, no further negative impacts, no additional loss of functions or values of critical areas. They also focus on

new activities and preventing new impacts or new degradation rather than requiring enhancement of existing conditions. *Swinomish Indian Tribal Community et al. v. Skagit County*; 02-2-0012c (Compliance Order, 12-8-03)

- In ongoing agricultural lands, where current stream conditions do not meet all seven functions and values of fish habitat, and where the functions and values in that location are not necessary to preserve anadromous fish, requiring farmers to remove from agriculture all their lands abutting those streams in an effort to achieve all those functions and values, not met for many years, would be mandating enhancement of fish habitat (which the Act does not require). *Swinomish Indian Tribal Community et al. v. Skagit County*; 02-2-0012c (Compliance Order, 12-8-03)
- After careful consideration of all the arguments, and the entire record, we are no longer convinced that the Act requires the County to mandate that regulation of critical areas provide for all the functions in every watercourse that contains or contributes to watercourses that contain anadromous fish in ongoing commercially significant agricultural lands where some of those functions have been missing for many years and where these functions are not required for a particular life stage of anadromous fish. By reaching the above conclusion, we are not saying that farmers do not need to alter their practices if they are continuing activities which will further degrade the streams. Those activities must stop and practices must be implemented which ensure no additional harm or further loss of function. *Swinomish Indian Tribal Community et al. v. Skagit County*; 02-2-0012c (Compliance Order, 12-8-03)
- FWHCAs buffers are below the ranges required by BAS under the record in this case. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- Administrative discretion must be accompanied by clear guidelines, consultation with resource agencies and a public hearing for issues involving FWHCAs, under the record in this case. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)
- The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government's failure to include designation of species of local importance for FWHCAs does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)

- Where a DR allows "external riparian zone averaging" which would further degrade habitat areas based on existing residences, did not comply with the GMA especially in light of special emphasis for protection of anadromous fish set forth in RCW 36.70A.172. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- A standard 50-foot buffer for type IV and V waters, while at the low end of the range of scientific recommendations, achieved compliance because the buffers were within the range of BAS shown in this record. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- WAC 365-190-180(5) recommends a variety of protections in DRs according to specific species and habitats. A local government must follow those guidelines absent justification to the contrary. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)

DECLARATORY RULING

- As a preliminary matter, we note that the jurisdiction of the boards cannot be extended by procedural rules and that RCW 36.70A.270(7) only incorporates the APA rules for "practice and procedure of the boards." RCW 36.70A.280 provides a strict limitation on the authority of the boards… Even though the boards have rules for petitions for declaratory rulings, then, we must be careful not to apply them in ways that exceed the legislative grant of authority to the growth boards. *In the Matter of the Petition of Bert Loomis for Declaratory Ruling,* WWGMHB Case No. 06-2-0006 (Decision on Petition for Declaratory Ruling, 3-28-06).
- Petitioner argues that there is a need for a Board decision on the applicability of the GMA to the permit approvals at issue. However, it is not up to this Board to determine that such a decision would be pertinent or helpful. Such a determination should be made by the tribunal that has the issue before it. The doctrine of primary jurisdiction is instructive in this regard. This doctrine allows a court to defer to an agency… However, the decision whether to defer to the agency, in this case the Board, rests with the court, not the Board. *In the Matter of the Petition of Bert Loomis for Declaratory Ruling,* WWGMHB Case No. 06-2-0006 (Decision on Petition for Declaratory Ruling, March 28, 2006).
- A petition for declaratory ruling that is in essence a request for clarification of a previous determination of invalidity under RCW 36.70A.302(6), will be handled through that provision and the declaratory ruling request will be ignored. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)
- A request for declaratory ruling that is in essence a request for clarification under RCW 36.70A.302(6) will be treated as a request for clarification and processed with an expedited hearing and a decision within 30 days of the hearing. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)
- Where the question presented by a petition for declaratory ruling states that there is not, at the present time, a direct controversy involving a vigorous opposing view, a GMHB will decline to issue a ruling on the petition. *Woodland School District* 00-2-0026 (MO 7-19-00)

- In order to qualify for a declaratory ruling the petitioner must show that the question involves an actual controversy. *Burlington, Petitioner* 97-2-0020 (FDO, 7-29-97)
- A declaratory ruling may not be used as a vehicle to allow advisory opinions that are prohibited by WAC 242-02-910(1)(b). *Burlington, Petitioner* 97-2-0020 (FDO, 7-29-97)
- Pursuant to WAC 242-02-920 a GMHB must identify "interested persons" at or subsequent to the notice of hearing. *Woodland, Petitioner* 95-2-0068 (FDO, 7-31-95)
- Where there is no issue for which it is appropriate to enter a declaratory order, under WAC 242-02-930 no ruling will be made. *Woodland, Petitioner* 95-2-0068 (FDO, 7-31-95)

DEFAULT

- The failure to participate in the prehearing conference or a motions hearing provides sufficient grounds for dismissal of the petition under WAC 242-02-710. *Chapman v. Clark County* 95-2-0051 (MO 5-11-95)

DEFERENCE

- [Petitioner] would have the Board interpret the County policy in a light that grants no deference to Clallam County. Rather than find that the policy language *might be interpreted in a manner that violates the GMA,* the Board is required to grant deference to the County and presume its decisions to be valid upon adoption. These presumptions will be upheld unless it is shown that the provisions are clearly erroneous. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Final Decision & Order, at 8 (June 12, 2009)
- A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A GMHB does not have authority to select a greater deference to local government standard than the one set forth in RCW 36.70A.3201. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- The amendments to ESB 6094 in 1997 directed a more deferential standard of review for local government actions. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- The GMA provides that ultimate planning decisions rest with the local government. Such decisions are not unfettered but must be within the range of discretion allowed by the GMA. A GMHB does not substitute its judgment as to the best alternative available, but reviews the local

government action to determine if it complies with the goals and requirements of the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

DEVELOPMENT REGULATIONS (DRS)

- [The Board reiterated its FDO holding] As the Board noted in the FDO in its discussion pertaining to administrator discretion, providing sufficient guidance for decision-makers is an important element of development regulations. *RE Sources v City of Blaine,* Case No. 09-2-0015, Order on Reconsideration at 6 (April 27, 2010).
- Binding site plans are a mechanism that allow some development to occur in the UGA at rural densities and intensities so long as that development does not preclude (and indeed plans for) urban densities and intensities *when urban levels of service are available. ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 15.
- Under the amended code section at issue here, the hearings examiner does not consider a rezone application but instead conducts a master plan review. Included in the definition… of project permits are building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical areas ordinances. RCW 36.70B.020(4)… The review of the master site plan by the hearings examiner falls within this category of actions defined as project permits and is therefore not a development regulation. *Roth et al. v. Lewis County* 04-2-0014c (Order on Motions to Dismiss, 9-10-04)
- To the extent that the [memorandum of understanding between the Tribe and the County] MOU provides for controls on development or land use activities, those will be imposed by the Tribe, not the County… Therefore, the MOU does not entail the County's placement of official controls on tribal trust lands and is not a development regulation within the meaning of the GMA. *Alexanderson, et al. v. Clark County* 04-2-0008, (Order on Motion to Dismiss 7-23-04)
- The use of RCW 36.70A.390 to adopt actions without a public hearing apply only to DRs and do not apply to CPs. Amendment of a CP through the use of this section does not comply with the Act. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Petitioner did not prove that the DRs for GHA areas fail to comply with the Act even though such DRs could have been more clearly set forth. *FOSC v. Skagit County* 00-2-0048c (FDO, 2-6-01)
- Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- Where the County's DR allowed significant uses in LAMIRDs which were not principally designed to serve the rural population under RCW 36.70A.070(5)(d)(i) and that did not protect the rural character of the area under RCW 36.70A.070(5)(c), substantial interference of the goals of the Act has not been removed. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 12-15-00)
- A SAP that specifically references a memorandum of agreement between the City and WWU, which agreement directs and amends the adopted zoning code of the City and specifies the permit application and approval process for development projects on the WWU campus, is a DR under the definition contained in RCW 36.70A.030(7). *Servais v. Bellingham* 00-2-0020 (FDO, 10-26-00)
- The GMA definition of a DR by the Legislature does not include the concept of intent of the parties. *Servais v. Bellingham* 00-2-0020 (FDO, 10-26-00)
- The adoption of an amended DR denominated a memorandum of agreement, that occurred without any public participation except the noticing of the holding of a work session, does not comply with the GMA public participation goals and requirements. *Servais v Bellingham* 00-2-0020 (FDO, 10-26-00)
- A phased environmental review process under WAC 197-11-060(5)(b) for an amended DR that incorporated previous environmental documents, complied with the GMA. *Servais v. Bellingham* 00-2-0020 (FDO, 10-26-00)
- A written agreement between the City and WWU defining the standards in adopting criteria for approval of building projects falls within the definition contained in RCW 36.70A.030(7) for a DR regardless of the intent of the parties to enter into the agreement to resolve a jurisdictional dispute. *Servais v. Bellingham* 00-2-0020 (MO 8-31-00)
- Where a County adopts permanent DRs which are presumptively valid under RCW 36.70A.320, to implement a CP that was at the time also

presumptively valid, compliance with the GMA requirement of permanent DRs was achieved. The issues of whether the DRs complied substantively complied with the Act would be resolved by separate hearing. *Panesko v. Lewis County* 98-2-0004 (Compliance Order, 8-21-00)

- The GMA requires a local government to adopt DRs that protect designated CAs. In discharging its duty to protect CAs a local government must include BAS and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- In the designation of an FCC, the CP must determine if the requirements of RCW 36.70A.350 could be met in the foreseeable future. DRs are not the appropriate time to fulfill this requirement. DRs for an FCC must establish a system to ensure that an FCC urban designation is appropriately self-sufficient and contained. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Under the authority of *LaCenter v. New Castle Investments* 98 Wn. App. 224 (1999), impact fees are not and cannot be development regulations, are not a part of the requirements of RCW 36.70A and therefore not within the scope of jurisdiction provided in RCW 36.70A.280. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)
- A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A requirement for “minimized vegetation removal” is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)
- The adoption of limited interim DRs at the time of CP adoption until a “full set” of DRs can be adopted, does not fully implement the CP and does not comply with the GMA. *Panesko v. Lewis County* 98-2-0004 (Compliance Order, 11-16-99)
- Where an ordinance sets definitive standards to implement the CP and location criteria for residential PUDs are set forth, compliance with the GMA is achieved. A local government is not required to structure PUD approval through a rezone process for every project. *CMV v. Mount Vernon* 98-2-0006 (Compliance Order, 5-28-99)

- Clear regulations are essential for GMA compliance. Where multiple interpretations are shown or are possible, compliance has not been achieved. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- There is both a requirement of internal consistency within a CP, WAC 365-195, and of consistency between DRs and the CP as defined in WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- The consistency required between DRs and the CP means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- Implementing DRs are distinct from consistency DRs. Implementing DRs are defined at WAC 365-195-800. There must not only be a lack of conflict but the regulations must be of sufficient scope to carry out fully the goals, policies, standards and directions contained in the CP. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- Where ordinances do not contain specific standards for deciding in advance whether a project does or does not qualify for approval under the policies of the CP, the implementing DRs do not comply with the GMA. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- A water ordinance may have some effect on the rate of development. Where the ordinance places no controls on development nor on land use activities it does not qualify as a DR under the definition contained in RCW 36.70A.030(7). *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)
- The policies set forth in a CP have the same directive effect as DRs. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered, a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- A local government has the duty of enacting DRs that are understandable. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- An IUGA DR must expressly prohibit urban growth outside the IUGA boundaries. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- CA DRs need not apply to every conceivable wetland designation. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)
- There are two different types of DRs, CP “implementing” regulations and CA regulations. Each type is independent. CA DRs are reviewable

immediately after adoption. *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

- The adoption of CA DRs immediately grants jurisdiction for review of compliance with the GMA. If jurisdiction did not attach until completion of the CP or implementing DRs, review at that time would be limited to consistency under RCW 36.70A.060(3). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

DISCOVERY

- [In reviewing the motion to authorize discovery, the Board found that discovery in this case will not supply relevant information for the Board as it makes its decision. The Board's decision is also based upon the short timeline for board decisions, which may be impacted by discovery] Discovery is normally not allowed for cases before the Board as is specified in the Board's administrative code: "Discovery shall not be permitted except upon an order of a board or its presiding officer." WAC 242-02-410(1) Discovery is discouraged in large part due to the fact that the evidence upon which a board may base its decision is limited to the "record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision." *Caitac, et al v. Whatcom County,* Case No. 10-2-009c, Order on Motion at 2 (June 8, 2010)
- A request for discovery will be denied where petitioners fail to demonstrate that the proposed discovery would lead to evidence that would be necessary or of substantial assistance in deciding the case. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)
- Under the record and the request for discovery in this case, allowance of discovery would make impossible fulfillment of the requirement of RCW 36.70A.300(1) to issue an order within 180 days. *Abenroth v. Skagit County* 97-2-0060 (MO 10-10-97)

DISCRETION OF LOCAL GOVERNMENT

- A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- Where a 192 acre property meets some, but not all, of the CP criteria for designation of 1:20 and/or 1:10, a County is within its range of discretion to designate the entire property as 1:10 rural residential under the record in this case. *OEC v. Jefferson County* 00-2-0019 (Compliance Order, 8-22-01)
- The discretion allowed under RCW 36.70A.3201 is bounded by the requirement the discretion be exercised "consistent with requirements and goals of the" GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)

- ‘Available’ means not only that the evidence must be contained in the record, but also that the science must be practically and economically feasible. ‘Best’ means that within the evidence contained in the record a local government must make choices based upon the scientific information presented to it. The wider the dispute of scientific evidence, the broader the range of discretion allowed to local governments. Ultimately, a local government must take into account the practical and economic application of the science to determine if it is the ‘best available’. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- The provisions of BAS directing both preservation and enhancement of anadromous fish limits the discretion available to local governments and requires a more heavily weighted towards science decision. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- Under *HEAL v. GMHB,* 96 Wn. App. 522 (1999) a local government has the authority and obligation to take scientific evidence and balance it among the goals and requirements of the GMA. However, the case inaccurately refers to the burden on petitioners to prove a local government acted “arbitrarily or capriciously.” The case also apparently holds that scientific evidence must play a major role in the context of critical areas. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- The discretion of a local government in designating and protecting CAs is limited by the requirements to: (1) ensure compliance with the GMA, (2) protect CAs, (3) ensure no net loss of CA functions, and (4) include BAS. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- It is not the role of a GMHB to “balance the equities” in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to direct a specific decision on the merits of the case. Local governments are afforded a “broad range of discretion” in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- A county must appropriately balance the need to minimize and contain AMIRD boundaries with the desire to prevent abnormally irregular boundaries. The delineation of such boundaries does not require a concentric circle or a squared-off block. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- Under RCW 36.70A.3201 local governments have discretion to find ways to comply with the GMA and may use local conditions as a cornerstone of such compliance. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- RCW 36.70A.140 provides a local government with greater discretion to limit public participation “as appropriate and effective” in dealing with a response to a determination of invalidity. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)

- The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Within the parameters of the goals and requirements of the GMA, local governments have wide discretion to make localized decisions. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- In exercising its discretion a local government must consider all aspects of public facilities and services and make a reasoned decision as to which are necessary and how to subject those facilities and services to concurrency requirements. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- A local government has the discretion to determine which public facilities and services are necessary to support development. In exercising its discretion a local government must consider all aspects of public facilities and services and make a reasoned decision as to which are necessary and how to subject those facilities and services to concurrency requirements. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- A local government has the discretion within the parameters of the GMA to determine proper phasing of concurrency. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- There is no discretion for local governments to allow new urban growth outside UGAs. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- A local government does not have the authority to change the definition of urban growth found in the GMA. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- A local government has the right to prioritize and emphasize the goals of the GMA. A local government does not have the right to disregard 12 of the goals and focus entirely on the property rights goal. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- GMA mandates early and continuous public participation in the planning process but grants local governments wide latitude in designing a public participation process based upon local conditions. *Beckstrom v. San Juan County* 95-2-0081 (FDO, 1-3-96)
- A local government has a wide range of discretion in determining specific designations within a properly established UGA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Under the GMA a GMHB does not have authority to specifically order a particular action to be taken by a local government. Therefore, the issue to be decided at a compliance hearing is whether the local government has complied with the GMA and not necessarily whether strict adherence to the FDO has been achieved. The specific mechanism for achieving compliance rests solely with a local government. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)

- The concept of regionality and local government decision-making are fundamental to the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- RCW 36.70A.110 prohibits urban growth outside of a properly established IUGA and therefore a local government does not have any discretion to allow such urban growth. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95) *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- The GMA provides that ultimate planning decisions rest with the local government. Such decisions are not unfettered but must be within the range of discretion allowed by the GMA. A GMHB does not substitute its judgment as to the best alternative available, but reviews the local government action to determine if it complies with the goals and requirements of the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

DISCRIMINATION

- The term "arbitrary and discriminatory actions" in Goal 6 involves the protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)

DISPOSITIVE MOTIONS

- *Skagit Hill Recycling v. Skagit County,* Case No. 09-2-0011, Order on Motions, at 1 (July 20, 2009)(Board's rules do not permit a moving party to reply to a response to a dispositive motion).
- This Board has previously held that dispositive motions are appropriate where the issues are essentially legal, a limited record is necessary for review, and there are no genuine issues of material fact. In addition, under the standards applicable to a motion for summary judgment, the motion shall be granted when the pleadings show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Order on Motions, at 2 (March 9, 2009).
- *See Clark County Natural Resources Council/Futurewise v. Clark County,* Case No. 09-2-0002, Order on Motion (March 18, 2009) *for discussion RE:* When parties have jointly filed a Petition for Review, both petitioners must join in the Motion to Dismiss in order for the Board to fully dismiss the matter.
- *See Bussanich, et al v. City of Olympia,* Case No. 09-2-0001, Order on Motion (April 1, 2009) *for discussion RE:* When a party fails to file a response to another party's motion, the absence of argument to counter the position limits the Board's ability.
- The County's argument [in support of *res* judicata] that all interested citizen groups are in privity is also without foundation. Interested citizen groups could easily take different positions with respect to an issue and should not be lumped together merely on the basis that they are citizen

groups. *Skagit County GrowthWatch v. Skagit County,* 04-2-0004 (Order On Motion To Dismiss 6-2-04)

- Where several matters were not fully addressed in the cross-motions and exhibits for dispositive motions, the motions will be denied as to both parties and the matter will be addressed at the HOM. *ARD v. Mason County* 01-2-0025 (MO 12-31-01)
- A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)
- The GMA does not require notice to, or joinder of, an affected property owner as an indispensable party to GMHB cases. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)
- Where three ordinances are challenged by a PFR and subsequently the county rescinds all three ordinances, jurisdiction to continue the case is lost. Where there are no DRs in effect for which a finding of compliance or noncompliance could be made, a board must dismiss the case. *ARD v. Mason County* 01-2-0017 (MO 10-12-01)
- Where a compliant SEPA process was fully set forth in the limited record accompanying a dispositive motion, the motion is granted. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- The denial of a dispositive motion simply preserves the issue for the HOM. *Achen v. Battleground* 99-2-0040 (MO 2-17-00)
- In reaching a decision on a dispositive motion a decision to grant or deny the motion involves examination of the size of the limited record in conjunction with the time available, the nature of the motion, the complexity of the issue and the reasonableness of claims. A dispositive motion will be denied if there is doubt. A denial of a dispositive motion means the issue will be decided at the HOM after a review of the entire record. *Evergreen v. Washougal* 99-2-0042 (MO 2-17-00)
- When the parties' positions are unclear at the dispositive motion hearing, and recent appellate court cases call into question an earlier jurisdictional ruling by the GMHB, dispositive motions will be denied and the matters argued at the HOM. *Progress v. Vancouver* 99-2-0038 (MO 2-2-00)
- Where the complexity of a case and its record does not lend itself to a decision based on less than a full hearing, a dispositive motion will be denied. *Birchwood v. Whatcom County* 98-2-0025 (MO 3-18-99)
- A dispositive motion will be denied if there is doubt whether it should be granted. A denial of such motion simply means the issues will be decided after a review of the entire record and a complete hearing. *ICCGMC v. Island County* 98-2-0023 (MO 3-2-99)
- A GMHB will reach its decision on a dispositive motion by reviewing an interrelated combination of criteria including the size of the limited record in conjunction with time availability, the nature of the motion, the complexity of the issue including whether it is one of first impression, and the reasonableness of the claims. *ICCGMC v. Island County* 98-2-0023 (MO 3-2-99)

- It is appropriate to reserve decision on a dispositive motion where the limited record submitted raises as many questions as it answers. *WEAN v. Island County* 97-2-0064 (MO 2-23-98)
- A case that involves complex issues and an extensive record, even though relating to the issue of jurisdiction, is not a proper vehicle for a dispositive motion ruling and judgment is reserved until the hearing on the merits. *Rosewood v. Friday Harbor* 96-2-0020 (MO 10-2-96)
- Where the issues under consideration from a dispositive motion are complex and an extensive review of the record is required for determination, a ruling will ordinarily be reserved until the hearing on the merits. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)
- Where all issues can be decided on briefs, materials already submitted, and the arguments, a dispositive motion is the proper vehicle. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)
- Where the issues addressed by a dispositive motion are complex and require substantial review of the record, the motion will be denied. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- Dispositive motions are more analogous to an appellate court motion on the merits than to a superior court summary judgment or failure to state a claim motions. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)
- Except in rare instances where testimony is authorized under the standards of RCW 36.70A.290(4), a GMHB is not a fact-finding body and therefore affidavits submitted in support of a dispositive motion have little, if any, value. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)
- In reaching a decision on a dispositive motion submitted under WAC 242-02-530(4), a decision whether to grant or deny the motion involves examination of the size of the limited record in conjunction with the time available, the nature of the motion, the complexity of the issue and the reasonableness of the claims. A dispositive motion will be denied if there is doubt. A denial of a dispositive motion means that the issue will be decided at the hearing on the merits after a review of the entire record. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)

DISSENTING OPINION

- It is reasonable for the County to provide an alternative to mandatory buffers in ongoing agriculture because of the enormous negative impact those buffers could have on the ability of farmers to continue to farm. However, the regulations established in lieu of mandatory buffers must still meet the statutory requirements for protection of designated critical areas, and include best available science in doing so. They must protect from harm all of the seven functions and values of fish habitat. *Swinomish Tribal Community, et al. v. Skagit County,* 02-2-0012c (Compliance Order, – Dissent 12-8-03)
- Instead of making those best management practices mandatory, the County has made them “voluntary”. Under the County’s new ordinance, the County will only require an individual farmer to adopt best

management practices if that farmer can be shown to have caused harm to fish habitat. This approach shifts the emphasis from prevention to punishment; from protecting the functions and values of fish habitat to waiting for proof that harm has been caused. It also accepts the current status of fish habitat relative to shade, large woody debris, and litter fall and nutrient input, without regard to what the impact of the current status may be on fish. This approach allows for environmental harm which may take years to remedy. *Swinomish Tribal Community, et al. v. Skagit County* 02-2-0012c (Compliance Order, – Dissent 12-8-03)

- A finding of fact cannot be used to override repeal of the ordinance allowing continuation of the 1997 criteria. *FOSC v. Skagit County* 01-2-0002 (FDO, 6-13-01)
- The majority has incorrectly ruled regarding the Curtis LAMIRD designation. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under the record in this case the County was clearly erroneous in adopting a uniform 5-acre density in the rural area and did not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- The record demonstrated that surrounding parcelization was too great a consideration in RL designations. The remand order should include review of all of the areas disqualified because of such parcelization. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- Where the record demonstrated that the intent of the local government was to control development even though an ordinance was adopted to preserve water capacity, a sufficient nexus with the GMA and an official control was shown and therefore a GMHB has jurisdiction to review the action. *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)
- A GMHB should not invalidate sections of a zoning code that were not challenged by petitioner. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Under RCW 36.70A.280(2) a person is only required to appear. There is no requirement under the statute that a person participate. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)
- The petitioner in this case has not shown APA standing under RCW 34.05.530 because inclusion within the IUGA was desired by petitioner and the remedy petitioner requested was beyond the scope of a GMHB. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)
- The majority incorrectly applies the GMA to the record when it allows certain exemptions from regulation of rural wetlands. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

DUTIES

- Under the GMA, a County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Simply

providing access does not satisfy that duty. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)

- In an area where dike failure is common, under the GMA a county has the duty to identify, inspect, monitor, and impose restrictions or conditions on the maintenance of existing dikes. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- The rural character requirements of RCW 36.70A.070(5)(b) and (c) as well as RCW 36.70A.030(14) involve more than just preservation of "natural" rural area. A county must assure that the "natural landscape" predominates, but also has a duty to foster "traditional rural lifestyles, rural based economies and opportunities" to live and work in the rural area. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The public participation goals and requirements of the GMA impose a duty on a local government to provide effective notice and early and continuous public participation. Under the record in this case that duty was not discharged. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

ECONOMIC DEVELOPMENT ELEMENT

- The designation of an industrial land bank area under RCW 36.70A.367 must comply with the criteria contained therein and must contain analysis and designation in the CP and not through later adopted DRs. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Application by a county of the criteria found in RCW 36.70A.070(5) in dealing with existing industrial uses that recognizes and protects the economic viability of such uses while restricting their location to appropriate areas, complies with the GMA. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)
- An ordinance which was designed to implement the goals and objectives of an economic development plan as an element of the CP, but which did not specify any locations of proposed commercial or limited industrial districts, did not comply with the requirement found in RCW 36.70A.040(3)(d) requiring consistency between the plan and DRs. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)

EMERGENCY

- An ordinance adopted pursuant to RCW 36.70A.390 without a public hearing, and that expired prior to the date of the HOM, divests the Board of jurisdiction to rule on the issue of compliance of the ordinance. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- A DR adopted as an "emergency" without a public hearing makes it very difficult to show compliance with the Act. Under this record, hearings were held within sixty days but no permanent ordinance was adopted. The

actions do not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- The emergency provisions allowing waiver of SEPA compliance did not apply to "citizen confusion over property rights" after a determination of invalidity under WAC 197-11-880. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

EQUITABLE DOCTRINES

- *ICAN v. Jefferson County,* Case No. 09-2-0012, Order on Motions (Nov. 5, 2009) sets forth the tests for two equitable doctrines: *Res judicata* (claim preclusion) prevents the same parties from relitigating a claim that was raised or could have been raised in an earlier action. It is designed to prevent piecemeal litigation and to ensure the finality of judgments. The doctrine will bar litigation of a subsequent claim if the prior judgment and the pending matter include a concurrence of identity in: (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made. *Collateral estoppel* (issue preclusion) applies when the subsequent action is on a different claim yet relies on previously determined issues. Relitigation of those issues is barred when there are: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.
- [In looking at court application of the doctrines, the Board stated] Thus, it is clear from various court holdings that the equitable doctrines of *res judicata* and collateral estoppel may be applied by the courts to the quasi-judicial decisions of administrative bodies, such as the Growth Boards … it is clear that the courts in certain situations can apply these equitable doctrines to decisions made by administrative or quasi- judicial bodies. The question before this Board is somewhat different: *whether the Growth Management Hearings Board, as an administrative agency serving in a quasi-judicial capacity, may apply these equitable doctrines as well. ICAN v. Jefferson County,* Case No. 09-2-0012, Order on Motions (Nov. 5, 2009)
- [In considering whether the Board could apply the doctrines] The three Growth Management Hearings Boards have taken differing positions throughout the years. The Central Board, as ICAN correctly points out, has held that the GMA's grant of jurisdiction limits the Boards' ability solely to determining compliance or non-compliance with the GMA and thus the Boards are precluded from applying equitable doctrines. The Eastern Board has applied the doctrines while the Western Board has taken inconsistent positions. Neither of the latter two boards has analyzed the underlying legal issues but rather simply applied the principles (or declined to). No appellate court decisions appear to have addressed the power of a growth management hearings board to directly apply *res judicata* or

collateral estoppel. Division III of the Court of Appeals has held that the Pollution Control Hearings Board has the implied authority to consider and rule on a party's equitable defense. *ICAN v. Jefferson County,* Case No. 09-2-0012, Order on Motions (Nov. 5, 2009)

- Under the GMA, at RCW 36.70A.270(4) and (7), the Board is authorized to perform all powers and duties specified in the GMA "or as otherwise provided by law" and is granted the authority to adopt rules for the practice and procedure before the Board including rules regarding expeditious and summary disposition of appeals. In addition, and of greatest significance, this section states that unless there is a conflict with a specific GMA provision, the Administrative Procedures Act, Chapter 34.05 (APA) shall govern the practice and procedures of the Boards. While the language of RCW 43.21B.160 and RCW 36.70A.270(7) is not identical, both statutes provide their respective boards with the authority to apply provisions of the APA, providing in the case of the hearings boards there is no conflict with the GMA. And, in accord with the logic set forth by the court in *Motley*, the Growth Boards, being under an obligation to render decisions within 180 days of the filing of a petition for review, have the implied authority to "do everything lawful and necessary to provide for the expeditious and efficient disposition" of matters. As the Court stated in *Motley*: "An agency's implied authority is its power to do those things that are necessary in order to carry out the statutory delegation of authority". *ICAN v. Jefferson County,* Case No. 09-2-0012, Order on Motions (Nov. 5, 2009)
- Another element of ICAN's argument, and one again employed by the Central Board, is that RCW 36.70A.280(1) and .300(1) require the boards to determine only petitions alleging noncompliance with specified statutes and that the boards' final orders are to be based exclusively on whether the jurisdiction is compliant. However, applications of res judicata or collateral estoppel do not conflict with these statutory mandates. Rather, they supplement and serve to expedite such a determination. If, in fact, a determination has previously been made involving identical parties and issues, and the other factors required for application of those principles are present, how can it be argued that the Board is doing anything other than determining compliance or lack of same? Once a decision has been rendered, that determination should not be re-examined time and time again. The boards' rules of practice and procedure allow for reconsideration of decisions, but such a motion must be brought within a specified time period. Allowing re-argument of an issue involving the same facts and parties would be to potentially allow, in essence, reconsideration of the reconsideration. *ICAN v. Jefferson County,* Case No. 09-2-0012, Order on Motions (Nov. 5, 2009)
- [As to the] equitable principles of *res judicata* and/or *collateral estoppel.* The Board need not resort to the application of equitable principles in this case. The GMA has provided the Board with the statutory authority to review the record before it and determine whether the challenged

ordinance is in compliance with the Act … This case can be decided on that basis and there is no benefit at this stage of the proceedings to decide the case based on equitable principles. However, this does not preclude the Board from considering its past decisions, including the FDO (FDO) issued in WWGMHB No. 06-2-0023, to the extent those decisions provide guidance. *WEAN v. Island County,* case No. 08-2-0032, Final Decision & Order, at 5-6 (May 15, 2009)

- [Application of Equitable Doctrines such as *Res Judicata* or *Collateral Estoppel*] This Board, as have our colleagues at the other Growth Management Hearings Boards, have previously stated that the GMA has granted it no authority to apply equitable doctrines and has denied applicability of such doctrines. The Board affirms these previous holdings and denies dismissal of Issues 6 and 10, as relating to rural and urban water service, based on either Collateral Estoppel or Res Judicata. *Friends of Skagit County et al v. Skagit County,* Case No. 07-2-0025c, FDO at 24-25 (May 12, 2008)
- [Collateral estoppels requires (1) identical issues; (2) a final judgment on the merits; (3) the same party or a one in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice] The new ordinance is entitled to the presumption of validity pursuant to RCW 36.70A.320(1) and the question for the Board is whether the new ordinance is clearly erroneous. The record before the Board in each case is entirely different, most notably in that, in adopting each ordinance, the County relied upon separate and distinct studies. The Board's inquiry is whether, based on the record, the County's actions were clearly erroneous. Our review focuses upon the record and decisions made in adopting [the challenged ordinance]. Therefore, collateral estoppel does not apply. *ADR/Diehl v. Mason County,* Case No. 07-2-0010, FDO, at 4 (Jan. 16, 2008).

ESSENTIAL PUBLIC FACILITIES (EPFS)

- There are essential public facilities such as roads, bridges, pipelines and utility lines that must, of necessity, be located in resource lands. Clearly, the County must take into account the need for the construction of such facilities in resource lands. However, the County must also assure that the construction of these essential public facilities in natural resource lands does not interfere with the use of the resource. *Butler, et al. v. Lewis County,* 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04)
- A residential zone within airport property does not comply with RCW 36.70A.200(5). *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- A local government may not preclude the siting of EPFs. Siting includes use or expansion of airport facilities for airport uses. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01) & *Des Moines v. CPSGMHB* 98 Wn. App. 23 (1999)

- An airport is an EPF under the definition found in RCW 36.70A.200. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- Where a city adopted its CP before a county has adopted a process for siting EPFs and the CP included criteria for location of future EPFs along with a recognition of the necessity to have the city and county develop future siting criteria, compliance with the GMA was achieved. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)
- The requirement for establishing a process for siting EPFs was not satisfied by developing a study to determine if other studies should occur. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- An airport is an EPF under the definition of RCW 36.70A.200(1). *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- RCW 36.70A.200(2) states that a local government may not preclude the siting of EPFs. That requirement directs that DRs must be adopted that restrict incompatible uses surrounding current or future locations of EPFs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

EVIDENCE – *SEE* SUPPLEMENTAL EVIDENCE AND EXHIBITS

EXHAUSTION

- [Petitioners' asked for reconsideration of the Board's retroactive application of its decision to overrule prior holdings regarding exhaustion of administrative remedies for SEPA, the Board stated):

  > Contrary to Cook's assertion, it appears to be "well settled" that *retroactive* application is the general rule when announcing a new rule of law in a civil case. However, the case law also reflects a concern that retroactivity may unjustifiably affect a litigant's vested interests … Although vested, substantive interests in property, a contract, or in regards to taxation are not involved in this matter, the Board is mindful of the need to consider the impact on the parties, particularly if they justifiably and reasonably relied on the Board's prior holding … In light of the foregoing, including Cook and Heikkila's assertions of substantial reliance on this Board's prior holding in *Island County*, and the lack of any response from the City to the Petitioners' motions, the Board will grant Petitioners ' motions to reconsider and reinstate [Petitioners' SEPA issues] … based on the facts of this case, the Board declines in this instance to retroactively apply its decision … [However, the Board's decision to require exhaustion of administrative remedies] will be applied prospectively from the date of the Board's Order on Dispositive Motion in this matter, May 29, 2009.

  Heikkila/Cook v. City of Winlock, Case No. 09-2-0013c, Order on Reconsideration, at 3-4 (June 30, 2009)
- *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0009c, Order on Dispositive Motion, at 4-7 (May 29, 2009)(Overruling the prior holding of the Western Board in regards to the need to exhaust administrative remedies prior to seeking review of a SEPA decision before the Board.

RCW 43.21C.075(4) establishes a requirement for exhaustion of administrative remedies and, if an administrative process is available, a petitioner must exhaust in order to raise a SEPA issue before the Board).

- Since Petitioner is a citizen watchdog group rather than a party which has suffered specific injury, it is clear that Petitioner could not meet the standing requirements of SCC 14.06.040(3)(d). On the other hand, Petitioner does meet the participatory standing requirements of the GMA because it raised the issue to the County before filing this appeal. RCW 36.70A.280(2)(b). The County's position would leave the Petitioner with no ability to appeal the administrative interpretation as a GMA-related action, even assuming exhaustion of administrative remedies were required by the GMA. We conclude the Petitioner was not required to exhaust administrative remedies. *Skagit County GrowthWatch v. Skagit County,* 04-2-0004 (Order On Motion To Dismiss, 6-2-04)
- The County failed to provide a meaningful administrative remedy so that the Petition is not barred from bringing this petition based on failure to exhaust its administrative remedies. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- The exhaustion of administrative remedies requirement found in RCW 43.21C.070(2) and WAC 197-11-608(3)(c) for SEPA review is specifically directed to actions taken in order to qualify for *judicial review* and does not apply to GMHB review under RCW 36.70A.280(1). *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- There is no exhaustion of administrative remedies requirement in the GMA. *CPRA v. Clallam County* 95-2-0083 (MO 1-17-96)
- Under RCW 36.70A.110(2), where a city previously objected to an IUGA to CTED, it was not necessary for the city to once again object when a CP UGA with identical boundaries was adopted. *CPRA v. Clallam County* 95-2-0083 (MO 1-17-96)

EXHIBITS (SEE ALSO SUPPLEMENTAL EVIDENCE)

- *Campbell v. San Juan County,* Case No. 09-2-0014, Order on Motion to Supplement (Oct. 20, 2009)(Reminding parties that all exhibits referenced in the briefs must be attached to that brief)
- *RE Sources v. City of Blaine*, Case No. 09-2-0015 Order on Motions to Supplement (Jan. 5, 2010)(Granting motions by both parties but noting that with the supplementation of an Audio CD of the Planning Commission/City Council work session, if either party wishes to rely on the discussions which occurred during the work session, then that party will need to present the transcribed excerpt to the Board as an exhibit with its brief).
- [In response to a request for clarification of Board policy regarding submittal of exhibits by Petitioners, the Board stated]: In short, in

submitting evidence to the Board, the parties are expected to adhere to the requirements set forth in the Prehearing Order, unless modified in response to a motion, which requires all exhibits to be attached to a party's brief. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Final Decision & Order, at 3 (June 12, 2009)

- WEAN's brief referenced numerous exhibits that were not attached to its brief [Board had previously granted admission based on a motion to supplement filed by WEAN] A motion to supplement the record, even when granted, does not place the offered documents into evidence unless and until they are attached to the brief. It is a party's obligation to submit for the Board's consideration those portions of the record upon which it intends to rely. *WEAN v. Island County,* Case No. 08-2-0032, Final Decision & Order, at 3 (May 15, 2009)
- As a general proposition requested supplemental evidence compiled after the decision of the local government has been made will not be permitted. Such supplemental evidence may occasionally be admitted for issues involving a request for invalidity. Supplemental evidence of materials available to the local government, often developed by the local government, but not included in the record of deliberations are often admitted. Newspaper articles are not admitted for supplemental evidence. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)
- Since a GMHB can take official notice of growth management guidelines issued by CTED as well as the RCW and WAC provisions, there is no need to add proposed exhibits setting those items out. *Smith v. Lewis County* 98-2-0011 (MO 12-22-98)

EXISTING USES

- A local government must regulate preexisting uses in order to fulfill its duty to protect critical areas. GMA requires any exemption for preexisting use to be limited and carefully crafted. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- While existing zoning cannot be used as the sole criterion for designation of areas of AMIRDs, it may be used as an exclusionary criterion. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)

EXPIRATION

- In summary, we come to three conclusions. First, that the boards lack authority to declare that county and city ordinances and resolutions are void. Second, that the failure of a local jurisdiction to comply within the

period of remand no longer makes the ordinance ineffective because a finding of invalidity is available to address the question of vesting of permits. Third, even if the failure of a local jurisdiction to comply within the period of remand does make the ordinance ineffective, in this case the County acted within the extended periods of remand granted by the Board. For the reasons stated above, we find that the issues that pertain to unchanged portions of the County's code and comprehensive plan did not expire and thus were not timely raised and cannot be challenged here. *Vinatieri, Smethers and Knutsen, et al. v. Lewis County,* 03-2-0020c (FDO, 5-6-04)

- The record is clear that the County has worked diligently to bring itself into compliance and it submitted its report on progress made before the date specifically identified in the FDO. Noting that it would not be able to achieve compliance under the original timeframe set by the Board, the County also submitted a request for an extension of time to achieve compliance. Petitioner argues that this is not sufficient to prevent the ordinance from expiring. However, the County submitted its Compliance Report and request for extension before the date set in the FDO (February 27, 2004) and was therefore acting within the time frame allowed by the Board. We conclude that the County acted within the period of remand within the meaning of the statute, RCW 36.70A.300(4). *Irondale Community Action Neighbors v. Jefferson County* 03-2-0010 (Compliance Order 6-10-04)

EXTENSIONS

- A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)
- Where the parties have previously stipulated to an extension of time for issuance of a FDO and as part of that extension order a date was fixed for the time of issuance of a new request for extension and no such request was made the case is dismissed. *Carlson v. San Juan County* 99-2-0008 (MO 2-29-00)
- Under RCW 36.70A.300(2)(b), if the parties so stipulate and a GMHB finds that potential settlement of all or some of the issues in a case could resolve significant issues in dispute, an extension of the 180-day limitation for issuing a ruling is appropriate. *Abenroth v. Skagit County* 97-2-0060 (MO 10-30-97)

FAILURE TO ACT

- [In regards to the FDO's holding as to the Petitioners' failure to act claim, the Board found] ... the actions of the City were less than thorough -- as evidenced by, among other things, Exhibits 5 and 11 regarding inconsistencies in zoning and land use maps, utility corridors, public lands, and stormwater plans - However, although the 2005 Comprehensive Plan

quite likely does require further review and amendment, the Record before the Board establishes that the City has now updated its Comprehensive Plan in accordance with GMA requirements as required by RCW 36.70A.130. *Heikkila/Cook v City of Winlock,* Case No. 09-2-0013c, Compliance Order at 7 (June 8, 2010).

- The Board … views the sole issue to be considered during these compliance proceedings as one grounded in a "failure to act" challenge: whether Whatcom County has cured this failure by completing the RCW 36.70A.130(3) 10-year review of its UGAs. … the Board's finding of non-compliance which gave rise to the present compliance proceedings was in relationship to a procedural "failure to act" challenge. As this Board has previously stated, when non-compliance is based on a failure to act, compliance is cured when the necessary "procedural" action is complete. Any objection to the "substance" of that action requires a new Petition for Review. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, Order on Motion, at 3 (Feb. 1, 2010)
- The requirement of RCW 36.70A.130 is clear - Winlock was required to review and revise, if necessary, its comprehensive plan by December 1, 2008. While it adopted a revised comprehensive plan in early 2006, there has been no action taken by the City to address the concerns raised in the previous matter before the Board [*Harader, et al. v. Winlock,* WWGMHB, Case Number 06-2-0007]; concerns which appear to remain as review of the 2005 Comprehensive Plan in this case reflects many of the same facts. As with the prior case, there is no evidence in the Record reflecting that there was public notice that the .130 mandated review and revision was under consideration nor was there a finding in any ordinance (1) of the review that had taken place or (2) that revisions were or were not undertaken as a result. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [The issue with which the Board was presented during compliance proceedings is whether the County conducted the procedural review required by RCW 36.70A.130(1) as opposed to an analysis of the substance of that review and subsequent revision. Thus, in regards to the Housing Element which was amended in 2009, the Board held]: The Petitioner does not question that a review of [the Housing Element] occurred. Rather, he questions the substance in regards to affordable housing. As stated above, the sole remaining issue before the Board is whether or not the County conducted the required RCW 36.70A.130(1) and (4) review. The Petitioner has failed to meet his burden of proof to establish that such a review did not occur. *Campbell v. San Juan County,* Case No. 08-2-0006 Compliance Order, at 4-5 (Sept. 9, 2009)
- Where noncompliance was based on a failure to act, a compliance hearing for a new ordinance involved facial good-faith evidence in the limited record which, when combined with the presumption of validity under RCW 36.70A.320, resulted in a compliance finding and a

requirement for a PFR to challenge the new ordinance. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)

- In a hearing to rescind or modify invalidity, where a previous inaction in adopting DRs for CAs had been cured by adoption of a new ordinance, only a facial review of the new ordinance was made and the question of compliance with the GMA would only be addressed upon filing of a PFR. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)
- An adoption of a CP where a prior noncompliance finding was based upon a failure to act to adopt such plan, complied with the GMA. Further challenges were required to be made through a PFR. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- A prior finding of noncompliance for failure to adopt implementing DRs is cured when such regulations are adopted. Review of those regulations is by a PFR not by a compliance hearing. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- Where a previous order found a county had failed to act to adopt IUGAs and a subsequent DR cured that deficiency, compliance with the GMA has to be addressed through a PFR. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 2-22-96)
- The failure to adopt DRs to preclude new urban residential, commercial and/or industrial growth and extension of urban governmental services outside IUGAs did not comply with the GMA. A local government does not have authority to wait until adoption of its CP to take such action. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)

FISH AND WILDLIFE HABITAT CONSERVATION AREAS – *SEE* CRITICAL AREAS

FORESTRY

FOREST RESOURCE LANDS

- The proposed shooting range on designated natural resource lands, as described in the adopted Park Plan, does not comply with the GMA because the large complex of buildings for non-forestry activities would convert those lands from forestry to non-resource uses. *Lake Cavanaugh Improvement Association v. Skagit County* 04-2-0011 (Order on Dispositive Motion 9-21-04)
- DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The redesignation of an area to rural residential within a “sea of rural resource land” which was done because the rural resource land allowed certain activities, does not comply with the Act. A county may not permit certain activities in resource areas and then use the existence of those

activities as a reason to redesignate resource areas to other categories. *FOSC v. Skagit County* 99-2-0016 (FDO, 8-10-00)

- A finding of compliance for Mason County in its designation of forest lands of long-term commercial significance was made in accordance with the decision in *Manke v. Diehl* 91 Wn. App. 793 (1998). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 2-18-00)
- Allowing densities more intense than 1 du per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Under the record in this case, the county's determination that it had no forest RLs of long-term commercial significance complied with the GMA under *Manke v. Diehl* 91 Wn. App. 793 (1998). *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- An ordinance which prohibited residential development in commercial forestry lots of larger than 40 acres, but allowed residential use of 1 unit per 20 acres in smaller lots did comply with the GMA. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- A DR which did not act to significantly reduce the impact of incompatible encroachment upon the RL did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- The use of previously determined noncompliance criteria in a forestland designation was not cured by applying the same criteria to a DR. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- A determination that only lands previously zoned forestry would be designated industrial forestland precluded designation of forestlands which met the criteria of GMA and thus did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- The use of a minimum 20-acre lot size in a forestry zone did not comply with the GMA requirement to preclude conflicting uses from RLs. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- First establishing a desired outcome through mapping and then developing data and/or criteria to support that outcome did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- The failure to include setbacks from lands adjacent to designated forestlands where a density of 1 dwelling unit per 2.5 acres was allowed did not preclude incompatible uses and thus did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- A criterion which made participation in the open space tax classification system a prerequisite for designation effectively left the designation decision to the landowner and thus did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- Excluding parcels under 5,000 acres for designation as commercial forestland did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)

- Conservation of productive forestland is the paramount consideration for an interim resource land DR. Enhancement of potential economic value at the expense of conservation was not a legitimate goal and did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- A designation that required a net yield of 25,000 board feet per year and allowed an owner to remove the forestry designation any time that criterion had not been reached did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- A criterion that disqualified RL designation, if it was within ½ mile from "suburban" lands, did not conserve RL and did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- The allowance of a transfer of development rights from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- A clustering scheme which allowed 40% of the designated forestland area for conflicting uses did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- A local government is required to designate forestlands not already characterized by urban growth that have long-term significance for commercial production of timber. A local government is required to consider the guidelines established by CTED. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- The intent of the early (September 1, 1991) designation process was to conserve commercial forestlands while a local government completed its CP. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- The 1994 amendment to the definition of forestlands contained in RCW 36.70A.030(9) did not change the original intent of the GMA. The amendment does not allow a landowner's intentions nor the consideration of a higher value for conversion to be appropriate criteria for the designation of forestry land. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- A local government's methodology to reach a conclusion as to designation of forestlands and then establish criteria to support that conclusion did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- Adoption of criteria that encouraged rather than discouraged conflicting uses did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- The exclusion of class IV forestlands from designation was based on improper criteria and ignored abundant evidence contained in the record. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)

FRAMEWORK

- CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)

FREQUENTLY FLOODED AREAS – *SEE* CRITICAL AREAS

FULLY CONTAINED COMMUNITIES (FCCS)

- While the County has created an urban reserve (which can be used to allocate urban population growth to new fully contained communities), there is nothing in the code which provides that the urban reserve will be utilized when a fully contained community is created. This is an express requirement of the GMA that is critical to the creation of a fully contained community. *Wristen-Mooney v. Lewis County,* Case No. 06-2-0020, Order on Compliance, at 2 (Jan. 5, 2007)
- [Affirming the] use of a coordinated process, whereby the Hearing Examiner handles the permit issues and the Planning Commission handles the comprehensive plan and development regulation issues, [to be compliant] with the GMA. *Wristen-Mooney v. Lewis County,* Case No. 06-2-0020, Order on Compliance, at 9-10 (Jan. 5, 2007)
- A county is compliant when its approval process for an FCC includes the statutory criteria of RCW 36.70A.350 and a process for review, approval, and designation of the FCC. *Mudge, Panesko, Zieske, et al. v. Lewis County*, 01-2-0010c (Compliance Order, 7-10-02) Also *Panesko v. Lewis County*, 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (Compliance Order, 7-10-02)
- In the designation of an FCC, the CP must determine if the requirements of RCW 36.70A.350 could be met in the foreseeable future. DRs are not the appropriate time to fulfill this requirement. DRs for an FCC must establish a system to ensure that an FCC urban designation is appropriately self-sufficient and contained. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- There is no authority in the GMA to apply a provisional or preliminary FCC designation. With no adherence to RCW 36.70A.350 in the CP and a purported provisional vesting designation, the designation substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

GENERAL AVIATION AIRPORTS

- In this Order, we find that the County has sufficiently analyzed the risk factors and conditions specific to the OIA and reduced development potential in those airport safety zones that carry the greatest risk. Important to our findings in this regard is the fact that the Washington

Department of Transportation, Aviation Division, supports the County in its choice of methods for protecting the OIA from incompatible uses. *Durland v. San Juan County* 00-2-0062c and *Klein v. San Juan County* 02-2-0008 (Compliance Order/Extension of Time 12-18-03).

GEOLOGICALLY HAZARDOUS AREAS – *SEE* CRITICAL AREAS

GOALS

- [T]he ultimate test of whether the County considered the goals is in the determination of whether the challenged action was guided by those goals … nothing in the GMA requires a specific delineation of such consideration. The Record before the Board clearly demonstrates the GMA's goals, although not explicitly referenced, were before the County Council during the process that led to the adoption of [the challenged ordinance] and deliberation and contemplation as to the issues related to the goals occurred. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, FDO at 38-39 (Oct. 13, 2008) [See Pages 39-48 for Board's evaluation as to whether the County's action was guided by the GMA's goals].
- There is no requirement in the Act that the County show how it will balance the GMA goals in every comprehensive plan amendment; instead, the burden is on Petitioners to show that the County's action is not in compliance. *Hood Canal, et al. v. Jefferson County* 03-2-0006 (FDO, 8-15-03)
- One of the challenges for cities and counties is to balance the goals in their policies and in the GMA. In this case, the City struck a balance between preservation of waterfront views and increased urban housing densities. This is precisely the type of balancing that the Legislature left to the cities and counties. *Ray, Jacobs, Jorgensen, Lean and Friends of the Waterfront v. City of Olympia and Department of Ecology* 02-2-0013 (FDO, 6-11-03)
- Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under the record in this case, the County appropriately considered property rights under Goal 6. *Mitchell v. Skagit County* 01-2-0004c (FDO, 6-8-01)
- A claim of petitioners who were owners of improved property that the allowance of RVs on unimproved properties interfered with Goal 6 was not the type of "property right" intended by the Legislature to be encompassed by Goal 6. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)

- The term “arbitrary and discriminatory actions” in Goal 6 involves the protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)
- A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as “rural development districts” does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under the record in this case, the county improperly included vast areas of undeveloped property in its LAMIRD designations. Such areas are noncompliant and further substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Goal 1 of the Act allows and encourages expansion to take place in urban areas where public facilities can accommodate such growth at a lower cost and with less burden to taxpayers and to the natural environment. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities

and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)

- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- A one-acre property virtually filled with a community center building with no further opportunity for development and substantial interference with Goal 8 of the Act will result in a rescission of invalidity. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- A petitioner's concern about a local government's hearing examiner system and the reluctance to incur the expense of a court appeal was beyond the scope of review authorized to a GMHB by the Legislature and did not constitute a violation of Goal 6. *Evaline v. Lewis County* 00-2-0007 (FDO, 7-20-00)
- Balancing of GMA goals can take place only after goals are met through compliance. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- A local government has the right to prioritize and emphasize the goals of the GMA. A local government does not have the right to disregard 12 of the goals and focus entirely on the property rights goal. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- The goals of the GMA have substantive authority and must be considered and incorporated into all GMA actions. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

GMA PLANNING

- Under the GMA, a County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Simply

providing access does not satisfy that duty. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)

- A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

HABITAT MANAGEMENT PLAN

- Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)

HISTORIC PRESERVATION

- [As to historic or ancient lots] ICAN fails to acknowledge that even legally created lots are not developable if substandard. [ICAN's] argument reveals a lack of appreciation of the distinction between a legal lot and a developable lot. In general, a "legal lot" is any lot that was created by legal means (i.e. subdivision, testamentary devise, boundary adjustment). A "buildable" or "developable" lot is one that meets the zoning and health code requirements. In *Dykstra,* [*Dykstra v. Skagit County*] the Court noted that a legal lot may still be a non-conforming substandard lot because its land is insufficient to be a buildable site and that the legal lot status does not confer development rights. Here, the County properly based its holding capacity analysis upon developable lots. *ICAN v. Jefferson County,* Case No. 07-2-0012, Order on Reconsideration, at 6-7 (Sept. 11, 2009)
- We have been given no authority to persuade us that the GMA imposes a burden on a city with the limited resources of the City of Nooksack to undertake preservation of a specific historic site. *Camp Nooksack Association v. City of Nooksack*, 03-2-0002, (FDO, 7-11-03)

HOUSING (SEE ALSO AFFORDABLE HOUSING)

- Intervenor does raise an intriguing question about the County's need to meet the housing requirements for that portion of the County's workforce that commutes to the islands by ferry service from the mainland. In response, the County argues that its duty under RCW 36.70A.070(2)(d) is to provide for the existing and projected housing needs of the community, not the housing needs of residents in adjacent communities who work in San Juan County … Intervenor does not cite any GMA provision or case law to support his assertion that San Juan County is required to address the needs of individuals who commute to the County and, hypothetically, would relocate to the County if housing was available. Rather, RCW 36.70A.070(2) seeks to address not only the County's existing needs but its housing needs "necessary to manage projected growth." In GMA planning, "projected growth" is a product of the Office of Financial Management (OFM), the state agency charged with maintaining

population data for the State [RCW 43.62.035], and it is these numbers which serve as a foundation for GMA planning. Thus, the County's assessment of its housing needs is based on its 20-year projected population growth as provided by OFM. OFM's numbers, of course, are not stagnant but look at a variety of statistical trends in order to calculate projected growth for a community. These trends are not limited to births and death occurring in the community but are also based on various models which include migration rates due to employment. Therefore, the Board finds no indication in the GMA that the County has a duty to address the housing needs of individuals who commute to San Juan County for their jobs. *Campbell v. San Juan County,* Case No. 09-2-0104, FDO at 6-7 (Jan. 27, 2010)

- The Board finds that where, as here, the County has adopted policies that support the housing needs of the County it has met RCW 36.70A.070(2)'s requirement to "make[s] adequate provisions for existing and projected needs of all economic segments of the community". *Campbell v. San Juan County,* Case No. 09-2-0104, FDO at 7-8 (Jan. 27, 2010)
- The Board recognizes too that the County is not obligated to add to the stock of low income housing but instead to set the framework in which the market can provide housing for all segments of the population. *Campbell v. San Juan County,* Case No. 09-2-0104, FDO at 14 (Jan. 27, 2010)
- In order to implement this goal [RCW 36.70A.020(4)], cities and counties are directed to do the necessary planning to perform an inventory and analysis of existing and projected needs, make adequate provisions for the needs of all economic segments of the community, and identify sufficient land for low income housing. *Campbell v. San Juan County,* Case No. 09-2-0104, FDO at 15 (Jan. 27, 2010)

IMPACT FEES

- Under the authority of *LaCenter v. New Castle Investments* 98 Wn. App. 224 (1999), impact fees are not and cannot be development regulations, are not a part of the requirements of RCW 36.70A and therefore not within the scope of jurisdiction provided in RCW 36.70A.280. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)
- A transportation impact fee ordinance which could have some effect on the rate of development but placed no "controls" on development or land use activities does not meet the definition of a DR under RCW 36.70A.030(8). Therefore, a GMHB does not have jurisdiction to review an appeal of that ordinance. *Properties Four v. Olympia* 95-2-0069 (FDO, 8-22-95)

INCORPORATION BY REFERENCE

- Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)

- Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- GMA compliance is not achieved where a city CFE which was still in process was adopted by reference by a county for claimed compliance with RCW 36.70A.070(3). *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- RCW 36.70A.070(3)(d) requires that a CFE clearly identify funding sources. A generalized list of funding sources did not comply with such a requirement. However, use of other sections of the CP which are incorporated by reference and are sufficiently specific documents does comply with the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- The adoption of a groundwater management plan into the FSEIS as authorized by WAC 197-11-640 sufficiently disclosed potential environmental impacts from increased agricultural use. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The incorporation of a different entity's plan for capital facilities without review to ensure consistency to achieve the goals and requirements of the GMA does not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

INDISPENSABLE PARTY

- The GMA does not require notice to, or joinder of, an affected property owner as an indispensable party to GMHB cases. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

INDUSTRIAL LAND BANKS/INDUSTRIAL DEVELOPMENT

- An ILB first brought forth at a Planning Commission sub-committee meeting and included for the first time in a Planning Commission draft less than a month before final CP adoption by the BOCC did not comply with the public participation goals and requirements of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The designation of an industrial land bank area under RCW 36.70A.367 must comply with the criteria contained therein and must contain analysis and designation in the CP and not through later adopted DRs. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- A purported ILB "reserve area" was without authority and did not comply with the GMA. The Legislature required only two sites to be designated ILB under RCW 36.70A.367. Additional designations substantially interfered with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

INFRASTRUCTURE

- The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Within municipal UGAs efficient phasing of infrastructure is the key element, not the interim shape of the city limits boundary. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)

INNOVATIVE TECHNIQUES

- The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)

INTERIM

- Adoption of an interim ordinance cannot cure non-compliance… The reason for this is that an interim ordinance will, by its terms, expire in a set period of time. Once the interim ordinance expires, the County will again be out of compliance. Given the statutory limitations on the Board's jurisdiction, expiration of the interim ordinance would not confer jurisdiction upon the Board to determine compliance and so the Board cannot determine compliance until a permanent amendment has been adopted. See RCW 36.70A.290(2) on the jurisdiction of the boards. *Friends of San Juans, Lynn Bahrych and Joe Symons v. San Juan County,* WWGMHB Case No. 03-2-0003c (Compliance Order, 7-21-05)
- Due to the interim nature of Interim Ordinance 020040006, the County's lot aggregation measures continue to be noncompliant with the GMA. *Evergreen Islands v. Skagit County* 00-2-0046c (Compliance Order, 6-22-04)
- An ordinance adopted pursuant to RCW 36.70A.390 without a public hearing, and that expired prior to the date of the HOM, divests the Board of jurisdiction to rule on the issue of compliance of the ordinance. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- The use of RCW 36.70A.390 to adopt actions without a public hearing apply only to DRs and do not apply to CPs. Amendment of a CP through the use of this section does not comply with the Act. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- The use of the term "interim" in a designation of UGA process where a county acknowledged that the designations were a "work in progress" did not relieve the county of the duty to comply with all the goals and requirements concerning UGAs before compliance with the GMA can be achieved. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The adoption of an interim ordinance to amend a previously invalidated matrix of permitted uses to allow fire stations and accessory structures removes substantial interference as to that use only. A compliance hearing is necessary before a decision on compliance may be reached. *Diehl v. Mason County* 96-2-0023c (MO 4-18-01)
- Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- Under RCW 36.70A.130(1) every CP is subject to continuing review and evaluation. Where a CP has been adopted, is being used and has no sunset date, it is considered permanent under the GMA even though the CP referred to specific area as "interim" to be revisited after a study was completed. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- Under recent amendments to RCW 36.70A.302(7)(a) a local government may either amend an invalid plan or regulation or subject such plan or regulation to interim controls. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- An interim CAO that contained a sunset provision (expiration date) did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 7-1-97)

INTERIM URBAN GROWTH AREAS (IUGAS)

- When an IUGA ordinance dealing with restrictions on rural growth is superseded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (Compliance Order, 7-13-00)
- A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as amended" no longer substantially interferes with the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (Compliance Order, 7-13-00)
- Under this record, prohibition of residential development is an essential element of the industrial IUGA, as are restrictions of use to resource-based or rail-dependent industry and associated and supportive commercial development. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- An affordable housing element is not a requirement of the GMA at the time of establishing IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- Transportation concurrency and LOS standards are tasks for the CP process and are not required in the designation of IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- The GMA does not envision the creation of new small towns in rural areas at the IUGA stage of planning. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- Nothing in the GMA prevents a county from approving an IUGA adjacent to lands with urban characteristics solely because land within the IUGA is being farmed. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)

- Under RCW 36.70A.110 a local government must permit a range of urban densities and uses including affordable housing requirements. Nothing in RCW 36.70A.110(5) makes that requirement different for an IUGA. *Smith v. Lewis County* 98-2-0011 (MO 12-11-98)
- Because of regionality within the counties and cities of the WWGMHB jurisdiction, it is impossible to establish a standard average density per acre or other mathematical baseline to determine compliance with the GMA in the sizing or location of IUGAs. The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- CPPs play a major role in determining proper IUGAs. CPPs must comply with the GMA and cannot be used as a justification for failure of an IUGA to comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The purpose of IUGAs is to establish IUGAs at municipal boundaries and minimize or eliminate expansion until a proper land capacity analysis, including existing and future capital facilities impacts and existing and future fiscal impacts, has taken place. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The GMA requirement for an IUGA land capacity analysis does not shift the burden of proof to a local government but simply provides an analytic framework to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used or that it was used in a way that did not comply with the GMA remains with a petitioner. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A county is required to account for growth that has occurred between the base year and the year in which an IUGA was adopted. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A recognition of growth that has already taken place helps to prevent over-sizing of IUGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The county must size an IUGA large enough to accommodate the growth that will be directed into it. The Legislature has determined that directing growth to urban areas provides for better use of RLs and more efficient use of taxpayer dollars. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The GMA requires local governments to adopt policies, DRs and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The more a local government uses techniques to funnel growth into urban areas, the more discretion is afforded under the GMA in the sizing of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)

- Under RCW 36.70A.110 the establishment of an IUGA depends on the demand, as established from OFM population projections, the current supply of land and the cost of supplying public facilities (infrastructure) and services. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A demand factor analysis for projected industrial land did not comply with the GMA where it was based upon erroneous population projection assumptions, failed to reconcile the differences in projected demand between various exhibits, and was based upon historical zoning patterns. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Where the record demonstrated an industrial land supply in excess of 13,000 acres, which was at least 450% greater than forecasted demand, IUGAs based upon such an analysis did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Where the record is devoid of information or analysis as to the cost of extension of public facilities and services for industrial zoned IUGAs in unincorporated areas, there was no compliance with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Where a new IUGA designation was made without even a threshold determination required by WAC 197-11-310, compliance with the GMA was not achieved. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The lack of information or analysis of available supply of commercial land within IUGAs was fatal to GMA compliance. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The lack of any cost analysis for future public facilities and services dealing with commercial IUGA designations rendered the designation not in compliance with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The GMA signals the end of land use planning solely for revenue purposes and tax-base issues. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Residential IUGAs that included too much area and areas that were inappropriate for IUGA designation and which included no provisions for infilling did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The failure of a county to complete RL and CA designations and DRs prior to IUGA designations, when such resource and CA lands were included in

the IUGA, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)

- Projected densities in IUGAs or UGAs at the end of the planning period, which only slightly increased current densities, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The GMA does not allow designation of areas for urban growth where no such urban growth is expected within the planning period. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A DR which did not limit industrial development to resource-based industry nor limit commercial development to rural neighborhood needs in areas outside properly established IUGAs did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- One of the major purposes of an IUGA ordinance is to preclude new urban development outside of IUGAs while local governments complete their GMA CPs and implementing regulations. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- The GMA does not preclude the placement of resource-based industries or rural commercial development outside of IUGAs. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- Nonresidential uses outside IUGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- Allowance of new urban growth outside the IUGA boundary does not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Under the record in this case, the allowance of densities of 1 dwelling unit per 2 acres and greater densities in areas outside properly established IUGAs substantially interferes with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- The purpose of DRs to prohibit urban growth outside IUGAs is to contain sprawl immediately. Greater discretion to balance competing interests comes with the adoption of a CP. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Where a previous order found a county had failed to act to adopt IUGAs and a subsequent DR cured that deficiency, compliance with the GMA has to be addressed through a PFR. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 2-22-96)
- The failure to adopt DRs to preclude new urban residential, commercial and/or industrial growth and extension of urban governmental services outside IUGAs did not comply with the GMA. A local government does not have authority to wait until adoption of its CP to take such action. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- The establishment of an IUGA at the Port Townsend city limits complied with the GMA. Establishment of study areas for potential later inclusion within an UGA did not violate GMA. Under the GMA a GMHB does not

have authority to specifically order a particular action to be taken by a local government. Therefore, the issue to be decided at a compliance hearing is whether the local government has complied with the GMA and not necessarily whether strict adherence to the FDO has been achieved. The specific mechanism for achieving compliance rests solely with a local government. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)

- Where an ordinance had a sunset date that expired, leaving no DRs implementing the IUGA, a local government failed to comply with RCW 36.70A.110. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)
- Where an interlocal agreement between a city and a county established an IUGA at the city limits but provided that there was no restriction to annexation outside the IUGA, a clear violation was shown. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)
- The GMA requires that new urban growth be served by urban public facilities and services whether they are provided by a public or private source. Public services and facilities means that all such services must be equitably available to all persons within an IUGA. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)
- In order to qualify as an unincorporated IUGA an area must be characterized by urban growth or adjacent to areas characterized by urban growth. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)
- Where no evidence showed the basis for a population allocation of an unincorporated IUGA nor showed that the assigned OFM population projection could not be accommodated within existing municipal limits nor showed that an agreement under the county's CPP provisions had been reached, the IUGA designation did not comply with the GMA. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)
- Prior to adoption of any IUGA beyond city limits a proper planning analysis of growth needs and the present and future availability of adequate public facilities and services to meet those needs as well as planning for the costs of providing such public facilities and services is required. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)
- The failure to provide for an adequate water supply for urban densities showed that the establishment of an IUGA did not comply with the GMA. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)
- An IUGA DR must expressly prohibit urban growth outside the IUGA boundaries. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- An IUGA is initially established at the municipal boundary. Until a proper land capacity analysis, which includes a capital facilities and fiscal impact analysis, is completed the IUGA cannot be moved. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- Greenbelts and open spaces must be identified within an IUGA. The most common method of such identification is by mapping. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)

- A population projection that was shown to be less accurate than the one provided by OFM did not comply with the GMA and could not be used as the basis for drawing IUGAs. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- A land capacity analysis is a necessary prerequisite to establishing IUGAs. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- The GMA does not allow existing zoning to be the sole criterion upon which to base an IUGA. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- RCW 36.70A.110(4) was passed by the Legislature to prevent new urban development from occurring outside a logically established IUGA until the CP is completed. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- RCW 36.70A.110(1) requires that municipal boundaries are to be included within an IUGA and the balance of the GMA establishes that those boundaries may not be extended until a proper analysis has been adopted. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- In establishing an IUGA where a county used appropriate analysis and reasoning and conclusions that were within the range of discretion afforded by the GMA, that decision complied with the GMA. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- An IUGA must initially be established at the municipal boundaries and expanded only when appropriate information and analysis balanced with CPPs and the goals and requirements of the GMA are met. *Williams v. Whatcom County* 94-2-0013 (FDO, 10-13-94)
- Under RCW 36.70A.110 the decision to establish a particular IUGA is made by the County. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- An IUGA is definitionally established at the municipal boundary and may be expanded only after a proper analysis of the need for, cost of and ability to pay for additional urban growth. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- A reasonable analysis of current data is necessary prior to the establishment of an IUGA outside municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- CPPs apply to and must be consistent with the establishment of an IUGA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- A land capacity analysis, an analysis of existing and future capital facilities and services, and necessary fiscal impacts must be completed before an IUGA outside municipal boundaries may be established. The IUGA must be consistent with the goals and requirements of the GMA and the CPPs. Guidance as to the information required for such an analysis is found in WAC 365-195-335(3). *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- The purpose of an IUGA is to immediately establish a boundary until completion of the CP and DRs. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

- New urban growth is prohibited outside of a properly established IUGA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs and adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- RCW 36.70A.110 prohibits urban growth outside of a properly established IUGA and therefore a local government does not have any discretion to allow such urban growth. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95) *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

INTERLOCAL AGREEMENTS (ILAS)

- Some inherent drawbacks to the reliance upon interlocal agreements [to establish development regulations] are that they are contracts among local governments that may not be subject to public or board review; they are dependent on good relations among local governments; they are built on commitments between local elected officials that may not last from election to election; and they are not themselves regulations that apply to citizens in regulating land use without corresponding comprehensive plan policies or development regulations *City of Sedro-Woolley, et al., v. Skagit County,* 03-2-0013c (Compliance Order, 6-18-04)
- Where a county adopts a position that for many years that interlocal agreements adequately substituted for DRs to accomplish the purpose of transformance of governance, it cannot now complain that it does not have the ability to amend those interlocal agreements in order to achieve compliance. *FOSC v. Skagit County* 00-2-0050c (RO 3-5-01)
- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- The adoption of an amended DR denominated a memorandum of agreement, that occurred without any public participation except the noticing of the holding of a work session, does not comply with the GMA public participation goals and requirements. *Servais v Bellingham* 00-2-0020 (FDO, 10-26-00)
- ILAs between cities and counties ensuring that growth and development of commercial and industrial uses are timed, phased and efficiently provided with services must be in place and in force before compliance with the GMA can be found. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- An interlocal agreement between the city and county that is enforced to require concurrency and preclude uncoordinated strip commercial growth

along a major highway complies with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)

- In the absence of an interlocal agreement giving the city control over land use policies and DRs, no additional protection for CAs in the proposed UGA was available. The record did not reveal why the county was unable to protect the watershed if it had not been designated for urban growth. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- The GMA does not allow designation of an UGA that is not expected to ever develop at urban densities simply to allow a city to have greater control over its water supply, particularly when the county would continue to exercise planning jurisdiction over the area and no interlocal agreement had been made. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

INTERVENTION

- *See Clark County Natural Resources Council/Futurewise v. Clark County,* Case No. 09-2-0002, Order on Intervention. Board granted intervention to Houghton (March 17, 2009) and Schwarz (April 6, 2009). Orders denoted that intervention is proper when the party claims an interest relating to the property or transaction but that the Board has the authority to limit the intervenor's participation in the case.
- A petitioner has rights to pursue its petition that a non-petitioner does not have. See, for example, RCW 36.70A.300(2)(b)(ii). The board procedures for intervention allow an interested party to participate in briefing and arguing the issues so that it may protect its interests in the board's decision. However, full petitioner status can only be obtained through filing a timely petition for review. *Futurewise v. Whatcom County,* WWGMHB Case No. 05-2-0013 (Order on Dispositive Motions, 6-15-05).
- We have held that a test for imposition of invalidity is whether the continued validity of the challenged and non-compliant enactment would interfere with proper planning in the future. *Vinatieri v. Lewis County,* WWGMHB Case No. 03-2-0020c (Compliance Order – 2005, January 7, 2005).
- In this case, the non-compliant comprehensive plan provisions and development regulations allowing urban levels of development without requiring urban levels of sewer service pose the danger that such development might vest in the new UGA before the County is able to adopt compliant development regulations. Such vested development would interfere with the County's ability to plan for adequate public sewer service to the new urban growth area, thus interfering with UGA goals for urban growth with adequate public facilities and services (Goal 1) and adequate public facilities and services to support development at the time the development is available for occupancy (Goal 12). *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action*

Neighbors v. Jefferson County, WWGMHB Case No. 03-2-0010 (Compliance Order, 5-31-05)

- Intervention is granted subject to the conditions that no new issues may be raised, adherence to the prehearing order is required and any mediation or settlement will involve intervenors, but intervenors may not object or otherwise interfere with any resolution between the county and individual petitioners. *Durland v. San Juan County* 00-2-0062c (MO 1-23-01)
- Under RCW 36.70A.290(7) the test for granting or denying intervention is directed by RCW 34.05.443. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)
- The provisions of RCW 36.70A.330(2) do not provide for intervention standing during a compliance hearing. Intervention is governed by RCW 34.05.443(2) which authorizes a presiding officer to impose conditions upon an intervenor's participation at the time intervention is granted or at any subsequent time. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)
- Some divergence of interest must be shown to warrant granting of intervention. The term "interest" is to be construed broadly. *Progress v. Vancouver* 99-2-0038 (MO 11-30-99)
- Under RCW 36.70A.270(7) the test for intervention is found in RCW 34.05.443. *Butler v. Lewis County* 99-2-0027 (MO 10-28-99)
- Intervention was denied because the next hearing would not involve a request for rescission of invalidity, it was not the appropriate time for submission of new information and a GMHB does not have jurisdiction over the permitting of specific projects. *ICCGMC v. Island County* 98-2-0023 (MO 7-6-99)
- Where a city's motion to intervene in a compliance hearing was untimely, the motion will be denied. *Abenroth v. Skagit County* 97-2-0060 (Compliance Order, 3-29-99)
- The motion clearly demonstrated that potential intervenors had a long history of involvement in the subarea plan which was the gravamen of the case. Potential intervenors further demonstrated that their interests would not necessarily be represented by the county. *Carlson v. San Juan County* 99-2-0008 (MO 3-29-99)
- WAC 242-02-270 provides that whether a person qualifies for intervention is based upon applicable provisions of law as well as consideration of the applicable superior court civil rules. The granting of intervention must be in the interest of justice and shall not impair the orderly and prompt conduct of the proceedings. *Smith v. Lewis County* 98-2-0011 (MO2 12-22-98)
- Where a citizens' group opposed to the petitioners citizens' group demonstrated an interest in the outcome of the proceedings and that the interest may be impaired if the opposition group was not permitted to intervene, intervention was granted. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)

- Where a property owner has an interest that may not be adequately protected by existing parties and the property was one whose designation was being challenged, adequate grounds for intervention was shown. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Intervention was granted subject to the conditions that the intervenors were limited to the issues set forth in and by all other requirements of the prehearing order. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Where constitutional challenges were the sole basis for the request for intervention it was denied. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- The GMA has no intervention provisions and hence no conflict with RCW 34.05. Thus the APA rather than the provisions of WAC 242-02 are the controlling requirements. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- In order the qualify under any provision of law, CR 24 (a)(2) requires that an applicant for intervention must show an interest in the case that is not adequately protected by existing parties. Some factual information must be shown. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- In order to qualify for permissive intervention some facts must be submitted in support of the request. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Where a large number of additional parties requested intervention in a case that already had approximately 40 parties, granting the interventions would have impaired the orderly and prompt conduct of the proceeding and therefore the requests were denied. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Intervenors will only be permitted to address issues that were raised by a timely filed PFR. Intervention is not a vehicle for allowing admittance of a belated PFR. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Intervention was granted where parties own property in various parts of the county, specific facts supporting the request for intervention were set forth and no existing party objected. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- After the 1996 amendments to RCW 36.70A.270(7), qualifications for intervention are to be established by RCW 34.05.443. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- There are three separate tests to determine whether to grant intervention status: (1) whether a party qualifies under "any provision of law" (WAC 242-02-270(2) and CR 24), (2) where the intervention is sought in the interest of justice and, (3) and where there is no impairment of orderly and prompt proceedings. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- In order to demonstrate whether a potential intervenor has shown an "interest" in the case to support intervention as a matter of right, some factual information must be shown. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

- In order the qualify as an intervenor an applicant must provide a factual basis as to why existing parties could not or would not adequately represent the interests of the applicant. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- In order to qualify under CR 24 for permissive intervention an applicant must submit facts showing qualification or appropriate grounds for intervention. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- Allowing an additional 47 parties to intervene in a case involving 13 existing parties would impair the orderly and prompt conduct of the proceeding under RCW 34.05.443(1), particularly absent a factual showing of reasons to allow the interventions. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)
- An intervenor waived the right to object to jurisdiction at the hearing on the merits when conditions which granted intervenor status were accepted. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- The provisions of WAC 242-02-270 determine the test for granting or denying intervenor status. Limitations to the existing issues and existing schedule is normally a condition of granting intervention. *FOSC v. Skagit County* 95-2-0065 (MO 4-10-95)
- The failure of potential intervenors to attach proposed pleadings to their motion for intervention was not fatal since an answer or other responsive pleading is not required by WAC 242-02. *CCNRC v. Clark County* 92-2-0001 (MO 8-4-92)
- Where there was no evidence that delays would occur as a result of the intervention, it was granted subject to conditions. *CCNRC v. Clark County* 92-2-0001 (MO 8-4-92)

INVALIDITY

1. In General

- Rescinding invalid regulations is an appropriate response in this instance to a finding of invalidity [as it removes the basis for the Board's earlier determination]. *ARD/Diehl v. Mason County,* Case No. 07-2-0010, Order on Compliance, at 7 (Oct. 20, 2008)
- [I]t is inappropriate for the County to transfer lands into the Toledo UGA while such lands are still under invalidity … Although the land designated for the Toledo UGA expansion may be appropriate for inclusion in the UGA, the County may not expand the UGA to include land under invalidity. Only after invalidity has been lifted from the affected parcels may the County include this land in the UGA. *Panesko, et al v. Lewis County,* Case No. 08-2-0007, FDO, at 26, 29 (Aug. 15, 2008).
- [T]he Board sees the primary question raised on reconsideration as essentially the impact of a Determination of Invalidity – does it solely invalidate a non-compliant jurisdiction's comprehensive plan and/or development regulations or are the lands themselves restrained by the invalidity so as to preclude future land use planning decisions from impacting these lands? The GMA authorizes the Board to issue a

Determination of Invalidity as to part or all of a comprehensive plan or development regulation upon finding a jurisdiction is non-compliant with the GMA and that the continued validity of the plan or regulation would substantially interfere with the fulfillment of the goals of the GMA. The GMA further provides there are two ways in which invalidity may be removed – by motion of the county or city subject to such invalidity or after a compliance hearing which considered the county's or city's enactment amending the invalidated part or parts of the plan or regulation. The driving analysis in all regards remains the requirement that any legislative enactment not only comply with the requirements of the GMA, but also that it not substantially interfere with the goals of the GMA. Therefore, … it is the non-compliant jurisdiction's comprehensive plan and/or development regulations that are rendered invalid, not the land itself. However, the County's Comprehensive Plan is a generalized coordinated land use policy statement that serves as a guiding framework, the blueprint for all land use planning decisions made by the County. Its development regulations implement those goals and policies set forth in the comprehensive plan and represent the controls placed on the development and use of land. As such, when a comprehensive plan or development regulation has been invalidated, this invalidation is intrinsically linked to the use of land which those policies, goals, and regulations address. After all, the purpose of invalidation is to preclude non-GMA compliant development from occurring until such time as the jurisdiction has taken responsive action to remedy its non-compliant action of the past … a Determination of Invalidity does in fact impede future land use planning decisions – it places such decisions on hold until the jurisdiction has demonstrated compliance with the GMA. *Panesko, et al v. Lewis County,* case No. 08-2-0007, Order on Reconsideration, at 19-20 (Sept. 15, 2008).

- The Board has been impressed by the good faith of Thurston County in ensuring that inconsistent development did not take place during the prior compliance remand period. Further, there has been no showing of a serious risk that significant inconsistent development, precluding ultimate compliance, will take place in the absence of an invalidity determination. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Oct. 22, 2007).
- [A] finding of invalidity has been imposed where there is a serious risk of significant inconsistent development vesting before the date on which the local jurisdiction is expected to achieve compliance… The extent of the risk of inconsistent development occurring is dependent upon the facts of each case. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007) at 24-25.
- Since the Court of Appeals has directed us to consider the MOU as a comprehensive plan amendment, the Board must likewise view the impact of the continuing validity of the MOU … [based the lack of public participation] the Board finds that the continuing validity of the MOU

substantially interferes with the fulfillment of Goal 11 of the GMA and therefore the MOU is invalid. *Alexanderson/Dragonslayer, et al v. Clark County,* Case No. 04-2-0008, Order on Remand (June 19, 2007)

- Under the circumstances presented here, such a determination requires the Board to find that the threat of significant inconsistent development makes a remand with an order to achieve compliance insufficient to enable the County to pursue proper planning under the Act. We do not find that such a threat has been shown here, especially where the time for ultimate compliance of the capital facilities plan is only a few months away. *ADR/ Diehl v. Mason County,* WWGMHB Case No. 06-2-0005, Order on Compliance, (May 14, 2007)
- Although we find that the City has created an internal inconsistency among its adopted planning documents … we do not find that this conflict substantially interferes with the fulfillment of the goals of the GMA. While the different standards may be a source of some confusion, it is an error that can be easily corrected and they are not likely to preclude GMA-compliant planning to be undertaken by the City. *MaComber v. Bellingham,* Case No. 06-2-0022, FDO, at 20 (Jan. 31, 2007)
- [I]nvalidity should be imposed if continued validity of the noncompliant comprehensive plan provisions or development regulations would substantially interfere with the local jurisdiction's ability to engage in GMA-compliant planning. *WEAN v. Island County,* Case No. 06-2-0023 FDO, at 17 (Jan. 24, 2007) (citing to *Vinatieri v. Lewis County,* WWGMHB Case No. 03-2-0020c and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 04-2-0011)
- The Board has held that it will impose invalidity when the continuance of the regulation would interfere with the County's ability to properly plan during the remand period. Here, the limited number of potential detached ADU permits that might be issued during the remand period makes it unlikely that continued validity of SJCC 18.40.240(G)(4) will substantially interfere with the fulfillment of the goals of the GMA generally and Goal 2 specifically. *Friends of San Juan, et al v. San Juan County,* Case No. 03-2-0003c coordinated with *Nelson, et al v. San Juan County,* Case No. 06-2-0024c, FDO/Compliance, at 63 (Feb. 12, 2007)
- We will not consider a request for invalidity that was not raised until the briefing. *See also CMV v. Mount Vernon,* WWGMHB Case No. 98-2-0006 (FDO, July 23, 1998). *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06).
- The change in designation of rural lands to include them in the expanded Winlock UGA was not accompanied by a showing that the new designation and mapping of those lands (subject to a finding of invalidity in the *Butler* and *Panesko* decisions) no longer substantially interferes with Goal 8 of the GMA. Inclusion of those lands into the expanded Winlock UGA without such a showing fails to comply with the GMA requirements to designate and conserve agricultural lands of long-term commercial significance. RCW 36.70A.060(1) and 36.70A.170. The invalidity

determination was imposed to preserve those rural lands for consideration for designation as agricultural resource lands once the County adopts compliant designation criteria. Under the standard of RCW 36.70A.320(4) and 36.70A.302(7), the County must show that substantial interference with Goal 8 of the GMA has been removed when it changes the designation of those lands. *Futurewise v. Lewis County,* WWGMHB Case No. 06-2-0003 (FDO, August 2, 2006). **Modified:** [T]he [Supreme] Court's decision in *Lewis County v. Western Washington Growth Management Hearings Board* has changed the basis upon which this Board's decision with respect to the Winlock UGA was made. Therefore, the Board reconsiders its decision with respect to the Winlock UGA boundaries. The invalidity determination no longer applies to the lands at issue in the Winlock UGA and therefore the inclusion of those lands in the expanded UGA does not contravene the GMA requirements for conservation of agricultural resource lands. *Futurewise v. Lewis County,* WWGMHB Case No. 06-2-0003 (Order Granting Motion for Reconsideration, 8-21-06). Appealed to Lewis County Superior Court (pending).

- While four years is a long time to achieve compliance, the designation of the Eastsound UGA is a task of unusual scope and complexity for a rural County with limited resources. As long as the County keeps [an ordinance] in place… so that urban uses are not allowed until compliance is found, we find that the designation of the Eastsound UGA does not interfere with Goals 1,2, and 4 of the GMA. *Stephen Ludwig v. San Juan County,* WWGMHB 05-2-0019c and *Fred Klein v. San Juan County,* WWGMHB 02-2-0008 (Compliance Orders, June 20, 2006) and *John Campbell v. San Juan County*, WWGMHB Case No. 05-2-0022c (FDO, 6-20-06)
- While the Board has no doubt about the County's good intentions in this regard, we are unable to rescind invalidity until the ambiguities concerning the type of development that may continue to occur within the Irondale and Port Hadlock UGA are resolved. *Irondale Community Action Neighbors and Nancy Dorgan v. Jefferson County,* WWGMHB Case No. 04-2-0022 and *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 03-2-0010 (Order Denying Motions to Rescind Invalidity and Impose Additional Invalidity Determination, 3-8-06).
- Clearly, the concern that inconsistent development might occur during the remand period is not present here. The agricultural activities in rural areas subject to the exemption from the critical areas buffer requirements at issue here are not "development" and, because they require no permits, applications for permits for those activities are not likely to vest during the remand period. *WEAN v. Island County, WWGMHB Case No. 98-2-0023c* (Order Finding Compliance as to Type 5 Stream Buffers and Denying Determination of Invalidity as to Agricultural Activities in Rural Areas, 11-16-05)
- WEAN relies upon Board decisions where a determination of invalidity was considered on the basis of the egregiousness of the violation; the

length of time the violation has occurred; and the likelihood that the violation will continue to occur absent invalidation. These criteria may be seen as addressing a situation where a jurisdiction refuses to undertake reasonable compliance efforts and thereby substantially interferes with the fulfillment of the goals of the Act.

- We do not find this to be the situation here. The County has a thorough and extensive public process in place to consider the use of best management practices to protect critical areas from the impact of agricultural activities in rural areas. As WEAN agrees, buffers are not the only method by which the functions and values of critical areas may be protected pursuant to RCW 36.70A.172. The County has proposed a reasonable time table to determine how best management practices may be used in rural lands and the Board will review the County's compliance efforts. *WEAN v. Island County*, WWGMHB Case No. 98-2-0023c (Order Finding Compliance as to Type 5 Stream Buffers and Denying Determination of Invalidity as to Agricultural Activities in Rural Areas, 11-16-05)
- This Board has found that invalidity should be imposed where there is a reasonable risk that development will occur during the compliance remand period that will interfere with the local jurisdiction's ability to plan in accordance with the requirements and goals of the GMA. See, e.g., *Futurewise v. Whatcom County,* WWGMHB Case No. 05-2-0013 (FDO, September 13, 2005) ("When there is a reasonable risk that the continued validity of comprehensive plan provisions and/or development regulations that the Board has found noncompliant will make it difficult for the county or city to engage in proper planning within those goals, we have made a determination of invalidity. See *Vinatieri v. Lewis County,* WWGMHB Case No. 03-2-0020c and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 04-2-0011, as examples."
- Because the Board has entered an invalidity finding as to the designation of rural lands in Lewis County and the site of the Cardinal MID was designated as rural land, the County bears the burden of proof in this motion to rescind invalidity pursuant to RCW 36.70A.320(4). *Butler v. Lewis County,* WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis County,* WWGMHB Case No. 00-2-0031c (Order Rescinding Invalidity as to Cardinal MID Site, 5-12-05).
- The Board does not have authority to decide whether the project vested to the pre-invalidity designation. However, the Board must determine whether the change in designation of the Cardinal MID UGA lands continues to substantially interfere with the goals of the GMA for conservation and protection of agricultural resource lands under the requirements of the GMA for those purposes. *Butler v. Lewis County,* WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis County,* WWGMHB Case No. 00-2-0031c (Order Rescinding Invalidity as to Cardinal MID Site, 5-12-05).

- Because the lands do not now have long-term commercial significance for agricultural production, and because the MID UGA will not adversely impact the designation and protection of lands adjacent to it as agricultural resource lands, the Board finds that the designation of the Cardinal MID UGA site no longer substantially interferes with the goals of the GMA. *Butler v. Lewis County,* WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis County,* WWGMHB Case No. 00-2-0031c (Order Rescinding Invalidity as to Cardinal MID Site, 5-12-05).
- The purpose of invalidity is to prevent the vesting of development permits that might interfere with the County's compliance with GMA requirements. RCW 36.70A.302(1) (b). *Lake Cavanaugh Improvement Association v. Skagit County* 04-2-0011 (Order on Dispositive Motion, 9-21-04)
- We share Sedro-Woolley's concern about the potential negative impact of short plat proposals already at the County's permit counter vesting if current interim provisions are allowed to lapse. However, we note that the County has readopted the interim ordinance and kept it in effect even though negotiations have failed. We also note that as long as the creation of new lots smaller than five acres is forbidden, there is no showing of substantial interference with the goals of the GMA such as to form a basis for a finding of invalidity under RCW 36.70A.302. We have no reason to believe that the County would show bad faith and allow such restrictions to lapse, creating a window of opportunity for more small short plats to vest while compliant DRs are being developed. We therefore decline to invoke invalidity at this time. *City of Sedro-Woolley, et al., v. Skagit County,* 03-2-0013c (Compliance Order, 6-18-04)
- As to the allowable uses in resource lands that we have found non-compliant with the GMA, we find invalid those uses which, if allowed to develop during the period of invalidity, would substantially interfere with the County's ability to comply with the GMA. *Butler, et al. v. Lewis County,* 99-2-0027c, Order Finding Noncompliance and Imposing Invalidity (2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04).
- We find that the savings clause in Ordinance 1179E and 1179C should not act to make the prior plan, maps, and code provisions regarding designation of agricultural lands effective during the remand period because those prior provisions were non-compliant as well, and designated even fewer agricultural lands than the present provisions. We believe that it is necessary to prevent inconsistent development of agricultural lands during the period of invalidity and we use the tools that the GMA has given us to try to achieve it. *Butler, et al. v. Lewis County,* No. 99-2-0027c, Order Finding Noncompliance and Imposing Invalidity (2-13-04); *Panesko, et al. v. Lewis County*, 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, 2-13-04).
- In order for a GMHB to modify and/or rescind a determination of invalidity, there must be an ordinance or resolution adopted in response to the finding of invalidity and a local government request that the finding be

modified or rescinded. *Panesko v. Lewis County* 00-2-0031 (Amended RO 4-18-01)

- A county may request a "clarification" of a previously issued determination of invalidity under RCW 36.70A.302(6). A FDO dated 11-30-00 which included a determination of invalidity was perspective only and did not affect vested permits. Additionally, it was not the intention of the order to prohibit a single-family residence from being built on a lot where an existing guesthouse was already permitted or had been built. *Friday Harbor v. San Juan County* 99-2-0010 (MO 4-6-01)
- Where a subsequent LAMIRD ordinance reduced the areas that were established in the CP, the burden of showing substantial interference rests with the petitioners. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The imposition of a determination of invalidity does not have any effect on previously vested rights. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- A request for declaratory ruling that is in essence a request for clarification under RCW 36.70A.302(6) will be treated as a request for clarification and processed with an expedited hearing and a decision within 30 days of the hearing. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)
- A determination of invalidity does not affect previously vested rights under RCW 36.70A.302(2). *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- Under the 30 day time constraint found in RCW 36.70A.302(6) the issues of rescission and/or modification of invalidity were bifurcated from the issues of noncompliance not involving invalidity, which would be addressed in a subsequent order. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 12-15-00)
- The provisions of RCW 36.70A.330(2) requiring a written decision within 45 days of the time a motion for rescission/modification is filed by a local government deals with situations where the local government has enacted a response to a determination of invalidity. The provisions of RCW 36.70A.302(6) requiring a written decision within 30 days from an "expedited" hearing for "clarifying, modifying or rescinding" a determination of invalidity involves questions as to the scope of the invalidity and usually occurs before a local government has completed its response. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- While a GMHB often only facially reviews an ordinance adopted in response to a determination of invalidity because of the 45-day limitation, there is no prohibition against reviewing the record and ordinance in depth under RCW 36.70A.330(1). *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as amended" no longer substantially interferes with

the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (Compliance Order, 7-13-00)

- Even though a period of time passed since noncompliance was found, unless there is new evidence of substantial interference a GMHB will not change the previous determination under the record in this case. However, continued long-term failure to meet a schedule of compliance would result in a reconsideration of invalidity and a possible recommendation for sanctions. *Abenroth v. Skagit County* 97-2-0060 (Compliance Order, 9-23-98)
- Under the amended provisions of RCW 36.70A.290(1) the issue of substantial interference with the fulfillment of the goals of the GMA must properly be raised. A requested remedy of a determination of invalidity is not sufficient to raise the issue. *CMV v. Mount Vernon* 98-2-0006 (RO 9-4-98)
- Under the ruling in *Skagit Surveyors v. Friends* 135 W.2d 542 (1998), a GMHB does not have statutory authority to invalidate pre-GMA DRs. Therefore, the previous orders of April 10, 1996, and October 6, 1997, were vacated. *WEAN v. Island County* 95-2-0063 (Compliance Order, 8-25-98)
- A claim of invalidity which was not set forth as an issue in the petition nor in the original or supplemental prehearing order will not be considered because of the 1997 amendment to RCW 36.70A.290(1) stating that absent a claim in the statement of issues or prehearing order a GMHB is precluded from deciding or addressing an issue. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- The burden of showing substantial interference with the goals of the GMA is a higher one than the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- A GMHB will declare invalid only the most egregious of noncompliant provisions whose continued invalidity most threaten the local government's future ability to achieve compliance with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- A petitioner's motion for invalidity on additional sections of a zoning code is an additional remedial order. A party may make such a request at any time even if a prior order of invalidity has been entered. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- A GMHB will review a DR's language and also its interpretation by those who administer it in deciding whether the regulation meets the substantial interference test. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- An extended length of time that a local government is without a compliant ordinance for CAs may be a ground for a finding of invalidity. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)

- After determination of invalidity a development application can vest only to an ordinance that is (1) enacted in response to the invalidity and (2) complies with the goals and requirements of the GMA. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)
- Invalidity is not a separate issue in a case but is rather a part of the overall requested relief. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- A GMHB will declare invalid elements of a CP or DRs that most seriously threaten a local government's future ability to adopt compliant planning legislation. *Hudson v. Clallam County*96-2-0031 (FDO, 4-15-97)
- A GMHB reviews an action or failure to act for the potential to substantially interfere with the goals of the GMA since a finding of invalidity cannot extinguish rights that have vested prior to the date of the order. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 2-6-97)
- In reviewing the potential for substantial interference, a GMHB looks to the language of the regulation and the experience, if any, a local government has had in dealing with the actions or inaction being challenged. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 2-6-97)
- Once substantial interference has been shown a GMHB then determines the scope of the invalidity. A decision regarding the scope of the invalidity takes into account the local government's compliance or noncompliance along with current and past efforts to achieve compliance and meet the deadlines established by the Legislature. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 2-6-97)
- An ordinance may only be declared invalid if it substantially interferes with the goals of the GMA. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Under RCW 36.70A.300 and .330 a GMHB must review GMA actions by local governments to determine if such actions substantially interfere with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- The decision about what action to take after a determination of invalidity is totally up to the local government affected by it. A GMHB has no further role except to later determine whether to modify or rescind a finding of invalidity. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- Any property right that has vested under either state or local law before a determination of invalidity continues and is unaffected in any manner by a determination of invalidity. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- Any vested or pre-existing noncontiguous legal lot prior to the determination of invalidity is not affected by a determination of invalidity. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- After a determination of invalidity any development application can only vest to an ordinance or resolution that is enacted in response to the determination of invalidity and which is also determined by a GMHB to comply with the GMA. RCW 36.70A.300(3)(b). *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

- A GMHB does not have jurisdiction to consider or make a ruling on what constitutes a vested permit or lot or what constitutes a pre-existing legal lot. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- A determination of invalidity merely precludes vesting until a local government complies with the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- Whether a particular property is or is not vested must be determined in a forum other than a GMHB. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- The remedy of invalidity is to be used only in the most egregious cases. This record contained no compelling evidence of a purposeful delay or an abnormal number of applications for subdivision in potential RLs as a result of such delay. Therefore, the request for invalidity was denied. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 8-15-96)
- When no DRs to protect CAs had been adopted but an ordinance allowed residential development within a designated CA, a GMHB had the jurisdiction to decide if continued use of such ordinance substantially interfered with the goals of the GMA. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 7-31-96)
- When no previous determination of invalidity has been made, RCW 36.70A.330(3) requires a GMHB to consider whether invalidity should be found at the time of compliance hearing. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 7-31-96)
- The date upon which a finding of invalidity suspends vesting is the moment of time on the day that a local government is served with, or has actual knowledge of, the finding of invalidity. *FOSC v. Skagit County* 96-2-0009 (MO 7-24-96)
- Under RCW 36.70A.330(3)(a) and (b) the phrase “the date” refers to both the day and the time that a jurisdiction has been served with or has actual knowledge of an order of invalidity. *FOSC, Petitioner* 96-2-0009 (FDO, 7-24-96)
- A GMHB has jurisdiction to determine whether pre-existing non-GMA DRs are invalid. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- The substantially interferes standard is intended to focus on DRs or CPs whose continued implementation seriously threatens local governments’ future ability to adopt planning legislation which complies with the GMA. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- A determination of invalidity cannot preclude local government consideration for a building permit for pre-existing, platted, noncontiguous lots of separate legal ownership. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)
- A GMHB must specify the particular parts of a regulation determined to be invalid and the reasons therefore. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)

- Even though a local government adopted the "existing code" it was nonetheless a GMA action subject to review for compliance and/or invalidity. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Had the Legislature intended the new remedy created by new subsections of ESHB 1724 to apply only to DRs adopted under GMA, it could have used the same language "under this chapter" found in other sections of the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- Invalidity requires more than simple noncompliance and a GMHB will only determine invalidity for sections of a zoning code which most egregiously interfere with the local government's future ability to fulfill the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- The result of an invalidity finding is merely to test new permits under an ultimately determined compliant action taken by a local government. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- A necessary prerequisite to a finding of invalidity is a finding of noncompliance. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- A GMHB does not have the authority to impose regulations even under an invalidity finding. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- A finding of invalidity should only be made in the most extreme or egregious circumstances. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- A party claiming invalidity has the burden of proof of showing substantial interference with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- When amendments to RCW 36.70A.300 and .330 (ESHB 1724 Sections 110 and 112) became effective subsequent to a compliance hearing during which hearing the application of the sections were thoroughly discussed and post-hearing briefing was received from the parties, and the compliance order was issued after the effective date of the amendments, a GMHB has authority to impose invalidity. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- When an amendment to a statue is clearly remedial it is construed to apply retroactively even if not expressly stated. The invalidity provisions

of ESHB 1724 are clearly remedial and are applied retroactively. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)

- Imposition of invalidity by a GMHB requires a determination that a DR would substantially interfere with the goals of the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)
- At the hearing on the merits or at a compliance hearing the party asserting substantial interference with the goals of the GMA has the burden of proof. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 2-28-95)
- A determination of invalidity is necessary here because continued development of rural lands that should be considered for designation as agricultural resource lands threatens the ability of the County to ultimately conserve all appropriate agricultural resource lands. RCW 36.70A.060; RCW 36.70A.170(1)(a). While we cannot say what lands the County will ultimately designate under compliant policy and criteria, a finding of invalidity allows us to ensure that the reasons for not designating agricultural lands do not rest in incompatible development that has occurred during the period of remand. *Butler, et al. v. Lewis County,* WWGMHB Case No. 99-2-0027c (Order On Reconsideration of Extent of Invalidity, May 21, 2004); *Panesko, et al. v. Lewis County*, 00-2-0031c (Order On Reconsideration of Extent of Invalidity, 5-21-04).

2. Finding

- Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The use of a 35-foot buffer in Type 1 waters under SMP designations “suburban” and “urban” areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is “functionally ineffective.” A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The designation of a LAMIRD involving 2-acre lot sizes is not an “intensive” rural development under RCW 36.70A.070(5)(d). Such a

LAMIRD designation also substantially interferes with Goals 2 and 12 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- Under the record in this case, the county improperly included vast areas of undeveloped property in its LAMIRD designations. Such areas are noncompliant and further substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- In designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for

encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

- Reducing buffers for minor new development defined in the CAO to widths smaller than those adopted for major activities substantially interfered with Goals 10 and 14 of the Act. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Where the County's DR allowed significant uses in LAMIRDs which were not principally designed to serve the rural population under RCW 36.70A.070(5)(d)(i) and that did not protect the rural character of the area under RCW 36.70A.070(5)(c), substantial interference of the goals of the Act has not been removed. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 12-15-00)
- Allowance of a second "guesthouse" as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially interferes with the goals of the Act and is determined to be invalid. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- One dwelling unit per acre is not an ARL density that complies with the Act. It also substantially interferes with Goals 2, 8, 9 and 10. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-24-00)
- An EIS is designed to ensure awareness of potential environmental impacts by the decision maker. It does not dictate a particular legislative action and is thus an inappropriate document upon which to impose a finding of invalidity. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A provision which allows densities more intense than 1 du per10 acres and allows "opt out" at the property owner's choice does not comply with GMA regarding RLs and substantially interferes with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- There is no authority in the GMA to apply a provisional or preliminary FCC designation. With no adherence to RCW 36.70A.350 in the CP and a purported provisional vesting designation, the designation substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- In order to be compliant with the Act the designation of an MPR under RCW 36.70A.360 must comply with the requirements of that section. There is no authority to apply a preliminary or provisional designation to

an MPR until the requirements .360 are fulfilled. Under the record in this case there is no showing that the location is a setting of significant natural amenities. The failure to adhere to the requirements of the Act and purportedly apply a provisional designation to the MPR substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A purported ILB "reserve area" was without authority and did not comply with the GMA. The Legislature required only two sites to be designated ILB under RCW 36.70A.367. Additional designations substantially interfered with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The adoption of a uniform 1 dwelling per 5 acres in the rural areas does not satisfy the requirements of .070(5) and substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The provisions of RCW 36.70A.070(5)(e) prohibit the designation of an industrial LAMIRD that is a major industrial development unless the designation is specifically permitted under RCW 36.70A.365. The designation of an "industrial" LAMIRD that did not comply with RCW 36.70A.365 and also did not independently comply with the provisions of RCW 36.70A.070(5)(d) as to the proper establishment of the built environment and LOB, did not comply with the Act and substantially interfered with Goals 1, 2 and 12. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan

policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)

- Where a county requests clarification of the scope of a finding of invalidity with a motion for reconsideration and demonstrates that a limitation of areas is consistent with the FDO, reconsideration will be granted and invalidity will not apply to villages, hamlets, and activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (RO 8-25-99)
- Under the record here, allowing densities more intense than 1 du per 5 acres surrounding RL designated areas substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Allowing densities more intense than 1 du per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Two-acre and ½ acre lots outside an UGA, under the record here, substantially interferes with goals 1, 2, and 12. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Where a reasonable person could be confused as to the scope of the order finding invalidity, a clarification excluding uses within the UGAs will be granted. *Abenroth v. Skagit County* 97-2-0060 (MO 6-7-99)
- Under the record in this case, where it is clear the county must reconsider certain parts of its rural agricultural designation for potential RL designation, invalidity will apply to those areas in the Rural-Ag designation which allow greater density than that allowed in the agricultural RL zone. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Under the record in this case, certain AMIRDs were found noncompliant. A finding of invalidity was also imposed. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Substantial interference with Goals 2, 8, and 10 were found where the local government failed to adopt permanent DRs to address risks of avulsion, together with the continued allowance of unmonitored diking activity, the continued allowance of an inappropriate level of construction in the floodway and the failure to include BAS. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- The allowance of a range of uses including auction houses, auto sales, banks, bowling alleys, etc., in rural areas did not comply with the GMA and

substantially interfered with Goals 1, 2 and 8. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)

- Where rural areas are not limited in size and density to preclude future need for urban services and measures to minimize and contain intensive rural development are not adopted, a determination of invalidity is found. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- An ordinance which allowed subdivision of agricultural lands into parcels smaller than 10 acres in conjunction with a finding by the county that acreage smaller than 10 acres could not be reasonably expected to have long-term commercial significance for agricultural use did not comply with the GMA. Additionally, such an ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)
- A DR which allowed 1 unit per 5-acre density within agricultural RLs did not comply with the GMA. Additionally, such ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-18-98)
- Where the record demonstrated that a greater variety of rural densities, a decrease in urban and rural sprawl and an increase in RL conservation would be achieved by a greater than 5-acre minimum lot size, maintaining a minimum 5-acre lot size throughout the county did not comply with the GMA and substantially interfered with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- The test of whether a DR meets the substantial interference criterion depends on 3 factors: The egregiousness of the violation of GMA goals; The length of time the violation has occurred; The likelihood that the violation will continue to occur absent invalidation. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- An ordinance which allowed expansion of existing commercial or industrial uses other than resource based or rural neighborhood commercial uses to the full size of the existing parcel in areas outside of an UGA, substantially interfered with the goals of the GMA and was declared invalid because it allowed urban growth in rural areas. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- Continued incremental movement of an UGA boundary that promotes sprawl and inefficient use of tax money did not comply, and also substantially interfered, with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- Under the test found in RCW 36.70A.300 the failure to take effective steps to conserve RLs and prevent further urban growth outside of UGAs renders the ordinances in questions invalid. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Where substantial over-sizing and lack of analysis was found as to IUGAs and substantial interference with the goals of the GMA was proven, invalidity was imposed. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)

- Where no designation of agriculture lands was set forth in an ordinance invalidation would serve no purpose and therefore was not imposed. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- A DR which allowed expansion of 1 and 2.5 acre minimum lot sizes in rural areas prior to adoption of RL designations and conservation and before an overdue CP was completed substantially interfered with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- The emergency provisions allowing waiver of SEPA compliance did not apply to "citizen confusion over property rights" after a determination of invalidity under WAC 197-11-880. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)
- The allowance of new urban commercial and new urban industrial growth outside properly established IUGAs substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Invalidity was found for rural densities more intense than 1 dwelling unit per 3 acres and above, under the record in this case. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Under the record in this case the allowance of densities of 1 dwelling unit per 2 acres and greater densities in areas outside properly established IUGAs substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- The rescission of an ordinance limiting development in rural areas to 1 dwelling unit per 5 acre and/or failing to adopt any DRs to preclude new urban growth and prohibit extension of urban governmental services outside of IUGAs, thus violating GMA goals to reduce sprawl, conserve RLs, and protect CAs, along with a consistent record of missing deadlines, were compelling reasons to make a determination of invalidity. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- Where a CAO was adopted more than four years past the deadline during which severe and irreparable damage to the environment resulted and where such damage was continuing as a result of the inadequacy of protection of the new ordinance, substantial interference with the goals of the GMA was found and the new ordinance was invalid. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- The net yield criterion and the opt out provision of Jefferson County's forestlands DR substantially interfered with Goal 8 of the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)

3. Rescission/Modification

- [Certain cities] annexed properties that were the subject of this appeal prior to the issuance of the Board's AFDO. Since invalidity can only apply prospectively, the Board's ruling on invalidity had no effect on those annexed lands. Therefore, although the Board does not view rescission of invalidity as a necessity, the Board will expressly rescind its Determination

of Invalidity as to those lands … which have been annexed to their respective municipalities. As a result of these annexations, the GMA's duty of planning for growth for the annexed areas, including the provision of public facilities and services, is now the sole responsibility of the respective cities. *Karpinski, et al v. Clark County,* Case No. 07-2-0027, Compliance Order (October 28, 2009)

- A county may adopt an ordinance amending development regulations that the board had declared invalid by providing for an expansion or additions to school structures in rural areas and rural activity centers without interfering substantially with the fulfillment of the goals of the Act. *Dawes v. Mason County*, Case 96-2-0023c (Compliance Order, 2-1-02) (Order Re: Interim Development Regulation Ordinance 148A-01)
- A county may not move, under RCW 36.70A.302(6), to amend an ordinance by adding childcare or daycare centers to a Matrix of Permitted Uses previously declared invalid as part of an effort to remove invalidity. The finding of invalidity addressed only the Matrix of Permitted Uses in effect at the time. Amending the Matrix to include childcare or daycare centers which were not part of the original Matrix of Permitted Uses represents a new amendment to the comprehensive plan. This amendment is properly considered either in a new case or in a compliance hearing rather than a motions hearing under RCW 36.70A.302(6). *Dawes v. Mason County*, Case 96-2-0023c (Compliance Order, 3-4-02) (Order Denying Motion to Rescind Invalidity)

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- Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)

- BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- A local government has the burden of proof to demonstrate that an ordinance it enacted in response to a determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- In order for a GMHB to modify and/or rescind a determination of invalidity, there must be an ordinance or resolution adopted in response to the finding of invalidity and a local government request that the finding be modified or rescinded. *Panesko v. Lewis County* 00-2-0031 (Amended RO 4-18-01)
- The adoption of an interim ordinance to amend a previously invalidated matrix of permitted uses to allow fire stations and accessory structures removes substantial interference as to that use only. A compliance hearing is necessary before a decision on compliance may be reached. *Diehl v. Mason County* 96-2-0023c (MO 4-18-01)
- A county has the burden of showing that the ordinance that was enacted "in response" to a determination of invalidity will no longer substantially interfere with the goals of the Act under RCW 36.70A.320(4). Where ordinances have been adopted prior to a finding of invalidity, a county accepted its burden for a request to rescind or modify those determinations of invalidity. Where no motion to rescind or modify was filed, the 45-day time limitation of RCW 36.70A.330(2) did not apply. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A GMHB may bifurcate the compliance aspect of a case from the invalidity rescission motions because of the short time frame allowed for invalidity rescission findings. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- A local government has a burden of proof, under RCW 36.70A.320(4), that its action removes substantial interference with the goals of the Act in order to rescind or modify invalidity. *Panesko v. Lewis County* 00-2-0031c (MO 2-26-01)

- A petition for declaratory ruling that is in essence a request for clarification of a previous determination of invalidity under RCW 36.70A.302(6), will be handled through that provision and the declaratory ruling request will be ignored. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)
- A one-acre property virtually filled with a community center building with no further opportunity for development and substantial interference with Goal 8 of the Act will result in a rescission of invalidity. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- Where a matter was not clear from the briefing and argument leading to a FDO, but became clearer on a motion for reconsideration, a revision of the determination of invalidity as to a one acre piece of property is appropriate. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- Where a County downsized its LAMIRDs, established maximum rural density and matched capacity with the LAMIRD population allocations, set LOBs and capped clustering provisions, substantial interference with the Act was removed. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 12-15-00)
- Pursuant to RCW 36.70A.320(4) a local government subject to a determination of invalidity has the burden of demonstrating that the ordinance that it enacted in response to the initial determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act under the standard expressed in RCW 36.70A.302(1). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 12-1-00)
- The provisions of RCW 36.70A.330(2) requiring a written decision within 45 days of the time a motion for rescission/modification is filed by a local government deals with situations where the local government has enacted a response to a determination of invalidity. The provisions of RCW 36.70A.302(6) requiring a written decision within 30 days from an "expedited" hearing for "clarifying, modifying or rescinding" a determination of invalidity involves questions as to the scope of the invalidity and usually occurs before a local government has completed its response. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as amended" no longer substantially interferes with the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (Compliance Order, 7-13-00)
- When an IUGA ordinance dealing with restrictions on rural growth is superseded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP

process. Continued noncompliance and invalidity was found. *Smith v. Lewis County*98-2-0011c (Compliance Order, 7-13-00)

- Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- Where the record contained new evidence of development of a previously invalidated plat that was now appropriate for inclusion within a RAID, rescission of invalidity was granted. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant rescission of invalidity. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- Where the local government has not met its burden of demonstrating that substantial interference has been removed and petitioners have overcome the presumption of validity and proved noncompliance with the GMA, rescission of a prior determination of invalidity will not be entered. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- When an ordinance adopted in response to a determination of invalidity continued to allow non-rural densities in rural areas, and the local government failed to carry its burden of proving the elimination of substantial interference and petitioners proved noncompliance, a prior determination of invalidity will continue. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- A GMHB will modify or rescind a determination of invalidity only if the amended plan or regulation no longer substantially interferes with the fulfillment of the goals of the GMA. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- In order to sustain its burden of proof for rescission of a commercial/light industrial zoning invalidity finding, a local government must include an analysis of future allowable commercial/retail uses in the record. *Abenroth v. Skagit County* 97-2-0060 (RO 7-23-98)
- The retail activities allowed by an ordinance were not sufficiently restrictive to sustain the county's burden of showing that substantial interference with the GMA no longer applied. *Abenroth v. Skagit County* 97-2-0060 (RO 7-23-98)
- A superior court decision upheld the January 26, 1998, refusal to rescind invalidity where the county adopted criteria linked to GMHB orders. The court directed that rescission of invalidity be granted for the 4 zones for which the county had established "procedural" criteria. Additional conditions from the Superior Court were imposed. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)
- Where the superior court remand was precise in its holding, a formal motion by a local government and a further hearing was not required prior

to entry of an order rescinding invalidity. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)

- A local government has the burden of proving that its action, adopted in response to a determination of invalidity, no longer substantially interferes with the fulfillment of the goals of the GMA. It is no longer necessary that the action comply with the GMA only that it removes substantial interference. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)
- A GMHB will review a request for rescission of invalidity in the same manner that it reviews a request for compliance, *i.e.* whether after the remand the new action removes substantial interference and not necessarily whether the recommendations contained in the FDO have been followed. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)
- Submission of a proposed interlocal agreement and a draft concurrency ordinance to counter a previous finding of invalidity that was based on the lack of strong provisions in place to prevent low-density sprawl, did not remove the substantial interference with the goals of the GMA. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)
- A change in a market factor analysis from what was agreed to in a CPP did not comply with the GMA and could not be used as a basis for a rescission of invalidity. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)
- A motion to clarify a determination of invalidity under RCW 36.70A.302(6) does not apply where the local government has taken legislative action. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- On a motion to rescind invalidity a local government has the burden of showing that the legislative action adopted in response to a determination of invalidity no longer substantially interferes with the goals of the GMA. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- A decision on whether a local government has removed substantial interference does not simply involve a review of whether items found in the order determining invalidity have been removed. A local government may not adopt an ordinance in response to a determination of invalidity that imposes new independent invalidity provisions. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- Recent amendments to RCW 36.70A.330(2) did not change the requirement that a finding on a local government's motion to rescind invalidity must be made within 45 days of the date of the motion. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- Under recent amendments to RCW 36.70A.302(7)(a), a local government may either amend an invalid plan or regulation or subject such plan or regulation to interim controls. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- A local government must specifically articulate what will and will not be allowed in an invalidated zone or areas in order to sustain its burden of proof. Use of previous GMHB orders as a DR is insufficient. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

- It would be very difficult for a purely “procedural” DR to remove substantial interference. In this record the attempt to use such a procedural DR failed to sustain the county’s burden of proof. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)
- Where a prior order or determination of invalidity was made and no corrective action followed, a GMHB will not rescind the previous determination of invalidity. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Where a portion of the CP and/or DRs relate to a prior determination of invalidity, a local government had the burden of demonstrating the amended provisions no longer substantially interfered with the fulfillment of the goals of the GMA. If the county meets this burden the amendments are then presumed valid and the burden shifts to the petitioner to show that the county’s action is not in compliance with the GMA. RCW 36.70A.320. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- Under RCW 36.70A.330(2) a local government subject to a determination of invalidity may file a formal motion to modify or rescind. A finding is required within 45 days thereafter. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Where no formal motion for rescission has been made the issue is properly before a GMHB and the 45-day period begins at the time of filing of the local government’s opening brief. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Under recent amendments to RCW 36.70A.320(4), in a rescission of invalidity hearing the local government has the burden of showing that it no longer substantially interferes with the fulfillment of the goals of the GMA. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Once, or if, a local government meets its burden of showing it no longer substantially interferes with the fulfillment of the goals of the GMA, the petitioner then bears the burden under the clearly erroneous standard of proving the action does not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Where a local government was subject to a determination of invalidity and noncompliance because of a failure to act and later took the required action, a facial review will be used to determine if substantial interference no longer applies. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Where a discrete ordinance and a full record capable of being reviewed within the 45-day period was submitted along with a request for rescission of invalidity and a finding of compliance, a GMHB will make a full review and issue a decision on compliance. If a PFR for the new ordinance is submitted within the 60-day limitation after publication, appropriate action will be taken thereafter. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)

- RCW 36.70A.140 provides a local government with greater discretion to limit public participation "as appropriate and effective" in dealing with a response to a determination of invalidity. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- When a local government that had failed to act was subjected both to a determination of invalidity and noncompliance, then later took the required action, a facial review will be used to determine if substantial interference no longer applies. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Where a CP and/or DRs were adopted and referenced by a county as being in response to previous invalidity findings, the county had the burden to show that the new actions removed the substantial interference found in the previous cases. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- Where a determination of compliance was made, an earlier finding of invalidity was rescinded. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- A local government subject to a determination of invalidity has the burden of demonstrating that an ordinance adopted in response to the invalidity no longer substantially interferes with the goals of the GMA under the 1997 amendments found in ESB 6094, effective July 27, 1997. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- Because RCW 36.70A.330(2) requires a finding within 45 days of a local government's motion to rescind invalidity, it is impossible to thoroughly review the record. A GMHB will only facially review the action to determine if it is a valid, good-faith attempt to comply. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- In reviewing changes made by a local government in response to a determination of invalidity, a GMHB reviews those changes to determine if they continue to substantially interfere with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- The adoption of CP UGAs does not render IUGA invalidity determinations moot because the ordinance was enacted in response to the order of remand and determination of invalidity under RCW 36.70A.300(3)(b). *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- Where new DRs for an industrial area were adopted which limited the area to large industrial uses and provided that costs of infrastructure were to be borne by new development rather than the public, the new designation no longer substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

- Where a local government subsequently adopted a CP and DRs which addressed previous findings of invalidity and noncompliance, only a facial review will be made to determine whether the actions constituted a valid good-faith attempt to comply with the GMA and whether substantial interference with the goals of the GMA remained. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- A new CP and DRs consisting of several hundred pages, adopted after years of public participation with an index list of over 170 items, will not be reviewed other than facially within the 45-day limitations under a motion to rescind invalidity. Such local government actions are entitled to the presumption of validity and the new record must contain obvious evidence that the actions continue to substantially interfere with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- The adoption of a temporary CAO which no longer substantially interfered with goals of the GMA, even though noncompliant, provided a basis for rescission of invalidity. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 7-1-97)
- Where a new forest resource ordinance had been adopted and all parties mediated their differences and supported a finding of compliance and a rescission of invalidity, the previous determination of invalidity was rescinded. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 6-4-97)
- A motion to rescind or modify a determination of invalidity requires that a GMHB make a finding within 45 days of the filing of the motion. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)
- In a hearing to rescind or modify invalidity with a 45-day deadline for a finding, it is not possible, nor reasonable to conclude that the Legislature intended a thorough, substantive review of a new CAs ordinance to determine if compliance with the GMA has been achieved. Rather, a facial review for the purpose of determining whether the ordinance constitutes a valid good-faith attempt to comply with the GMA along with the presumption of validity set forth in RCW 36.70A.320 is the proper scope of review in a rescission of invalidity hearing. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)
- Pursuant to RCW 36.70A.330(2)(a), a finding must be issued within 45 days of the filing of a motion to rescind by a local government subject to invalidity. *Seaview v. Pacific County* 95-2-0076 (MO 4-16-97)
- A determination of invalidity cannot be modified or rescinded until a new DR complies with the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- The failure to comply with the requirements of RCW 36.70A.140 in adopting an ordinance in response to a determination of invalidity precludes consideration of rescission. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

- A GMHB has authority under RCW 36.70A.300(2) and .330(4) to modify a previous finding of invalidity. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

JURISDICTION

- [In response to the City's assertions that the Board did not have jurisdictions because the challenged ordinances were not adopted pursuant to the GMA but were a proprietary decision related to annexation and sewer service, the Board, in citing to various points in the ordinances to support its conclusion stated:] The substantive portions of Ordinances 3472 and 3473 further demonstrate the City adopted these ordinances as GMA-based policies and development regulations. *Skagit D06 LLC v. City of Mount Vernon,* Case No. 10-2-0011, Order of Motion to Dismiss at 3-4 (May 20, 2010).
- [There was] no merit in the City's argument that the PFR is barred because the Board has no jurisdiction over a municipal decision to extend utility service. Characterizing this as a proprietary or contractual decision misses the point, as is the focus on the City's claim of lack of jurisdiction outside its boundaries. By amending its comprehensive plan and development regulations the City has altered the policies and regulations that affect all members of the public, not merely Petitioner, and not merely individual applicants for sewer extension. *Skagit D06 LLC v. City of Mount Vernon,* Case No. 10-2-0011, Order of Motion to Dismiss at 5 (May 20, 2010).
- [The City's motion] challenges the Board's jurisdiction to consider amendments to the land use element of the City Comprehensive Plan and a related development regulation amendment. Such amendments are squarely within the Board's jurisdiction, even if the subject of the amendment is a matter over which the local jurisdiction is vested with discretion." *Skagit D06 LLC v. City of Mount Vernon,* Case No. 10-2-0011, Order of Motion to Dismiss at 5 (May 20, 2010).
- [S]imilarly unpersuasive is the City's argument that the Board lacks jurisdiction if a GMA provision fails to establish a mandate or provides discretion through permissive language. In fact, RCW 36.70A.280 does not limit the Board's jurisdiction in this manner. If a local jurisdiction acts pursuant to the GMA, as the Board has concluded the City did, the Board has jurisdiction to review that action. There are several optional elements under the GMA, yet the City has not produced any authority to suggest that the Board lacks jurisdiction over a decision to pursue such an optional course of action. *Skagit D06 LLC v. City of Mount Vernon,* Case No. 10-2-0011, Order of Motion to Dismiss at 5 (May 20, 2010).
- This Board has consistently held that we have no jurisdiction over any statute not explicitly cited in RCW 36.70A.280, nor do we have jurisdiction over constitutionally-based issues. Since the Public Trust Doctrine is based, in part, on the State Constitution, the Board has no authority to

hear violations of such a doctrine. *Evans, et al v. City of Olympia,* Case No. 09-2-0003, Order on Motion, at 3 (Feb. 1, 2010)

- It is true that the Growth Management Hearings Boards do not have jurisdiction over site-specific rezone proposals when they are already authorized by a comprehensive plan. Such challenges are to be filed under LUPA. However, in the matter before us, the County had to amend its comprehensive plan as well as the applicable zoning. In that situation, the Growth Management Hearings Boards do have jurisdiction to address both amendments: the comprehensive plan and zoning changes. *CCNRC v. Clark County,* Case No. 09-2-0002, FDO at 17 (Aug. 10, 2009).
- *Bussanich, et al v. City of Olympia*, Case No. 09-2-0001, Order Dismissing Case (April 1, 2009), Board reiterated in this decision that it has no jurisdiction over:
    1. Project specific actions
    2. Constitutional issues
    3. Common-law issues
    4. RCW 82.02.020 claims
- *Clark County Natural Resource Council/Futurewise v. Clark County,* Case No. 09-2-0002, Order on Motion, at 3-4 (April 23, 2009)(County Code provision requiring filing of LUPA action for County Commissioners' decisions related to comprehensive plan amendments does not divest the Board of jurisdiction if a petitioner fails to file such an action because it if the Board, not the court, that has jurisdiction over comprehensive plan amendments).
- *Laurel Park Community LLC , et al v. City of Tumwater,* Case No. 09-2-0010, Order Dismissing Issue (June 29, 2009)(No jurisdiction over constitutional issues)
- [In response to Petitioners' assertion that their issues did not bring in constitutional claims, but instead the nexus and proportionality language related to the SMP's alleged violation of RCW 82.02.020, which is incorporated by reference via the SMA guidelines, WAC 173-26, the Board stated:] Petitioners' argument begs the question: To what was the Court of Appeals referring to with regard to the nexus and rough proportionality test if not to the test of a constitutional taking? The phrase "nexus and proportionality" does not appear in the GMA, the SMA, SEPA, or even in RCW 82.02.020, but instead come from constitutional takings jurisprudence. More specifically, the phrase comes from U.S. Supreme Court opinions analyzing the *unconstitutional* taking of private property. *Citizens for Rationale Shoreline Planning v. Whatcom County,* Case No. 08-2-0031, Order on Motions, at 3-4 (Jan. 16, 2009)
- By long established precedent, all three of the Growth Management Hearings Boards have consistently declined to consider constitutional issues (See e.g. *Dudek/Bagley v. Douglas County,* EWGMHB Case No. 07-1-0009, Order on Motions (Sept. 26, 2007), *Roth, et al v. Lewis County,* WWGMHB Case No. 04-2-0014c, Order on Motions (Sept. 10, 2004), *Gutschmidt v. Mercer Island,* CPSGMHB Case No. 92-3-0006,

FDO (March 16, 2003). Western Board decisions have also specifically stated that the Board does not have jurisdiction to determine whether an unconstitutional taking has occurred, *see e.g. Achen v. Clark County,* WWGMHB Case No. 95-2-0067, FDO (Sept. 20, 1995), *Beckstrom v. San Juan County,* WWGMHB Case No. 95-2-0081, FDO (Jan. 3, 1996)) …This Board continues to follow this precedent. *Citizens for Rationale Shoreline Planning v. Whatcom County,* Case No. 08-2-0031, Order on Motions, at 4 (Jan. 16, 2009)

- [In response to Petitioners' assertion that because WAC 173-26-186(5) incorporates RCW 82.02 by reference, the Board has jurisdiction to review a shoreline master plan for consistency with RCW 82.02.020, the Board stated:] This section [WAC 173-26-186(5)] references not only RCW 82.02 but "all relevant constitutional and other legal limitations". Were the Board to accept Petitioners' reasoning there would be no limit on the scope of the Board's review when a SMP is appealed. The Board will not attempt to extend its jurisdiction beyond the limitations imposed by the Legislature in RCW 36.70A.280(1)(a). As this Board held in the past:

  > This Board has only that authority that the legislature has expressly conferred upon it. The statute limits the authority of the boards to determining the compliance with the GMA, SEPA or the Shoreline Management Act of comprehensive plans, development regulations and amendments to them. RCW 36.70A.280 and 36.70A.290. The GMA does not confer upon the boards the authority to determine constitutional claims.
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  > The Board disagrees with Petitioners' assertion that the Board's grant of jurisdiction should be read broadly. It is true that when reviewing a challenge to a SMP both the GMA and the SMA authorize the Board to utilize the SMA guidelines which, as noted *supra,* state that SMP planning policies should be consistent with other legal limitations, such as RCW 82.02.020. The problem with the Petitioners' argument is that the Supreme Court has previously held the GMA is not to be liberally construed and a broad read would counter these holdings.

  Citizens for Rationale Shoreline Planning v. Whatcom County, Case No. 08-2-0031, Order on Motions, at 6-7 (Jan. 16, 2009) (Internal citations omitted).
- *See Bussanich, et al v. City of Olympia,* Case No. 09-2-0001, Order on Motion (April 1, 2009) *for discussion RE:* Board does not have jurisdictional of constitutional issues or any statute not referenced in RCW 36.70A.280(1).
- The regulations at issue for [Petitioner] in this case relate primarily to the County's adoption of Channel Migration Zones (CMZs) for four of its most prominent rivers. The Board notes all of these rivers are within the jurisdiction of the SMA and therefore land located within 200 feet of either side of the rivers falls under the jurisdiction of the SMA. Therefore, despite the lack of a mandate and the pending motion for reconsideration [in the case of *Futurewise, et al v. WWGMHB*, 162 Wn.2d 242 (2008)], this Board

will adhere to the Court‘s unambiguous holding that critical areas within the shoreline are regulated by the SMA. Thus, for the area of the CMZ that is within the 200 foot shoreline jurisdiction, the Board views the County‘s action effectively as a segment of its SMP update which is subject to review and approval by Ecology. However … CMZs are not limited to a 200 foot area bordering either side of a river. Rather CMZs expand outward from the river‘s edge and encompass land in excess of the area within the SMA‘s regulatory boundaries. For the area of the CMZs that are located outside the 200 foot shoreline jurisdiction, these are critical areas squarely within the GMA‘s jurisdiction pursuant to RCW 36.70A.060, .170, and .172. As such, this Board has jurisdiction to review the adopted regulations for compliance with the GMA. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 16-17 (Nov. 19, 2008).

- [The Board noted that] …within [Petitioner's] briefing were several assertions based on constitutional premises [nexus and rough proportionality]. This Board has previously held, and reaffirms today, that the GMA does not confer upon the Boards the authority to determine constitutionally-based claims and therefore such claims will not be addressed within this FDO. *Olympic Stewardship Foundation and Citizens Protecting Critical Areas v. Jefferson County,* Case No. 08-2-0029c, FDO, at 14-15 (Nov. 19, 2008)
- This Board has previously held it does not have jurisdiction to determine whether property rights have been violated based on RCW 36.70A.370, primarily due to the constitutional nature of such challenges. However, this Board has also stated .370(2) mandates that local governments —utilize the adopted process and, although the substance of the process used is protected by attorney-client privilege, there must be evidence which demonstrates the process recommended by the AG was utilized in adopting the challenge ordinance … [in reviewing the County's action for compliance with the AG process, the Board found] these considerations are incorporated within Findings/Conclusions 144 through 149 of the challenged Ordinance which address private property rights. Although it would have benefited Jefferson County to clearly denote it had utilized the AG‘s process and therefore complied with RCW 36.70A.370(2), the Board finds, based on the Ordinance‘s own language, sufficient evidence in the Record to conclude the County utilized the required process. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 42-43 (Nov. 19, 2008).
- [Petitioner challenged a Hearing Examiner's decision in regard to the Port Ludlow Master Planned Resort (MPR), the Board stated …] [T]he key question in determining the Board's jurisdiction is whether the decision being challenged is a comprehensive plan, a development regulation or an amendment to either … [Thus] Far from amending a development regulation, the Appellate Hearing Examiner was merely applying it. Thus, his decision was clearly a permitting decision, not a legislative amendment of the MPR code and is outside the Board's jurisdiction to review. *Powers*

v. Jefferson County, Case No. 08-2-0010 (Order on Dispositive Motions, April 22, 2008) at 6, 8.

- Petitioner takes exception with the fact that the adoption was not made by the legislative body, the adoption was not preceded by notice, the amendment was not submitted as part of the annual amendment cycle, and the application was not accompanied by the public notice and public participation required under the GMA. Because the Board finds that the challenged action was a project permit decision, and not an amendment of a development regulation, the referenced GMA requirements for adoption and amendment of comprehensive plans and development regulations do not apply. Thus, these challenges do not serve as a basis for Board jurisdiction. *Powers v. Jefferson County,* Case No. 08-2-0010 (Order on Dispositive Motions, April 22, 2008) at 8.
- [Petitioner asserts that the County's decision so modified the MPR standards that it is now non-compliant with the GMA, the Board found] …If the MPR code is not consistent with the GMA, a challenge to that code ought to have been when the code was adopted. The County's master planned resort development regulations were adopted in 1999 and have not been recently amended. In accordance with RCW 36.70A.320(1), the County's code regulating existing MPRs is considered valid on adoption. If the MPR revision is consistent with the MPR code, it is not within the Board's authority to consider its compliance with the GMA. As the Court in *Woods v. Kittitas County* held, "the GMA does not explicitly apply to such project permits and the GMA is not to be liberally construed". *Powers v. Jefferson County,* Case No. 08-2-0010(Order on Dispositive Motions, April 22, 2008) at 9
- [Petitioner challenged the County's denial of a comprehensive plan amendment, the Board held that is has …] no jurisdiction over a city or county's failure to adopt a comprehensive plan amendment that is not a GMA mandate. *1000 Trails v. Skagit County,* Case No. 07-2-0022, (Order on Motions, April 3, 2008) at 8.
- The Board finds that [RCW 36.70A.360 and .362 relied on by Petitioner] use permissive language "may permit" and "may include" and do not establish a mandate for a County to designate new MPRs or include existing MPRs in its comprehensive plan. These sections of the GMA give the County the discretion to designate MPRs if they adopt the comprehensive plan policies and development regulations required by these sections. Therefore, the Board concludes that RCW 36.70A.360 and RCW 36.70A.362 do not create a mandatory requirement for the County to consider for designation MPRs. *1000 Trails v. Skagit County,* Case No. 07-2-0022, Order on Motions, April 3, 2008) at 9.
- [Petitioner cites to an excerpt of the Comprehensive Plan to support jurisdiction, the Board concluded…] This introductory language presents a general description of the areas that could be considered for MPR designation, but is not a comprehensive plan policy or goal in and of itself. This language does not identify Petitioner's property specifically as an

area to be considered for an MPR. Also, this text only says the area around the Casino is an area for "*consideration*" as an MPR. The Board does not find that this language creates a mandate to designate any specific property as an MPR nor does it limit the County's discretion in designating an MPR in this area. *1000 Trails v. Skagit County,* Case No. 07-2-0022 (Order on Motions, at 11 (April 3, 2008).

- [In regard to SEPA challenges raised concurrently with GMA challenges, the Board found …] Although RCW 36.70A.280(1) gives the Board jurisdiction over SEPA challenges for GMA actions, because the Board has found we have no jurisdiction over this proposed comprehensive plan amendment, we also have no jurisdiction over Petitioner's SEPA challenge. *1000 Trails v. Skagit County,* Case No. 07-2-0022, Order on Motions, April 3, 2008) at 16.
- *See also: West v. City of Olympia,* Case No. 08-2-0001, Order on Motions (April 2, 2008) (denial of petition due to lack of jurisdiction)
- The Board does not agree with Petitioner that RCW 36.70A(6)(a)(iv)(B) requires that the six-year road program be adopted as part of the comprehensive plan. What RCW 36.70A.070(6)(a)(iv)(B) requires is that the appropriate parts of the transportation element's multi-year financing plan form the basis for six-year TIP … [and] serve as the basis [for the TIP], but does not state that the six-year road plan is necessarily the same thing as the required multi-year financing plan. Therefore, the Board finds that a TIP is not a mandatory element of a comprehensive plan. *Griffen Bay Preservation Committee v. San Juan County,* Case No. 07-2-0014, Order of Motion to Dismiss, at 10-11 (Jan 10, 2008).
- Because the decisions regarding ferry service are made by the County Commissioners, those necessarily must take the form of an ordinance or resolution. However, this does not make them "development regulations." The change in the ferry schedule may well impact transportation to Guemes Island but so might the addition of a traffic signal impact transportation to another part of the County. That does not make the action a development regulation over which growth boards have jurisdiction. *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023, Order on Motions, at 5 (Jan 31, 2008).
- The Board does not read RCW 36.70A.120 as an expansive grant of jurisdiction to the growth boards to decide whether any activities undertaken by a local government are consistent with its comprehensive plan. The scope of review of a growth board in deciding an allegation that RCW 36.70A.120 has been violated must be limited to planning activities and capital budget decisions at the level of comprehensive plans and development regulations. *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023, Order on Motions, at 6 (Jan 31, 2008).
- The Board does not lack subject matter jurisdiction over any and all denials of comprehensive plan amendments. Where there is a mandate to act, either in the Growth Management Act (GMA) or in the comprehensive plan, the failure to act in accordance with express requirements of either is

subject to Board jurisdiction. *Concrete Nor'West v. Whatcom County,* Case No. 07-2-0028, Order on Motions, at 1 (Feb. 28, 2008).

- The Washington Supreme Court has held that the Board's jurisdiction is limited to comprehensive plans, development regulations and amendments thereto. The subject of Petitioner's appeal is a comprehensive plan amendment and therefore within the scope of the grant of jurisdiction to the boards. Further, the courts hold that the question of compliance with the GMA is uniquely a board question. If the boards do not have jurisdiction over a denial of a comprehensive plan amendment, there is no remedy for the petitioner whose application for a comprehensive plan amendment has been denied since there is no other avenue for appeal … [T]he critical question is not, therefore, whether the local jurisdiction denied a request for a comprehensive plan amendment but whether the denial violated a requirement imposed under the GMA. *Concrete Nor'West v. Whatcom County,* Case No. 07-2-0028, Order on Motions, at 8-9 (Feb. 28, 2008).
- The appellate court determination that the Board has subject matter jurisdiction is conclusive on the issue of Board jurisdiction. *Alexanderson/Dragonslayer, et al v. Clark County*, Case 04-2-0008, Order on Motions on Remand (June 19, 2007).
- An Interlocal Agreement between Ecology and the County ("ILA") was neither a *de facto* comprehensive plan amendment, nor a development regulation. Therefore, the Board did not have jurisdiction to hear an appeal challenging the adoption of this agreement. *City of Anacortes v. Skagit County and Washington Department of Ecology,* Case No. 07-2-0003, Order Dismissing PFR (July 2, 2007)
- [T]he County's action is still a legislative action affecting the overall plan for the County. If it were possible to evade GMA compliance by making comprehensive plan map changes on an individual basis, then there would be a patchwork of decisions, some of which must comply with the GMA and some of which need not. This would not make for "an internally consistent document [in which] all elements shall be consistent with the future land use map. *ARD/Diehl v. Mason County,* Case No. 07-2-0006, FDO at 45 (Aug. 20, 2007)
- [O]ur examination of WAC 246-290-100-4 and WAC 246-290-100-4(b)(i) and (ii) confirm that these WACs set out the requirements for a water system plan. They do not set the parameters for cities and counties to establish the adequacy of water for building permits. Additionally, determining compliance with these requirements of the WAC is not within the jurisdiction of a growth management hearings board. *Friends of San Juans, et al v. San Juan County,* Case No. 03-2-0003c coordinated with *Nelson, et al v. San Juan County,* Case No. 06-2-0024c, FDO/Compliance, at 62 (Feb. 12, 2007)
- [T]o the extent that the Subarea Plan sets new deadlines for action, those deadlines are part of the Comprehensive Plan. Any review of the County's UGAs would have to be consistent with the Comprehensive

Plan, both to maintain the Comprehensive Plan as an internally consistent document (RCW 36.70A.070) and to assure that all planning activities are done in conformity with the Comprehensive Plan (RCW 36.70A.120). In this case, the County has not yet taken an inconsistent action but, if the deadline for its self-imposed review period has passed, its failure to act within the specified time period means that any future UGA review would be inconsistent with its comprehensive plan. We therefore find that the Board has jurisdiction to determine whether the County has failed to comply with the GMA by failing to comply with the deadlines established in its comprehensive plan (through the Urban Fringe Subarea Plan). *Wiesen v. Whatcom County,* WWGMHB Case No. 06-2-0008 (Order Granting Motion to Dismiss, 7-17-06)

- A growth management hearings board may only decide issues "presented to the board in the statement of issues, as modified by any prehearing order". Petitioners seem to argue that since invalidity may only be imposed after a finding of noncompliance has been made, a challenge to the compliance of those regulations may be inferred. They are mistaken. RCW 36.70A.290(1) expressly limits the Board to deciding issues raised in the issue statement incorporated into the prehearing order. Since Petitioners did not allege noncompliance of the specific development regulations establishing rural lot sizes and densities, Petitioners may not backdoor their request for invalidity into a compliance challenge they did not raise. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- To the extent that Petitioner asks the Board to issue an order requiring his specific agricultural activities be allowed in the fish and wildlife protection buffers, he is seeking an order beyond the jurisdiction of this Growth Management Hearings Board. *Dunlap v. Nooksack,* WWGMHB Case No. 06-2-0001(FDO, 7-7-06)
- Resolutions 2006-05-26B and 2006-06-05 are not yet final actions to adopt development regulations or amend the comprehensive plan. Until the final conditions for lifting the urban holding designation are set, the challenge to those adoptions is not yet ripe and the Board has no jurisdiction over them pursuant to RCW 36.70A.280(1). *The City of Vancouver v. Clark County,* WWGMHB Case No. 06-2-0013 (Order Granting the County's Motion to Dismiss in Part and Denying Motion to Dismiss in Part, 9-29-06)
- The Board decides that Resolution 2006-05-26A is subject to the Board's jurisdiction. It is not a site specific rezone, but instead is a final action that removes the urban holding overlay designation. For that reason, it is a development regulation that implements the comprehensive plan policies on removal of UH overlay designations. Resolution 2006-05-26A is a development regulation and therefore is subject to the Board's jurisdiction. *The City of Vancouver v. Clark County,* WWGMHB Case No. 06-2-0013 (Order Granting the County's Motion to Dismiss in Part and Denying Motion to Dismiss in Part, 9-29-06)

- The Board finds that it does have jurisdiction over these regulations because they are a new enactment of development regulations, over which the Board has jurisdiction pursuant to RCW 36.70A.280(1). *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, 12-27-05)
- We do not render an opinion on the question of which applications for guest houses are subject to the vested rights doctrine. That decision is outside our purview. *Friends of the San Juans et al. v. San Juan County,* Case No. 03-2-0003c (Compliance Order (2005), 6-21-05)
- In this case, the Board decides that the amendments to the City's WSP are not within the subject-matter jurisdiction of the Board. They do not amend the comprehensive plan, either directly or by reference. While some local governments use water system plans to meet requirements of the Growth Management Act (GMA), there is no express requirement in the GMA for a water system plan. *Heikkila, et al. v. Winlock and Cardinal FG Company*, Case No. 04-2-0020c (FDO, 4-15-05)
- The commitment by the City in that resolution to provide municipal water and sewerage services to users that meet certain conditions was not adopted as an amendment to Napavine's Comprehensive Plan or its development regulations. Nor does any party offer evidence that the resolution constitutes a *de facto* amendment of the comprehensive plan. *Harader et al. v. Napavine,* WWGMHB Case No. 04-2-0017c (FDO, 2-2-05).
- Since the Board's jurisdiction is limited by statute to comprehensive plans, development regulations, and amendments to them, the Board does not have jurisdiction over the challenged resolution. RCW 36.70A.280; 36.70A.290. *Harader et al. v. Napavine,* WWGMHB Case No. 04-2-0017c (FDO, 2-2-05).
- This Board has jurisdiction over challenges to comprehensive plans, development regulations, and amendments to them whether procedural or substantive in nature… The Intervenor and County fail to explain how CTED's interpretation of its duty to provide comments on legislative enactments of counties and cities has any bearing on the jurisdiction of the boards to hear appeals. *Roth et al. v. Lewis County* 04-2-0014c (Order on Motions to Dismiss 9-10-04)
- We are limited in this decision to determining whether the Board has jurisdiction over the challenged MOU and we determine that we do not. In so doing, however, we do not minimize the significance on county planning of placing lands in trust status. Both the County and the Petitioners have expressed serious concerns about the impact of future development on trust lands that may not be consistent with either the County's planning policies or the GMA. *Alexanderson, et al. v. Clark County* 04-2-0008 (Order on Motion to Dismiss 7-23-04)
- The statute limits the authority of the boards to determining compliance with the GMA, SEPA or the Shoreline Management Act of comprehensive plans, development regulations and amendments to them. RCW

36.70A.280 and 36.70A.290. The GMA does not confer upon the boards the authority to determine constitutional claims. *Roth et al. v. Lewis County* 04-2-0014c (Order on Motions to Dismiss 9-10-04)

- The Board has jurisdiction to determine whether the challenged administrative interpretations were in fact comprehensive plan amendments. *Skagit County GrowthWatch v. Skagit County,* 04-2-0004 (Order On Motion To Dismiss 6-2-04)
- It is clear that the court could not and did not resolve GMA compliance issues in the LUPA case. A LUPA petition may not be used to obtain judicial review of land use decisions that "are subject to review by a quasi-judicial body created by state law, such as the shorelines hearings board or the growth management hearings board." RCW 36.70C.030(1)(a)(ii). *Skagit County GrowthWatch v. Skagit County,* 04-2-0004 (Order On Motion To Dismiss 6-2-04))
- [In a challenge to a case in which a LUPA decision had already been rendered, the board finds that neither res judicata nor collateral estoppel apply] [Nevertheless] It is difficult to see how we could decide for Petitioner *without* determining that the superior court judge was in error [in the LUPA decision]. Clearly, it is not the prerogative of the hearings boards to over-rule superior court judges; indeed, it is the reverse. Petitioner has stated that its concern with respect to both appeals is the principle involved with respect to the County's use of administrative interpretations to make comprehensive plan amendments. Since Petitioner can still pursue its appeal of the County's practice through the challenge to the [companion case] administrative interpretation, we find under the highly unusual circumstances of this case that the appeal of the [case in which the LUPA decision was rendered] administrative interpretation should be dismissed. *Skagit County Growthwatch v. Skagit County,* 04-2-0004 (Order On Motion To Dismiss, 6-2-04)
- The Board only has jurisdiction over those matters that are new adoptions or amendments to the comprehensive plan or development regulations [adopted as part of the annual comprehensive plan amendment process or in response to a finding of noncompliance]. Unchanged portions of the comprehensive plan and development regulations may not be challenged in this case. *Vinatieri, Smethers and Knutsen, et al. v. Lewis County,* 03-2-0020c (FDO, 5-6-04) (See *1000 Friends v. Whatcom County* 04-2-0010 [Order on Motions to Dismiss 8-2-04] for a discussion of the difference between obligations under the annual comprehensive plan amendment process and the requirements for an "update". RCW 36.70A.130.)
- The challenge does not become timely because the City amended Ordinance 2198 (a 1991 ordinance) to incorporate those development regulations by reference. Under these circumstances, we find that the Petitioners' challenge to the readoption of Ch. 17.65 AMC in Ordinance 2623, amending Ordinance 2198, did not form the basis for the Board's jurisdiction to review those previously adopted (and unchanged) development regulations. *1000 Friends of Washington, Evergreen Islands,*

and Skagit Audubon Society v. City of Anacortes, 03-2-0017 (Order on Issue for Reconsideration 4-20-04).

- The Forest Plan was not adopted as the City's development regulations for the protection of fish and wildlife conservation areas ("FWCAs") prior to the adoption of Ordinance 2623. In the case of the designation and protection of FWHCAs in the City of Anacortes, Ordinance 2623 enacts the Forest Plan to designate and protect FWHCAs for the first time. For this reason, the Board found that it did have jurisdiction for substantive review of the FWHCA measures. *1000 Friends of Washington, Evergreen Islands, and Skagit Audubon Society v. City of Anacortes* 03-2-0017 (Order on Issue for Reconsideration 4-20-04).
- The 1995 and 1997 amendments to the GMA give rise to an entirely different scenario with regard to the initial FDO finding noncompliance than was the situation in *Association of Rural Residents, v. Kitsap County,* 141 Wn.2d 185 (2000). While the local government is still under a duty to cure noncompliance, it is clear from the 1995 and 1997 amendments that a board retains jurisdiction and has the authority to extend the remand period until compliance is achieved. In any event, what is clear is that the Legislature has expressed its intent on at least two separate occasions in 1995 and 1997 that a local government has the duty to comply with the Act and that duty continues beyond the initial remand period of the FDO. *Anacortes v. Skagit County,* 00-2-0049c (Compliance Order, 1-31-02)
- This Board has not ruled that we lack jurisdiction in any case in which issues we have remanded to a jurisdiction (the County) have been appealed by parties in the case to Superior Court. In *Wells, et al. v. Whatcom County*, Case 97-2-0030c, Order on Motion for Reconsideration, June 4, 1998, we ruled that we lacked jurisdiction only because the Motion for Reconsideration had been delayed for a period far in excess of the required ten days, long enough for petitioners to have filed an appeal with Superior Court, which they had. There was a time, prior to 1995, when a Growth Management Board's powers were limited to transmitting a finding of noncompliance to the Governor and recommending imposition of gubernatorial sanctions. Prior to 1995, no further hearings or other authority to take further action existed for the Boards under the GMA. In 1995, Boards were given the authority to find noncompliance and invalidity and "additional hearings" were authorized for the first time. In 1995, a separate section for invalidity determinations was created which noted that the validity of plans and regulations during the period of remand were not affected by an order of noncompliance and that jurisdiction continued during the remand period. We have retained jurisdiction in many of our cases while Superior Court appeals were pending, absent a court order directing otherwise. We reject the argument that we have no jurisdiction over a case while a Superior Court appeal is pending. We further reject the argument that we have previously declared such cases to be beyond our jurisdiction. *Dawes v. Mason County*, 96-2-0023c (Compliance Order, 3-4-02) (Order Denying the Motion to Rescind Invalidity)

- The 1995 and 1997 amendments to the GMA give rise to an entirely different scenario with regard to the initial FDO finding of noncompliance than the situation in *Association of Rural Residents, v. Kitsap County,* 141 Wn.2d 185 (2000) situation. While the local government is still under a duty to cure the noncompliance, it is clear from the 1995 and 1997 amendments that a board retains jurisdiction and has the authority to extend the remand period until compliance is achieved. In any event, what is clear is that the Legislature has expressed its intent on at least two separate occasions in 1995 and 1997 that a local government has the duty to comply with the Act and that duty continues beyond the initial remand period of the FDO. *Anacortes v. Skagit County,* 00-2-0049c (Compliance Order, 1-31-02)
- This Board has not ruled that we lack jurisdiction in any case in which issues we have remanded to a jurisdiction (the County) have been appealed by parties in the case to Superior Court. In *Wells, et al. v. Whatcom County*, Case 97-2-0030c, Order on Motion for Reconsideration, June 4, 1998, we ruled that we lacked jurisdiction only because the Motion for Reconsideration had been delayed for a period far in excess of the required ten days, long enough for petitioners to have filed an appeal with Superior Court, which they had. There was a time, prior to 1995, when a Growth Management Board's powers were limited to transmitting a finding of noncompliance to the Governor and recommending imposition of gubernatorial sanctions. Prior to 1995, no further hearings or other authority to take further action existed for the Boards under the GMA. In 1995, Boards were given the authority to find noncompliance and invalidity and "additional hearings" were authorized for the first time. In 1995, a separate section for invalidity determinations was created which noted that the validity of plans and regulations during the period of remand were not affected by an order of noncompliance and that jurisdiction continued during the remand period. We have retained jurisdiction in many of our cases while Superior Court appeals were pending, absent a court order directing otherwise. We reject the argument that we have no jurisdiction over a case while a Superior Court appeal is pending. We further reject the argument that we have previously declared such cases to be beyond our jurisdiction. *Dawes v. Mason County*, 96-2-0023c (Compliance Order, 3-4-02) (Order Denying the Motion to Rescind Invalidity)
- A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)
- Where three ordinances are challenged by a PFR and subsequently the county rescinds all three ordinances, jurisdiction to continue the case is lost. Where there are no DRs in effect for which a finding of compliance or noncompliance could be made a board must dismiss the case. *ARD v. Mason County* 01-2-0017 (MO 10-12-01)
- An ordinance adopted pursuant to RCW 36.70A.390 without a public hearing, and that expired prior to the date of the HOM, divests the Board

of jurisdiction to rule on the issue of compliance of the ordinance. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)

- A mere shifting of a DR to a new code section without any changes, does not establish jurisdiction to rule on the previously adopted ordinance. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A GMHB does not have jurisdiction to rule on "spot zoning" challenges. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)
- A 1997 CP designation that was not appealed precludes GMHB jurisdiction when a later DR that is consistent with and implements the designation is adopted. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)
- A GMHB retains jurisdiction over noncompliant actions regardless of and independent of any appeals that are filed, absent an order from the court of jurisdiction. *FOSC v. Skagit County 96-2-0025* (MO 3-8-01)
- A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A re-adoption of a previous CA ordinance that does not involve any changes after the consistency review does not invoke jurisdiction to review the substance of the original CA ordinance. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a county has requested review of ordinances within the context of a previous FDO remand, even though the appeal period has passed on the specific ordinances, review is taken with regard to whether or not a finding of compliance is warranted. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under RCW 36.70A.280 and .330 a compliance hearing must relate to and is governed by the original issues set forth in the FDO, as well as any new issues arising from the actions taken by the local government during the remand period. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- A GMHB does not have jurisdiction to review portions of an ordinance previously adopted and not challenged within the proper time-frames where the ordinance was only amended in very limited sections, none of which were involved in the PFR submitted in this case. *Parsons v. Mason County* 00-2-0030 (MO 11-27-00)
- A petitioner's concern about a local government's hearing examiner system and the reluctance to incur the expense of a court appeal was beyond the scope of review authorized to a GMHB by the Legislature and did not constitute a violation of Goal 6. *Evaline v. Lewis County* 00-2-0007 (FDO, 7-20-00)

- To achieve participation standing under RCW 36.70A.280(2)(b) a person must have participated during the local government process regarding the matter on which the review is being requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment". The word "matter" refers to a "subject or topic of concern or controversy." *Wells v. WWGMHB,* 100 Wn. App. 657 (2000). & *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- In order to acquire standing a petitioner's participation must be reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation and the issues raised is required. A GMHB has considerable discretion to determine whether the facts support the necessary connection in each case. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A GMHB does not have jurisdiction to determine whether a violation of RCW 36.70 regarding notice and methods of ordinance adoption existed. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Where a PFR restated issues already decided in a compliance hearing, a GMHB will review petitioner's brief and any supplemental exhibits properly submitted and issue an FDO without the need of a responding brief from the local government or a full HOM. *WEAN v. Island County* 00-2-0001 (FDO, 6-26-00)
- Under the authority of *LaCenter v. New Castle Investments* 98 Wn. App. 224 (1999), impact fees are not and cannot be development regulations, are not a part of the requirements of RCW 36.70A and therefore not within the scope of jurisdiction provided in RCW 36.70A.280. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)
- A GMHB does not acquire jurisdiction to review an ordinance until a proper PFR is filed. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)
- Under RCW 36.70B.020(4) a "project permit" means that only site-specific rezones "authorized by a CP" are outside the jurisdiction of a GMHB. Project permits do not include the initial adoption of a CP amendment. The change to a map or any part of a CP invokes the jurisdiction of a GMHB. *Evergreen v. Washougal* 99-2-0042 (MO 2-17-00)
- Intervention was denied because the next hearing would not involve a request for rescission of invalidity, it was not the appropriate time for submission of new information and a GMHB does not have jurisdiction over the permitting of specific projects. *ICCGMC v. Island County* 98-2-0023 (MO 7-6-99)
- A GMHB has no authority to require a county to disband its boundary review board. *Abenroth v. Skagit County 9*7-2-0060 (Compliance Order, 6-10-99)

- A GMHB has jurisdiction to decide whether a county has complied with the GMA when it adopted a new CP and DRs and continued use of a previously adopted subarea plan without any review for consistency or readoption at the time of adoption of the CP and/or DRs. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)
- Issues not raised by a petitioner are prohibited from being addressed by a GMHB under RCW 36.70A.290(1). *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- A dispute between petitioners and the county that involves vesting and/or contract law is not within the jurisdiction of a GMHB. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)
- Questions concerning vesting and/or contract law are not within a GMHB's jurisdiction. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)
- An issue of "spot zoning" is beyond the jurisdiction of a GMHB. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)
- Under the ruling in *Skagit Surveyors v. Friends* 135 W.2d 542 (1998), a GMHB does not have statutory authority to invalidate pre-GMA DRs. Therefore, the previous orders of April 10, 1996, and October 6, 1997, were vacated. *WEAN v. Island County* 95-2-0063 (Compliance Order, 8-25-98)
- Where an ordinance is not challenged within 60 days of publication of the notice of adoption, review is precluded. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- Once an appeal to court has been made a GMHB loses jurisdiction over the issues relating to the court appeal for reconsideration purposes. *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- The GMA establishes a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. It is within the purview of the joint Boards to adopt a rule defining actual receipt of a petition for the establishment of the date of filing. *Weber v. Friday Harbor* 98-2-0003 (MO 4-16-98)
- When the GMHB hearing and decision postdate the effective date of ESB 6094, the procedural aspects of that amendment apply. *Storedahl v. Clark County* 96-2-0016 (Compliance Order, 12-17-97)
- When a local government action was taken prior to July 27, 1997, the effective date of ESB 6094, but the GMHB hearing and decision was subsequent to that date, the procedural provisions of the new amendments apply to the decision in the case. Such provisions include substitution of the clearly erroneous standard for the previous preponderance burden. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)

- Under RCW 36.70A.280 and .290 there is no requirement that a PFR be served anywhere except at the appropriate GMHB office. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- Where a local government did not demonstrate any prejudice from the failure to serve the PFR on it, a motion to dismiss was denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure" does not authorize a GMHB to impose a jurisdictional service of PFR requirement when no such specific authority is provided in the GMA. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- A GMHB does not have jurisdiction to determine compliance with the Planning Enabling Act, RCW 36.70. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- A GMHB has jurisdiction to consider invalidity of pre-GMA regulations. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- Recent amendments to RCW 36.70A.070(5) (rural element) do not apply to a local government action taken prior to July 27, 1997. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- A GMHB has no jurisdiction to invalidate DRs adopted under GMA and unchallenged within 60 days of publication of notice of adoption. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- For GMA planning counties adoption of amendments to the local SMP after July 23, 1995, are reviewed by a GMHB. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- The amendment to RCW 36.70A.290(2) authorizes a petition to a GMHB to include a challenge to whether the CP, DR, or amendments thereto adopted under GMA also comply with the SMA. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- A GMHB does not have jurisdiction to award attorney's fees or costs of any type. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- 1995 amendments to RCW 36.70A.280 transferred jurisdiction to GMHBs to decide issues concerning amendments to local SMPs adopted by cities and counties planning under the GMA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- Under RCW 36.70A.480(2) amendments to SMPs continue to be processed under the provisions of the SMA, which requires approval by DOE. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A GMHB does not have jurisdiction to determine whether a particular property or permit application is or is not vested. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)

- Where an initial CP action was taken and not challenged within the 60-day time limit provided in the GMA, a GMHB does not have jurisdiction to review the alleged failure to adopt an amendment because of an alleged deficiency of the original action. *Quail Construction v. Vancouver* 97-2-0005 (MO 5-6-97)
- A GMHB has jurisdiction to determine if a land use planning legislative action is in violation of the goals and requirements of the GMA, regardless of whether the local government has chosen to adopt the legislation pursuant to the GMA, as long as there is a sufficient nexus between the action and the GMA. *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)
- Where the record demonstrated that the intent of an ordinance was to protect a water supply and not necessarily to prohibit development, a GMHB did not have jurisdiction to rule on the challenge under the GMA. *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)
- A GMHB does not have jurisdiction to review permitting decisions under the 1995 amendment to RCW 36.70A.030(7). *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- A GMHB does not have jurisdiction to consider or make a ruling on what constitutes a vested permit or lot or what constitutes a pre-existing legal lot. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- A GMHB does have the authority to require aggregation of nonconforming lots. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- In 1996 the Legislature expanded the jurisdiction of a GMHB to include review of adoption of SMPs or amendments thereto. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- The provisions of RCW 36.70A.370 prevent a GMHB from having jurisdiction over a challenge to the action of a local government under that section. Dismissal is the result. *Rosewood v. Friday Harbor* 96-2-0020 (MO 10-2-96)
- A review process for a previously adopted CAO for the purpose of ensuring consistency with a later adopted CP that resulted in readoption without substantive change did not grant jurisdiction to a GMHB to review the substance of the previously adopted CAO. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- Whether a particular property is or is not vested must be determined in a forum other than a GMHB. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- A GMHB has jurisdiction to determine whether pre-existing non-GMA DRs are invalid. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- A GMHB has authority under RCW 36.70A.300(2) and .330(4) to modify a previous finding of invalidity. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)
- Where the record showed obvious noncompliance and invalidity in portions of the record supplied by the local government, a GMHB will not

ignore such action during a compliance hearing. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)

- Even though a local government adopted the "existing code" it was nonetheless a GMA action subject to review for compliance and/or invalidity. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- A GMHB has jurisdiction to review a subarea plan that by its terms was adopted pursuant to RCW 36.70A, even if it was also adopted pursuant to other planning legislation. *Beckstrom v. San Juan County* 95-2-0081 (FDO, 1-3-96)
- A pending appeal to the County Council of a hearing examiner's SEPA decision did not deprive a GMHB of jurisdiction to render a decision on SEPA under RCW 36.70A.280. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- A GMHB does not have jurisdiction to decide violations of statues other than RCW 36.70A. *Armstrong v. Clark County* 95-2-0082 (FDO, 12-6-95)
- A GMHB does not have the authority to impose regulations even under an invalidity finding. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- When reviewing a CP or DR that has obvious and glaring noncompliance, a GMHB will not overlook that feature based upon some hyper-technical legal analysis. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- ReESHB 1025 states that GMHB jurisdiction sections were to be "added to Chapter 36.70A RCW." Such direction leads to the inescapable conclusion that the Legislature intended limitation of a GMHB's jurisdiction to violations of goals and requirements of RCW 36.70A. *Armstrong v. Clark County* 95-2-0082 (FDO, 12-6-95)
- Allegations of lack of a compliance with RCW 19.27.097 dealing with potable water requirements are not within the jurisdiction of a GMHB. *Armstrong v. Clark County* 95-2-0082 (FDO, 12-6-95)
- Where the record demonstrated that a local government has taken action in large measure to comply with GMA, jurisdiction for review by a GMHB existed even though a local government adopted a later resolution to declare the action was not taken under GMA. *Cedar Park v. Clallam County* 95-2-0080 (MO 11-16-95)

- The failure of a local government to adopt all parts of its CP by the GMA deadline does not preclude GMHB review of the portions that have been adopted. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- An ordinance which by its terms was adopted under the authority of the GMA, even though it was not submitted to CTED prior to adoption pursuant to RCW 36.70A.106(1)(a), invoked GMHB jurisdiction in spite of a subsequently adopted resolution that the ordinance was adopted under the authority of RCW 36.70 and not the GMA. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- RCW 36.70A.280 provides that a PFR may be filed as soon as the local government takes formal action. The timeframe for a PFR continues for a period of 60 days after publication of the appropriate notice. The failure of the local government to comply with RCW 36.70A.106(1)(a) does not preclude GMHB review. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- There is no jurisdiction for a GMHB to determine whether a constitutional taking has occurred. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- For DRs adopted in 1991, after a later adoption of a CP, the role of a GMHB is to determine whether such DRs are consistent with the CP. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A GMHB does not have jurisdiction to determine whether a federal statute has been violated. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A GMHB does not have jurisdiction to determine compliance with RCW 36.105.070. *CICC v. Island County* 95-2-0072 (MO 9-6-95)
- RCW 36.70A.280(1)(a) provides three separate jurisdictional bases: Whether a local government planning under the GMA, or the State, is in compliance with RCW 36.70A;
  Whether a local government planning under the GMA, or the State, is in compliance with RCW 90.58 relating to SMPs or amendments thereto; Whether a local government planning under the GMA, or the State, is in compliance with RCW 43.21C (SEPA) as it relates to CPs, DRs or amendments, adopted under either GMA or SMA. *CICC v. Island County* 95-2-0072 (MO 9-6-95)
- A GMHB has jurisdiction to determine if a land use planning legislative action complies with the GMA regardless of whether or not the local government has adopted the legislation pursuant to RCW 36.70A, as long as there is a sufficient nexus between the action and the GMA. *CICC v. Island County* 95-2-0072 (MO 9-6-95)
- A transportation impact fee ordinance which could have some effect on the rate of development but placed no “controls” on development or land use activities does not meet the definition of a DR under RCW 36.70A.030(8). Therefore, a GMHB does not have jurisdiction to review an appeal of that ordinance. *Properties Four v. Olympia* 95-2-0069 (FDO, 8-22-95)

- A CP is no longer a binder full of pages whose main function is to be dusted. If it is in the plan, it must be implemented. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A GMHB has jurisdiction over an issue challenging a local government's failure to comply with GMA deadlines. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)
- Where no timely appeal of a wetlands ordinance was taken, there is no jurisdiction for a GMHB to review that ordinance at the time of adoption of the CP except for consistency with the CP. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- The requirements for implementing DRs formerly found in RCW 36.70A.120 are now found in .040(3). Once implementing DRs were adopted, a GMHB does not have jurisdiction over the previous interim resource land DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- A GMHB does have jurisdiction to review CP implementing DRs regarding RLs even if such regulations are verbatim readoptions of resource lands interim DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- Placing a PFR in the mail does not comply with the jurisdictional requirements that the PFR be filed within 60 days of publication. After 60 days from publication a GMHB is without jurisdiction to rule on the PFR. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)
- A GMHB has jurisdiction to determine the consistency of a CP as it relates to the SMA. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- A city's DNS for a sewer extension is not an issue within the jurisdiction of a GMHB under RCW 36.70A.280. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- A GMHB has jurisdiction to rule on SEPA challenges that relate to a GMA action or nonaction. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- A GMHB does not have jurisdiction to rule on standards, goals or requirements of federal statutes and/or constitutional provisions. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- The adoption of CA DRs immediately grants jurisdiction for review of compliance with the GMA. If jurisdiction did not attach until completion of the CP or implementing DRs, review at that time would be limited to consistency under RCW 36.70A.060(3). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)
- CA DRs are independent of, and different than, CP implementing DRs and are reviewable after adoption even if a CP has not yet been adopted. RCW 36.70A.060(2). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

LAND CAPACITY ANALYSIS

- [As to historic or ancient lots] ICAN fails to acknowledge that even legally created lots are not developable if substandard. [ICAN's] argument reveals a lack of appreciation of the distinction between a legal lot and a developable lot. In general, a "legal lot" is any lot that was created by legal means (i.e. subdivision, testamentary devise, boundary adjustment). A

"buildable" or "developable" lot is one that meets the zoning and health code requirements. In *Dykstra,* [*Dykstra v. Skagit County*] the Court noted that a legal lot may still be a non-conforming substandard lot because its land is insufficient to be a buildable site and that the legal lot status does not confer development rights. Here, the County properly based its holding capacity analysis upon developable lots. *ICAN v. Jefferson County,* Case No. 07-2-0012, Order on Reconsideration, at 6-7 (Sept. 11, 2009)

- [In adjusting land availability within residential areas to allow for commercial and industrial needs, the County utilized a market factor which Petitioners contested] [T]he Board disagrees that additional land supply provided by the market factor cannot be used to account for institutional land … RCW 36.70A.110(2) also allows that "An urban growth area determination *may* include a reasonable land market supply factor". The Board reads this to mean that while the County can provide for additional land over and above what the County's land capacity analysis says it actually needs to provide for sufficient land to accommodate its projected population, the use of a market factor is not required … Using the market factor to account for institutional uses has the effect of reducing the market factor. While a market factor is a useful tool in ensuring adequate land supply over the 20-year life of the plan, it is not required. Thus, the Board does not find it clearly erroneous for San Juan County to reduce the market factor to account for institutional land. Coordinated cases: *Ludwig, et al v. San Juan County,* Case No. 05-2-0019c, *Klein, et al v. San Juan County,* Case No. 02-2-0008, *Campbell, et al v. San Juan County,* Case No. 05-2-0022c, Order on Compliance, at 26-27 (Jan. 30, 2009).
- A *Land Capacity Analysis* (LCA) is a requirement arising from RCW 36.70A.110 for all counties planning under the GMA. This section of the GMA relates to the designation of UGAs and the requirement that each UGA shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding 20-year period. The LCA is a critical mechanism for the sizing of a UGA because it is utilized to determine how much urban land is needed. Therefore, in contrast to the Buildable Lands Report, the LCA is prospective – looking forward over the coming 20 years to see if there is enough land within the UGA to accommodate the growth that has been allocated to the area. In certain counties, the LCA is now underscored by the Buildable Lands Report required by RCW 36.70A.215. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c (Order on Reconsideration, June 18, 2008) at 15.
- The Board disagrees that the word "sufficient" in RCW 36.70A.115 should be found to mean "not too much and not too little" as previous Board cases have found in relationship to RCW 36.70A.110. This is primarily because RCW 36.70A.110 goes to the establishment of an urban growth boundary and the ability of the area within the boundary to accommodate

the allocated growth and to provide for urban facilities and services. The Board does not find that RCW 36.70A.115 mandates the same type of analysis for rural areas. To conclude RCW 36.70A.115 requires a LCA like Petitioners assert, is essentially finding the GMA requires a county to size *both* its UGA and its rural areas which would be contrary to various provisions of the UGA which require that development be encouraged in urban areas and that sprawling, low-density development be reduced. In other words, the emphasis and focus as to capacity applies to the urban growth areas. The Board reads RCW 36.70A.115 as requiring a coordinated effort between a county and its cities to ensure that the adoption of subsequent amendments to comprehensive plans and development regulations, when taken collectively, will not adversely impact the supply of land needed to address allocated housing and employment growth for which the County and cities have planned. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c, (Order on Reconsideration, June 18, 2008) at 16-17 [For original discussion on this issue, see FDO, May 12, 2008 at 44-45.]

- While a CAO must be consistent with the CP, it does not specifically need to be analyzed for consistency with a land capacity analysis. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- The GMA requirement for an IUGA land capacity analysis does not shift the burden of proof to a local government but simply provides an analytic framework to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used or that it was used in a way that did not comply with the GMA remains with a petitioner. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The GMA does not require a land capacity analysis for rural areas but does not allow existing and future conditions in rural areas to be ignored. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- An IUGA is initially established at the municipal boundary. Until a proper land capacity analysis, which includes a capital facilities and fiscal impact analysis, is completed the IUGA cannot be moved. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- While there is no precise requirement in the GMA to specifically identify locations of future industrial, commercial and/or residential growth, a general location of such urban growth must be included in a land capacity analysis. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- A land capacity analysis is a necessary prerequisite to establishing IUGAs. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- A land capacity analysis, an analysis of existing and future capital facilities and services, and fiscal impacts must be completed before an IUGA outside municipal boundaries may be established. The IUGA must be consistent with the goals and requirements of the GMA and the CPPs. Guidance as to the information required for such an analysis is found in WAC 365-195-335(3). *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

LAND USE ELEMENT

- RCW 36.70A.070(1) requires a land use element designating the proposed general distribution and general location and extent of the uses of land. This information need not be presented in tabular form. *Panesko, et al v. Lewis County,* Case No. 08-2-0007c, Compliance Order at 7 (July 24, 2009)
- RCW 36.70A.070(1) requires a review of current "drainage, flooding, and stormwater runoff" and "guidance for corrective actions" to be included within the land use element of a CP. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- Where a city adopted its CP prior to the one adopted by the county and the city included conceptual analysis for a potential UGA outside of municipal limits, compliance with the GMA was achieved. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)
- The land use element and any subarea plans adopted through it must be consistent with all other elements of the CP. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

LAND USE POWERS

- The establishment of greenbelts and open spaces within municipal boundaries is a city responsibility. The GMA requirement to make such designation available to a county does not infringe upon the city's land use powers. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)

LEGISLATIVE ENACTMENT

- In adopting planning policies, the name or title of the legislative action is not critical. The important factors are whether the notice, public participation and petition to the GMA board provisions of the GMA apply to the policy under local law, not whether it was adopted by ordinance or resolution. *Olympic Environmental Council, et al. v. Jefferson County,* 01-2-0015 (Compliance Order, 12-4-02)

LEGISLATIVE INTENT

- The role of a GMHB in interpreting the GMA is to give effect to legislative intent and avoid unlikely or absurd results. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- A GMHB interprets the GMA to give effect to the intent of the Legislature and to avoid unlikely or absurd results. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 2-6-97)

LEVEL OF SERVICE (LOS)

- *See Irondale Community Action Neighbors v. Jefferson County,* Case No. 07-2-0012/03-2-0010/04-2-0022, FDO and Compliance Order, at 14-16 (Feb. 8, 2008) (Finding that the County has adopted development regulations that prohibit development which causes the LOS to decline

below locally adopted standards and requires that the necessary transportation facilities be reasonably funded before development may proceed).

- [Pursuant to RCW 36.70A.020(12)] Local jurisdictions are required to establish an objective baseline to determine minimum LOS standards for public facilities and services. However, in establishing LOS standards, local government is invested with wide discretion as to the proper level. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 52 (Aug. 6, 2007)
- For locally owned arterials, the County has discretion on how they choose to describe the LOS as long as it describes this in their comprehensive plan and use their description to measure LOS. For state-owned facilities, highways of state-wide significance are set by the state. For other state-owned highways the local government and the state work together to set the LOS. *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, 5-31-05)
- The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirements of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A city's change of methodology for the measurement of traffic in the establishment of new LOS standards did not significantly raise or lower the LOS standards. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A change in LOS standards involving a different methodology of traffic measurement does not substantially increase nor lower the LOS standards and a DNS determination was not clearly erroneous. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A new corridor-approach LOS standard discourages sprawl and encourages multi-modal transportation by avoiding costly intersection improvements that promote single occupancy vehicle use. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A "less-than-ten-trip" exemption for requiring a transportation impact study would lead to an incomplete assessment of cumulative impacts on LOS

and thus fails to comply with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)

- RCW 36.70A.020(12) imposes a requirement for local government to establish an objective baseline to determine minimum LOS standards for public facilities and services. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- RCW 36.70A.070(6)(e) directs the adoption of DRs that prohibit established LOS standards to decline below those designated in the CP. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)
- Once a local government adopts concurrency policies, implementing DRs must be adopted that prohibit new development from causing previously established LOS standards to be violated. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The GMA requires that LOS standards be established by a local government but invest the local government with wide discretion as to the proper level. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Defining LOS standards as "allowed", "not allowed", "conditional", or "provisional" does not establish a definitive level and thus did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)
- LOS is defined in WAC 365-195-210(12). LOS standards must be in place prior to the establishment of an IUGA outside municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT (LAMIRDS)

- *Dry Creek Coalition v. Clallam County,* Case No. 07-2-0018c, Compliance Order (Nov. 3, 2009)(Addressing the LOBs for LAMIRDs)
- [As to characteristics and development of LAMIRDS] This Board has addressed an issue of interpretation of RCW 36.70A.070(5)(d)(i)(C) in the Order on Reconsideration in Case No. 07-2-0018c [issued Feb. 2, 2009]. There the Board noted that "building size is but one characteristic to consider in assessing the character of the existing area, consideration must also be given to use, scale, or intensity." The statute's use of the term "or" rather than "and" appears to indicate a Legislative determination that the factors of building size, scale, use or intensity are ones that may be considered in determining the character of the existing area, but that development is not required to meet every one of those parameters. If the Legislature had intended to use the word "and" in the statute, they clearly could have done so. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Final Decision & Order at 8 (June 12, 2009)
- [As the Board held in the February 2009 Order on Reconsideration] … the County has not violated the GMA by failing to adopt parameters that define the existing character of each LAMIRD where no such requirement is contained in the GMA. The County has the policies and zoning regulations in place to implement the requirements that new development and redevelopment be consistent with the 1990 existing areas. *Dry Creek*

Coalition v. Clallam County, Case No. 08-2-0033, Final Decision & Order at 11 (June 12, 2009)

- [RCW 36.70A.070(5)(d)(i)(B)] requires development in these areas to be "principally" designed to serve the existing and projected rural population; there is no requirement that it "exclusively" serve that population. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Final Decision & Order at 11-12 (June 12, 2009)
- [T]he Board has stated that "building size is but one characteristic to consider in assessing the character of the existing area, consideration must also be given to use, scale or intensity." So too with building height, it is but one factor to consider in determining if a development is consistent with the 1990 existing area. The County's provisions for maximum heights must be read in harmony with other provisions, such as CCC 33.15.040 (9), .050(9), and .060 (8) which require that allowed and conditional uses in the CEN, RNC and RLC zones, respectively, "must be similar to the use, scale, size, or intensity as the uses that existed in the area" on July1, 1990. So read, there is no violation of the GMA. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Final Decision & Order at 14 (June 12, 2009).
- [In response to Petitioner's assertion that the GMA's use of the word "shall" demonstrates a violation of the GMA when the County used the word "should" in its comprehensive plan, the Board disagreed, stating]: … [I]t is the development regulations that ensure that the requirements of the GMA are implemented. There is no inconsistency in the use of the term "should" in a comprehensive plan where, as here, the development regulations implement the policy statements contained in the plan. *Dry Creek Coalition v. Clallam County,* Case No. 08-2-0033, Final Decision & Order at 15 (June 12, 2009)
- The Board notes that RCW 36.70A.070(5)(d)(ii) is primarily concerned with allowing small-scale recreational or tourist uses within LAMIRDs. While this section contains a prohibition on new residential development, this appears to be designed to ensure that the jurisdiction does not permit low-density sprawl. Providing limited allowances for caretaker residences does not undermine that intent. In the FDO, the Board expressed the concern that the County had no limitation on the size or scope of "caretaker quarters". The County has addressed that concern by providing that such housing is limited in size and quantity to only that necessary to house active existing employees. While Petitioners insist that even a single new caretaker's residence would violate RCW 36.70A.070(5)(d)(ii), the Board concludes that a more reasonable interpretation of that statute would allow an accessory dwelling unit for the security and operation of small scale recreational or tourist uses allowed in Type II LAMIRDs. *Friends of Skagit County, et al v. Skagit County,* Case NO. 07-2-0025c, Order on Compliance, at 8 (Jan. 21. 2009)
- [DCC argued that the Board should require documentation in the Plan or the Clallam County Code of the parameters of the Laird's LAMIRD as of

July 1, 1990, the Board stated:] The Board agrees that specification of those parameters would provide great assistance to the County in determining the nature of future land uses to be allowed in its LAMIRDs. However, no such requirement exists in the GMA, and it was not error for the Board to fail to impose such a requirement. In any event, as a result of this appeal, an extensive record has been compiled regarding the state of the built environment in the County's LAMIRDs as of July 1, 1990, which the County and the public can rely upon for future land use decisions. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c, Order on Reconsideration, at 4 (Feb. 20, 2009)

- The phrase "the uses that existed in the area *prior to* or as of July 1, 1990" in describing the reference point for allowed and conditional uses is not consistent with RCW 36.70A.070(5)(d)(v) which provides that "For purposes of (d) of this subsection, an existing area or existing use is one that was in existence: (A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter". The Legislature in selecting July 1, 1990 used a definite point in time to use as a reference point for counties in defining the extent of a LAMIRD. The County explained at oral argument that the intent of the phase "prior to or as of July 1, 1990" was to recognize that uses that existed before that date need not still have been in operation "as of July 1, 1990" to qualify the area as a LAMIRD. The phrase "prior to or as of July 1, 1990" would allow consideration of past uses that were not only not in operation on July 1, 1990, but of which there was no remaining evidence. Under the County's current phrasing, a commercial use that was in existence prior to July 1, 1990 but which subsequently was removed or destroyed leaving no remaining "built environment" would still qualify the area as a LAMIRD. This is inconsistent with the language of RCW 36.70A.070(5)(d)(v) and is clearly erroneous. While the County may properly limit conditional uses in a LAMIRD based upon "type, scale, size, use or intensity" without numerical standards as to those dimensions, the appropriate inquiry is the character of the existing area "on July 1, 1990" as provided by the Legislature, not "prior to or as of July 1, 1990" as the County now provides. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c, Order on Compliance, at 10-11 (Jan 30, 2009)
- *See Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c, Order on Compliance, at 11-30 (Jan 30, 2009) *for discussion RE:* Logical Outer Boundaries of 20 LAMRIDS within Clallam County based on the July 1, 1990 Built Environment in relationship to roads and topographical features.
- *See 1000 Friends v. Thurston County,* Case No. 05-2-0002, Oct. 23, 2008 Order Finding Compliance on Remand (Finding compliance based on the Thurston County Superior Court's reversal of the Board as to the Rochester LAMIRD in *Rochester Water Association et al. v. Western Washington Growth Management Hearings Board, et al.* Thurston County

Superior Court Case Nos. 07-2-02533-0 and 07-2-02557-0, Agreed Order (Sept. 4, 2008))

- A Type 1 LAMIRD requires the areas included be delineated predominantly by the *built* environment. Mere clearing and grubbing of the land does not satisfy this requirement, the GMA seeks man-made structures. *Panesko, et al v. Lewis County,* Case No. 08-2-0007, FDO, at 33 (Aug 15, 2008).
- [T]he uses must be similar to the use, scale, size, or intensity as the uses that existed as of July 1, 1990 [RCW 36.70A.070 (5)(d)(i)(C)]. The manner in which these factors combine help determine whether the uses allowed within the LAMIRD are consistent with the character of the area. Petitioner requests the Board rule on just one of these factors, building size, and define it to mean total building size. However, building size is but one characteristic to consider in assessing the character of the existing area, consideration must also be given to use, scale, or intensity. *Dry Creek Coalition v. Clallam County,* Case No. 07-2-0018c (Order on Reconsideration, June 9, 2008) at 11.
- [T]he Board does not agree that a "use" must be the same, specific use as existed in 1990, the "use" should be of the same general type. This interpretation is supported by the GMA's language in regard to "re-development" and "change in use" … [but] the GMA requires more; it requires consistency with the character of the LAMIRD based on consideration of size, scale, use or intensity. Without regulations that address these components, there are no assurances that these elemental characteristics of the LAMIRD will remain. *Dry Creek Coalition v. Clallam County,* Case No. 07-2-0018c (Order on Reconsideration, June 9, 2008) at 13-14.
- [A] LAMIRD is not frozen in time but may develop and re-develop over time within the limits of RCW 36.70A.070(5)(d). However, the existing character of the area should remain generally the same … Also, a LAMIRD is not supposed to become a mini UGA or an economic development node. Their purpose is to recognize existing more intense rural growth and contain it. *Dry Creek Coalition v. Clallam County,* Case No. 07-2-0018c (Order on Reconsideration, June 9, 2008) at 14.
- Infill and redevelopment consistent with the character of the existing area is explicitly permitted by the GMA as long as it is consistent with the size, scale, intensity and uses of the existing LAMIRD. *Friends of Skagit County et al v Skagit County,* Case No. 07-2-0025c(FDO, May 12, 2008) at 35.
- [In response to the Petitioners' assertion that LAMIRDs are a one-time designation, with no ability to create new LAMIRDs in the future, the Board stated …] [N]othing in the GMA prevents a county from establishing new LAMIRDs if that LAMIRD meets the criteria set forth in RCW 36.70A.070(5)(d). And while a county may not expand a LAMIRD beyond the appropriate logical outer boundaries (LOB), it is not a violation to reconsider the LOB. If the revised LOB meets the standards of RCW

36.70A.070(5)(d)(iv), there is no violation. *Friends of Skagit County et al v Skagit County,* Case No. 07-2-0025c (FDO, May 12, 2008) at 36.

- Therefore, in light of the foregoing, the Board concludes that a county may establish new LAMIRDs or change the boundaries of a LAMIRD so long as the change complies with the GMA. However, the County may not establish new Rural Centers in areas not developed as of July 1, 1990 … To allow the establishment of new LAMIRDs in this manner substantially interferes with Goals 1 and 2 of the GMA by encouraging development outside the urban areas and encouraging sprawl. *Friends of Skagit County et al v Skagit County,* Case No. 07-2-0025c, (FDO, May 12, 2008) at 38-39.
- Consequently, the Board finds that, while the County is entitled to allow uses consistent with the existing areas and those uses are not limited to the particular type of uses found in 1990, they must be consistent with the areas and the uses must be similar to the use, scale, size, and intensity as the uses that existed as of July 1, 1990. Because the County's conditional use provisions allow a potentially broader range of uses, they are non-compliant. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 19.
- In *Wells v. Whatcom County*, this Board noted that "existing zoning cannot be a sole criterion for designating rural lands for more intense development." The Board does not depart from that principle. If the Legislature had intended for counties to merely adopt zoning boundaries as the LOB, it would have said so, and it has not. Adopting pre-existing zoning to establish the LAMIRD would in many if not most cases bring within the LOB areas that are in no way characterized by urban growth. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 21.
- The Board rejects the County's argument that it possesses "an independent legal basis" to designate LAMIRDs that contravene GMA criteria. The County asserts that RCW 36.70A.070(5)(a)'s provision allowing a county to consider local circumstances, based on a written record, in establishing patterns of rural densities and uses provides for such an independent basis. However, to adopt this interpretation would make RCW 36.70A.070(5)(d) superfluous. Rather than base the boundaries of LAMIRDs on the criteria provided in the GMA, the County would merely need to explain "how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter." *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 22.
- This Board has previously held … when establishing a LAMIRD the County must FIRST identify the built environment, as of July 1, 1990, so that it may be minimized and contained as required under the GMA. In determining the built environment, the Board has stated: Vested rights does not equate to the built environment; the built environment includes those facilities which are manmade, and whether they are above or below

ground; Subdivided or platted land, although occurring prior to 1990, which remains undeveloped may not be considered part of the built environment as the Legislature intended this term to relate to manmade structures. Once the built environment has been identified, the County must establish the LOB for the LAMIRD by considering the criteria set forth in RCW 36.70A.070(5)(d). *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 30-31. [Board reviews 29 of the County's LAMIRDS for compliance with the GMA].

- For further analysis about the ability of jurisdictions to create or expand LAMIRDS, see also:

  -Dry Creek Coalition/Futurewise v. Clallam County, Case No. 07-2-0018c (FDO, April 23, 2008) at 25-27. (Nothing in the GMA expressly prohibits a county from reconsidering the boundaries of a LAMIRD or establishing a LAMIRD at a later date).
- For further analysis about permitted uses within a LAMIRD, see also:

  -Friends of Skagit County et al v. Skagit County, Case No. 07-2-0025c (FDO, May 12, 2008) at 29-33.

  -Dry Creek Coalition/Futurewise v. Clallam County, Case No. 07-2-0018c (FDO, April 23, 2008) at 16-19.
- The Legislature imposed strict requirements on the area that may be included in (d)(i) LAMIRDs because residential LAMIRDs are commonly developed at densities that would otherwise constitute sprawl. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007).
- Small lots that were not developed by 1990; and plans for further water service areas; do not constitute man-made facilities and structures such that they may be considered the "built environment" pursuant to RCW 36.70A.070 (5)(d)(iv). *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007).
- Expanding the boundaries of a residential LAMIRD across lands otherwise not eligible for inclusion to reach a smaller area of "built environment" exceeds the proper scope of a logical outer boundary. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007).
- The phrase "more intensive rural development" is not defined in the GMA. However, the meaning of the phrase may be gleaned by its context ... The pre-existing development that characterizes the built environment of a (d)(i) LAMIRD fits somewhere in the middle between a rural level of development and urban growth; it must be more intensive than rural development but not as intensive as urban development… In determining whether a manmade structure or facility is "more intensive rural development", the Board can look to the County's own definitions of rural residential densities and definitions of residential densities of "more intensive rural development". *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007) at 13.

- "Infill" is specifically contemplated in the statute so that the mere addition of some lots through infill does not necessarily violate the restrictions of RCW 36.70A.070(5)(d)(i) and (iv). However, "outfill" or the inclusion of larger tracts of land on the periphery of the built environment is of major concern as adding to, rather than minimizing and containing, more intensive rural development. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007) at 18.
- *For a General Discussion of LAMIRDS, see 1000 Friends v. Thurston, Case No. 05-2-0002, Compliance Order (Nov. 30, 2007)*
- Outside of the update process, the choice whether to revisit prior LAMIRD boundary adoptions is within the discretion of the County. *Widdell v. Jefferson County,* WWGMHB Case No. 06-2-0004 (Order on Dispositive Motion, 5-2-06)
- The County's high density rural residential designations (SR – 4/1; RR 2/1; RR 1/1; and RR 1/2); Housing and Residential Densities Policies 1 and 2, and Rural Land Use and Activities Policy 8; and the County's development regulations implementing these designations (T.C.C. Ch. 20.10; T.C.C. Ch. 20.11; T.C.C. Chapter 20.13; and T.C.C. Chapter 20.14) fail to comply with RCW 36.70A.070(5). The residential density levels allowed in these designations are too intensive for rural areas unless they are designated as limited areas of more intensive rural development (LAMIRDs) pursuant to RCW 36.70A.070(5)(d). If the County is to allow such areas of more intensive rural development, it must establish them in accordance with RCW 36.70A.070(5)(d). *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, 7-20-05)
- The type (d)(iii) LAMIRD must meet the requirements of RCW 36.70A.070(5)(d)(iii) and is not merely the same thing as a type (d)(i) LAMIRD without the requirement of a logical outer boundary established in accordance with the built environment as of July 1990. *Better Brinnon Coalition v. Jefferson County,* 03-2-0007(Compliance Order, 6-23-04)
- The Legislature's use of the term "isolated" for both cottage industry and small-scale businesses in RCW 36.70A.070(5)(d)(iii) demonstrates an unambiguous intention to ensure that any commercial uses established by the mechanism of a type (d)(iii) LAMIRD be set apart from other such uses. *Better Brinnon Coalition v. Jefferson County,* 03-2-0007(Compliance Order, 6-23-04)
- Type (d)(i) LAMIRDs are not alternative vehicles for channeling urban residential and commercial growth. They are designed to acknowledge existing intensive uses in the rural areas as of July 1990 and to permit limited more intensive development within carefully constrained boundaries. Type (d)(i) LAMIRDs are intended to acknowledge and contain existing areas of more intense development in the rural lands. They are not principally designed for new development; rather, type (d)(i) LAMIRDs permit some infill, development and redevelopment of "existing" areas only. *Better Brinnon Coalition v. Jefferson County,* 03-2-0007 (Amended FDO, 11-3-03)

- The test for a type (d)(i) LAMIRD is not whether it would be good for the economy of a rural region to have more commercial development there. The test is whether there was a built environment on July 1, 1990 and what the logical outer limits of that built environment should be for the purposes of containment*. Better Brinnon Coalition v. Jefferson County,* 03-2-0007 (Amended FDO, 11-3-03)
- Type (d)(i) LAMIRDs are not to be used as opportunities to create industrial development; they are to contain and control already existing development. If the County anticipates a major industrial *project*, the Act addresses planning for major industrial developments in RCW 36.70A.365. *Better Brinnon Coalition v. Jefferson County,* 03-2-0007 (Amended FDO, 11-2-03)
- The County had originally developed the suburban enclave designation before the 1997 amendments to the GMA that created the LAMIRD designation option. At the time the suburban enclave designation was developed, therefore, there was no "logical outer boundaries" requirement (RCW 36.70A.070(5)(d)(iv)). In revisiting the suburban enclaves designated for Lake Samish in Ordinance 2003-007, the County properly established the logical outer boundaries of the limited area of more intense rural development on Lake Samish, by considering the 1990 "built environment", and addressing the need to preserve the character of the community, its physical boundaries, prevention of abnormally irregular boundaries, and the ability to provide public facilities and services in a manner that does not permit low density sprawl. RCW 36.70A.070(5)(d)(iv). *Cal Leenstra v. Whatcom County,* 03-2-0011 (FDO, 9-26-03)
- We find that the proposed new type (d)(iii) LAMIRD does not comply with RCW 36.70A.070(5)(c)(i) and (iii), and 36.70A.070(5)(d)(iii) and (iv) because it connects a new area of more intense rural uses to an existing LAMIRD which allows the same kinds of uses. LAMIRDs must limit and contain growth, not extend it from one LAMIRD to the next. *Better Brinnon Coalition v. Jefferson County,* 03-2-0007 (Compliance Order, 6-23-04)
- 175 existing isolated small-scale LAMIRDS, 9 hamlets, and 14 other LAMIRDs would ordinarily appear to be an unusually large number of LAMIRDs. Coupled with the effect of RCW 36.70A(5)(d)(ii) and (iii) that allows for the creation of new small-scale industrial, commercial, and recreational LAMIRDs, the large number of LAMIRDs could thwart the intent of RCW 36.70A.020(2) (the GMA's sprawl reduction goal). The requirement that no new isolated small-scale business LAMIRD can be created one-half mile from any other LAMIRD or urban growth area and the numerical and acreage limitations that Criterion I imposes on the number of new small-scale isolated LAMIRDs that can be created help alleviate our concern that the sprawl reduction goal is being undermined. *Diehl v. Mason County,* 95-2-0023c (Compliance Order, 11-12-03)

- Mapping and delineating boundaries for these LAMIRDS is an essential ingredient in making their designation consistent with the GMA. *Diehl v. Mason County,* 95-2-0023c, (Compliance Order, 11-12-03)
- RCW 36.70A.070(5)(d) clarifies that that the Legislature did not intend to have appropriately designated LAMIRDs looked upon as urban growth. *Diehl v. Mason County,* 95-2-0023c (Compliance Order, 11-12-03)
- When reviewing the County's choices of LAMIRD boundary lines, it is not our role to determine if there might be better options than what the County has enacted; rather, we are to determine if the County's chosen action complies with the Act. *People for a Liveable Community et al. v. Jefferson County* 03-2-0009c (FDO, 8-22-03)
- LAMIRDs are intended to be a one-time recognition of existing, more intensively developed areas and uses and are not intended to be used continuously to meet needs (real or perceived) for additional commercial and industrial lands. *People for a Liveable Community et al. v. Jefferson County* 03-2-0009c (FDO, 8-22-03)
- While it is optional for the County to allow areas of more intensive rural development, if the County does allow such areas, they must conform to the requirements of RCW 36.70A.070(5)(d). *1000 Friends v. Whatcom County* 04-2-0010 (Order on Motions to Dismiss 8-2-04)
- There is no such rigid interpretation of RCW 36.70A.070(5)(d) that a county must pick one subsection of RCW 36.70A.070(5)(d) and that all Rural Freeway Services LAMIRDs must strictly comply with that subsection's specific criteria. *Anacortes v. Skagit County*, 00-2-0049c (Compliance Order, 1-31-02)
- We remind the county that LAMIRD provisions were added to GMA to allow the county to acknowledge pre-existing development, not as a prospective and ongoing rural development tool. The county must not add new LAMIRD designations six years after that opportunity was provided through addition of RCW 36.70A.070(5)(d). *Anacortes v. Skagit County*, 00-2-0049c (Compliance Order, 1-31-02)
- We focus on two key questions as we review challenged Rural Freeway Service designations:
  1. Was there "built environment" in July 1990?
  2. Is the logical outer boundary properly defined as predominantly delineated by the build environment?

  Anacortes v. Skagit County, 00-2-0049c (Compliance Order, 1-31-02)
- We do not agree with the theory that vested or "right to build" = "built environment" in the context of RCW 36.70A.070(5)(d). Vested projects can be built, but the property cannot be designated as a LAMIRD if it does not meet the criterion of containing build environment as of July 1, 1990. *Anacortes v. Skagit County,* 00-2-0049c (Compliance Order, 1-31-02)
- The designation of a LAMIRD involving 2-acre lot sizes is not an "intensive" rural development under RCW 36.70A.070(5)(d). Such a LAMIRD designation also substantially interferes with Goals 2 and 12 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- A framework analysis for RCW 36.70A.070(5) is set forth. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- In designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under RCW 36.70A.070(5)(e) a LAMIRD must not be used to permit a major industrial development or master plan resort in the rural area unless specifically permitted under the provision of .360 and .365. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under the record in this case, the county improperly included vast areas of undeveloped property in its LAMIRD designations. Such areas are noncompliant and further substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county may make minor adjustments to an LOB to include undeveloped property. Such undeveloped property is to provide for "infill" and does not comply when it is used to include large undeveloped properties outside the areas existing as of July 1, 1993. A county must take into account the requirement of including adequate public facilities and services that do not permit low density sprawl all within the LOB. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A LAMIRD designation is for the rural element and no RL lands may be included. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A framework analysis of the requirements of RCW 36.070A.070(5) is set forth in this case. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a subsequent LAMIRD ordinance reduced the areas that were established in the CP, the burden of showing substantial interference rests with the petitioners. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- LAMIRDs created under .070(5)(d)(i) (Commercial, residential, or mixed use) must be principally designed to serve the "existing and projected rural population." A county must minimize and contain the existing area or existing uses. Lands within the LOB must not allow a "new pattern of low-density sprawl." *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- The failure to include any reference to the thirteen new LAMIRDs not previously designated within a supplemental FSEIS, fails to comply with SEPA requirements under GMA. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Vested rights do not constitute a "built environment" under RCW 36.70A.070(5)(d)(i). *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)

- In establishing an LOB under .070(5)(d)(iv) the county is required to clearly identify and contain the area, which must be delineated predominately by the built environment but may include limited undeveloped lands. The built environment includes those facilities which are manmade, whether they are above or below ground. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- A framework analysis concerning the requirements of the rural element in RCW 36.70A.070(5) is included. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- The record demonstrates compliance with RCW 36.70A.070(5)(d)(iii) in establishing and designating cottage industry/small scale business areas. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- A LAMIRD which combines commercial and industrial uses is a mixed use area and is not subject to the exemption under .070(5)(d)(i) of industrial areas being freed from the requirement of being principally designed to serve existing and projected rural population. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- The provisions of RCW 36.70A.070(5)(d)(i) that exempts industrial <u>areas</u> from the requirement of being principally designed to serve the existing and projected rural population does not apply to industrial <u>uses</u> within a mixed use LAMIRD. *Dawes v. Mason County* 96-2-0023 (RO 1-17-01)
- The GMA does not allow expansion of original LOBs which were predominately delineated by the built environment existing on 7-1-90. LAMIRDs are not an appropriate target for commercial/industrial expansion. Expansion of the delineated LOBs constitutes "outfill" rather than "infill." *OEC v. Jefferson County* 00-2-0019 (FDO, 11-22-00)
- A proper LAMIRD designation must be initially based upon "existing areas and uses" as established by the built environment on 7-1-93 (for Lewis County). Once the area and use determination has been made then a LOB is to be established which contains and limits expansion of those areas and uses through appropriate infill. LAMIRDs are a "limited" exception to allow for existing (7-1-93) greater densities and intensities but only for a fundamentally "rural" development. All LAMIRDs are subject to the provision of .070(5)(a), (b) and (c) except for (c)(ii) and (iii). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and

substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- The provisions of RCW 36.70A.070(5)(e) prohibit the designation of an industrial LAMIRD that is a major industrial development unless the designation is specifically permitted under RCW 36.70A.365. The designation of an "industrial" LAMIRD that did not comply with RCW 36.70A.365 and also did not independently comply with the provisions of RCW 36.70A.070(5)(d) as to the proper establishment of the built environment and LOB, did not comply with the Act and substantially interfered with Goals 1, 2 and 12. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A proper LAMIRD designation must be initially based upon "existing areas and uses" as established by the built environment on 7-1-93 (for Lewis County). Once the area and use determination has been made then a LOB is to be established which contains and limits expansion of those areas and uses through appropriate infill. LAMIRDs are a "limited" exception to allow for existing (7-1-93) greater densities and intensities but only for a fundamentally "rural" development. All LAMIRDs are subject to the provision of .070(5)(a), (b) and (c) except for (c)(ii) and (iii). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The purpose of a LAMIRD is to acknowledge and *contain* preexisting areas of more intensive rural development. The established LOB must contain the intensive rural development and must be based upon the built environment as it existed on 7-1-90. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-22-00)
- The GMA allows for infill within a properly established LOB, but does not allow for expansion beyond that line. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-22-00)
- Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant rescission of invalidity. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- Under RCW 36.70A.070(5)(d) commercial, industrial, shoreline, or mixed use LAMIRDs are not required to assure visual compatibility nor reduce inappropriate conversion of lands into sprawling low-density uses in rural areas. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- LAMIRDs are not mini-UGAs but are limited by the provisions of RCW 36.70A.070(5)(d)(iv). A county must: (1) minimize and contain AMIRDs, (2) existing *areas or uses* must be clearly identified, and (3) must be contained by a logical outer boundary which delineates the area by the

built environment as it existed on 7-1-90. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)

- The question for review of LAMIRDs is not whether they contain urban densities and uses, the question is whether the allowed densities and uses are minimized and contained and reflected by logical outer boundaries established on July 1, 1990. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Under the record in this case, certain LAMIRDs were found noncompliant. A finding of invalidity was also imposed. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- The record revealed that the Clinton and Freeland areas were areas involving non-municipal urban growth and were not appropriately designated as an AMIRD. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- An ordinance which does not clearly state that only recreational uses explicitly permitted by pre-GMA zoning and/or the GMA CP are allowed, does not comply with the GMA. *FOSC v. Skagit County* 98-2-0016 (FDO, 5-13-99)
- LAMIRDs must be identified in the CP and must provide logical outer boundaries delineated by the built environment as it existed on July 1, 1990. Nothing in the GMA allows clustering to be used to the degree that would create new AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- Five-acre lots in a rural area are not, *per se*, a failure to comply with the GMA. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- While existing zoning cannot be used as the sole criterion for designation of areas of LAMIRDs, it may be used as an exclusionary criterion. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- A county must appropriately balance the need to minimize and contain LAMIRD boundaries with the desire to prevent abnormally irregular boundaries. The delineation of such boundaries does not require a concentric circle or a squared-off block. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- In rural areas a logical outer boundary delineated by the built environment must preclude allowance of new low-density sprawl. Public facilities and public services can only be provided in a manner that does not permit low-density sprawl. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- The GMA requires that limited areas of more intensive rural development be subject to minimization and containment. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- Even under the amendments contained in ESB 6094 more intensive development in the rural areas is limited to existing areas or uses and does not allow new patterns of sprawl of commercial, industrial and residential uses. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)

- The 1997 amendments to the GMA found in ESB 6094 provide considerable guidance in reviewing challenges to the rural element of the CP. Where a local government did not clearly delineate and identify logical boundaries over existing areas or uses of more intensive rural development, GMA compliance was not achieved under RCW 36.70A.070(5)(d)(iv). *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- The 1997 amendments to the GMA found in RCW 36.70A.070(5) are intended to accommodate pre-existing actual uses, not pre-existing zoning. Existing zoning cannot be used as a sole criterion for designating rural lands for more intense development. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)

LOCALIZED ANALYSIS

- In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County*96-2-0025 (Compliance Order, 2-9-01)

MAJOR INDUSTRIAL DEVELOPMENTS (MIDS)

- The provisions of RCW 36.70A.210 require the establishment of a collaborative process between a county and its cities in developing county-wide planning policies. RCW 36.70A.210(2). The County represents through Exhibit 152 that the Planned Growth Committee includes representatives of all the cities in Lewis County. The minutes of the July 14, 2005, Planned Growth Committee show that the committee considered the changes to Ch. 17.20 LCC and approved them. This meets the requirements of RCW 36.70A.365 and 36.70A.367 for consultation with the cities. In the course of the mandated consultation on the process to be used, the County and cities could have agreed upon a process that provided for such continuous consultation, but they did not. RCW 36.70A.365 and 36.70A.367 by their terms only require consultation in the *establishment of the process* for reviewing and approving applications; those provisions of the GMA do not require that there be consultation on each application. *Vinatieri et al. v. Lewis County*, WWGMHB Case No. 03-2-0020c (Order Finding Compliance, 11-23-05)
- By their terms, major industrial developments under RCW 36.70A.365 and industrial land banks under RCW 36.70A.367 involve development outside

of urban growth areas; the Legislature did not add to public participation requirements as a result but it did require consultation with cities in establishing the process for reviewing and approving such applications. This has been done here. Since major industrial developments under RCW 36.70A.365 and industrial land banks under RCW 36.70A.367 by definition occur outside of urban growth areas, the Legislature also requires specific undertakings to mitigate their impacts: buffers, environmental protection, development regulations to ensure urban growth will not occur outside their boundaries, mitigation of adverse impacts on designated natural resource lands, and protections for critical areas. RCW 36.70A.365(2)(c), (d), (e), (f), (g); RCW 36.70A.367(2)(a) and (b), (3)(c), (d), (e). However, the GMA does not subject these proposals to a greater degree of public participation than any other GMA action. *Vinatieri et al. v. Lewis County*, WWGMHB Case No. 03-2-0020c (Order Finding Compliance, 11-23-05)

- In reviewing the arguments and record in this case, we are persuaded that this is precisely the kind of situation that the Legislature intended to address when it enacted RCW 36.70A.365. The unique siting requirements for the industrial use proposed here mean that the facility could not be located within existing urban growth areas in Lewis County. Without the ability to create an MID UGA on this site, the industry would likely have to be located outside of Lewis County. Under these circumstances, the statute provides a mechanism where a contained and buffered UGA may be located in such a way that any impacts on the surrounding community are minimized. Our inquiry here is whether the statutory requirements for this purpose have been met and we find, in large part, that they have been. *OBCT v. Lewis County,* WWGMHB Case No. 04-2-0041c (FDO, 5-13-05).
- Because RCW 36.70A.365(2)(a) requires that new infrastructure be "provided for," this gap between the County's road requirements for new industrial development and the regulations imposed on the Cardinal MID UGA is also not compliant with RCW 36.70A.365(2)(a). *OBCT v. Lewis County,* WWGMHB Case No. 04-2-0041c (FDO, 5-13-05).
- The combined process for considering a comprehensive plan amendment and implementing development regulations at the same time that the hearings examiner considers the master site plan complies with RCW 36.70A.365. *Roth et al. v. Lewis County* 04-2-0014c (Order on Motions to Dismiss 9-10-04)
- Under RCW 36.70A.070(5)(e) a LAMIRD must not be used to permit a major industrial development or master plan resort in the rural area unless specifically permitted under the provision of .360 and .365. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

MARKET FACTOR

- [T]he Board reads the GMA as authorizing the use of a reasonable land market supply factor which is intended to reduce the total net buildable

acreage of land within a UGA by a set percentage to account for the fact that not all buildable land will be developed within the 20-year planning horizon. Whether a jurisdiction calls this adjustment a land availability factor, a market factor, a safety factor, or a cushion – it serves the same purpose … Thus, Petitioners' contention that Bellingham was permitted to use a "land availability factor" intended to reflect that not all developable land will be available for development and a "safety factor" intended to provide for an excess of land so as to assure affordability is not supported by the GMA. To size the UGA in excess of the acreage required to accommodate the urban growth projection based upon any other reduction factor other than market factor is simply not authorized by the GMA. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, FDO at 30-31 (Oct 13, 2008)

- [The Board found that Lewis County failed to "show its work" in regards to the market factor it utilized to size a UGA. The County and an intervening City asserted that based on the Supreme Court's holding in *Thurston County v. Western Washington Growth Management Hearings Board,* issued just one day prior to the FDO, the Board's requirement for justification must be reversed. In response, the Board stated:]

  > The phrase "show your work" was used … to describe the explicit documentation of factors and data used by counties when undertaking the sizing of UGAs. Because UGA sizing relies primarily on mathematical calculations and numerical assumptions, the Board concluded that such a showing of work was required in order to demonstrate the analytical rigor and accounting that supported the sizing and designation of UGAs. Without that both the Board and interested citizens would have no criteria against which to judge a County's UGA delineation. This requirement was subsequently adopted by this Board. However, it has since been clarified that requiring the record to support a jurisdiction's actions neither amounts to "justification" nor does it result in a shifting of the burden; the burden remains on the petitioner to demonstrate the analysis was clearly erroneous.
  >
  > The Board recognizes that, as with all legislative enactments, comprehensive plans and development regulations are presumed valid upon adoption. However, a presumption is not evidence; its efficacy is lost when the opposing party adduces prima facie evidence to the contrary. Therefore, the presumption of validity accorded to legislative enactments is not conclusive but rebuttable. In order to overcome the presumption, a petitioner must persuade the Board that the jurisdiction's action was clearly erroneous and to do so it must present clear, well-reasoned legal argument supported by appropriate reference to the relevant facts, statutory provisions, and case law which establishes that the GMA's requirements have not been met. Once a petitioner has overcome the presumption, the responding

jurisdiction must then present evidence to contradict a petitioner's allegations.

The Board recognizes the Supreme Court's holding that a requirement for the County to identify and prospectively justify its market factor in its comprehensive plan distorts the presumption of validity afforded to such enactments. Thus, this Board finds that a local jurisdiction planning under the GMA is not required to explicitly identify or set forth a prospective justification for a market factor within its comprehensive plan. However, the Board does not read the Court's holding in Thurston County as transforming the presumption of validity into a conclusive presumption. The presumption of validity is rebuttable and remains as such.

Therefore, the purpose and function of the Board's "show your work" requirement is, and in this Board's view has always been, a demonstration by the County upon challenge of the facts and evidence supporting its action in response to a petitioner's prima facie case. There is no distortion of the presumption of validity or a shifting of the burden. The presumption is rebuttable by evidence and legal argument. If rebutted it then becomes incumbent upon the County to present contrary evidence from the Record. Without having the ability to review supporting evidentiary documentation, the Board's ability to determine whether a jurisdiction has complied with the GMA would be irretrievably compromised.

Panesko, et al v. Lewis County, Case No. 08-2-0007, Order on Reconsideration, at 7-9 (Sept 15, 2008)

- [T]he market factor does not apply to the population calculation – it is a "land market supply factor." It applies to the calculation of land availability rather than to the calculation of the number of people to be accommodated. *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, 5-31-05)
- However, there is no explanation in the comprehensive plan for the use of a market factor, perhaps because the buildable lands analysis appears to already account for many of the market vagaries in its own assessment of land availability… The buildable lands analysis assesses many of the potential market factors and incorporates them into the figures for land supply and demand that it produces. This analysis appears to take the place of a market factor. *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, 7-20-05)
- A change in a market factor analysis from what was agreed to in a CPP did not comply with the GMA and could not be used as a basis for a rescission of invalidity. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

- The use of an urban reserve area without defined standards of conversion to an UGA, in conjunction with a large market factor, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The use of a market factor in determining an UGA boundary complies with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

MASTER PLANNED RESORTS (MPRS)

- An MPR can only be authorized if, along with several other requirements, the comprehensive plan specifically identifies policies to guide the development of MPRs. *Whidbey Environmental Action Council v. Island County*, 03-2-0008 (FDO, 8-25-03)
- Under RCW 36.70A.070(5)(e) a LAMIRD must not be used to permit a major industrial development or master plan resort in the rural area unless specifically permitted under the provision of .360 and .365. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- In order to be compliant with the Act the designation of an MPR under RCW 36.70A.360 must comply with the requirements of that section. There is no authority to apply a preliminary or provisional designation to an MPR until the requirements .360 are fulfilled. Under the record in this case there is no showing that the location is a setting of significant natural amenities. The failure to adhere to the requirements of the Act and purportedly apply a provisional designation to the MPR substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

MEDIATION

- After the appointment of a settlement conference officer the parties were able to reach agreement on five of the seven issues presented in the petition. *TRG v. Oak Harbor* 97-2-0061 (FDO, 3-5-98)
- Where a new forest resource ordinance had been adopted and all parties mediated their differences and supported a finding of compliance and a rescission of invalidity, the previous determination of invalidity was rescinded. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 6-4-97)

MINERAL RESOURCE LANDS

- The GMA does not require exclusion of mineral land designations in excess of a 50-year mineral supply. *Neighbors v. Skagit County* 00-2-0047c (FDO, 2-6-01)
- The redesignation of properties formerly in rural reserve to a new designation of rural resource that involved a lack of application of a local government's own criteria and which was also inconsistent with the CP, failed to comply with the Act. *FOSC v. Skagit County* 99-2-0016 (FDO, 8-10-00)
- A record which does not show a mapping location specifically for mineral RLs, nor demonstrate the criteria upon which any designations were made

does not comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- The allowance of mining activity in rural areas did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- The language of RCW 36.70A.020(8) to maintain and enhance resource-based industries includes the mining industry. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- RCW 36.70A.170(1)(c) requires mineral RLs designation where appropriate. With appropriate evidence and analysis, a local government was in compliance with the GMA when it determined that other goals and requirements of the GMA precluded the designation of mineral resources within 100-year floodplain throughout the county. *Storedahl v. Clark County* 96-2-0016 (Compliance Order, 12-17-97)
- Prohibitions against densities greater than 1 dwelling unit per 10 acres within ¼ mile of mineral RLs complied with the GMA. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 7-14-97)
- The designation of a minimum 5-acre lot as the only DR to protect mineral lands did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- The prohibition of mining within any 100-year floodplain that was based upon inadequate analysis contained in the record did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A DR that did not address incompatible use of lands adjacent to designated mineral lands did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)

MINIMUM GUIDELINES

- *Campbell v. San Juan County,* Case No. 09-2-0014, Final Decision and Order at 13 (Jan. 27, 2010)(WAC 365-195-310 provides recommendations, the County is not mandated to utilize these suggestions)
- The Board does not read .050(3)'s "minimum guidelines that apply" as creating a duty for local jurisdictions to consider the provisions of WAC 365-190 when designating critical areas; this is accomplished via RCW 36.70A.170(2) which mandates that cities and counties consider the guidelines established pursuant to RCW 36.70A.050. *RE Sources Inc. v. City of Blaine,* Case No. 09-2-0015 Order on Motions (Jan. 5, 2010)
- The Board sees RCW 36.70A.050(3)'s language as a directive to Commerce when developing the guidelines - that the guidelines are to be minimums and they are to have flexibility so as to allow for regional differences. *RE Sources Inc. v. City of Blaine,* Case No. 09-2-0015 Order on Motions (Jan. 5, 2010)
- The record for the adoption of Ordinance No. 2623 does not show that the City considered the Minimum Guidelines for designation of resource lands and critical areas (Chapter 365-190 WAC) in designating FWHCAs as required by RCW 36.70A.170(2) and RCW 36.70A.040(3)(b) of the GMA.

1000 Friends of Washington, Evergreen Islands, and Skagit Audubon Society v. City of Anacortes, 03-2-0017 (FDO, 2-10-04)

- The GMA does not dictate the use of a five-tier classification system for waters of the state. However, WAC 365-190-080(5)(c)(vi) recommends this classification system and RCW 36.70A.170(2) requires that this guidance be considered. *1000 Friends of Washington, Evergreen Islands, and Skagit Audubon Society v. Skagit County*, 03-2-0017 (FDO, 2-10-04)
- Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth in RCW 90.58.060 relating to guidelines adopted by DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- Although the GMA and accompanying regulations (WAC 365-190-080) use the term designation and classification interchangeably, classification is a sub-component of the overall designation scheme. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- WAC 365-190-080(5) recommends a variety of protections in DRs according to specific species and habitats. A local government must follow those guidelines absent justification to the contrary. *Diehl v. Mason County* 95-2-0073 (FDO, 1-8-96)
- A local government is required to designate forestlands not already characterized by urban growth that have long-term significance for commercial production of timber. A local government is required to consider the guidelines established by CTED. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)

MOOTNESS

- Since not all of the land was annexed … the appeal is not moot, as Clark County insinuates. Thus, the conclusions set forth in the Board's AFDO as to these unannexed parcels, along with the determination of invalidity, were and are effective … and, therefore the County was required to take legislative action on the portion of [the unannexed land] which remains subject to the County's jurisdiction. *Karpinski, et al v. Clark County,* Case No. 07-2-0027, Compliance Order (Oct. 28, 2009)
- A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)
- Where three ordinances are challenged by a PFR and subsequently the county rescinds all three ordinances, jurisdiction to continue the case is lost. Where there are no DRs in effect for which a finding of compliance or noncompliance could be made a board must dismiss the case. *ARD v. Mason County* 01-2-0017 (MO 10-12-01)
- When an IUGA ordinance dealing with restrictions on rural growth is superseded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP

process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (Compliance Order, 7-13-00)

- Where challenged DRs are superseded by new ordinances during the PFR process, a GMHB will issue a FDO without regard to the new ordinances. If noncompliance is found, a compliance hearing would quickly be held at the local government's request. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)
- Where pre-GMA ordinances were being used at the time of the PFR, but a new GMA ordinance was adopted, the challenge to the pre-GMA ordinances was rendered moot. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)
- Where a CP was adopted, but was by its terms not effective until DRs were adopted and thereafter the local government repealed the initial adoption, the petitions challenging the CP were rendered moot and thus dismissed. *Ellis v. San Juan County* 97-2-0006 (FDO, 6-19-97)
- Where the Supreme Court has ruled that a CAO was not subject to a referendum and the referendum was therefore voided, a finding of noncompliance on the referendum is moot and will be withdrawn. *North Cascades v. Whatcom County* 94-2-0001 (MO 12-22-94)
- Even if a subsequent adoption of an UGA has occurred and mootness of the IUGA challenges may be appropriate, if both petitioner and a county request a decision on the merits and the criteria of *DOE v. Adsit* 103 W.2d 698 (1985) are met, a decision on the merits will be rendered. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)

MORATORIUM

- [The Board agreed that a moratorium can have a preclusive effect in some situations but] this case was not one of those situations. Because the moratorium only prevented the processing of applications for special use permits, it had limited application. *Skagit Hill Recycling v. Skagit County,* Case No. 09-2-0011, Order on Motions at 3-4 (Sept. 22, 2009)
- *Skagit Hill Recycling v. Skagit County,* Case No. 09-2-0011, Order on Motions at 5-6 (Sept. 22, 2009)(County complied with requirements of RCW 36.70A.390 and therefore no violation of Goal 11 was warranted)
- [RCW 36.70A.390 authorize moratoriums without prior public notice and] the Central Board identified the following instances:[1]

    1. Review is for compliance with the procedural requirements of RCW 36.70A.390.
    2. Review is of the substantive provisions of the moratorium only if it has been extended for a significant period of time so as to serve as a permanent regulation.
    3. Moratorium is a blatant violation of the GMA.

[1] Skagit County cites to the Central Board's holding in *Phoenix Development v. Woodinville,* Case No. 07-3-0029c, FDO at 21-22 (Oct. 12, 2007).

The Western Board agrees with our colleagues at the Central Board that the listed instances demonstrate appropriate circumstances for Board review of a moratorium. *Skagit Hill Recycling v. Skagit County,* Case No. 09-2-0011, Order on Motions at 2-3 (July 20, 2009).

MOTIONS

- With the exception of the motion to dismiss a portion of Issue No. 9, none of these motions are based upon grounds of jurisdiction, timeliness, or standing. Normally, the Board will not decide substantive issues on motion unless, in the judgment of the Board, an early ruling can be made on limited issues without impacting a full and fair consideration of the remaining issues. In this case, the issues are complex and interwoven; thus, they are inappropriate for early decision. *OBCT, et al. v. Lewis County and Cardinal FG Company*, Case No. 04-2-0041c (Decision and Order on Motions, 2-8-05)
- With limited exceptions, the Board is required by the GMA to issue a FDO within 180 days of the filing of a petition for review. RCW 36.70A.300. This is an expedited timeline in any event. Therefore, the Board will ordinarily only decide very limited issues on motion. *Overton Associates, et al. v. Mason County,* WWGMHB Case No. 05-2-0009c (Order Denying Dispositive Motion, 5-11-05)
- The GMA already provides parties with a speedy resolution to their claims by requiring that the Boards issue their decisions within 180 days of the filing of the petition. RCW 36.70A.300(2). The only issues that should be decided on the even shorter timeframe of the motions schedule are those which require little if any evidentiary record. To do otherwise both prejudices the parties' ability to present their claims and hampers the Board's ability to base its decision on well-briefed issues and a thorough review of the record. *Hood Canal, et al. v. Jefferson County,* 3-2-0006**,** (Decision and Order on Motions to Dismiss, 5-21-03)

NATURAL RESOURCE LANDS (NRL OR RL)

1. In General

- The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)
- The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A LAMIRD designation is for the rural element and no RL lands may be included. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- Where a DR allows a number of uses in RLs, which fail to comply with recent State Supreme Court decisions such uses fail to comply with the GMA. Requiring a special use permit does not remedy this failure to comply. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- If a lot aggregation DR within an adjacent to RL lands is amended, the county must adopt other measures that prevent incompatible development and uses from encroaching on RLs and to encourage conservation of forest and agricultural lands. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- There are no differences of importance or priorities in RL lands in the Act. *Neighbors v. Skagit County* 00-2-0047c (FDO, 2-6-01)
- Even if the public participation remand requirements of RCW 36.70A.130(2)(b) apply to this situation of redesignation, the goals and requirements of the Act with regard to public participation were not complied with under this record. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- Current use in RL areas is not a determinative factor of the appropriateness of an RL designation. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- A provision which allows densities more intense than 1 du per 10 acres and allows “opt out” at the property owner’s choice does not comply with GMA regarding RLs and substantially interferes with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated RLs. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The prohibition found in RCW 36.70A.060 against interference with existing uses applies only to RLs and not to CAs. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Where a Superior Court determines that no substantial evidence existed to support a county’s prior RL designation, the proper issue at the subsequent compliance hearing is whether petitioners met their burden under the clearly erroneous standard to demonstrate that the new RL designations did not comply with the GMA, regardless of the correlation between the new designations and the designations reversed by the Superior Court. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- While elimination of nonconforming lots adjacent to RLs may be impossible because of prior vesting, under the record here the county must take some action to buffer and keep conversion pressure away from the RLs. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- An ordinance, adopted in response to a finding of noncompliance, that allowed smaller “urban sized” lots and reduced the buffer area for such “urban sized” lots in the rural areas and RLs did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- The readoption of RL designations in the CP process is subject to challenge by a PFR. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Designation of RLs with an urban reserve area overlay for the post 20-year planning period complied with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Whether densities are characterized as “urban”, “suburban” or “rural residential” they do not comply with the GMA when located in RLs. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- The requirements of RCW 36.70A.020(8), .040 and .060 are not optional; they are mandatory and not just interim requirements. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- The use of an urban reserve area instead of designation of the land as RL for planning for the post-2012 period did not comply with the GMA. If the land is RL it must be designated and conserved until a proper analysis demonstrates a needed different designation. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)

- Initial adoption of DRs for RLs are interim and remain in effect only until the adoption of implementing DRs for a CP under RCW 36.70A.060. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- The GMA requires a type of stewardship protection of CAs and conservation of RLs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-6-96)
- The greatest threat to long-term productive RLs is nearby conflicting uses. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- RCW 36.70A.020(8) provides three prongs: To maintain and enhance; To encourage conservation; and, To discourage incompatible uses. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- The fact that a process for designations of RLs complied with the GMA is only the first determination. There is also substantive threshold of compliance that must be met. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)
- Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- The sequencing of designating and conserving RLs prior to adopting IUGAs must be followed unless there are overriding reasons in the record not to do so. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- While rural lands may be the leftover meatloaf in the GMA refrigerator, they have very necessary and important functions including an important symbiotic relationship to provide necessary support of and buffering for RLs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The term “long-term commercial significance” does not equate with having the sole income for a family generated by agricultural use on the property. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The identification of two specific classes of RL (agriculture and forest) in the GMA does not exclude a mixed designation of agri-forest lands. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A local government is not required to designate every parcel of land that has been placed within the current use taxation scheme of RCW 84.34. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A RL designation of a parcel of land placed within the current use taxation scheme of RCW 84.34 prevailed against an individual property owner’s argument that the land was not RL because it was not currently in actual use. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The use of an urban reserve designation instead of a RL designation did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A previously adopted CAO is not “interim” since the GMA does not require adoption of new designations and DRs in the CP, as is the case with RLs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

- Interim designations need to err on the side of over-inclusions, while CP designations involve a wider range of discretion and balancing of competing interests by local governments. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The requirement of RCW 36.70A.060 that local governments shall assure the use of lands adjacent to RLs not interfere with their continued use as RL, provides the basis to require adequate buffering between RLs and incompatible uses. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The DRs required to prohibit incompatible encroachments are designed to protect the RL from development and not to protect development from the RL. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The requirement of prohibiting incompatible use adjacent to RLs is not satisfied by plat notification, right to farm ordinances and minimum lot sizes. Additional mechanisms are needed to avoid the single most destructive reason for a loss of RLs: incompatible adjoining uses. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Interim DRs for RL are required to be adopted before September 1, 1991, under RCW 36.70A.060 and .170. Those DRs remain in effect <u>only</u> until the adoption of new DRs in conjunction with the CP. RCW 36.70A.040(3). *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- A GMHB does have jurisdiction to review CP implementing DRs regarding RLs even if such regulations are verbatim readoptions of interim resource lands DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- The requirements for implementing DRs formerly found in RCW 36.70A.120 are now found in .040(3). Once implementing DRs were adopted, a GMHB does not have jurisdiction over the previous interim resource land DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)
- The greatest threat to sustainability of economically viable commercial forestlands is incompatible adjacent uses. The failure to adopt DRs to minimize such external threats did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- RCW 36.70A.020(8) requires a county to maintain and enhance resource-based industries, encourage conservation of productive forestlands, and discourage incompatible uses. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- RL regulations and CA regulations are treated differently in the GMA. RL regulations have a certain expiration date at the time of adoption of DRs for the CP. No such expiration date is found in the CAs DR section. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)

2. Designations

- In reviewing a county's "de-designation" of natural resource lands (See *Forester Woods Homeowners Association v. King County*, CPSGMHB 01-3-0008), we start with the presumption of validity that would attach to any county legislative enactment, examine the record to ensure that it contains sufficient analysis that the appropriate GMA criteria are applied, and make our determination based upon the presumption of validity and the record under the clearly erroneous standard. Because of circumstances resulting from the county's de-designation, including creation of islands and failure to take into account previous designation criteria based on soils, tax classification, long-term management, and parcel size in general, we decline to rescind our previous finding of invalidity regarding these properties. *Town of Friday Harbor, et al., v San Juan County,* 99-2-0010c and *Michael Durland, et al., v. San Juan County*, 00-2-0062c (Compliance Order, 3-28-02) (Order on Compliance and Invalidity Re: Resource Lands Redesignation)
- The language of the GMA and the *Redmond Soccer Field* case require a county to honor a "conservation imperative." *Town of Friday Harbor, et al. v. San Juan County*, 99-2-0010c (Compliance Order, 3-2-02)

NONCOMPLIANCE

- Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- Reduction of distance from a GHA location that required geological reports and assessments, was not in conformance with BAS and did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 7-13-01)
- The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The designation of a LAMIRD involving 2-acre lot sizes is not an "intensive" rural development under RCW 36.70A.070(5)(d). Such a

LAMIRD designation also substantially interferes with Goals 2 and 12 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- The use of the term "interim" in a designation of UGA process where a county acknowledged that the designations were a "work in progress" did not relieve the county of the duty to comply with all the goals and requirements concerning UGAs before compliance with the GMA can be achieved. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The proper sizing of an UGA is not simply a density calculation. The community residential preference is not an appropriate criterion for sizing under RCW 36.70A.110. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Administrative discretion must be accompanied by clear guidelines, consultation with resource agencies and a public hearing for issues involving FWHCAs, under the record in this case. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-14-01)
- A DR adopted as an "emergency" without a public hearing makes it very difficult to show compliance with the Act. Under this record, hearings were held within sixty days but no permanent ordinance was adopted. The actions do not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- In designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county may make minor adjustments to an LOB to include undeveloped property. Such undeveloped property is to provide for "infill" and does not comply when it is used to include large undeveloped properties outside the areas existing as of July 1, 1993. A county must take into account the requirement of including adequate public facilities and services that do not permit low density sprawl all within the LOB. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl.

Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- A county does not comply with the rural character and visual compatibility requirements of the Act by simply declaring that what existed on the date it became subject to the Act and whatever development occurred thereafter is the county's definition of rural character. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a local government makes substantial and significant changes to maps after the closing of the public hearings that is not resubmitted for public review, compliance with the Act under RCW 36.70A.035(2)(a) is not achieved. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Adoption of a map for "open space" at a scale that does not allow features to be accurately located, does not delineate future trails and parks and does not meet the GMA requirement of including lands that provide multiple use open space and separators between incompatible land uses, does not comply with the GMA. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- The failure to include any reference to the thirteen new LAMIRDs not previously designated within a supplemental FSEIS, fails to comply with SEPA requirements under GMA. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- A DR which allows non-agricultural uses in an agricultural RL and does not require such use to be temporary and does not prohibit leaching of toxins, does not comply with the GMA and the county's own agricultural conservation policies. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Allowances under a rural signs DR that would allow signage to predominate over open space, natural landscape and vegetation does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A rural character definition which essentially says that whatever existed anywhere in the rural area on June 30, 1990 became the existing rural

character of that particular county does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)

- In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A shift of an urban commercial industrial lands allocation to non-urban areas under the record in this case does not comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- In establishing an LOB under .070(5)(d)(iv) the county is required to clearly identify and contain the area, which must be delineated predominately by the built environment but may include limited undeveloped lands. The built environment includes those facilities which are manmade, whether they are above or below ground. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- RCW 36.70A.110(4) does not allow a county to extend a 4-inch sewer line when the county has not shown that the extension is "necessary to protect public health and safety and the environment". The record only demonstrated that a "betterment of health and/or environment" would be obtained. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- When an IUGA ordinance dealing with restrictions on rural growth is superseded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (Compliance Order, 7-13-00)

- The public participation goals and requirements of the GMA impose a duty on a local government to provide effective notice and early and continuous public participation. Under the record in this case that duty was not discharged. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Under RCW 36.70A.140 a local government is required to adopt a public participation program. The failure to do so does not comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A record which does not show a mapping location specifically for mineral RLs, nor demonstrate the criteria upon which any designations were made does not comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A provision which allows densities more intense than 1 du per 10 acres and allows "opt out" at the property owner's choice does not comply with GMA regarding RLs and substantially interferes with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A County CP must identify open space corridors within and between UGAs and encourage the retention of open space and recreational opportunities. A CP which contains no analysis of existing and future needs nor identification of locations of open spaces or open space corridors and no text regarding policies encouraging and retaining recreational and open space opportunities does not comply with the Act. It was not compliant with the Act for the County to circumvent the CP and merely adopt DRs to fulfill this requirement. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which

demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)
- A local government that ignores BAS recommendations from agencies with expertise, applies BAS for healthy streams to degraded ones and precludes the timely submission of agency BAS recommendations does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)
- Where an area is in an UGA but still under County jurisdiction, a County must use a joint and collaborative planning process under RCW 36.70A.210 and .020(11) rather than treat the City as "just another critic." *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)
- After a finding of noncompliance a local government must take action to comply with the GMA, regardless of whether a citizen challenges the action or inaction during the county's compliance process. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- The adoption of limited interim DRs at the time of CP adoption until a "full set" of DRs can be adopted, does not fully implement the CP and does not comply with the GMA. *Panesko v. Lewis County* 98-2-0004 (Compliance Order, 11-16-99)
- A noncompliant SEPA DNS will be remanded to the local government. A GMHB has no authority to order the creation of an EIS. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)
- The concept of a demonstration wetlands bank involves both creation and distribution functions. Creation of a new wetland, under the record here, did not have any probable significant adverse effect. A non-conditioned DNS for the distribution of banking credits for the newly created wetland

satisfies the clearly erroneous test and does not comply. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)

- The record failed to show that qualifying agricultural RLs that were not in current use were designated. Therefore, failure to designate such areas did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- The allowance of a guesthouse as an ADU to satisfy affordable housing requirements does not comply with the GMA in the absence of any analysis of existing conditions, projections of future guesthouse needs and the potential cost of public facilities and services. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- The establishment of villages, hamlets, and activity centers in rural areas that were based exclusively on existing conditions without any of the analysis required by RCW 36.70A.070(5)(d) does not comply with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- An ordinance which does not clearly state that only recreational uses explicitly permitted by pre-GMA zoning and/or the GMA CP are allowed, does not comply with the GMA. *FOSC v. Skagit County* 98-2-0016 (FDO, 5-13-99)

NONCONFORMING USES

- Changes in nonconforming uses are compliant so long as the overall nature and intensity of the activity remains the same. *Yanisch, et al. v. Lewis County*, 02-2-0007c (FDO, 12-11-02)
- A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county may not continue to include previously invalidated “large lots” in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant rescission of invalidity. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- While elimination of nonconforming lots adjacent to RLs may be impossible because of prior vesting, under the record here the county must take some action to buffer and keep conversion pressure away from the RLs. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- A GMHB does have the authority to require aggregation of nonconforming lots. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- The reduction of rear and side setbacks for dwellings within resource areas that increased the allowable uses of nonconforming lots did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)

- The fact that a RL designation made a particular parcel of property nonconforming did not violate the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

NOTICE

- [Futurewise argued the County did not specify its published notice was to comply with RCW 36.70A.290; the Board found]: No requirement in RCW 36.70A.290(2)(b) that the County must use this statutory citation[in its publication] … [and that the notice] clearly stated that the Council adopted an ordinance regarding the Whatcom County zoning map, comprehensive plan and the 10 year review of the urban growth area [thereby satisfying the requirements of .290(2)(b)] *Futurewise, et al v. Whatcom County,* Case 10-2-0009c, Order on Motion at 3-4 (April 2, 2010)
- Petitioners allege Tumwater failed to post impacted properties and this amounts to a violation of RCW 36.70A.035(1)(a). This provision of the GMA is merely an example of a potential method a jurisdiction can utilize to provide notice; it does not mandate its use. Thus, Tumwater did not violate RCW 36.70A.035(1)(a) when it failed to post impacted properties. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct 13, 2009)
- Under RCW 36.70A.035(1) "reasonable notice" is required even if many or all of the current petitioners attended the meetings. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The notice of adoption required by RCW 36.70A.290(2) must be "effective" in order to satisfy the GMA and establish the 60-day cutoff period for appeals. *WEAN v. Island County* 97-2-0064 (FDO, 6-3-98)
- Where an ordinance is not challenged within 60 days of publication of the notice of adoption, review is precluded. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- Where no notice of adoption has been published, a person with standing under RCW 36.70A.280(2) may file a petition challenging the action at any time until 60 days subsequent to the publication of the notice of adoption. *WEAN v. Island County* 97-2-0064 (FDO, 6-3-98)

OFFICIAL NOTICE

- A motion to supplement the record with, or take official notice of, new ordinances adopted late in the PFR process will be denied. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)
- Since a GMHB can take official notice of growth management guidelines issued by CTED as well as the RCW and WAC provisions, there is no need to add proposed exhibits setting those items out. *Smith v. Lewis County* 98-2-0011 (MO 12-22-98)

OFFICE OF FINANCIAL MANAGEMENT (OFM) POPULATION PROJECTION

- [T]he population growth rate is] both a *factual assumption* and a *policy choice*. OFM does broad research to come up with population projections

for the County to use in their growth management planning … Because of the importance these assumptions [growth rate, market factor, household size] play in the planning process, the annual growth rate and the resulting 20-year population projection that eventually becomes the basis for the CP are *fundamental assumptions* … the Board concludes that the County's choice of the annual growth rate is *policy, a goal, and a change* from the 2004 adopted [comprehensive plan]. *Karpinski et al v. Clark County,* Case No. 07-2-0027 (Amended FDO (June 3, 2008) at 11-13.

- A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- The previous holding in *Port Townsend v. Jefferson County* concerning use of other than OFM population projections has been overruled by the change in legislation that required OFM to establish a range of projections rather than a discrete number. The outer limits of the OFM ranges are the minimum and maximum within which population projections must fall. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Under the 1996 amendment, a local government is free to choose any population projection figure within the range established by OFM. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Where a county government based its population projection on an adopted CPP and used that figure for the establishment of IUGAs, a subsequent staff reallocation, based on different projections that were not consistent with the CPPs and which had not received legislative approval from the county council, could not be used as a rationale for the sizing of IUGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Not only must all IUGAs be based upon a range of OFM projections they must all be based upon the same projections in order to comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The population allocation for urban areas plus the population allocations for non-urban areas must equal the total population projection. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A failure to use OFM population projections in the CP process did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The failure to include population increases that occurred after the OFM projection but prior to the adoption of the CP did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The OFM population projection must be used unless a county can show that a different projection is necessary. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)
- A population projection that was shown to be less accurate than the one provided by OFM did not comply with the GMA and could not be used as the basis for drawing IUGAs. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)

- The range of population projections found in the ESB 5876 amendment to RCW 43.62.035 had not been developed at the time of this case and therefore the statute did not apply. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- A county has the ultimate responsibility of determining population figures and urban growth boundaries. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A deviation from the OFM population projections is possible if a county can clearly show a justification for that deviation. The decision must be based on evidence other than the mere fact that the numbers are different. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- The term "based upon" as used in GMA population projections may mean either that the OFM projection must be exclusively used or that the OFM projection is a foundation upon which a local government begins and builds its analysis. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- The OFM population projection must be used unless a local government can clearly show that it is inaccurate as applied to local conditions and that a different projection needs to be used in order to accomplish the goals and requirements of the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

OPEN SPACE/GREEN BELTS

- Here, the County has incorporated Goal 9 in its open space policies. It has adopted planning policies that pertain to open space corridors, long range trail planning, open space networking, trail development, education and recreation, and parks and trails as they relate to quality of life, public safety and economic development. The minutes of the County Trails Committee show that the County is using its policies to plan for trails. Further the County has development regulations to provide opportunities to provide for open space corridors through its clustering ordinance and incentives for acquiring open space abutting identified open space corridors. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- Adoption of a map for "open space" at a scale that does not allow features to be accurately located, does not delineate future trails and parks and does not meet the GMA requirement of including lands that provide multiple use open space and separators between incompatible land uses, does not comply with the GMA. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Counties are required to identify "green belt and open space areas" within UGAs and to "identify open space corridors within and between" UGAs. Official maps, which do not show these areas fail to comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A County CP must identify open space corridors within and between UGAs and encourage the retention of open space and recreational

opportunities. A CP which contains no analysis of existing and future needs nor identification of locations of open spaces or open space corridors and no text regarding policies encouraging and retaining recreational and open space opportunities does not comply with the Act. It was not compliant with the Act for the County to circumvent the CP and merely adopt DRs to fulfill this requirement. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- Where a local government established a greenbelt area as one for special consideration status for the purpose of creating such an open space/greenbelt between two UGAs and the area was identified in a local government's parks and open space plan as an important corridor for public and private preservation, compliance with the GMA was achieved. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Open spaces need to be identified and prioritized and delineated on a map. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Where large size UGAs and a maximum population projection is adopted, an even more compelling need to identify open space corridors under RCW 36.70A.160 exists. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Planned residential developments or other clustering schemes properly designed and limited in scope may protect sensitive areas, riparian trails and green space in rural areas. If properly used they can constitute a tool for preservation of sensitive lands and open space. The GMA encourages such use. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- RCW 36.70A.160 requires that an open space corridor be identified within and between UGAs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Greenbelts and open spaces must be identified within an IUGA. The most common method of such identification is by mapping. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- The establishment of greenbelts and open spaces within municipal boundaries is a city responsibility. The GMA requirement to make such designation available to a county does not infringe upon the city's land use powers. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)

PERFORMANCE STANDARDS

- Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- The purpose of a performance standard is to have an objective standard against which to compare an as yet unclassified object. Such a concrete standard provides predictability. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)

- CAs may be designated by performance standards. WAC 365-190-040(2)(d). *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- The designation of a CA should include a classification scheme and general location determination or performance standards for specific locations. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- The use of words "encourage" and "should" do not constitute performance standards *per se*. Standards are requirements or thresholds. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)

PETITION FOR REVIEW (PFR)

1. Requirements

- [Futurewise argued that the challenged ordinance did not become law until approval by the County Executive and therefore, the 60 day filing deadline commenced only following publication after the County Executive's signature; the Board disagreed, noting:] 'Adoption' as used in the context of RCW 36.70A.290 refers to action by the jurisdiction's legislative body, here the Whatcom County Council." *Futurewise, et al v. Whatcom County,* Case No. 10-2-0009c, Order on Motion at 4 (April 2, 2010)
- [Within their issue statements] Petitioner makes no allegation of a violation of the GMA, SMA, or SEPA, or, in fact, any statute at all. They cite no provision that directs the Board to review whether the County "failed to understand the scope and effect" of its action. The GMA is clear in that an issue statement needs to be detailed and the Board's Rules of Practice and Procedure further state that the necessary statutory citations are to be included. *Citizens for Rationale Shoreline Planning v. Whatcom County,* Case No. 08-2-0031, Order on Motions, at 10 (Jan. 16, 2009)
- [In denying Petitioner's attempts to argue that the County's notice was insufficient when the issue statement cited only to RCW 36.70A.140, the Board stated:] [WAC 242-02-210(2)(c)] would be rendered meaningless were Petitioner permitted to pursue an appeal based upon an alleged violation of a section of the GMA not specified in the Petition for Review. Further, considering a claim founded on the requirements of RCW 36.70A.035 when such a violation was not alleged in the Petition for Review or contained in the Prehearing Order would be inconsistent with RCW 36.70A.290(1) [Board shall not issue advisory opinions on issues not presented to the board in the
  statement of issues, as modified by any prehearing order]. Because Petitioner's claims do not address the establishment of the County's public participation program, but rather the sufficiency of the notice provided to the public, an issue of compliance with RCW 36.70A.035, the Board finds that Petitioner has not established a violation of RCW 36.70A.140. *Spraitzar v. Island County,* Case No. 08-2-0023, FDO, at 8-9 (Nov. 10, 2008).
- [Within a PFR] A citation to this provision of the GMA, without more, provides virtually no information about the nature of the claim. To adopt Petitioners' view that this is sufficient to raise a claim regarding the capital

facilities and transportation elements here would be to accept such a citation as a place-holder while the Petitioners decide what claims they actually intend to make. The Board will not allow this; it would contravene the clear requirement for a "detailed statement of issues"… [S]imply listing a number of GMA provisions without explanation does not apprise either the parties or the Board of what is at issue … [were the Board] to accept that Petitioners' list of GMA citations as sufficient to raise [a claim] without any narrative asserting that claim, we would be accepting this practice. That would mean that a petition for review could simply list a number of GMA provisions and later identify the issues arising out of them. *Karpinski, et al v. Clark County,* Case No. 07-2-0027, Order on Motion to Strike, at 5-6 (Feb. 13, 2008).

- Petitioner has failed to provide a copy of the ordinance he seeks to challenge and fails to respond to the City's assertion that there was no ordinance passed amending the City's comprehensive plan on October 3, 2006. Consequently, the Board finds no basis to dispute the City's assertion that it has not yet adopted its 2006 Comprehensive Plan amendment and development regulations. That being the case, our course is clear. Until such time as the City amends its Comprehensive Plan or development regulations, an appeal is premature. *West v. City of Olympia*, WWGMHB Case No. 06-2-0026 (Order on Dispositive Motions, 11-6-06).
- Issues not raised by a petitioner are prohibited from being addressed by a GMHB under RCW 36.70A.290(1). *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- Where noncompliance was based on a failure to act, a compliance hearing for a new ordinance involved facial good-faith evidence in the limited record which, when combined with the presumption of validity under RCW 36.70A.320, resulted in a compliance finding and a requirement for a PFR to challenge the new ordinance. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)
- In conjunction with the presumption of validity, the GMA requires that initial review of local government action or inaction must come through the filing of a petition at least until a determination of noncompliance has occurred. *WEAN v. Island County* 97-2-0064 (MO 2-23-98)
- A GMA DR is presumed valid and even though questions arise as to whether an ordinance was adopted under GMA and whether publication was completed, such claims must be raised by means of a PFR. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- Where a new CP and DRs are adopted the proper vehicle to challenge that action is through a PFR. Such a determination will not be made in a rescission of invalidity hearing. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- Where parties were provided notice and an opportunity to participate in a compliance hearing but did not do so, then later filed a PFR involving claims that should have been raised during the compliance hearing

process, those claims will be dismissed. *Wirch v. Clark County* 96-2-0035 (MO 1-29-97)

- The GMA does not provide specific guidance to determine review within the scope of compliance hearings versus the necessity for a new PFR. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)
- Where an IUGA ordinance was finally adopted and contained significant differences to the boundary configuration than the pre-existing zoning ordinance, a new PFR rather than a compliance hearing was the appropriate vehicle to challenge the IUGA provisions of the ordinance. *WEC v. Whatcom County* 94-2-0009 (MO 1-20-96)
- The omission of a specific issue in a PFR that is later included in a prehearing order is sufficient to present the issue for decision by a GMHB under WAC 242-02-558. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- Ultimately, a GMHB has discretion to decide whether a new PFR or a compliance hearing is a proper vehicle to review compliance with the GMA, even in a situation where the local government has previously failed to act. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- RCW 36.70A.280 provides that a PFR may be filed as soon as the local government takes formal action. The timeframe for a PFR continues for a period of 60 days after publication of the appropriate notice. The failure of the local government to comply with RCW 36.70A.106(1)(a) does not preclude GMHB review. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- The requirement to list the addresses of the petitioners in the PFR is not jurisdictional and failure to do so did not warrant dismissal. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)
- When a petitioner and local government agree that a remand is necessary and no review of the action by a GMHB occurred, any subsequent request for review must be by means of a PFR rather than a compliance hearing. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

2. Time for Filing

- [Futurewise argued that the challenged ordinance did not become law until approval by the County Executive and therefore, the 60 day filing deadline commenced only following publication after the County Executive's signature; the Board disagreed, noting:] 'Adoption' as used in the context of RCW 36.70A.290 refers to action by the jurisdiction's legislative body, here the Whatcom County Council." *Futurewise, et al v. Whatcom County,* Case No. 10-2-0009c, Order on Motion at 4 (April 2, 2010)
- Original filings, that is, filing of petitions for review, are governed by WAC 242-02-230. This rule is clear on its face and does not allow for e-mail filings. WAC 242-02-230 specifies the ways in which petitions for review may be filed: personally, by first-class mail, by certified mail, by registered mail, or by electronic facsimile transmission. There is no provision for email filing. *WEAN v. Island County*, WWGMHB Case No. 06-2-0027 (Order on Motion to Dismiss, 11-17-06).

- A petition that is not filed within the 60-day period after publication, as required by RCW 36.70A.290(2), will be dismissed. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A PFR must be filed within 60 days after notice of publication is made. There is no provision in the GMA for any expansion of the 60-day filing period. *Schlatter v. Clark County* 95-2-0078 (MO 8-16-95)
- Where the petition showed that it had been filed more than 60 days after notice was published, it was deemed to be frivolous under RCW 36.70A.290(3) and dismissed. *Schlatter v. Clark County* 95-2-0078 (8-16-95)
- A PFR must be filed in the GMHB office within 60 days after publication. WAC 242-02-060 adopts the CR 6 methodology of counting days. Under WAC 242-02-240 filing means actual receipt in the GMHB office. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)
- After 60 days from publication a GMHB is without jurisdiction to rule on the PFR. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)
- The 60-day period for filing a PFR does not begin until publication of a notice of adoption. The physical presence of a petitioner when adoption occurred did not change the requirement for publication. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)
- Whether the act of adoption is by resolution or by ordinance, the GMA requires publication of a notice of that adoption in order to start the 60-day clock for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- Under the facts of this case the doctrine of laches did not apply and a PFR was timely filed. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- The 60-day limitation period for filing a PFR does not start until a notice of adoption has been published by the local government. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- A PFR must be filed within 60 days of publication of a notice of adoption. RCW 36.70A.290(2). *WSGA v. Whatcom County* 93-2-0001 (FDO, 9-9-93)

3. Service

- Under WAC 242-02-230(2), "substantial compliance" rather than "strict compliance" is required [for WAC 242-02-230(1)]. **..**[Before the Board] can find substantial compliance, the petitioner must show a good faith effort to make proper service. The rationale of the doctrine of substantial compliance is that one who has made a good faith effort to comply with a technical requirement, noncompliance with which leaves him open to liability, should not be subject to that liability for a failure to literally comply. Where, as here, there has been no attempt to comply with the service requirements of WAC 242-02-230 as it pertains to service upon the Auditor, we cannot find substantial compliance. *Sherman v. Skagit County*, Case No. 07-2-0021, Order of Dismissal at 5-6 (Dec. 11, 2007)

- Where a local government did not demonstrate any prejudice from the failure to serve the PFR on it, a motion to dismiss was denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- Under RCW 36.70A.280 and .290 there is no requirement that a PFR be served anywhere except at the appropriate GMHB office. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- The GMA does not require that service of the PFR be made on the local government. WAC 242-02-230 provides a substantial compliance test and authorizes a GMHB total discretion in ruling on a motion to dismiss because of lack of proper service. *Kemper v. Clark County* 95-2-0044 (MO 5-9-95)
- In order to dismiss a case for failure to properly serve the local government prejudice to the local government must have resulted from the failure to comply with WAC 242-02-230. *Kemper v. Clark County* 95-2-0044 (MO 5-9-95)

4. Amendments

- Receipt of an amended PFR 11 days prior to the due date of petitioner's brief was rejected as untimely. *CMV v. Mount Vernon* 97-2-0063 (MO 3-13-98)
- WAC 242-02 provides that amendments to a PFR may be filed as a matter of right within the first 30 days after the petition is received. Thereafter, approval of a GMHB is necessary. *CMV v. Mount Vernon* 97-2-0063 (MO 3-13-98)
- WAC 242-02-260 allows amendment of a PFR, but such shall not be freely granted. A showing of hardship by a nonmoving party is sufficient grounds for denial. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

5. Standing

- There is no GMA requirement that a petitioner specifically set forth standing claims in the petition, especially where the record is clear that petitioner has participated under the GMA test. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96) *But see* WAC 242-02210(2)(d).

PRACTICE BEFORE THE BOARD

- We take this opportunity to note with approval the County's use of its planning staff to present the majority of its oral argument in this case. The County's attorney in this case utilized planning staff strategically to make the County's arguments on planning points and to answer Board questions. County staff deftly avoided the potential pitfalls of this approach by carefully limiting themselves to exhibits already before the Board. The Western Board recognizes that not all of the growth boards will accept this approach but we found this approach very helpful since the planning staff presented arguments and responded to Board questions with respect and professionalism. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)

PRE-GMA ACTIONS

- An ordinance which does not clearly state that only recreational uses explicitly permitted by pre-GMA zoning and/or the GMA CP are allowed, does not comply with the GMA. *FOSC v. Skagit County* 98-2-0016 (FDO, 5-13-99)
- With regard to the issue of whether pre-GMA regulations to satisfy GMA requirements were properly adopted, a GMHB will review the record to determine the type of notice that was given to the public, the amount of public participation that was involved, and the wording of the legislative action to readopt the regulations. *WEAN v. Island County* 97-2-0064 (FDO, 6-3-98)
- The mere adoption of a pre-existing land use map and underlying residential densities within designated agricultural lands without a review for consistency did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- Simply listing non-GMA and pre-GMA statutes and regulations did not comply with the requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- A GMHB has jurisdiction to determine whether pre-existing non-GMA DRs are invalid. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- Even though a local government adopted the "existing code" it was nonetheless a GMA action subject to review for compliance and/or invalidity. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Had the Legislature intended the new remedy created by new subsections of ESHB 1724 to apply only to DRs adopted under GMA, it could have used the same language "under this chapter" found in other sections of the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- A clear and definitive delineation of pre-existing ordinances to be relied upon and an analysis of how those ordinances conserve RLs is essential to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- A determination that only lands previously zoned forestry would be designated industrial forest precluded designation of forestlands which met the criteria of GMA and thus did not comply. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)

- In order to comply with the GMA the use of pre-GMA DRs must be explicit and must show that they are sufficient to protect CAs. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (Compliance Order, 12-19-95)
- Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The use of pre-existing ordinances as GMA compliance without a hearing and notice and without discussion did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Prior planning decisions that are not in compliance with the GMA cannot be used as the basis for future planning decisions. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- The GMA does not allow existing zoning to be the sole criterion upon which to base an IUGA. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- Failure to prohibit new urban commercial and industrial growth outside of an IUGA from existing zones did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)

PREHEARING ORDER

- The issues set forth in the prehearing order controls all further proceedings. A party is required to object in writing within seven days to contest the prehearing order issues. WAC 242-02-558. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- WAC 242-02-558 provides that an objection to any issue contained in the prehearing order must be made in writing within seven days. The prehearing order controls subsequent proceedings unless modified for good cause. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

PRESUMPTION OF VALIDITY

- We agree with our sister board that "mere conclusory statements in a petition or prehearing brief are insufficient to overcome the statutory presumption of validity." *Moses Lake v. Grant County* 01-1-0010 (FDO, 11-20-01). We will not, therefore, review the unsupported list of alleged

inconsistencies but consider them to have been abandoned. *Cal Leenstra v. Whatcom County* 03-2-0011 (FDO, 9-26-03)

- The legislative action taken by a local government is presumed valid upon adoption. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. RCW 36.70A.320. *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- Where a local government has taken legislative action in response to a remand the presumption of validity applies. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Where there is no legislative action taken in response to a finding of noncompliance there is no presumption of validity to apply. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Where a new ordinance adopted in response to a finding of noncompliance merely "confirms" the original ordinance, the presumption of validity applies, although logic would dictate a different result. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- A new CP and DRs constituting of several hundred pages, adopted after years of public participation with an index list of over 170 items, will not be reviewed other than facially within the 45-day limitations under a motion to rescind invalidity. Such local government actions are entitled to the presumption of validity and the new record must contain obvious evidence that the actions continue to substantially interfere with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- A CP is presumed valid and remains so until and unless the petitioner proves by a preponderance of the evidence that the CP did not comply with the GMA. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- Once a preponderance of evidence overcomes the presumption of validity the burden of coming forward shifts to the respondent. Such evidence must be shown in the record. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)
- A FEIS does not carry a presumption of validity under RCW 36.70A.320. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A presumption of validity can be overcome by the absence of evidence of proper consideration by the decision-maker, as shown or not shown by the record. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- The presumption of validity applies to adoption of the land use element of a CP. However, as shown by WAC 365-195-050, it is necessary for the local government to adequately prepare and furnish a complete record containing appropriate analysis. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

- Once a preponderance of evidence overcomes the presumption of validity, the burden of coming forward shifts to the respondent. Such evidence must be shown in the record. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)
- All GMA DRs are presumed valid upon adoption. Such a presumption presents an interesting dichotomy with the burden of proof established at the preponderance level. *CCNRC v. Clark County*92-2-0001 (FDO, 11-10-92)

PROCEDURAL CRITERIA

- Implementing DRs are distinct from consistency DRs. Implementing DRs are defined at WAC 365-195-800. There must not only be a lack of conflict but the regulations must be of sufficient scope to carry out fully the goals, policies, standards and directions contained in the CP. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- The consistency required between DRs and the CP means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- There is both a requirement of internal consistency within a CP, WAC 365-195-500, and of consistency between DRs and the CP as defined in WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- The adoption of WAC 365-195 was done to assist counties and cities in complying with the GMA. The WAC only made recommendations which a GMHB must consider in making its decision. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

PROPERTY RIGHTS

- The GMA's Property Right Goal has two separate and distinct prongs – the "takings" prong and the "protection" prong. While this Board has found that "the 'takings' prong of Goal 6 is to be reviewed to determine if adequate consideration of that prong has been given by the decision makers", it is also true that the GMA provides a process for local governments to utilize in order to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property. That process is laid out in RCW 36.70A.370. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Order on Reconsideration (Nov. 12, 2009)
- It is not necessary for the Board to develop its own test of when "adequate consideration of [the takings] prong has been given by the decision makers" when the GMA has set out the specific process to be followed. Therefore the Board modifies its October 13, 2009 FDO to recognize that in analyzing the first prong of a Goal 6 property rights claim, it is appropriate to consider whether the local jurisdiction complied with RCW 36.70A.370 in evaluating the proposed action. *Laurel Park, et al v. City of*

Tumwater, Case No. 09-2-0010, Order on Reconsideration (Nov. 12, 2009)

- Here, Petitioners raised a claim under RCW 36.70A.370 as well as a Goal 6 claim. However, while the Board found that the City failed to comply with RCW 36.70A.370, a conclusion undisturbed by this Order on Motions for Reconsideration, this does not necessarily resolve the Goal 6 issue in Petitioners' favor. Concluding that a local jurisdiction failed to adequately consider the takings aspect of a proposed action does not necessarily mean that a takings occurred. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Order on Reconsideration (Nov. 12, 2009)
- The GMA does not require local jurisdictions to explain the steps it took in evaluating constitutional issues where to do so would violate the attorney-client privilege. But, as the Petitioners pointed out in their HOM Reply Brief, "Had Tumwater actually utilized this process, certainly there would have been some documentation available (even if it would be redacted to protect attorney-client privilege under RCW 36.70A.370(4))." *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Order on Reconsideration (Nov. 12, 2009)
- The Board recognizes that the actual deliberations between a local government's attorney and elected and appointed officials, while they utilize the Attorney General process, is protected by the attorney-client privilege. However, it is a statutory mandate that they utilize that process. Where, as here, Petitioners have submitted evidence that the Record is devoid of any evidence that the process was utilized, the City may not assume that the attorney-client privilege relieves them of any obligation to point to contrary evidence in the record that the process was utilized. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Order on Reconsideration (Nov. 12, 2009)
- At the outset, the Board must make clear that we do not have the authority to determine whether an unconstitutional "taking" of Petitioners' property occurred. While RCW 36.70A.020(6) provides, in part, that "Private property shall not be taken for public use without just compensation having been made," the Board has consistently held that it does not have jurisdiction to determine if an act by a local government constitutes an unconstitutional taking. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13, 2009)
- Goal 6 is comprised of 2 elements: (1) the protection of property rights and (2) protection from arbitrary and discriminatory actions that impact those rights. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13, 2009)
- The first question that must be addressed is – "what is the property right at risk?" … Here, the Petitioners do not allege a right entitled to be protected from a change in zoning. Nor, as they acknowledged at the Hearing on the Merits, is there any infirmity in a zone that restricts the use of land to a single use, e.g. airport zoning or agricultural zoning. Because there is no right to the continuation of existing zoning, there is no dispossession of a

property right by City action that changes the zoning of their property. This includes a zoning change that limits the use of their property almost exclusively to manufactured home parks. As this Board found in *Achen*, the "rights" intended by the Legislature could only have been those which are legally recognized, e.g., statutorily, constitutional, and/or by court decision. Petitioners have failed to demonstrate an impact on any such legally recognized right. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13, 2009)

- The Record, including the Ordinances, reveals no such compliance with RCW 36.70A.370(2). Neither Ordinance O2008-009 nor O2008-027 disclose any evaluation of the proposed regulatory action consistent with the Attorney General's process … [and] the mere presence of the Attorney General's Advisory Memorandum in the Record is not evidence that the process was followed or even considered. It may demonstrate that the City was on notice of the process, but nothing more. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13, 2009)
- Exhibits which demonstrate a concern as to the "legalities" of the proposed action, does not specifically demonstrates compliance with RCW 36.70A.370(2). *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13, 2009)
- [The Board re-iterated the test for a Goal 6 challenge] … in order for a petitioner to prevail in a challenge based on Goal 6, they must prove that the action taken by a local jurisdiction has impacted a legally recognized right and that the action is *both* arbitrary *and* discriminatory. Showing only one is insufficient to overcome the presumption of validity that is accorded to jurisdictions by the GMA. In addition, this Board has held that the protection prong of Goal 6 involves a requirement for the protection of a *legally recognized* right of a landowner being singled out for unreasoned and ill-conceived action. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 43 (Nov. 19, 2008).
- *See also, Hadaller, et al v. Lewis County,* Case No. 08-2-0004, FDO, at 14-15 (July 7, 2008) [Case was coordinated with compliance proceedings for *Butler, et al v. Lewis County*, Case No. 99-2-0027c and *Panesko, et al v. Lewis County,* Case No. 00-2-0031c]
- The Board has previously stated that in order for petitioners to prevail in a challenge based on Goal 6, they must prove that the action taken by a local jurisdiction is *both* arbitrary *and* discriminatory; showing only one is insufficient to overcome the presumption of validity that is accorded to local jurisdictions by the GMA. Additionally, the Petitioner must show that the action has impacted a legally recognized right. The rights that Bayfield asserts that will be allegedly impacted by the CAIT [Critical Areas Innovative Techniques] would be the ability to "use or develop the critical areas or the associated buffers," "ability to subdivide," and a parcel's "development potential." None of these are the types of rights for which the Legislature has intended to be protected under Goal 6. *Bayfield*

Resources/Futurewise v. Thurston County, Case No. 07-2-0017c (FDO, April 17, 2008) at 27.

- All land use regulations discriminate in a literal sense because they apply only within certain zoning districts or to certain uses. Bayfield asserts the CAIT is discriminatory because it applies only to land zoned RRR 1/5 or RR 1/5 as opposed to all land. But the "right" to have a particular zoning classification not treated differently from other classifications is not the type of "right" this Board or the courts has ever recognized as being protected by Goal 6 nor is it discriminatory in the sense that it "it unduly burdens or unfairly impacts a single group without rationale." *Bayfield Resources/Futurewise v. Thurston County,* Case No. 07-2-0017c (FDO, April 17, 2008) at 29.
- The right Hadaller asserts will be allegedly impacted by the County's action is founded in economics with the statements such as: "[T]he land is too valuable when used for residential, commercial or industrial purposes to support an agricultural zoning designation" and the ARL designation "fails to maximize the utility and value of the property." The right to make the most profitable use of property possible is not the type of property right for which the Legislature has intended protection under Goal 6. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c (Compliance Order/FDO, July 7, 2008) at 15.
- The Board has no jurisdiction to determine if an unconstitutional taking of private property has occurred. Coordinated cases of *Butler et al v Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c (Compliance Order/FDO, July 7, 2008) at 16.
- *See Durland/Fennell v. San Juan County,* Case No. 07-2-0013, FDO, at 7 – 10 (March 24, 2008) (Affirming the Board's requirement for a Goal 6 violation stated in *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c, which required (1) an arbitrary and discriminatory action and (2) a recognized property right).
- Under the record in this case, the County appropriately considered property rights under Goal 6. *Mitchell v. Skagit County* 01-2-0004c (FDO, 6-8-01)
- A claim of petitioners who were owners of improved property that the allowance of RVs on unimproved properties interfered with Goal 6 was not the type of "property right" intended by the Legislature to be encompassed by Goal 6. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)
- The term "arbitrary and discriminatory actions" in Goal 6 involves the protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *PRRVA v. Whatcom County* 00-2-0052 (FDO, 4-6-01)

- Vested rights do not constitute a "built environment" under RCW 36.70A.070(5)(d)(i). *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- A petitioner's concern about a local government's hearing examiner system and the reluctance to incur the expense of a court appeal was beyond the scope of review authorized to a GMHB by the Legislature and did not constitute a violation of Goal 6. *Evaline v. Lewis County* 00-2-0007 (FDO, 7-20-00)
- The "takings" prong of RCW 36.70A.020(6) was satisfied where adequate consideration was given during the decision-making process. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- A designation ordinance that required a minimum 40-acre parcel, but also allowed subdivision into two 20-acre parcels, was inconsistent with a criterion to eliminate 20-acre parcels for resource designation. One or the other must be changed to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 4-9-97)
- A local government must protect private property rights but also has the responsibility to protect CAs. There is no property right to provide false or incorrect information. *FOSC v. Skagit County* 96-2-0025 (FDO, 1-3-97)
- It is appropriate to consider property rights issues but not to the point of disregarding all other goals and requirements of the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Whether a particular property is or is not vested must be determined in a forum other than a GMHB. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- A local government has the right to prioritize and emphasize the goals of the GMA. A local government does not have the right to disregard 12 of the goals and focus entirely on the property rights goal. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- There is no property right to subdivide rural areas at urban densities in the absence of prior vesting. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 2-7-96)
- The role of a GMHB under the takings provision of Goal 6 is to ensure that the issue has been adequately considered by local government. *Beckstrom v. San Juan County* 95-2-0081 (FDO, 1-3-96)
- Whether private property has been unconstitutionally taken is an issue to be determined by courts and not by a GMHB. *Beckstrom v. San Juan County* 95-2-0081 (FDO, 1-3-96)
- RCW 36.70A.020(6) contains two separate and distinct goals: (1) takings and (2) protection of property from arbitrary and discriminatory actions. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The takings prong of Goal 6 is reviewed to determine if adequate consideration has been given by decision-makers. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- There is no jurisdiction for a GMHB to determine whether a constitutional taking has occurred. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

- Goal 6 involves a requirement of protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A local government's decision to not include any clustering in RLs, given the history of the past 15 years of clustering having the effect of reducing RLs, did not violate RCW 36.70A.020(6). *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- In order to be appropriately considered under the GMA, property rights must be ones that are vested and not merely speculative. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)

PUBLICATION

- Where no notice of adoption has been published, a person with standing under RCW 36.70A.280(2) may file a petition challenging the action at any time until 60 days subsequent to the publication of the notice of adoption. *WEAN v. Island County* 97-2-0064 (FDO, 6-3-98)
- The GMA establishes a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. It is within the purview of the joint Boards to adopt a rule defining actual receipt of a petition for the establishment of the date of filing. *Weber v. Friday Harbor* 98-2-0003 (MO 4-16-98)
- RCW 36.70A.280 provides that a PFR may be filed as soon as the local government takes formal action. The timeframe for a PFR continues for a period of 60 days after publication of the appropriate notice. The failure of the local government to comply with RCW 36.70A.106(1)(a) does not preclude GMHB review. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)
- The failure of a local government to publish notice of adoption precludes the 60-day appeal limitation from starting. A formal publication rather than extensive newspaper coverage and general public knowledge must be made. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)
- A PFR must be filed within 60 days after notice of publication is made. There is no provision in the GMA for any expansion of the 60-day filing period. *Schlatter v. Clark County* 95-2-0078 (8-16-95)
- After 60 days from publication a GMHB is without jurisdiction to rule on the PFR. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)
- Regardless of whether a CP is adopted by ordinance or resolution, it is the act of publication of notice of that adoption that begins the 60-day time limitation for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- Whether the act of adoption is by resolution or by ordinance, the GMA requires publication of a notice of that adoption in order to start the 60-day clock for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- Where dual publications occur and there is no reference to the first publication in the second one, the second publication is the effective date

for the commencement of the 60-day filing limitation. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)

- A city's publication requirement is slightly different than that of a county. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)
- Where a county published two separate times, but referenced the first publication date in both, the 60-day period commenced as the date of the first publication period. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)
- Where a city and county adopted a unified CP and different notice-of-publication dates were used, the final publication date becomes the commencement date of the 60-day filing limitation period. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)
- The 60-day limitation period for filing a PFR does not start until a notice of adoption has been published by the local government. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

PUBLIC FACILITIES AND SERVICES

- As the County correctly notes, there is an important distinction between sewer service availability and having all residential sewer connections in place. The Central Puget Sound Growth Management Hearings Board (Central Board) has previously held that making capital facilities such as a treatment plant, trunk lines, and pump stations *available* within the 20 year planning horizon is sufficient. We follow the Central Board in this regard … The capital facilities plan shows development of the collection system to continue within the sewer service area and be completed by the year 2030." As a result, it can be concluded that sewer will be available throughout the UGA within the 20 year planning horizon as the sewer system is phased in. Jefferson County's adoption of its General Sewer Plan adequately demonstrates that sewer will be available in the Port Hadlock UGA within the 20 year planning horizon, as required by RCW 36.70A.110. *ICAN v. Jefferson County,* Case No. 07-2-0012c, Compliance Order at 6-7 (August 14, 2009)(Citing to *KCRP v. Kitsap County*, CPSGMHB No. 06-3-0005, Order Finding Compliance (11/5/07)).
- An additional designation of municipal UGA areas that have existing sewer and water or that can be efficiently provided with the same, that are outside any floodplain designation and that impose a 1:5 lot size until the city completes a very detailed planning process complies with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such

needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Goal 1 of the Act allows and encourages expansion to take place in urban areas where public facilities can accommodate such growth at a lower cost and with less burden to taxpayers and to the natural environment. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- The fact that a public service and facilities provider also provides an urban LOS to others does not *ipso facto* make the facilities and service that are available to users outside the UGA an urban governmental service. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Public facilities and public services are defined in RCW 36.70A.030. The definitions are broad and far-reaching and include both build-out concepts and provider services. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- Availability of public facilities does not in and of itself define an area as characterized by urban growth. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The GMA requires that new urban growth be served by urban public facilities and services whether they are provided by a public or private source. Public services and facilities means that all such services must be equitably available to all persons within an IUGA. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)

- An analysis of current and future data concerning public facilities and services is necessary prior to establishing an IUGA outside of municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

PUBLIC PARTICIPATION

- Petitioners contend the City] violated various provisions of WAC 365-195-600(2), such as failing to: fully use the Planning Commission as a liaison; distribute drafts such as failing to: fully use the Planning Commission as a liaison; distribute drafts of proposals and alternatives in a timely manner, and; maintain a summary of public comments within the record. However, the recommendations set forth in WAC 365-195-600(2) are just that - suggestions of possible choices a jurisdiction may elect to use in providing for adequate public participation and, as such, Winlock was not required to follow these recommendations. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- Although the provisions of WAC 365-195 are generally seen as recommendations and therefore not susceptible in and of themselves to a finding of non-compliance, WAC 365-195-630(2) restates the requirements of RCW 36.70A.130(2)(a) and (b) which provide for annual limits on comprehensive plan amendments and concurrent consideration of them. [Petitioner] however, has not alleged a violation of RCW 36.70A.130(2) and the Board will not address violations not raised in a Petition for Review. Therefore, although [Petitioner] raises a valid concern, he has failed to base that concern on a provision of the GMA upon which the Board could base a finding of non-compliance. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- A review of the public participation provided by the City illustrates an extensive, lengthy process incorporating many of the recommendations set forth in the GMA and WAC 365-195-600 … [Board reiterates the City's process] While both [Petitioners argue] the City discouraged Planning Commission involvement *after* the Planning Commission forwarded the Draft Development Regulations to the City Council, once the Commission took action to send the proposal to the City Council, it was properly before that body and the Planning Commission's role was complete. The Council could have referred the Development Regulations back to the Planning Commission but chose not to and adopted them … *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [Petitioners] are clearly dissatisfied with the final version of the development regulations, but it is not the Board's role to second-guess the City Council's decision. Rather, the role of the Board, in regards to the RCW 36.70A.120 issue, is to ensure the City met the GMA requirements of providing adequate public participation in accordance with the cited Comprehensive Plan policies. The Record illustrates a lengthy, well publicized regulation development process that did not violate the

referenced Comprehensive Plan policies. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)

- *Skagit Hill Recycling v. Skagit County,* Case No. 09-2-0011, Order on Motions at 5-6 (Sept. 22, 2009)(County complied with requirements of RCW 36.70A.390 and therefore no violation of Goal 11 was warranted)
- *Petree, et al. v. Whatcom County,* Case No. 08-2-0021c, Compliance Order (Aug. 14, 2009)(Petitioner is permitted to raise public participation issue during compliance proceedings in regards to actions taken by the jurisdiction to achieve compliance).
- No provision of the GMA or the County's code is cited by Petitioner to support its position that the County is required to respond directly or specifically to public comments. What the GMA requires is for adequate notice to be given, opportunities to comment provided according to the County's public participation procedures, and that the County make its decision in accordance with GMA goals and requirements. While many counties and cities document comments received and their response to them, it is not a requirement of RCW 36.70A.140, RCW 36.70A.035, or RCW 36.70A.070, nor does [Petitioner] cite any provision of the Whatcom County Code which requires specific response. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c, FDO at 10 (Oct. 13, 2008)
- [Board recognized the GMA provisions related to public participation:] … RCW 36.70A.140 establishes the requirement that local jurisdictions adopt public participation programs that provide for early and continuous public participation. The GMA has other public participation requirements. RCW 36.70A.020(11) establishes a goal to encourage the involvement of citizens in the planning process. RCW 36.70A.035 requires the county to establish notice procedures that are reasonably calculated to provide notice to property owners and other affected individuals and entities. RCW 36.70A.070 requires that the county adopt its comprehensive plan in accordance with its public participation procedures. *Spraitzar v. Island County,* Case No. 08-2-0023, FDO, at 6 (Nov. 10, 2008).
- *See also, Spraitzer v. Island County* Dec. 3, 2008 Order on Reconsideration (RCW 36.70A.140 is not inclusive of the GMA requirements for effective public notification for early and continuous public participation and therefore a claim based on insufficient notice is required to assert a violation of RCW 36.70A.035 as opposed to RCW 36.70A.140).
- *See also, Spraitzer v. Island County* July 24, 2008 Order on County's Motion to Dismiss (Dismissal of public participation claim based on WAC 24-02-530(6) is not warranted when evidence relevant to the challenge is not limited).
- [In finding that the City made a significant change to a proposed ordinance without adequate notice to the public, the Board stated:] Public participation is indeed the keystone of the GMA, and it is incumbent upon jurisdictions to provide notice that is reasonably calculated to inform the public of the nature and magnitude of proposed changes to development

regulations. In this instance, the failure to publish notice or otherwise notify the public of the changes that the City Council made in the Ordinance fell short of meeting that standard. … [the ordinance] represented a significant change from the draft presented for review and comment at the Planning Commission public hearing. As such, it was incumbent upon the Lacey City Council to provide the public with an opportunity for additional review and comment pursuant to RCW 36.70A.035(2). That did not occur and that failure resulted in a violation of the public participation goals and requirements of the GMA. *Panza, et al v. City of Lacey,* Case No. 08-2-0028, FDO, at 9-10 (Oct. 27, 2008).

- [In response to allegations that Lewis County failed to comply with the GMA's public participation requirements, it was stated:]The Board has no power to impose a mediation process upon the County. *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO/Compliance Order, at 20
- The retention of consultants with specialized expertise to assist in the County's planning efforts did not violate the GMA's public participation requirement so long as the public is not excluded from the process in favor of the retained consultants. *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO/Compliance Order, at 20
- The GMA contains no requirement that the County circulate public input [e.g. public comments received on the proposal] to the public. *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-2-0027, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO/Compliance Order, at 22
- While the Board does not have jurisdiction over Chapter 36.70 RCW, the Planning Enabling Act, where the County has imposed the requirements of the Planning Enabling Act upon itself as part of its process for adopting site specific plan amendments pursuant to RCW 36.70A.140, the Board has jurisdiction to review whether the County has complied with these provisions as a means of satisfying the GMA"s public participation program provisions. *Brinnon Group, et al v. Jefferson County,* Case No. 08-2-0014, FDO, at 7 (Sept. 15, 2008).
- In light of the genesis of the final adopted version within the three variations earlier made available to the public, we do not find a public participation violation ... We find the CAIT adopted by the County was clearly within the scope of the previously discussed alternatives. These alternatives were available for discussion by the public during the County's public participation program. That the County selected from these alternatives in drafting the final enacted version did not deprive the public of a meaningful opportunity to comment. *Bayfield Resources/Futurewise v. Thurston County,* Case No. 07-2-0017c (FDO, April 17, 2008) at 14.
- [The final version of the ordinance adopted by the County was represented by one of the three alternatives but also included additional

language. In finding the County had not violated the GMA's public participation requirements, the Board stated …] Given the range of alternatives considered by the County, the addition of this language is not demonstrably outside the *"the scope of the alternatives available for public comment"* that it would require reopening the public participation process to consider this change. *Bayfield Resources/Futurewise v. Thurston County,* Case No. 07-2-0017c (FDO, April 17, 2008) at 15.

- Clark County's public process was not without irregularities, including not following its own code provisions or, on occasion, not appearing to be even handed to all groups. However, the record shows ample opportunities to observe the process, to participate, to be informed, and to comment. In light of the entire record, the Boards finds that the public process for the adoption of the County's revised CP was not a clearly erroneous violation of [the GMA]. *Karpinski et al v. Clark County,* Case No. 07-2-0027(Amended FDO, June 3, 2008) at 23.
- The County clearly did not realize that entering into the MOU would constitute a comprehensive plan amendment and it may, upon remand and public participation, change parts of the MOU or its comprehensive plan. It would be premature for this Board to review the MOU for compliance with the GMA and SEPA until the County has had the opportunity to do its own review. Based on the stipulation of the parties, therefore, the Board finds that Clark County did not provide for early and continuous public participation in the adoption of the MOU in violation of RCW 36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 and Clark County Code Ch. 40.560. *Alexanderson/Dragonslayer, et al v. Clark County*, Case 04-2-0008, Order on Remand (June 19, 2007).
- Last minute comments hardly give the local jurisdiction a change to correct. An appropriate public participation program would give time both for public comments and for a response to them. Therefore, the Board does not find it unreasonable for a local jurisdiction to set a deadline for comments prior to taking final action, provided that deadline is well-publicized and reasonable in light of the legislation in view and the interests involved, and is designed to encourage rather than limit public input (by, for instance) setting an additional public hearing for that purpose). We do not agree with Petitioner that the GMA entitles it to bring its comments at the last minute. The statute calls for "participation" which implies genuine interaction rather than just submitting comments when the time to respond to them effectively has passed. *ARD/Diehl v. Mason County,* Case No. 07-2-0006, FDO at 13 (Aug. 20, 2007)
- The execution by the Mayor of Winlock of the challenged professional services and cost reimbursement agreements is not subject to the public participation requirements of RCW 36.70A.140. *Harader v. Winlock,* WWGMHB Case No. 06-2-0007(FDO, 8-30-06).
- The evidence in the record indicates the City's good faith in extending the public hearing on the proposed CAO in this case to allow further public input on the revised draft. However, we have to agree with Petitioner that

there was insufficient notice that the comment period remained open; and changes to the draft ordinance were not readily available to read and review. Since there was an express comment period closure date set out in writing, the City had an obligation to provide express notice of the extension of the comment period. *Dunlap v. Nooksack,* WWGMHB Case No. 06-2-0001(FDO, July 7, 2006).

- [A] provision that makes an amendment of the PUD water plan an automatic amendment of the County's comprehensive plan does not comply with RCW
  36.70A.130(2) and RWC 36.70A.140. (County Comprehensive plans) may not also provide that *future* amendments to the utility's plans are simply incorporated into (a) comprehensive plan without the opportunity for public review and comment during the County's comprehensive plan amendment process. *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, May 31, 2005)
- In this case, the County mistook its obligations under SEPA and initially advised the public that comments on the environmental analysis were not permitted. Had the County not corrected its position, we would be in a very different posture today. However, we do not agree with Petitioners that the only remedy is a finding of noncompliance. In fact, the County did in this case what the Board would have ordered it to do on remand – hold a hearing with open public comment on the environmental analysis. *Hood Canal Coalition v. Jefferson County* 03-2-0006 (Compliance Order, 10-14-04)
- Because it used an administrative interpretation rather than following the County's procedures for a comprehensive plan amendment to make the designation change, the County's redesignation of the Karma Gardens site on the comprehensive plan map did not comply with the public participation goal and requirements of the Growth Management Act (GMA) and Skagit County's own public participation procedures as described in its comprehensive plan. *Skagit County GrowthWatch v. Skagit County* 04-2-0004 (FDO 8-24-04)
- The public should not be left to guess whether the County has undertaken its update or not. The statutory requirement for minimum legislative findings ensures that the public is on notice that the update is taking place. Therefore, the County cannot be found to have undertaken an update, even a partial update, of its comprehensive plan unless the challenged enactment unambiguously finds that a review and evaluation of the comprehensive plan and development regulations has occurred and identifies the revisions made; or if the County finds that a revision was not needed, the enactment must give the reasons for that. RCW 36.70A.130(1)(a). *1000 Friends v. Whatcom County* 04-2-0010 (Order on Motions to Dismiss 8-2-04)

- The legislative process involves input from the public but it does not necessarily include the ability to confront or cross-examine all sources of input. In this case, there were many opportunities for comment, written or oral, and the Petitioners took advantage of the opportunities to provide very extensive input. *Vinatieri, Smethers and Knutsen, et al. v. Lewis County,* 03-2-0020c (FDO, 5-6-04)
- It is true that the GMA's public participation requirements are founded in a belief that the best decisions are made with full public knowledge and participation. However, the GMA does not direct the local jurisdiction in how to act upon the comments it receives. However laudable consensus may be as an aim, the GMA does not require it. Local decision makers must allow citizens to make their feelings known but the county commissioners do not have to follow them, let alone must they engage in a particular form of interactive discussion such as Petitioner suggests should have been done here. *Better Brinnon Coalition v. Jefferson County,* 03-2-0007 (Amended FDO, 11-3-03).
- The requirement to have "interactive" dialogue does not mean that the GMA requires local government to respond to the various claims made by both proponents and opponents of a given legislative enactment. Where there has been "early and continuous" public participation and an adequate opportunity to participate in public hearings, there is no requirement that there be public discussion or expression of opinion immediately before the actual vote of the council. *Larson and Gasnick v. City of Sequim,* 01-2-0021 (FDO, 2-07-02)
- While it is difficult for a local government to comply with the public participation and requirements of the Act without a compliant public participation program, it is not impossible to do when specific locational decisions are made. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- Under the GMA, a County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Simply providing access does not satisfy that duty. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- A DR adopted as an "emergency" without a public hearing makes it very difficult to show compliance with the Act. Under this record, hearings were held within sixty days but no permanent ordinance was adopted. The actions do not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- An ordinance which merely schedules the CP amendment processes does not comply with the requirements of RCW 36.70A.130. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)

- Under RCW 36.70A.035(1) “reasonable notice” is required even if many or all of the current petitioners attended the meetings. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Where a local government makes substantial and significant changes to maps after the closing of the public hearings that is not resubmitted for public review, compliance with the Act under RCW 36.70A.035(2)(a) is not achieved. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Even if the public participation remand requirements of RCW 36.70A.130(2)(b) apply to this situation of redesignation, the goals and requirements of the Act with regard to public participation were not complied with under this record. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- A change in a designation involving more than 600 acres, without public participation under a County defined “mapping error” approach, failed to comply with the GMA. *OEC v. Jefferson County* 00-2-0019 (FDO, 11-22-00)
- The adoption of an amended DR denominated a memorandum of agreement, that occurred without any public participation except the noticing of the holding of a work session, does not comply with the GMA public participation goals and requirements. *Servais v Bellingham* 00-2-0020 (FDO, 10-26-00)
- Petitioner did not carry its burden of showing the county had failed to comply with the public participation goals and requirements of the GMA. The submission of three different drafts of an ordinance at different times was the type of participation and response a local government should engage in within the irerative process contemplated by the GMA. *Evaline v. Lewis County* 00-2-0007 (FDO, 7-20-00)
- A GMHB does not have jurisdiction to determine whether a violation of RCW 36.70 regarding notice and methods of ordinance adoption existed. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The public participation goals and requirements of the GMA impose a duty on a local government to provide effective notice and early and continuous public participation. Under the record in this case that duty was not discharged. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Under RCW 36.70A.140 a local government is required to adopt a public participation program. The failure to do so does not comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- An ILB first brought forth at a Planning Commission sub-committee meeting and included for the first time in a Planning Commission draft less than a month before final CP adoption by the BOCC did not comply with the public participation goals and requirements of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Where the public was afforded ample opportunity to comment on the precise ordinance language ultimately adopted by the county and the county’s public participation program did not preclude staff from accessing the BOCC and providing information after a vote has been taken,

subsequent reconsideration and changes to the ordinance did not violate GMA. *Manville-Ailles v. Skagit County* 99-2-0015 (MO 12-29-99)

- The role of a GMHB is in many respects an extension of the public participation theme of the GMA. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- An acknowledged failure of public participation in adopting an ordinance directs that a finding of noncompliance and a remand be made without addressing the substance of the ordinance. Since the public participation issue disposes of the case, addressing the other issues would violate RCW 36.70A.290(1) concerning advisory opinions. *FOSC v. Skagit County* 98-2-0007 (Compliance Order, 8-13-98)
- Where an ordinance by its language demonstrated that it was not intended to fulfill the requirements of RCW 36.70A.140 directing that a local government provide a public participation program, it did not comply with the GMA. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- An ordinance which does not contain any public participation program, except for an opportunity to comment on permit applications, does not satisfy the requirements of RCW 36.70A.140. *CMV v. Mount Vernon* 98-2-0006 (FDO, 7-23-98)
- RCW 36.70A.140 states that errors in exact compliance with public participation requirements shall not be the basis for noncompliance if the spirit of the program and procedures is observed. Under the record in this case there was compliance with the GMA. *WEAN v. Island County* 97-2-0064 (FDO, 6-3-98)
- The GMA requires early and continuous public participation but does not require a specific methodology. The failure to directly mail notices to affected property owners during the latter part of the CP adoption process did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- The GMA requires that a public participation process be provided, but does not require that the local decision-maker agree with the positions urged by citizens. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- RCW 36.70A.140 provides a local government with greater discretion to limit public participation “as appropriate and effective” in dealing with a response to a determination of invalidity. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- Where a focus group consisted of diverse members associated with a specialized scientific issue concerning fish and wildlife habitat areas, the meetings were open to the public, and further meetings by the planning commission and county commissioners did allow public participation, compliance with GMA was achieved. *CCNRC v. Clark County* 96-2-0017 (Compliance Order, 11-2-97)
- The GMA provides goals and requirements for “early and continuous” and “effective” public participation. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)

- While the GMA does not require local governments to notify all possible groups of a particular action under consideration, the specific involvement of particular groups on a particular project shown by this record makes early notification necessary in order to comply with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Where significant flaws in public participation are found, a GMHB will not address the substantive compliance issue of the ordinance in question. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Simply listing non-GMA and pre-GMA statutes and regulations did not comply with the requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (Compliance Order, 9-12-96)
- Where the designation of an IUGA was raised for the first time during a work session on the day of the one and only public hearing that established the IUGA, the GMA requirement of effective public participation was violated. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A DR that was never presented to the public before adoption and was substantially different from DRs previously presented at a public hearing did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- The GMA requires that a local government provide an opportunity for early and continuous public participation but does not force citizens to attend nor require that they discuss any particular issue. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- The failure to comply with the requirements of RCW 36.70A.140 in adopting an ordinance in response to a determination of invalidity precludes consideration of rescission. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)
- The release of documents and a revised staff report only days before the only hearing on adoption of a RLs DR did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- The fact that a petitioner participated in the process did not relieve a local government of the GMA duty to provide adequate notice. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- Adequate notice which includes availability of pertinent materials sufficiently in advance of a public hearing is required by the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- A clear and definitive delineation of pre-existing ordinances to be relied upon and an analysis of how those ordinances conserve RLs is essential to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- GMA mandates early and continuous public participation in the planning process but grants local governments wide latitude in designing a public

participation process based upon local conditions. *Beckstrom v. San Juan County* 95-2-0081 (FDO, 1-3-96)

- A CAO adopted after only one public hearing, which did not involve any iterative process or consideration of scientifically-based evidence, did not comply with the GMA requirement of early and continuous public participation. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- The touchstone of the public participation goals and requirements of the GMA involve "early and continuous" public involvement. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A GMHB will review late changes to a CP to determine whether public participation has been violated because of a combination of the nature of the change and the timing of the change. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The mere fact that the BOCC reached a different decision than the one recommended by staff, planning commission and the citizens advisory committee did not *ipso facto* show a violation of public participation. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The use of pre-existing ordinances as GMA compliance without a hearing and notice and without discussion did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The effective notice requirement of RCW 36.70A.140 does not require a local government to directly mail notices to potentially affected property owners. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- In light of the record and the number of hearings that were held, a three-minute limitation for each speaker and other restrictions on oral presentation did not violate the GMA, where unlimited written submissions were allowed. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Eight months of planning commission meetings with virtually no opportunity for citizen participation did not comply with the spirit of RCW 36.70A.140. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)
- The public participation requirement of GMA is intended to ensure an open, clear, active and ongoing dialogue between citizens and their local governments. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)
- RCW 36.70A.140 requires, as part of the public participation process, that public meetings occur only after effective notice. A series of postponed or continued meetings and lack of specificity as to the nature of the discussion when the meeting was finally held did not comply with the GMA. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)
- Where an earlier draft of a CP included items concerning road widening and construction and petitioner participated in commenting on those matters, there is no requirement in the GMA that a special notice be given to petitioner prior to adoption of the CP. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)
- To comply with the public participation goals and requirements of GMA, the information used by a local government and submitted to the public

and decision-makers must be reasonably complete and reliable. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

- The GMA requires a dual process of public participation: iterative and interactive. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- The goals and requirements of the GMA concerning public participation apply to all DRs. Review of challenges to public participation involves a review of the total record to determine if compliance with both the spirit of and strict adherence to RCW 36.70A.140 have been achieved. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

QUORUM

- A board may not address issues brought before it in a petition for review and subsequent to a hearing on the merits unless it is able to achieve a quorum under RCW 36.70A.270(4). When only two Board members are present and they are unable to agree on any given issue, [T]the ordinance or plan under challenge is presumed valid upon its adoption, pursuant to RCW 36.70A.320(1). *Clean Water Alliance, et al. v Whatcom County*, 02-2-0002 (FDO, 8-9-02)

RECONSIDERATION

- A Motion for Reconsideration is not an opportunity to present new evidence. The City bases its argument that it complied with RCW 36.70A.370(2) upon the Declaration of Tumwater City Attorney Karen Kirkpatrick. It points to no facts in the Record that it alleges the Board failed to properly consider, or misinterpreted … Submitting the declaration of the City Attorney *after* the Hearing on the Merits, in support of Motion for Reconsideration deprives the Petitioners of the opportunity to respond to the evidence, and deprives the Board of the ability to consider such evidence prior to issuance of the FDO. The City's proffered declaration of City Attorney Karen Kirkpatrick will not be considered. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Order on Reconsideration (Nov. 12, 20090
- A Motion for Reconsideration is not simply an opportunity to reargue a case. The fact that the Board disagreed with a Petitioners' interpretation or analysis, giving deference to the County's interpretation of its own code, does not provide a basis for reconsideration. *Skagit Hill Recycling/Waldal v. Skagit County,* Case No. 09-2-0011, Order on Reconsideration (Oct. 27, 2009)
- *Bussanich, et al v. City of Olympia*, Case No. 09-2-0001, Order on Motion to Vacate, at (April 23, 2009)(Petitioner's motion was determined to be a Motion for Reconsideration of the Board's Order of Dismissal)
- *Bussanich, et al v. City of Olympia*, Case No. 09-2-0001, Order on Reconsideration, at 1-2 (May 8, 2009) (Holding no ability to file a Motion for Reconsideration of an Order for Reconsideration)

- Generally, the Board will not consider the application of Court decisions issued after the Board has reached its decision in a matter because it is the law and facts at the time the decision was rendered which confine reconsideration; not an interpretation of the law that was unavailable for consideration at the time of the Board's decision. To allow reconsideration based on legal interpretations made after issuance of a decision by the Board would frustrate the finality that is sought for land use decisions in Washington State. Here, however, the Supreme Court issued its decision in the *Thurston County* matter one day prior to the Board's issuance of the FDO and therefore the Court's interpretation was the law in place at the time. *Panesko, et al v. Lewis County,* Case No. 08-2-0007, Order on Reconsideration, at 7 (Sept. 15, 2008)
- While it is true that the Board has previously held that Motions for Reconsideration will be denied when they present no new arguments that were not previously considered in the original decision,16 this is not to say that the opposite is true, i.e. that a Motion for Reconsideration is an opportunity to present new arguments that could have been presented at the Hearing on the Merits (HOM), but were not. *Brinnon Group, et al v. Jefferson County,* Case No. 08-2-0014, Order on Reconsideration at 4 (Oct. 14, 2008).
- The HOM is the time for the parties to present their case and to allow Board questioning of the legal theories and the record on which the parties relied. Raising new arguments, or even making a more precise argument, in a motion for reconsideration should not be allowed and is not provided for in WAC 242-02-832(2). Allowing new or restructured arguments would be wasteful of the parties' and the Board's limited time and resources. Instead, the parties should endeavor to make their most thorough and precise arguments in their hearing briefs and at the HOM. A Motion for Reconsideration then provides the opportunity to determine whether the Board committed one of the errors enumerated in WAC 242-02-832(2). *Brinnon Group, et al v. Jefferson County,* Case No. 08-2-0014, Order on Reconsideration at 6-7 (Oct. 14, 2008)
- [Petitioner sought reconsideration of the Board's Order of Dismissal, contending that dismissal prior to submittal of the Index to the Record by the jurisdiction was improper, the Board found …] that Petitioner cannot consent to a schedule that provided for a deadline for the preparation of the Index that followed the decision on the dispositive motion and then claim for the first time, after having its Petition for Review dismissed, that it suffered "[I]rregularity in the hearing before the board by which such party was prevented from having a fair hearing." While the Board does not find that the hearing of the County's Motion to Dismiss prior to the preparation of the Index was a procedural irregularity, to the extent it was, Petitioner's objections are barred as an "invited error." Under the Invited Error Doctrine, a party may not set up an error at trial and then complain of it on appeal. *Powers v. Jefferson County,* Case No. 08-2-0010 (Order on Reconsideration, May 22, 2008) at 4-5.

- To support his allegations of substantive error, Petitioner re-asserts many of the arguments previously submitted in his initial briefing, and subsequently rejected by the Board in its Order, as well as seeking the submittal of new evidence. The Board finds no error in the Petitioner's attempt to reargue the case, with Petitioner simply reaching a different conclusion than the Board in application of the governing statutory and case law to the facts at hand. However, Motions for Reconsideration will be denied when they present no new arguments that were not previously considered in the original decision. *Powers v. Jefferson County,* Case No. 08-2-0010, (Order on Reconsideration, May 22, 2008) at 5.
- When filing a motion for reconsideration, the burden is on the moving party to articulate not only the reason for its motion but where in the Board's FDO the alleged error(s) had been made. To simply state that there are errors within the FDO is not enough. *Friends of Skagit County et al v. Skagit County,* Case No. 07-2-0025c (Order on Reconsideration June 18, 2008) at 8.
- Petitioner's argument that the Community Development Department failed to circulate public input to the public,[2] Petitioners cite to no GMA or County code requirement to circulate such materials. As no such requirement exists, the Board finds no GMA violation in this regard. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c (Compliance Order/FDO, July 7, 2008) at 22.
- Panesko's objections to the County's use of retained consultants to assist in the ARL designation process are likewise not well-founded. It is not uncommon for local jurisdictions to retain consultants with specialized expertise to assist in their planning efforts, and Petitioner cites no authority that would prohibit such a process. While Petitioner might have a stronger argument if the public were excluded from the process in favor of retained consultants, this has not been demonstrated to be the case. Coordinated cases of *Butler et al. v. Lewis County,* Case No. 99-2-0027c, *Panesko v. Lewis County*, Case No. 00-2-0031c, and *Hadaller et al. v. Lewis County*, Case No. 08-2-0004c (Compliance Order/FDO, July 7, 2008) at 20.
- [Petitioner] presents no argument that there were material "errors of procedure or misinterpretation of fact or law; nor that there was an "irregularity in the hearing before the board" by which she was prevented from having a fair hearing; nor that there were "clerical mistakes in the FDO". At least one of these grounds must be cited, yet Petitioner has not asserted any one of them. *Sherman v. Skagit County,* Case No. 07-2-0021, Order on Reconsideration, at 3 (Jan. 15, 2008).
- While it is true that the [FDO] could have been clearer on the basis for the Fidalgo Island Subarea Plan direction, the burden to ensure that the [FDO] properly reflects the determinations sought is on the parties at the time.

[2] Petitioner Butler's Objections at 42.

We cannot re-write the decision now to reflect findings the parties now wish had been made. It is the responsibility of the parties to ensure that the Board's order addresses the previsions that it asserts are noncompliant. *Evergreen Islands, et al v. Skagit County,* Case No. 00-2-0046c, Order on Reconsideration, at 15 (Feb. 28, 2007)

- Motions for reconsideration before the growth hearings boards are governed by WAC 242-02-832. This rule provides that a motion for reconsideration may [only] be filed after issuance of a "final decision" [as defined by WAC 242-02-040(3)(b)]. *Butler v. Lewis County,* Case No. 00-2-0027c coordinated with *Panesko v. Lewis County,* Case No. 00-2-0031c, Order Striking Motion (Jan. 19, 2007)
- In deciding whether to address a motion for reconsideration involving a "new" argument, one that is more precise and thorough than originally presented, may qualify. *PPF v. Clallam County* 00-2-0008 (RO 12-13-01)
- On a motion for reconsideration, petitioners did not sustain their burden of proof. *PPF v. Clallam County* 00-2-0008 (RO 12-13-01)
- The filing of a motion is deemed complete upon actual receipt at the Board's office. WAC 242-02-330(1). A responding party must ascertain the actual date of filing and either respond within ten days or request an extension to respond. *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)
- A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)
- Where a motion for reconsideration raises no new arguments that were not briefed and argued at the HOM, the motion will be denied. *FOSC v. Skagit County* 01-2-0002 (RO 7-9-01)
- The due date for compliance begins at the time of the original order or upon issuance of an order on reconsideration, whichever occurs last. *Diehl v. Mason County* 95-2-0073 (MO 6-5-01)
- When no new arguments are presented by a motion for reconsideration, it will be denied. *Anacortes v. Skagit County* 00-2-0049c (RO 3-5-01)
- An issue neither briefed nor argued at the HOM may not be the basis of a motion for reconsideration. *PPF v. Clallam County* 00-2-0008 (RO 1-24-01)
- A LAMIRD which combines commercial and industrial uses is a mixed use area and is not subject to the exemption under .070(5)(d)(i) of industrial areas being freed from the requirement of being principally designed to serve existing and projected rural population. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- The imposition of a determination of invalidity does not have any effect on previously vested rights. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- A one-acre property virtually filled with a community center building with no further opportunity for development and substantial interference with

Goal 8 of the Act will result in a rescission of invalidity. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

- Current use in RL areas is not a determinative factor of the appropriateness of an RL designation. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)
- The provisions of WAC 242-02-832 control the criteria for determining motion for reconsideration. *ICCGMC v. Island County* 98-2-0023 (RO 11-20-00)
- The reconsideration rules provision of WAC 242-02-832 does not authorize the filing of a reply brief to a response to the motion for reconsideration. Each side gets one opportunity to set forth arguments on reconsideration. The reply brief will be stricken. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)
- An exhibit that was listed in the index but was not submitted for the HOM is not part of the record and will not be considered on a reconsideration motion. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)
- Where a county requests clarification of the scope of a finding of invalidity with a motion for reconsideration and demonstrates that a limitation of areas is consistent with the FDO, reconsideration will be granted and invalidity will not apply to villages, hamlets, and activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (RO 8-25-99)
- Where no new argument is presented by a motion to reconsider, it will be denied. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)
- Where a reasonable person could be confused as to the scope of the order finding invalidity, a clarification excluding uses within the UGAs will be granted. *Abenroth v. Skagit County* 97-2-0060 (MO 6-7-99)
- Where a county bases its motion for reconsideration on a misreading of the compliance order, the motion will be denied. *Abenroth v. Skagit County* 97-2-0060 (Compliance Order, 3-29-99.
- Where no new information is contained in the request for reconsideration that was not carefully considered in issuing the FDO, the reconsideration will be denied. *Abenroth v. Skagit County* 97-2-0060 (RO 10-30-98)
- A petition for reconsideration of a FDO must be filed within 10 days of service of the order. WAC 242-02-832. *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)
- Letters requesting clarification are not motions for reconsideration and are not properly before the GMHB. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)
- Pursuant to WAC 242-02-832, parties have an option of whether to respond to motions for reconsideration unless the GMHB requires such a response. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)

- Under WAC 242-02-060, if no action is taken by the GMHB within 20 days of the request of the motion for reconsideration it is deemed denied. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)
- A decision regarding motions for reconsideration becomes the FDO for purposes of court appeal. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)
- Motions for reconsideration will be denied when they present no new arguments that were not previously considered in the original decision. *CCNRC v. Clark County* 96-2-0017 (RO 1-21-98)
- Where no new arguments that were not considered in the original decision are presented, a motion for reconsideration will be denied. *CCNRC v. Clark County* 96-2-0017 (RO 1-21-98)
- Where no new arguments were presented that were not considered in the original decision the motion for reconsideration will be denied. *Achen v. Clark County* 95-2-0067 (RO 1-20-98)
- Failure to participate in the original hearing precludes availability of a reconsideration motion by such a party. *WEC v. Whatcom County* 94-2-0009 (RO 8-11-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (RO 8-11-97)
- Where no appeal to court was taken from a FDO of noncompliance, a GMHB will not reverse that decision through a request for reconsideration of a compliance order entered some 13 months later. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- Where the FDO adequately addressed the issues presented in a motion for reconsideration, the motion will be denied. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)
- WAC 242-02-830(2) requires that a motion for reconsideration must be filed within ten days of service of the FDO and thus a motion for reconsideration in a brief filed 15 days later is not timely. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)
- A party is not allowed to submit previously available evidence for the first time on a motion for reconsideration. *Williams v. Whatcom County* 94-2-0013 (RO 11-9-94)

RECORD/EVIDENCE (SEE ALSO EXHIBITS AND SUPPLEMENTAL EVIDENCE)

- Under the record in this case, the County included a wide range of science and appropriately included BAS in its decision. *Mitchell v. Skagit County* 01-2-0004c (FDO, 8-6-01)
- Tapes of a BOCC meeting which occurred approximately four months after adoption of an ordinance would not be necessary or of substantial assistance in reaching a Board decision. A motion to supplement the record is denied. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- As a general proposition requested supplemental evidence compiled after the decision of the local government has been made will not be permitted. Such supplemental evidence may occasionally be admitted for issues

involving a request for invalidity. Supplemental evidence of materials available to the local government, often developed by the local government, but not included in the record of deliberations are often admitted. Newspaper articles are not admitted for supplemental evidence. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

- An exhibit that was listed in the index but was not submitted for the HOM is not part of the record and will not be considered on a reconsideration motion. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)
- Where a local government moves to supplement the record with a scientific study on the day before the compliance hearing is held, post-hearing briefing on the issue of admissibility was allowed. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- A motion to supplement the record with, or take official notice of, new ordinances adopted late in the PFR process will be denied. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)
- A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant rescission of invalidity. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-23-99)
- The record demonstrated that a previous SCS map, which pointed out unique soils in Mason County, was incorrect and that no unique soils exist. Therefore, exclusion of unique soils as a designation criterion complied with the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- The record contained no evidence that anadramous fish were given *any* consideration in the development of the FFA DRs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- A motion from petitioners to allow expert testimony was granted and the county was afforded an opportunity to call its own expert for testimony at the hearing. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 5-4-99)
- The legislature resolved the concern with a local government being blindsided by a failure to raise a specific issue during the local government process by directing that a GMHB review be based on the record rather than *de novo*. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- Since a GMHB can take official notice of growth management guidelines issued by CTED as well as the RCW and WAC provisions there is no need to add proposed exhibits setting those items out.. *Smith v. Lewis County* 98-2-0011 (MO 12-22-98)
- Evidence subsequent to the date of the action under challenge may be admitted for the purpose of consideration of an invalidity request but not

for the purpose of determining compliance. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)

- A GMHB decides each case individually based on local circumstances and the record provided. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- A party requesting supplemental evidence must convince a GMHB that such evidence is necessary or of substantial assistance in reaching the decision. RCW 36.70A.290(4). *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- The index and record as developed by the local government does not include items that are subsequent to the action under challenge. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- The absence of evidence in the record is often very persuasive in determining whether compliance has been achieved. Depositions designed to supply supplemental evidence would not be necessary nor of substantial assistance over what is or is not in the record. *Abenroth v. Skagit County* 97-2-0060 (MO 10-10-97)
- The original and three copies of briefs and exhibits are required to be filed. WAC 242-02-570(2). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- Failure to timely submit briefs and exhibits makes it difficult for a GMHB to carry out the requirements of the GMA for expeditious disposition of cases. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- A motion to add 10 exhibits to the record will be denied when made 1 working day prior to a hearing, especially when allowing a 10-day response time would preclude a finding within 45 days for a local government's motion to rescind invalidity. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- A GMHB will disallow proposed supplemental evidence except in rare occurrences. It is unfair to local government to have evidence admitted subsequent to the decision that is under challenge. The same rule applies when a local government requests supplemental evidence to support its prior decision. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A GMHB reviews the record thoroughly. A local government may not provide information in a record for support of its claims and then demand that a GMHB ignore portions of the record that are unfavorable. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Where discrepancies existed between the titles of maps and the titles in the index, the proposed exhibits were not necessary nor of substantial assistance in reaching a decision. *FOSC v. Skagit County* 95-2-0065 (MO 8-7-95)
- Proposed affidavits and/or oral testimony concerning the adequacy of the FSEIS were not shown to be necessary nor of substantial assistance because the issue was sufficiently disclosed by the existing record. A

motion to supplement the record was denied. *CCCU v. Clark County* 95-2-0010 (MO 7-19-95)

- A request to supplement the record to include affidavits of expert witnesses and a county computer model which had not previously been published was denied because the request was not timely nor were the exhibits found to be necessary or of substantial assistance in making the decision. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- Rarely will supplemental evidence that could have been, but was not, submitted to the local government decision-maker be accepted for a GMHB hearing. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- Under the provisions of WAC 242-02-520(1) a local government is required to submit an index of the record within 30 days after the filing of a petition. The index is an exhaustive list of the record developed by the local government in reaching its decision. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- Under WAC 242-02-520(2), the actual exhibits to be used in a GMHB hearing are only those which are necessary for a full and fair determination of the issues. The purpose of this rule is to minimize the time-consuming preparation of the record by a local government. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- Exhibits which were part of the original record developed by the city or county, but not included in the original index list, are not supplemental evidence. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- The record is the source of evidence upon which a GHMB bases its decision about compliance or noncompliance. Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute valid challenges, the preponderance test will be met. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- The record is the source of evidence for a GMHB decision. If the record is incomplete or insufficient, the absence of evidence can be persuasive for carrying a burden of proof. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- Unless there is a dispute as to accuracy and/or authenticity, the mechanism of providing the record is immaterial. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- Under WAC 242-02-520, parties are required to carefully review the index of the record and submit *only* those documents reasonably necessary for determination of the issues presented. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- The record consists of documents and evidence submitted to the local government during the process involved with the local government decision. It is not correct to request that the record be supplemented to provide such records to a GMHB. Such a request is properly denominated as additions to the initial index. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

- Supplemental or additional evidence is that which is beyond the record developed by a local government. Such a motion is rarely granted. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- The FDO in this case was based upon the record established prior to and including the decision of the BOCC. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- Under WAC 365-195-050, -500 a local government has the responsibility of providing a record that demonstrates appropriate analysis of GMA goals and requirements and more than mere consideration of them. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

REGIONAL PLANNING

- A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A county has the responsibility under the GMA of providing for regional coordination and the sole responsibility for allocation of population projections. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)
- A county has the responsibility of being the regional coordinator for multi-jurisdiction GMA issues. *TRG v. Oak Harbor* 97-2-0061 (FDO, 3-5-98)
- A county has the responsibility to pull together all of the CFE information from other districts or agencies in its jurisdiction so that it can determine and make consistent the location, needs and costs of all capital facilities. It is the county's responsibility to make a regional analysis of all CFE needs, locations and costs so the public has an accurate assessment of what and where tax dollars are being spent, regardless of whether they go to the state, county or special districts. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Because of regionality within the counties and cities of the WWGMHB jurisdiction, it is impossible to establish a standard average density per acre or other mathematical baseline to determine compliance with the GMA in the sizing or location of IUGAs. The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The concept of regionality and local government decision-making are fundamental to the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

REMAND BY BOARD

- …the County has also asked the Board to remand this case to the County to take action on the challenged enactments and bring them into compliance with the GMA… This motion confuses two different board

actions. If the board dismisses a petition for review upon the motion of all parties to it, then that ends the board's jurisdiction over the case. At that point, there is no petition for review because it has been dismissed. A remand of a case, on the other hand, can only occur if the board finds that the challenged local legislative enactment is not in compliance with the Growth Management Act, State Environmental Policy Act or the Shorelines Management Act. RCW 36.70A.300(3). Since there has been no board finding of noncompliance, the board cannot "remand" the case to the County to bring the challenged ordinances into compliance. *The Building Association of Clark County, et al v. Clark County* (Order Denying Motion to Dismiss, 2-15-05)

- The 1995 and 1997 amendments to the GMA give rise to an entirely different scenario with regard to the initial FDO finding of noncompliance than the situation in *Association of Rural Residents, v. Kitsap County,* 141 Wn.2d 185 (2000). While the local government is still under a duty to cure noncompliance, it is clear from the 1995 and 1997 amendments that a board retains jurisdiction and has the authority to extend the remand period until compliance is achieved. In any event, what is clear is that the Legislature has expressed its intent on at least two separate occasions (in 1995 and 1997) that a local government has the duty to comply with the Act and that duty continues beyond the initial remand period of the FDO. *Anacortes v. Skagit County,* 00-2-0049c (Compliance Order, 1-31-02)
- Under the GMA, the Board's authority to enter compliance orders is only triggered after the time period for compliance with a Board's FDO entered under RCW 36.70A.300(3)(b) has lapsed, or at an earlier time at the request of the county to lift invalidity. RCW 36.70A.330(1). *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02)
- We find no authority in the Act to order the county to adopt any particular regulations to be in effect during the remand period. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02)
- The due date for compliance begins at the time of the original order or upon issuance of an order on reconsideration, whichever occurs last. *Diehl v. Mason County* 95-2-0073 (MO 6-5-01)
- Where a county has requested review of ordinances within the context of a previous FDO remand, even though the appeal period has passed on the specific ordinances, review is taken with regard to whether or not a finding of compliance is warranted. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Under RCW 36.70A.280 and .330 a compliance hearing must relate to and is governed by the original issues set forth in the FDO, as well as any

new issues arising from the actions taken by the local government during the remand period. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)

- The provisions of RCW 36.70A.130(2)(b) that allows a local government to suspend its public participation process "to resolve an appeal" of a GMHB hearing does not apply to changes in RL designations that were not part of the original FDO. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- After Superior Court remand orders of April 4 and June 11, 1997, a GMHB remand hearing was held and a remand order entered August 11, 1997. The order provided that the matters set forth in the Superior Court appeal were remanded to the county to achieve compliance with earlier GMHB orders as modified by the Superior Court. Particularly in light of the 1997 amendments to RCW 36.70A.330, jurisdiction did exist under these circumstances for a GMHB to review the county's action in spite of an absence of a PFR challenge filed within 60 days of the notice of publication of such action. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- The remand of an UGA directs that all UGA determinations be re-evaluated by a county government. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- When a petitioner and local government agree that a remand is necessary and no review of the action by a GMHB occurred, any subsequent request for review must be by means of a PFR rather than a compliance hearing. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

REMAND BY COURT

- This case was remanded to the Board by the State Supreme Court to "determine whether the county's designations of agricultural land comply with the GMA, using the correct definition of agricultural land".[3] The County has now repealed the provisions of the County Code that the Board found invalid for failing to properly designate agricultural resource lands: LCC 17.10.126(a), 17.10.126(b), LCC 17.30.590(1)(c). It also repealed those portions of Resolution 03-368 which mapped agricultural resource lands and Sections B (4) and Section D of the Resolution, as they were also subject to noncompliance and invalidity determinations. By its actions, the County has effectively mooted the Supreme Court's remand order because the compliance of the "county's designations of agricultural land" have been altered by these enactments. The Board must, therefore, review the current designation criteria and mapping to determine if they are compliant, rather than revisiting the designation criteria which were the subject of the remand. *Panesko v. Lewis County,*

[3] *Lewis County v. Western Washington Growth Management Hearings Board, et al*., Washington State Supreme Court Docket No. 76553-7, August 10, 2006, at 2.

Case. 00-2-0032c and *Butler v. Lewis County*, Case 99-2-0027c, Order on Compliance/Invalidity (June 8, 2007)

- After remand from a Court of Appeals decision and notice to the parties regarding the request for an extension or a progress report, when no party responded the case was considered abandoned and dismissed. *Wells v. Whatcom County* 00-2-0002 (MO 1-31-01)
- A finding of compliance for Mason County in its designation of forest lands of long-term commercial significance was made in accordance with the decision in *Manke v. Diehl* 91 Wn. App. 793 (1998). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 2-18-00)
- After Superior Court remand orders of April 4 and June 11, 1997, a GMHB remand hearing was held and a remand order entered August 11, 1997. The order provided that the matters set forth in the Superior Court appeal were remanded to the county to achieve compliance with earlier GMHB orders as modified by the Superior Court. Particularly in light of the 1997 amendments to RCW 36.70A.330, jurisdiction did exist under these circumstances for a GMHB to review the county's action in spite of an absence of a PFR challenge filed within 60 days of the notice of publication of such action. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- Where a Superior Court determines that no substantial evidence existed to support a county's prior RL designation, the proper issue at the subsequent compliance hearing is whether petitioners met their burden under the clearly erroneous standard to demonstrate that the new RL designations did not comply with the GMA, regardless of the correlation between the new designations and the designations reversed by the Superior Court. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- A superior court decision upheld the January 26, 1998, refusal to rescind invalidity where the county adopted criteria linked to GMHB orders. The court directed that rescission of invalidity be granted for the 4 zones for which the county had established "procedural" criteria. Additional conditions from the Superior Court were imposed. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)
- Where the superior court remand was precise in its holding, a formal motion by a local government and a further hearing was not required prior to entry of an order rescinding invalidity. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)
- Where a superior court remand post-dated the 1997 amendments to the GMA, a GMHB will review the matter taking into account amendments that were made subsequent to the original action by the local government, particularly where no party objects to that procedure. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Where a superior court reverses portions of the FDO, the matter is remanded to the local government to achieve compliance consistent with

FDO as modified by the superior court. *Achen v. Clark County* 95-2-0067 (MO 8-11-97)

RESOURCE LANDS – *SEE* NATURAL RESOURCE LANDS

RURAL CENTERS

- Where a county fails to follow its own CP policies and to do a .070(5) rural analysis for an expansion of a rural village designation, compliance with the GMA is not achieved. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- RCW 36.70A.110(4) does not allow a county to extend a 4-inch sewer line when the county has not shown that the extension is "necessary to protect public health and safety and the environment". The record only demonstrated that a "betterment of health and/or environment" would be obtained. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- The designation of an area as a rural village recognizes existing rural development patterns in the surrounding rural areas, reduces converting undeveloped land into sprawling, low-density development and is harmonious with Goal 2. *Solberg v. Skagit County* 99-2-0039 (FDO, 3-3-00)
- Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. *Solberg v. Skagit County* 99-2-0039 (FDO, 3-3-00)
- The establishment of villages, hamlets, and activity centers in rural areas that were based exclusively on existing conditions without any of the analysis required by RCW 36.70A.070(5)(d) does not comply with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Where the record showed compliance with RCW 36.70A.070(5) in designating rural centers because the county started at the correct beginning point, adopted appropriate criteria, and applied those criteria on a consistent basis and minimized and contained existing areas of more intense development, petitioner had not sustained its burden of showing the county's action was clearly erroneous. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (Compliance Order, 5-11-99)
- The GMA does not envision the creation of new small towns in rural areas at the IUGA stage of planning. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- The GMA requires that a county preclude sets of clusters of such magnitude that they will demand urban services. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)

- RCW 36.70A.070(5) requires that changes to existing rural areas be addressed at the CP stage. The GMA now provides for rural development of existing residential or mixed-use areas, intensification of developments on recreational or tourists lots, intensification of development on lots with isolated nonresidential uses, and minimization and containment of existing areas or uses of more intense rural development. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- Densities that are more intense that 1 du per 5 acres are not typically rural in character and exist in the rural environment, in the main, as part of AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- RCW 36.70A.070(5)(d)(iii) now allows commercial intensification of isolated small-scale businesses and cottage industries. Expansion of nonconforming uses within existing parcels does not necessarily fail to comply with the GMA. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- RCW 36.70A.070(5)(b) requires that the rural element "shall provide for a variety" of rural densities. Variegated densities are particularly appropriate in counties whose existing rural characteristics can accommodate such a variety of densities. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- The allowance of a range of uses including auction houses, auto sales, banks, bowling alleys, etc., in rural areas did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- The delineation of lines tightly drawn around pre-existing built-up areas which allowed only limited infill for rural villages complies with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- The GMA precludes rural centers from expansion beyond current development, except for infill. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Activities permitted in rural centers must be dependent on a location in a rural area, functional and visual compatibility with that area, and limits in size and density to preclude need for future urban services. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Infill of historical development patterns is allowable in rural centers as long as it is contained and does not create a new pattern of sprawl. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)

RURAL CHARACTER

- The Board concurs with the County that "There is not, however, a blanket prohibition within the GMA on non-residential uses that are *less* intensive and consistent with rural character outside of LAMIRDs." The rural areas of counties, outside of LAMIRDs, are not reserved for purely residential uses. Instead, rural development can consist of "a variety of uses and residential densities".13 It is only "more intensive rural development" that the GMA requires to be contained in specially designated LAMIRDs. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c, Order on Compliance, at 11 (Jan. 21, 2009)

- *See Bayfield Resources/Futurewise v. Thurston County,* Case No. 07-2-0017c, FDO, April 17, 2008 at 19. (Affirming Board's previous holdings that the written record explaining how the rural element harmonizes the goals of the GMA required by RCW 36.70A.070(5) does not need to be a distinct and separate document if the jurisdiction's comprehensive plan is clear in its description of how its amendments harmonize with the overall goals).
- The new exemption provides that substandard lots in rural areas created by public rights-of-way can be "existing lots of record" and developable without regard to the underlying zoning density requirements. Some of the lots thus created are smaller than the lot sizes required for the allowed densities in the rural zones in which they are located. The County established the rural densities as part of the rural element of its comprehensive plan and in aid of protecting Island County's defined "rural character." Under Ordinance C-61-06, the lots created by public rights-of-way are not reviewed to assure conformance with either rural densities or "rural character." *WEAN v. Island County,* Case No. 06-2-0023, FDO, at 15 (Jan. 24, 2007)
- In rural lands, the Board finds that the small number of detached ADU permits issued annually under the conditions placed on them will not disturb the existing compliant scheme of rural densities. The Board determines that because of the limitations described in the regulations and the historical pattern of guesthouses, permitting a small number of such detached ADUs in rural lands will not upset the traditional rural pattern of development in San Juan County and will not alter its rural character. *Friends of San Juans v. San Juan County,* Case No. 03-2-0003c coordinated with *Nelson et al v. San Juan County,* Case No.06-2-0024, FDO/Compliance, at 3 (Feb 12, 2007).
- The County Commissioners found that both commercial and noncommercial farming are important to the rural character of Island County. Rural character, they found, is part of the economy and culture of the County. They determined that noncommercial farming activities in rural designations contribute to the rural character of Island County and preserve the County's agricultural heritage. Therefore, the Commissioners found that the contributions of both noncommercial farming and commercial farming should be recognized and protected. Because of the number of critical areas located on parcels in rural noncommercial agricultural use, the Commissioners found that the standard buffer requirements would threaten the ability of rural agriculture to continue and that BMPs would assist rural agriculture to coexist in conformity with GMA requirements for the protection of critical areas. We find that, with its survey of agricultural activity on Island County and the Commissioners' findings, the County has established a sufficient rationale, based on its local circumstances, for the need to adopt special measures to protect critical areas that also preserve existing and ongoing agricultural activities in its noncommercial rural zones. WEAN v. Island County, WWGMHB

Case No. 98-2-0023c (2006 Order Finding Compliance of Critical Areas Protections in Rural Lands, 9-1-07)

- RCW 36.70A.070(5)(c) creates an overall requirement to create a written record harmonizing the goals of the GMA with the County's rural element, but does not create a separate requirement for the same process in the establishment of rural character. *Diehl v. Mason County* 95-2-0023c (Compliance Order, 11-12-03)
- Rural character is a pattern of use and development in which open space, natural landscape and vegetation predominate over the built environment. Rural character fosters traditional rural lifestyles in a rural based economy, provides an opportunity for rural visual landscape and is compatible with uses by wildlife and for FWHCA and that reduces inappropriate conversion of undeveloped land into sprawling low-density development. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated NRLs. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

RURAL DENSITIES (SEE ALSO RURAL CHARACTER)

- While [Petitioner] acknowledges that "[W]hether a particular density is rural in nature is a question of fact based on the specific circumstances of each case," it nevertheless maintains that a density of 1 dwelling unit per 2.4 acres is "characterized by urban growth" and inconsistent with the density otherwise allowed in the rural zones. However, if it is agreed that the determination of rural density is based on the specific circumstances of each case, it is not appropriate to dismiss a 1du/2.4 acre density out-of-hand, but instead to apply the density, if at all, where it is consistent with existing rural development. In fact, there are areas in Clallam County where a density of 1du/2.4 acre can be consistent with a rural environment, when appropriately limited in a manner such as the County now provides. *Dry Creek Coalition, et al v. Clallam County,* Case No. 07-2-0018c, Compliance Order (Nov. 3, 2009)
- To be clear, while this Board found that the rural character of Clallam County is a rural density of 1 du/5 acre, the Board has not held that no variation from that density is allowed under any circumstances. In fact, the clear language of the GMA, which requires "a variety of rural densities," would not permit such a holding. Instead, the Board found that the visual landscape and farm-based economy of the County was dominated by lots of greater than five acres in size and that, by authorizing densities "that do not reflect the existing landscape or economy of the area, the County has failed to maintain the traditional rural lifestyles of the residents of Clallam County." *Dry Creek Coalition, et al v. Clallam County,* Case No. 07-2-0018c, Compliance Order (Nov. 3, 2009)

- FARM SIZE: [In asserting rural density is, at a minimum 1 du/5 acre, Futurewise relied on the average farm size within Clallam County] Futurewise is essentially arguing that if a lot is too small to farm then it is *per se* urban. To determine something is *per se* urban based on a single factor is to essentially establish the bright line that the *Viking* Court found inappropriate. Although the Board concedes that the average farm size relates strongly to the visual rural character of the area, the ability of land to viably produce agricultural products is not, in and of itself, the defining factor in regards to whether something is rural. The purpose of rural lands is not primarily the production of agricultural products as Futurewise asserts based on the GMA's definition of urban growth. As noted *supra,* rural areas provide much more than solely agricultural land. The ability of land to be productive is more appropriate in the context of agricultural lands. It is the County's own data that is more persuasive … Given the County's reliance on farming to sustain traditional rural lifestyles and rural-based economies within the *Rural Lands Report*, the size of existing, operating farms is persuasive when determining what the character of the County's rural areas is. Based on statistics provided by Futurewise and the County itself, farms within Clallam County average 25 acres, with farms generally being five acres or greater *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 60.
- LAND USE PATTERNS: The GMA specifically references land use patterns as a defining feature with rural lands. RCW 36.70A.011 directs a county to "foster land use patterns" and 36.70A.030(15) further provides the rural character is comprised of land use patterns … [relying on the County's eight zoning districts and statistics] in regard to the land use pattern of Clallam County's existing rural area, more than half of the County's rural land is comprised of parcels greater than 4.81 acres each. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 61.
- The Board recognizes the GMA mandate for Clallam County to provide for a variety of rural densities and permits it discretion in making planning decisions. However, the densities the County selects must be *rural* in nature. The importance of rural lands and their character is specific, looking to land use patterns for establishing rural character and seeking to foster traditional rural lifestyles and economies that a County has historically provided. By authorizing densities that do not reflect the existing landscape or economy of the area, the County has failed to maintain the traditional rural lifestyles of the residents of Clallam County as required by the GMA. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 63.
- *See also: Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 61-63. (Board's response to Futurewise's arguments on rural densities based on ground and surface water quality, impervious coverage, traffic, greater demand for water, habitat loss and fragmentation, higher development costs, adverse

impacts on water resources due to faulty on-site septic systems, including shorelines and shellfish production, and a redirection of growth from urban areas.)

- This provision is of even greater concern because RR 1/5 is the *least* dense of the County's rural residential designations. The determination of proper rural density levels depends in large measure upon the GMA's strictures against promotion of sprawl. 48.3 percent of the County's rural residential areas fall into the RR 1/5 category. CP Table 2-1A at 2-18 – 2-19. With such a large portion of the County's rural area designated as RR 1/5, the net density level of one dwelling unit per four acres in the RR 1/5 zone increases the "conversion of undeveloped land into sprawling, low-density development in the rural area," in contravention of RCW 36.70A.070(5)(c)(iii). *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, 7-20-05)
- [W]here the rural designations and zones themselves do not include a variety of rural densities, the comprehensive plan and development regulations must demonstrate how the "innovative techniques" create such varieties of densities in the rural area. *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, July 20, 2005)
- Contrary to the stated purpose, the family member unit provisions do not protect farmlands from incompatible uses since the provisions allow increased residential development which, in turn, reduces the amount of farmland available for farming. *Yanisch v. Lewis County,* 02-2-0007c (Order on Compliance Hearing – 2004 3-12-04)
- A county, in creating 194 new Limited Areas of More Intensive Rural Development (LAMIRDs) must clearly map those LAMIRDs in order to achieve compliance with RCW 36.70A.070(5). *Dawes v. Mason County*, 96-2-0023c (Compliance Order, 8-14-02) (Compliance Order [For Compliance Hearing 7])
- Where the county designates approximately 95,000 acres of rural lands as 1 dwelling unit per 5 acres, 105,000 acres as 1 dwelling unit per 10 acres, and 150,000 acres as 1 dwelling unit per 20 acres, it has complied with the GMA requirement for a variety of rural densities. *Mudge, Panesko, Zieske, et al. v. Lewis County*, 01-2-0010c (Compliance Order, 7-10-02) Also *Panesko v. Lewis County*, 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (Compliance Order, 7-10-02)
- BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)

- Where a 192 acre property meets some, but not all, of the CP criteria for designation of 1:20 and/or 1:10, a County is within its range of discretion to designate the entire property as 1:10 rural residential under the record in this case. *OEC v. Jefferson County* 00-2-0019 (Compliance Order, 8-22-01)
- A change in density of a particular area from 1 du per 0.5 acre to 1 du per 5 acre, does not have a probable adverse environmental impact and the County's SEPA actions are in compliance with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A change in rural densities which reduces future developable acreage from 85,000 to 38, 000 under the unique facts and records in this case complies with the GMA. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The rural element of .070(5) is directed toward maintaining rural character and toward <u>limiting</u>, and <u>containing</u> any existing non-rural growth in rural areas. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)

- In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- An urban reserve designation of a remainder area from a cluster development that is implemented throughout the county and at the owner's discretion does not comply with the Act. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A shift of an urban commercial industrial lands allocation to non-urban areas under the record in this case does not comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- Allowance of a second "guesthouse" as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially interferes with the goals of the Act and is determined to be invalid. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)
- A one unit to five acre density does not, *per se,* constitute low-density sprawl. *OEC v. Jefferson County* 00-2-0019 (FDO, 11-22-00)
- Where no large lots of rural land exists that can reasonably be restricted from a uniform 5 acre development, and where unique local circumstances exist, a uniform 5 acre development pattern does comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- The adoption of a uniform 1 dwelling per 5 acres in the rural areas does not satisfy the requirements of .070(5) and substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Allowance of a 10-acre minimum lot size within agricultural RLs with the associated possibility of 1 du per 5 acre densities in some areas as part of a clustering program, complies with and does not substantially interfere with the goals of the GMA. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 8-19-99)
- Extensive use of 1 du per 5 acre densities and allowance of even more intense densities in AMIRDs without the balance of lower 1 du per 10 acre and 1 du per 20 acre densities create high average densities that do not comply with RCW 36.70A.070(5) and .030(14). *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- Densities that are more intense that 1 du per 5 acres are not typically rural in character and exist in the rural environment, in the main, as part of AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- RCW 36.70A.070(5)(d)(iii) now allows commercial intensification of isolated small-scale businesses and cottage industries. Expansion of

nonconforming uses within existing parcels does not necessarily fail to comply with the GMA. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)

- A CP which adopts a variety of rural densities of 1 du per 5 acres, 1 du per 10 acres and 1 du per 20 acres that allows creation of fewer than 1,000 new lots during the planning period fulfills the requirement of RCW 36.70A.070(5)(b) for a "variety of rural densities." *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)
- An ordinance which allowed lots as small as 12,500 square feet continued to allow non-rural densities in rural areas and thus did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- The use of bonus densities along with failure to limit the number of clustering lots allows non-rural densities in rural areas at a magnitude that demands urban services. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- When an ordinance adopted in response to a determination of invalidity continued to allow non-rural densities in rural areas, and the local government failed to carry its burden of proving the elimination of substantial interference and petitioners proved noncompliance, a prior determination of invalidity will continue. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- While intensive rural development is now allowed by the GMA such development must be subject to minimization and containment. Such rural areas must include only appropriate rural uses not characterized by urban growth and must be consistent with a rural character. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- Where the record demonstrated that a greater variety of rural densities, a decrease in urban and rural sprawl and an increase in RL conservation would be achieved by a greater than 5-acre minimum lot size, maintaining a minimum 5-acre lot size throughout the county did not comply with the GMA and substantially interfered with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- A recognition of growth that will occur outside IUGAs due to preexisting lots in rural areas must not encourage growth in those areas but merely recognize its existence. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A DR which allowed expansion of 1 and 2.5-acre minimum lot sizes in rural areas prior to adoption of RL designations and conservation and before an overdue CP was completed substantially interfered with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (Compliance Order, 8-28-96)
- The requirement of RCW 36.70A.070(5) to provide for a variety of rural densities must involve densities that are rural and not urban. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Invalidity was found for rural densities more intense than 1 dwelling unit per 3 acres and above under the record in this case. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)

- The imposition of a 5-acre minimum lot size north of a designated "resource line" under the record in this case did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The absence of a cap on PUD clusters in addition to a relaxation of aggregation standards to allow 8,400 square foot minimum lot sizes outside of an IUGA did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- Rural densities of 1 dwelling unit per acre are not absolutely prohibited, but would rarely comply with the goals and requirements of GMA. A reasonable and thorough analysis of the necessity for such densities is required before compliance can be achieved. Compliance decisions of a GMHB are based upon the record of each case, and involve concepts of regionality and local decision-making. Therefore, no "bright line" density requirements can be established. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- A rural density of 1 dwelling unit per acre without proper analysis and appropriate rationale did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

RURAL ELEMENT

1. In General

- [In *WEAN v. Island County,* Case No. 08-2-0032, Final Decision & Order (May 15, 2009), the Board addressed several reasons the County provided to justify smaller, segregated lots within the rural area as to unique local circumstances, limited application, bright line rules, and rural character].

  Unique Local Circumstances: the County has failed to show how this situation is "unique to Island County". In fact, the bisection of property is not a "unique local circumstance" but occurs throughout the state. Further, while the GMA provides that "in establishing patterns of rural densities and uses, a county may consider local circumstances," Ordinance C-117-08 does not "establish a pattern of rural densities" at all. The densities resulting from exceptions to the rural densities provided in the County Comprehensive Plan and zoning code follow no pattern because those densities are not the result of planning but are the mere residual effect of the division of property by right-of-way. The Board holds that the residual densities resulting from the existence of road rights-of-way is not a "pattern" of rural densities based on local circumstances as contemplated by the GMA. FDO, at 12.

  Limited Application: While the County stresses the limited scope of this provision, its argument is undercut by the fact that the location and size of the parcels exempted from lot size and density requirements is not the result of thoughtful planning. There is no evidence the County determined a particular area could absorb a specific number of lots of a particular size/density and still retain the area's rural character. Instead, the properties affected, by the very nature of the exemption, are located

wherever a road crossed a property line. Thus, even if the Board were to conclude that, on a County-wide basis, there was a *de minimis effect* on rural character, this is not necessarily the case in those particular areas where the exemptions apply. There are no provisions in place in those circumstances to protect rural character, such as development application review, because the creation of these substandard lots is not the result of land use planning, but simply of roadway engineering. As shown at the HOM, in those areas where a road crosses a parcel at a tangent, an entire line of substandard properties is created. FDO, at 13

Bright Line Rules: While the GMA does not establish numerically-based rural densities, and while the Growth Management Hearings Boards do not have the power to dictate densities, Island County can and has established rural densities … The Board is not determining bright line maximum rural density rules, as the County suggests. Rather, the County has already established what it believes are appropriate rural densities [5 acre parcel]. FDO, at 13-14.

Rural Character: The threat posed by Ordinance C-117-08 to the rural character of Island County exists not when viewing the County as a whole, but on those areas where the exemption would specifically apply. In those areas, the County concedes that the effect would be to convert undeveloped lands with a resulting density below that provided for in the Comprehensive Plan and Zoning Code. Such sub-standard densities are not consistent with rural character as the County asserts, but instead allow unplanned, low-density sprawl in the rural areas … Ordinance C-117-08 creates substandard low-density development in the rural areas of Island County. By the County's own admission, this is not an isolated phenomenon but applies to hundreds of parcels in the rural areas … Ordinance C-117-08 allows a significant number of below-rural density lots to be developed, thus creating, rather than reducing, "sprawling low-density development in the rural area." FDO, at 14-15.

- The Board concurs with the County that "There is not, however, a blanket prohibition within the GMA on non-residential uses that are *less* intensive and consistent with rural character outside of LAMIRDs." The rural areas of counties, outside of LAMIRDs, are not reserved for purely residential uses. Instead, rural development can consist of "a variety of uses and residential densities".13 It is only "more intensive rural development" that the GMA requires to be contained in specially designated LAMIRDs. *Friends of Skagit County, et al v. Skagit County,* Case No. 07-2-0025c, Order on Compliance, at 11 (Jan. 21, 2009)
- *See Bayfield Resources/Futurewise v. Thurston County,* Case No. 07-2-0017c, FDO, April 17, 2008 at 19. (Affirming Board's previous holdings that the written record explaining how the rural element harmonizes the goals of the GMA required by RCW 36.70A.070(5) does not need to be a distinct and separate document if the jurisdiction's comprehensive plan is clear in its description of how its amendments harmonize with the overall goals).

- The definition of “rural services” provides that rural services do *not* include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4). *ADR/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 12.
- If sanitary sewers are not rural services, then “sanitary sewer systems”, as defined in the GMA as part of “urban services”, do not encompass the traditional rural means of handling sewage, i.e. septic systems. This is consistent with the GMA definition of “urban services”; septic systems are also excluded under that definition because they are frequently associated with rural areas. We conclude, therefore, that under the GMA, septic systems, whether individual or community, are not considered “urban services”. *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 12.
- The conservation of productive agricultural, forestry and mineral resource lands occurs, under the GMA, through the natural resource lands designation process (RCW 36.70A.040 and 36.70A.170) and through the adoption of development regulations to assure their conservation (RCW 36.70A.060(1)). Agriculture and forestry must be permitted in the rural areas (RCW 36.70A.070(5)(b)), but there is no requirement that rural lands be primarily devoted to those uses. Therefore, there is no requirement that the County conserve “productive” rural lands for natural resource industry purposes. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- [RCW 36.70A.070(5)(c)] requires the rural element of the County’s comprehensive plan to, among other things, contain rural development and reduce the inappropriate conversion of undeveloped land into low-density sprawl. Petitioners allege that the County has failed to do this because it does not have a development regulation restricting the number of rural parcels that may be developed. The County does have development regulations addressed to nonconforming rural lots, even if they do not restrict development as Petitioners deem necessary… [T]here is no GMA requirement that the County adopt a specific approach to “containing or otherwise controlling rural development” or to “reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area”. Indeed, the reverse is the case. That is, the GMA expressly directs the board to “grant deference to counties and cities in how they plan for growth, consistent with the goals and requirements of this chapter”. To simply allege that there must be a regulation that limits the number of rural lots that are developed fails to recognize the Petitioners’ burden to show why the County’s choices are clearly erroneous. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- Every county must assure that rural development is contained and that inappropriate conversion of undeveloped land into sprawling, low-density development is reduced in the rural areas. RCW 36.70A.070(5)(c)(i) and

(iii), and 36.70A.070(5)(d)(iv). *Better Brinnon Coalition v. Jefferson County,* 03-2-0007 (Compliance Order, 6-23-04)

- A county which was given 90 days in the FDO to restrict the parameters for rural signage to protect rural character and after 230 days had still failed to do so, was found to be in substantial interference with the fulfillment of Goals 2 and 10 of the Act. *Evergreen Islands v. Skagit County*, 00-2-0046c (Compliance Order, 1-31-02)
- A county's rural area development regulations are not compliant if they allow subdivision resulting in densities greater than 1 dwelling unit in 5 acres. *Yanisch, et al. v. Lewis County*, 02-2-0007c (FDO, 12-11-02)
- A county's definition of rural character is noncompliant if it incorporates rural attitudes which give rise to land use regulations that do not conform to GMA goals and requirements. A county cannot exempt its rural residents from the requirements of the Act, even if doing so would reflect the wishes of those residents. A goal which states that residents of remote parts of the county are allowed to live as they choose, as long as they do not infringe upon the rights of neighboring property owners or cause environmental degradation, fails to harmonize with GMA goals. *Yanisch, et al. v. Lewis County*, 02-2-0007c (FDO, 12-11-02)
- A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The rural character requirements of RCW 36.70A.070(5)(b) and (c) as well as RCW 36.70A.030(14) involve more than just preservation of "natural" rural area. A county must assure that the "natural landscape" predominates, but also has a duty to foster "traditional rural lifestyles, rural based economies and opportunities" to live and work in the rural area. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density,

but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county does not comply with the rural character and visual compatibility requirements of the Act by simply declaring that what existed on the date it became subject to the Act and whatever development occurred thereafter is the county's definition of rural character. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A framework analysis of the requirements of RCW 36.070A.070(5) is set forth in this case. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The rural element of .070(5) is directed toward maintaining rural character and toward <u>limiting</u>, and <u>containing</u> any existing non-rural growth in rural areas. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Where a county fails to follow its own CP policies and to do a .070(5) rural analysis for an expansion of a rural village designation, compliance with the GMA is not achieved. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Allowances under a rural signs DR that would allow signage to predominate over open space, natural landscape and vegetation does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A rural character definition which essentially says that whatever existed anywhere in the rural area on June 30, 1990 became the existing rural character of that particular county does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas

substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)

- The record demonstrates compliance with RCW 36.70A.070(5)(d)(iii) in establishing and designating cottage industry/small scale business areas. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- Preexisting parcelization of surrounding lots provides no reason to perpetuate the past with continued reliance on consumptive land use patterns in the rural areas. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- Where no large lots of rural land exists that can reasonably be restricted from a uniform 5 acre development, and where unique local circumstances exist, a uniform 5 acre development pattern does comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- The redesignation of an area to rural residential within a "sea of rural resource land" which was done because the rural resource land allowed certain activities, does not comply with the Act. A county may not permit certain activities in resource areas and then use the existence of those activities as a reason to redesignate resource areas to other categories. *FOSC v. Skagit County* 99-2-0016 (FDO, 8-10-00)
- Under the provisions of RCW 36.70A.110(4) prohibiting urban governmental services in rural areas except in limited circumstances the phrase "basic public health and safety and the environment" involves two components. "Basic public health and safety" involves a component that encompasses a variety of protections for human well-being. "The environment" relates to protections that are directly beneficial to flora and fauna, but usually only indirectly beneficial to human well-being. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- In determining compliance with the rural element, a CP must only include lands that are not otherwise designated as UGAs and not otherwise designated as RLs. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- The rural element of a CP involves areas where a variety of uses and residential densities are allowed. A variety of uses and densities are to be established at a level that is consistent with the preservation of rural character and the requirements of .070(5). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Rural character is a pattern of use and development in which open space, natural landscape and vegetation predominate over the built environment. Rural character fosters traditional rural lifestyles in a rural based economy, provides an opportunity for rural visual landscape and is compatible with uses by wildlife and for FWHCA and that reduces inappropriate conversion of undeveloped land into sprawling low-density development. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated NRLs. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The adoption of a uniform 1 dwelling per 5 acres in the rural areas does not satisfy the requirements of .070(5) and substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A one-time redesignation of rural lands to correct mapping errors and misapplication of designation criteria that was postponed to the first amendment cycle as promised in the CP, was not required to comply with ESB 6094, and did comply with the GMA. *FOSC v. Skagit County* 99-2-0016 (FDO, 9-7-99)
- Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- Except in extremely unusual circumstances not shown by the record here, 2 acre and ½-acre lots do not constitute appropriate rural growth. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)
- 1997 Legislative amendments enacted through ESB 6094 more clearly defined the type of growth that is allowed in rural areas. *Friday Harbor v. San Juan County* 99-2-0010 (FDO, 7-21-99)

- A countywide uniform 5-acre minimum lot size conflicts with the GMA requirements for conservation of RLs and protection of CAs and prevents long-term UGA flexibility. Thus, it does not comply with the GMA. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- The GMA changes previously allowable land use patterns in rural areas. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Extensive use of 1 du per 5 acre densities and allowance of even more intense densities in AMIRDs without the balance of lower 1 du per 10 acre and 1 du per 20 acre densities create high average densities that do not comply with RCW 36.70A.070(5) and .030(14). *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- RCW 36.70A.070(5)(b) requires that the rural element "shall provide for a variety" of rural densities. Variegated densities are particularly appropriate in counties whose existing rural characteristics can accommodate such a variety of densities. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)
- Cities are the appropriate entity for urban growth issues while counties must focus on rural growth. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- RCW 36.70A.070(5)(a) requiring a local government to develop a written record explaining how the rural element harmonizes the planning goals and meets the requirements of GMA does not always require the creation of a separate document or report adopted by local decision-makers. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- Application by a county of the criteria found in RCW 36.70A.070(5) in dealing with existing industrial uses that recognizes and protects the economic viability of such uses while restricting their location to appropriate areas, complies with the GMA. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- The 1997 amendments to RCW 36.70A.050(5) do not mandate infill of rural commercial parcels but allows such action subject to very strict requirements. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)
- The GMA requires rural areas to accommodate appropriate rural uses not characterized by urban growth and which is consistent with rural character. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- As long as an ordinance precluded new urban growth outside of UGAs, serving new rural development with community on-site septic systems rather than individual septic tanks did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- An ordinance, adopted in response to a finding of noncompliance, that allowed smaller "urban sized" lots and reduced the buffer area for such "urban sized" lots in the rural areas and RLs did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 2-5-98)
- Existing zoning cannot be used as a sole criterion for the retention of commercial and industrial zoning under the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)

- The allowance of mining activity in rural areas did not violate the GMA. *Abenroth v. Skagit County*97-2-0060 (FDO, 1-23-98)
- The use of historical development patterns for expansion of residential and commercial growth beyond what is needed to allow infill and provide appropriate services to the surrounding community did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- The failure to change or make more difficult continuing development of "urban sized lots" or "multi-family zones" in rural areas did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Nonresidential uses outside IUGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- While rural lands may be the leftover meatloaf in the GMA refrigerator, they have very necessary and important functions including an important symbiotic relationship to provide necessary support of and buffering for RLs. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- "Urban sprawl" has the same devastating effects on proper land uses and efficient use of tax dollars as urban sprawl. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A "variety of densities" requirement set forth in the GMA can be accomplished by existing and historical vested lot sizes, and need not be exacerbated in the CP. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Rural areas are the leftover meatloaf in the GMA refrigerator. *Port Townsend v. Jefferson County*94-2-0006 (FDO, 8-10-94)
- An appropriate definition for rural areas is found in WAC 365-195-210(19). *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- Urban government facilities and services are not totally prohibited in rural areas but may only be placed there for compelling reasons. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- The GMA ends the prior practice of planning for tax revenue purposes in the rural areas of counties. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

SANCTIONS

- *See Alexanderson/Dragonslayer, et al v. Clark County,* Case No. 04-2-0008, Order Finding Continuing Non-Compliance and Invalidity, at 9-11 (Jan. 16, 2009) *for discussion RE:* Board will not request sanctions pursuant to RCW 36.70A.300(3) is a jurisdiction demonstrates good faith and motivation in achieving compliance given the complexities of a case.
- [W]here a county is working reasonably to respond to the Boards' finding of non-compliance, sanctions are not warranted. *ICAN v. Jefferson County,* Case No. 03-2-0010 coordinated with Case No. 04-2-0022, Order on Compliance, at 9 (April 9, 2007)

- A GMHB considers a wide range of evidence in deciding whether to recommend sanctions to the Governor. Primary in that decision is whether the local government is proceeding in good faith to meet the goals and requirements of the GMA and whether the local government has unreasonably delayed taking the required action. *WEAN v. Island County* 95-2-0063 (Compliance Order, 2-17-98)
- A delay of more than 3 years past the deadline for adopting a CP is unreasonable and therefore a request to recommend sanctions was appropriate. *WEAN v. Island County* 95-2-0063 (Compliance Order, 2-17-98)
- In order to obtain a recommendation for sanctions a petitioner must show that the local government is engaged in a bad-faith failure to comply with the goals and requirements of the GMA. Such showing may exist from a local government's numerous missed deadlines. *FOSC v. Skagit County* 95-2-0065 (MO 1-27-97)
- A recommendation for sanctions is only to be used in the most egregious of cases. This record did not demonstrate such a circumstance. *FOSC v. Skagit County* 95-2-0075 (Compliance Order, 8-15-96)
- Denial of access to sources of funding to local governments such as public works eligibility (RCW 43.155.070) and Centennial Clean Water Act (RCW 70.146.070) are referred to as "nonsanction consequences" of findings of noncompliance with the GMA. Those determinations are made by an appropriate agency and not associated with sanctions recommended by a GMHB. *Woodland, Petitioner* 95-2-0068 (FDO, 7-31-95)
- Sanctions were recommended. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)

SEQUENCING

- Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- The substantial progress of Mason County towards compliance in RLs and CAs removes the previous noncompliance regarding sequencing. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Within municipal UGAs efficient phasing of infrastructure is the key element, not the interim shape of the city limits boundary. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply

with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)

- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The failure of a county to complete RL and CA designations and DRs prior to IUGA designations, when such resource and CA lands were included in the IUGA, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The sequencing of designating and conserving RLs prior to adopting IUGAs must be followed unless there are overriding reasons in the record not to do so. *FOSC v. Skagit County* 95-2-0075 (FDO, 1-22-96)
- The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

SERVICE

- The GMA does not set forth a service requirement. Rather, the method of service on parties is set forth in WAC 242-02-230(1). *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13 2009)
- [In response to the City's argument that RCW 4.28.080 requires personal service, the Board stated] The Board's Rules, WAC 242-02, were adopted pursuant to RCW 36.70A.270(7) which requires the Boards to adopt administrative rules of practice and procedure. WAC 242-02 was originally adopted in 1992 and has been subject to various amendments since that time. The GMA makes no reference to RCW Title 4 - Civil Procedure, which addresses civil actions brought in Washington Courts. In addition, neither the GMA nor the WAC references RCW 4.28.080.

Rather, the GMA explicitly states the Administrative Procedures Act (APA), RCW 34.05, governs the practices and procedures of the Board. The application of the APA to the Board's practices and procedures is logical given the fact the Board is a quasi-judicial administrative agency created by the Legislature and not a court. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13 2009)

- The Board is not aware of a provision of the APA which limits service to personal service. RCW 4.28.080 pertains to civil actions filed in the courts and, as a quasi-judicial administrative agency, this provision of the RCWs is simply not applicable to the Board's proceedings. Therefore, under both the Board's rules and the APA, the mailing of a PFR is an appropriate manner of service so long as the PFR was deposited in the mail and postmarked on or before the date filed with the Board. *Laurel Park, et al v. City of Tumwater,* Case No. 09-2-0010, Final Decision and Order (Oct. 13 2009)
- *Bussanich, et al v. City of Olympia*, Case No. 09-2-0001, Order on Motion to Vacate, at (April 23, 2009)(Filing by mail of dispositive motion is complete when deposited in US Mail system, not internal office mail system).
- *Gagnon/Olympic Peninsula Development Co. v. Clallam County,* Case No. 09-2-0004, Order on Dispositive Motion, at 3-6 (May 4, 2009)(Filing of a Petition for Review in a charter county who has designated the County Auditor to receive such filings is not complete when petitioner filed Petition with County Administrator. WAC 242-02-230(1) provides for only two methods of service – personal or U.S. Mail – it does not provide for telefacsimile service).
- [Petitioners untimely filed objections with the Board and did not serve the County until a week later. However, the Board considered Petitioner's objections and stated:] During oral argument, the County did not formally object to the late filing or argue prejudice and for that reason the Board will consider Petitioner's objections. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order on Remand, at 3 (Oct. 23, 2008).
- RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure" does not authorize a GMHB to impose a jurisdictional service of PFR requirement when no such specific authority is provided in the GMA. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- Under RCW 36.70A.280 and .290 there is no requirement that a PFR be served anywhere except at the appropriate GMHB office. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- Where a local government did not demonstrate any prejudice from the failure to serve the PFR on it, a motion to dismiss was denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)
- The GMA does not have a requirement of service other than filing with a Board office. WAC 242-02-230 provides that substantial compliance is sufficient. In order to justify a dismissal for failure to serve, a local

government must demonstrate that it has suffered prejudice. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)

- Under WAC 242-02-230 a GMHB has broad discretion on the issue of dismissal for failure to properly serve a local government. The substantial compliance test, as well as the absent of any legislative requirement in the GMA that mandates service on a local government, means that absent a showing of prejudice by the local government a GMHB has no basis upon which to grant dismissal for failure to serve. *Kennon v. Clark County* 95-2-0002 (MO 5-9-95)

SETTLEMENT EXTENSIONS/MEDIATION

- All parties requested a stay of the proceeding in order to await resolution of matters pending before the State Legislature, in denying the request the Board stated:] [T]at the Board may only "…extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve settlement …" … [here the stated reason] failed to meet the statutory requirements. *Evans, et al v. City of Olympia,* Case No. 09-2-0003, Order Denying Request for Stay, at 1-2 (March 24, 2009)
- The Settlement Agreement purports to confer powers on the Board that have not been granted to it by the Legislature. The Growth Management Act does not authorize the Board to adjudicate the fulfillment of terms of settlement agreements. The purpose of settlement extensions is for the parties to reach an agreement among themselves. See RCW 36.70A.300(2)(b). While the Board is willing to grant extensions for the purpose of enabling the parties to reach a settlement that, in this case, appears to be helping, the Board cannot adjudicate whether the parties have abided by the terms of the settlement agreement. *Washington Environmental Council v. Jefferson County* 01-2-0013 (Corrected Order Extending Time For Issuing A FDO 7-9-04).
- Where the parties have previously stipulated to an extension of time for issuance of a FDO and as part of that extension order a date was fixed for the time of issuance of a new request for extension and no such request was made the case is dismissed. *Carlson v. San Juan County* 99-2-0008 (MO 2-29-00)
- Where the parties stipulate and pursuant to RCW 36.70A.300(2)(b) a GMHB finds that the stipulation could resolve significant issues in dispute, the request for extension for issuing a FDO is granted. *FOSC v. Skagit County* 98-2-0016 (MO 11-19-98)
- The new provisions of RCW 36.70A.300(2)(b) allow the parties to request a 90-day extension of the deadline for filing the FDO in order to explore options for settlement. *Birchwood v. Whatcom County* 97-2-0062 (MO 5-1-98)
- After the appointment of a settlement conference officer the parties were able to reach agreement on five of the seven issues presented in the petition. *TRG v. Oak Harbor* 97-2-0061 (FDO, 3-5-98)

- The most effective solutions to GMA issues are those developed at the local level as long as those solutions fall within the parameters of the GMA. Mediation and settlement procedures used by the parties are commended. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)

SHORELINE MANAGEMENT ACT (SMA)

- In regards to Petitioner's claim related to EHB 1653] The Board agrees that EHB 1653 contains retroactive language to expressly clarify the Legislature's intent when it adopted RCW 36.70A.480 in 2003 and that this legislation became effective prior to the issuance of the FDO. However, the Board finds nothing in EHB 1653 which requires Blaine to actively amend its CAO to include shoreline critical areas solely because of its passage or its retroactive language. Rather, the Board reads this legislation as merely clarifying that the GMA now has the authority to protect critical areas within shorelines if a jurisdiction has adopted a CAO which seeks to protect those areas. *RE Sources v. City of Blaine,* Case No. 09-2-0015, Order on Reconsideration at 4 (April 27, 2010).
- [In *CRSP/Jepson v. Whatcom County/Dept. of Ecology,* Case No. 08-2-0031, Final Decision & Order at 7 (April 20, 2009), in response to assertions that the County failed to adhere to the SMA public participation requirements because it adopted Ecology's revisions to the Draft SMP without any public participation *after* the Revised SMP was returned to the County from Ecology, and, in that regard the Board stated]: Although Petitioners cite GMA-based public participation cases, this statute [RCW 36.70A.480] specifically states that it is the procedures of RCW 90.58 which guide the adoption of SMPs, not those of the GMA. Thus, the interpretation of GMA-based public participation requirements, although potentially helpful, is not controlling. Therefore, the Board looks to RCW 90.58.090 for the procedures to be followed in the approval or amendment of a shoreline master program.
- The Board notes that neither the RCW nor the WAC sets forth any requirements for public input on a Revised SMP returned by Ecology to the originating jurisdiction. In accordance with RCW 90.58.090, after Ecology has conducted its review of a submitted SMP, it may do one of three things [Ecology selected Option 3 (Recommended specific changes) and Whatcom selected Option 2 (Submit an alternative proposal); with the submittal of an alternative Ecology has several Options, and it selected Option 1 (alternative was consistent/approval SMP) … The language of RCW 90.58.090(2)(e)(ii) is instructive here. If an alternative proposal is returned to Ecology, there is no language in the statute requiring Ecology to undergo additional public participation; it is free to approve the alternative SMP if it finds consistency. However, it is specifically noted that if Ecology deems the alternative inconsistent, it may return an alternative for *public and agency review.* Similar language is not present in RCW 90.58.090(e)(i) – which simply permits a local government to agree to Ecology's proposed changes. In addition, the Board notes that RCW

90.58.090 has no provision requiring the local government to subject a Revised SMP that has been returned from Ecology for additional public scrutiny and comment as to those revisions made by Ecology. Similarly, WAC 173-26-120 only addresses the local government's obligations up and until submittal of a proposed SMP to Ecology. Based on a plain reading of the SMA, there is nothing that requires additional public review of a Revised SMP that has been returned to the originating jurisdiction by Ecology if a jurisdiction decides to agree to Ecology's recommendations. *CRSP/Jepson v. Whatcom County/Dept. of Ecology,* Case No. 08-2-0031, Final Decision & Order, at 9-10 (April 20, 2009)

- The Board is also mindful of the provision in RCW 90.58.130 that requires Ecology and the County to provide the public with "a full opportunity for involvement in both [the] development and implementation" of master programs, and to "not only invite but actively encourage participation". In addition, the Board interprets the language in WAC 173-26-090 to provide for "early and continuous public participation" as applying throughout the adoption process. *CRSP/Jepson v. Whatcom County/Dept. of Ecology,* Case No. 08-2-0031, Final Decision & Order at 11 (April 20, 2009).
- The regulations at issue for [Petitioner] in this case relate primarily to the County's adoption of Channel Migration Zones (CMZs) for four of its most prominent rivers. The Board notes all of these rivers are within the jurisdiction of the SMA and therefore land located within 200 feet of either side of the rivers falls under the jurisdiction of the SMA. Therefore, despite the lack of a mandate and the pending motion for reconsideration [in the case of *Futurewise, et al v. WWGMHB*, 162 Wn.2d 242 (2008)], this Board will adhere to the Court's unambiguous holding that critical areas within the shoreline are regulated by the SMA. Thus, for the area of the CMZ that is within the 200 foot shoreline jurisdiction, the Board views the County's action effectively as a segment of its SMP update which is subject to review and approval by Ecology. However … CMZs are not limited to a 200 foot area bordering either side of a river. Rather CMZs expand outward from the river's edge and encompass land in excess of the area within the SMA's regulatory boundaries. For the area of the CMZs that are located outside the 200 foot shoreline jurisdiction, these are critical areas squarely within the GMA's jurisdiction pursuant to RCW 36.70A.060, .170, and .172. As such, this Board has jurisdiction to review the adopted regulations for compliance with the GMA. *OSF/CPCA v. Jefferson County,* Case No. 08-2-0029c, FDO, at 16-17 (Nov. 19, 2008).
- Pursuant to RCW 36.70A.280(1)(a), a growth management hearings board has jurisdiction to determine compliance with the Shoreline Management Act only "as it relates to the adoption of Shoreline Master Program or amendments thereto." Where the petition for review alleges only violations of the Shoreline Management Act but the county's challenged actions did not involve amending its Shoreline Master Program, the board has no jurisdiction. *Stephens v. San Juan County,* 02-2-0001 (Order of Dismissal, 3-20-02)

- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 10-12-00)
- A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- Where SEPA challenges are limited specifically to DOE's approval of SMP amendments, a GMHB reviews DOE's decision. Thus, a county motion to dismiss SEPA challenges is meaningless where the motion was not joined by DOE. *Floatplane v. San Juan County* 99-2-0005 (MO 5-3-99)
- The recent amendment to RCW 36.70A.290(2) authorizes a petition to a GMHB to include a challenge to whether the CP, DR, or amendments thereto adopted under GMA also comply with the SMA. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- The SMA and the SMP adopted by a local government are an element of a GMA CP. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- RCW 90.58.190 requires a GMHB to uphold the decision of DOE unless an appellant sustains the burden of proving that DOE's decision did not comply with the requirements of the SMA including the policies of RCW 90.58.020 and applicable guidelines, the goals and requirements of the GMA, and the SEPA requirements for adoption of amendments under RCW 90.58. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)

SHORELINES

1. Shorelines of Statewide Significance

- A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the

applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)

2. Shorelines of the State

- In an appeal of a proposed amendment to the local SMP for shorelines of the state, a GMHB must answer the questions of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA compliance relating to the adoption of the proposed amendment. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)

SHORELINES MASTER PROGRAMS (SMP)

- [In regards to Petitioner's claim related to EHB 1653] The Board agrees that EHB 1653 contains retroactive language to expressly clarify the Legislature's intent when it adopted RCW 36.70A.480 in 2003 and that this legislation became effective prior to the issuance of the FDO. However, the Board finds nothing in EHB 1653 which requires Blaine to actively amend its CAO to include shoreline critical areas solely because of its passage or its retroactive language. Rather, the Board reads this legislation as merely clarifying that the GMA now has the authority to protect critical areas within shorelines if a jurisdiction has adopted a CAO which seeks to protect those areas. *RE Sources v. City of Blaine,* Case No. 09-2-0015, Order on Reconsideration at 4 (April 27, 2010).
- [Relying in part on the Board's previous holding in *Evergreen Islands v. Anacortes* and WAC 173-26-191, the Board stated]: [The designation of critical area in the shoreline are by the Critical Areas Ordinance], which are incorporated by reference, are to be subject to public review at the time of their incorporation … Petitioners/Intervenor were entitled to "an opportunity to participate in the formulation of the regulations" including "their incorporation into the master program". To suggest that the public has no right to appeal the regulations as they are incorporated into the master program would render them passive participants and the SMA's provisions related to public participation meaningless. *CRSP/Jepson v. Whatcom County/Ecology,* Case No. 08-2-0031 FDO, at 14-15. (April 20, 2009)
- Had the County merely designated its shorelines as critical areas without consideration of whether those shorelines qualified as critical areas, the County would have run afoul of RCW 36.70A.480(5)'s requirement to designate those "specific" shorelines of the state that "qualify for critical area designation" … RCW 36.70A.480(5) permits Shorelines of the State to be considered critical areas when specific areas located within these shorelines qualify for critical area designation based on the definition of critical areas set forth in RCW 36.70A.030(5) and they have been designated as such by the local government … The County CAO designates as critical areas all areas that are of critical importance to the maintenance of special status fish, wildlife and/or plant species. .

CRSP/Jepson v. Whatcom County/Ecology, Case No. 08-2-0031 FDO, at 16-17. (April 20, 2009)

- [After reviewing the Record related to specific water bodies, the Board held]: In short, the County developed a record in its CAO, CAO maps, and Shoreline Inventory which supports the designation of Whatcom County's shorelines as a type of critical area – specifically, fish habitat. While the Board might well wonder whether some areas of the shoreline are so developed or isolated from protected species as to afford little habitat, Intervenors have not carried their burden of proof by showing that these [blanket] designations were clearly erroneous … The record in this case shows that these shorelines were designated as critical areas because of their role as fish and wildlife habitat conservation areas. . *CRSP/Jepson v. Whatcom County/Ecology,* Case No. 08-2-0031 FDO, at 19. (April 20, 2009)
- The County's adoption of Ordinance 7-2006 was not an amendment of the County SMP. Whatever regulations the SMP imposed on construction in shoreline jurisdiction prior to the adoption of Ordinance 7-2006 remain unaltered. We therefore conclude that the County was not required to comply with the notice and adoption procedures applicable to an amendment of its SMP. *Friends of San Juans, et al v. San Juan County,* Case No. 03-2-0003c coordinated with *Nelson, et al v. San Juan County,* Case No. 06-2-0024c, FDO/Compliance, at 56 (Feb. 12, 2007)
- Pursuant to RCW 36.70A.290(2)(c), appeals of Shoreline Master Program amendments to this Board are not ripe until the Department of Ecology has approved or disapproved the amendments, and notice of that decision is published. *Friends of the San Juans, Lynn Bahrych, and Joe Symons v. San Juan County* 03-3-0003 (Corrected FDO, 4-17-03)
- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- A CP policy adoption prohibiting mining within 100-year floodplain did not amount to a *de facto* amendment of the SMP and thus approval by DOE was not required. *Storedahl v. Clark County* 96-2-0016 (RO 9-15-97)
- For GMA planning counties adoption of amendments to the local SMP after July 23, 1995, are reviewed by a GMHB. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- A SMP element of a CP and/or DR must be internally consistent and consistent with all other aspects of a CP and DRs adopted by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth

in RCW 90.58.060 relating to guidelines adopted by the DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

- The portions of a SMP dealing with goals and policies are considered an element of the CP. All other portions of the SMP are considered DRs. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)
- 1995 amendments to RCW 36.70A.280 transferred jurisdiction to GMHBs to decide issues concerning amendments to local SMPs adopted by cities and counties planning under the GMA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- Under RCW 36.70A.480(2) amendments to SMPs continue to be processed under the provisions of the SMA, which requires approval by DOE. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- In an appeal of a proposed amendment to the local SMP for shorelines of the state, the scope of review addresses the question of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- A local government in amending its SMP must consider consistency with the goals and requirements of the GMA, SEPA and the SMA in reaching its decision. DOE is not authorized to and does not include the provisions of GMA or SEPA in its decision. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO, 6-19-97)
- Under RCW 36.70A.480, SMP use regulations are equivalent to GMA DRs. *Seaview v. Pacific County* 95-2-0076 (Compliance Order, 2-6-97)
- In 1996 the Legislature expanded the jurisdiction of a GMHB to include review of adoption of SMPs or amendments thereto. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- Where an amendment to the SMP was adopted after a DNS that did not include actual consideration of environmental factors shown in the record, a conclusion that a mistake was made under the clearly erroneous test was reached. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO, 5-11-95)

SHOW YOUR WORK – REQUIRED ANALYSIS

- [A]pplies when the GMA expressly requires certain kinds of analysis to have taken place … [this principle is not] "justify your work." The burden remains on Petitioner to demonstrate that the County's analysis is clearly

erroneous. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 13 (Aug. 6, 2007)

- Another source of major concern is sizing of the UGA. The County has not shown its work or analysis with regard to the need for commercial and institutional growth in the Eastsound UGA in the next 20 years, including an analysis of the impact of commercial and institutional needs on the land supply for residential housing . RCW 36.70A.110 (2) and RCW 36.70A. 115. *Stephen Ludwig v. San Juan County,* WWGMHB 05-2-0019c and *Fred Klein v. San Juan County,* WWGMHB 02-2-0008 (Compliance Orders, June 20, 2006) and *John Campbell v. San Juan County*, WWGMHB Case No. 05-2-0022c (FDO, 6-20-06).
- No analysis was presented that demonstrates a need for the 854 acres by which the Napavine UGA was actually expanded. The GMA requires the local jurisdiction to "show its work" when establishing UGA boundaries. See *Bremerton, et al. v. Kitsap County,* CPSGMHB Case No. 95-2-0039c (FDO, October 6, 1995) and *City of Tacoma et al. v. Pierce County,* CPSGMHB Case No. 94-3-0001 (FDO, July 5, 1994.) Otherwise, there would be no way to ensure or review the local jurisdiction's analysis required by RCW 36.70A.110. Since no evidence before the Board supports a need for the 854 acres by which the Napavine UGA was enlarged, Lewis County Resolution No. 05-326, Attachment D fails to comply with RCW 36.70A.110(1) and (2). *Futurewise v. Lewis County,* WWGMHB Case No. 06-2-0003 (FDO, 8-2-06).
- A reasonable analysis of current data is necessary prior to the establishment of an IUGA outside municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)
- Under WAC 365-195-050, -500 a local government has the responsibility of providing a record that demonstrates appropriate analysis of GMA goals and requirements and more than mere consideration of them. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

SPRAWL

- We agree that the GMA includes a goal to encourage economic development. RCW 36.70A.020(5). However, economic development may not occur at the expense of creating low-density sprawl. If new type (d)(iii) LAMIRDs could be created for commercial development abutting other LAMIRDs, it would be possible to create strip malls or other stretches of more intensive rural development throughout the rural areas. This would encourage sprawl in the rural areas rather than containing limited amounts of development in the rural zone as envisioned by the Act. *Better Brinnon Coalition v. Jefferson County* 03-2-0007 (Compliance Order 7-23-04)
- The County's decision not to include undeveloped property outside the existing built environment was a sound choice not to expand low-density sprawl. *Cal Leenstra v. Whatcom County* 03-2-0011 (FDO, 9-26-03)

- To allow a freestanding accessory dwelling unit on every single-family lot without regard to the underlying density in rural residential districts, including shoreline rural residential districts, fails to prevent urban sprawl, contain rural development, and, instead, allow growth which is urban in nature outside of an urban growth area. These sections do not comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) and are clearly erroneous. *Friends of the San Juans, Lynn Bahrych, and Joe Symons v. San Juan County* 03-3-0003 (Corrected FDO, 4-17-03)
- A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- LAMIRDs created under .070(5)(d)(i) (commercial, residential, or mixed use) must be principally designed to serve the "existing and projected rural population." A county must minimize and contain the existing area or existing uses. Lands within the LOB must not allow a "new pattern of low-density sprawl." *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- A one unit to five acre density does not, *per se,* constitute low-density sprawl. *OEC v. Jefferson County* 00-2-0019 (FDO, 11-22-00)
- Rural character is a pattern of use and development in which open space, natural landscape and vegetation predominate over the built environment. Rural character fosters traditional rural lifestyles in a rural based economy, provides an opportunity for rural visual landscape and is compatible with uses by wildlife and for FWHCA and that reduces inappropriate conversion of undeveloped land into sprawling low-density development. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

STANDARD OF REVIEW

- The role of the Growth Management Hearings Boards is not to second guess a jurisdiction's determination of how to implement the goals and policies contained within its comprehensive plan but to assure consistency with the goals and policies of the Growth Management Act (GMA). *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- We find the challenges to the apportionment of jurisdiction between the growth hearings board and the hearing examiner to be reasonably related to the matters raised below. Comprehensive plan amendments and development regulations under the Lewis County Code are processed through the Planning Commission process before going to the county commissions. Appeals of those decisions are heard as GMA petitions to this board. Therefore, the challenge to bifurcating the issues in a major industrial development proceeding is reasonably related to challenges to apportioning appellate jurisdiction between the growth board and the superior court. *Roth et al. v. Lewis County* 04-2-0014c (Order on Motions to Dismiss, 9-10-04)
- The Petitioners' participation in the County's proceedings below is reasonably related to all the issues they have presented in their petition for review and that they therefore have standing to raise and argue all of them. *1000 Friends v. Whatcom County* 04-2-0010 (Order on Motions to Dismiss 8-2-04)
- The legislative action taken by a local government is presumed valid upon adoption. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. *CCARE v. Anacortes* 01-2-0019 (FDO, 12-12-01)
- Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. RCW 36.70A.320*.* *ICCGMC v. Island County* 98-2-0023c (Compliance Order, 11-26-01)
- Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (Compliance Order, 10-26-01)
- A local government has the burden of proof to demonstrate that an ordinance it enacted in response to a determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- Petitioners have the burden of showing a lack of SEPA compliance for GMA purposes based on the clearly erroneous standard. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- BOCC findings are not "varieties" on appeal to a GMHB. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county has the burden of showing that the ordinance that was enacted "in response" to a determination of invalidity will no longer substantially interfere with the goals of the Act under RCW 36.70A.320(4). Where ordinances have been adopted prior to a finding of invalidity, a county accepted its burden for a request to rescind or modify those determinations of invalidity. Where no motion to rescind or modify was filed, the 45-day time limitation of RCW 36.70A.330(2) did not apply. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A local government has a burden of proof, under RCW 36.70A.320(4), that its action removes substantial interference with the goals of the Act in order to rescind or modify invalidity. *Panesko v. Lewis County* 00-2-0031c (MO 2-26-01)
- The clearly erroneous standard applies to a determination of non-significance. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- An action is clearly erroneous if a GMHB is left with a firm and definite conviction that a mistake has been made. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- A GMHB must find compliance unless the petitioner sustains its burden of proof of showing the action is clearly erroneous in view of the entire record and the goals and requirements of the GMA. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- In revealing the adequacy of an EIS or SEIS, a GMHB reviews the documents *de novo* under a rule of reason basis, giving substantial weight to the government agency's determination of adequacy. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)
- Ordinance amendments made in response to a finding of noncompliance are presumed valid. Petitioners bear the burden of proving under the clearly erroneous standard noncompliance with the Act. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 3-6-00)
- To satisfy the clearly erroneous standard, a GMHB must be left with a definite and firm conviction that a mistake has been made. *FOSC v. Skagit County* 98-2-0016 (FDO, 5-13-99)
- It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to direct a specific decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local

government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO, 4-5-99)

- Under the clearly erroneous standard the relevant consideration is "has petitioner demonstrated by competent evidence that the county is clearly erroneous in its adoption of the current ordinance as it relates to the issues properly under consideration in this compliance hearing." *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 9-16-98)
- RCW 36.70A.320(2) establishes that the burden is on petitioners to prove noncompliance under the clearly erroneous standard. *TRG v. Oak Harbor* 96-2-0002 (Compliance Order, 3-5-98)
- When a local government action was taken prior to July 27, 1997, the effective date of ESB 6094, but the GMHB hearing and decision was subsequent to that date, the procedural provisions of the new amendments apply to the decision in the case. Such provisions include substitution of the clearly erroneous standard for the previous preponderance burden. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Where the hearing and decision for compliance postdate the effective date of ESB 6094, the petitioner has the burden of proof under the clearly erroneous standard. *Storedahl v. Clark County* 96-2-0016 (Compliance Order, 12-17-97)
- [For historical purposes only – preponderance of evidence is no longer the standard of review] In reconciling the presumption of validity with the preponderance burden of proof a GMHB must analyze whether the ordinance was a result of application of GMA goals and requirements, whether the process complied with public participation goals and requirements, whether the decision-making process was supported by reasoned choices based upon appropriate factors actually considered as shown by the record, and whether the final product was within the range of discretion authorized by the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

STANDING

1. General

- It has long been held, by both the Courts and the Boards, that the GMA does not require issue specific standing [for participation standing]. Rather, the GMA requires only that a petitioner's participation raise a subject or topic of concern or controversy which is reasonably related to the issues presented for resolution to the Board. *Skagit Hill Recycling v. Skagit County,* case NO. 09-2-0011, Order on Motions, at 3 (July 20, 2009)
- In responding to Intervenor's assertion that Clark County Code's standing requirements should prevail over the GMA's, the Board held] The Board finds that the GMA clearly establishes the standing requirements for bringing a challenge to a local planning decision. While counties and cities have the power to enact ordinances covering subjects already covered by

state law, they may only do so when the state law was not intended to be exclusive and the local law does not conflict with state law. Here it appears to the Board that the state law was intended to be exclusive and that the local ordinance is in conflict. *Clark County Natural Resource Council/Futurewise v. Clark County,* Case No. 09-2-0002, Order on Motion, at 2-3 (April 23, 2009)

- [In finding that Petitioner did not have standing, the Board held:] … [Petitioner] did not raise any subject or topic of concern in their comments, and did not suggest any controversy. [Petitioner's] statements did nothing to apprise the County of any concern that it had with the Yelm/Thurston County Joint Plan that necessitated attention. Instead, the County, City of Yelm, or any official reading those comments would have reasonably concluded [Petitioner] fully supported its actions. It is simply contrary to the GMA's intent for active public participation for a petitioner to raise no concern whatsoever to a jurisdiction's proposed amendments and then challenge those amendments before the Board. *Adams Cove Group, et al. v. Thurston County,* Case No. 07-2-0005, FDO at 12 (July 28, 2008).
- [In asserting that they had standing to raise issues in regard to Guemes Island, Petitioners asserted that all they were required to do was testify about the geographic area not the specific issue sought for resolution before the Board; the Board disagreed]: The Board does not read this statement ["[*P]ersons who wish to raise issues before a growth management hearings board should participate actively in the planning process for the geographic areas or subject of interests to them"]* as allowing standing based solely on the expression of an interest in a particular geographical area. The Court was addressing the *planning process* for the geographic areas or subject of concern and specifically defined the term "matter" when it stated the word "*matter*" refers to "*a subject or topic of concern or controversy*." When setting forth this definition, the Court made no reference to geographical areas. *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023 (Order of Dismissal, May 12, 2008) at 6.
- [Petitioner attempted to establish standing on comments submitted after the close of the comment period, in disagreeing with this assertion …] The Board notes that here Skagit County's notice for public comment clearly denoted a deadline for the filing of comments which seeks to ensure that comments are filed in a timely manner … Compliance with these timelines ensure that County Staff and Commissioners have a point in time when public comment is deemed complete, allowing them to proceed on determining the actions to be taken in response to these comments. Submitting comments during this timeframe also allows the local government a reasonable opportunity to address the concerns raised by the public in timely-submitted comment letters so as to respond to and/or incorporate those concerns in the legislative action under consideration, thereby potentially eliminating an appeal to this Board … Therefore, the Board holds comments submitted after the close of the

comment period cannot now be used as a basis for a petitioner's standing except, for those presented orally, or if permitted in writing, at a subsequently-held public hearing pertaining to the topic or subject matter of the challenged enactment *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023 (Order of Dismissal (May 12, 2008) at 7-8, 11.

- *See also, Friends of Skagit County et al v. Skagit County,* Case No. 07-2-0025c (FDO, May 12, 2008) at 13-14 (further holding that a deadline means exactly what it states and it is unreasonable for Petitioners to assume that comments received after that date would be considered).
- Once GMA participation standing has been challenged by Respondent, the Petitioner has the duty to come forward with evidence to demonstrate their participation. This evidence must demonstrate compliance with the GMA"s standing requirements and cannot rely on the mere failure of the County to object to additions of documents to the record. The documents mere presence in the Index is not sufficient, particularly where the record demonstrates that the documents were submitted *after the close* of the public comment period. *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023 (Order of Dismissal, May 12, 2008) at 10.
- At the HOM and in briefing, the County inferred that a petitioner needed to comment on specific policies or regulations in order to achieve standing. The Board disagrees. As articulated by the Court in *Wells* and by all three GMHBs, the GMA does not require that a petitioner has provided an "issue-specific" comment in order to achieve standing. With such an assertion, the County is attempting to apply a standard which has been repeatedly rejected. *Friends of Skagit County et al v. Skagit County,* Case No. 07-2-0025c (FDO, May 12, 2008) at 12.
- [**Organization Standing**] [A]n organization may *provide legal counsel to represent* its members in proceedings before the Board, for the organization itself to file a PFR it must independently demonstrate that the organization itself has standing. Prior Board decisions have articulated that for an organization to have participation standing, a member of that organization must identify himself or herself as a representative of the organization when that person testifies at a hearing or submits a letter to the County or City … a petitioner (including an organization), may not rely on the public participation of others in order to achieve standing unless specific reference is made to the representation … for an organization to have standing it must have independently participated during the public participation process. This can be satisfied by members of the organization submitting written or oral comments *in the name of the organization. Friends of Skagit County et al v. Skagit County,* Case No. 07-2-0025c, (FDO, May 12, 2008) at 15-16.
- *See also for a general discussion of the Board's Standing Requirements as interpreted by the Ct. of Appeals in Wells v. WWGMHB,* 100 Wn. App. 657, 999 P.2d 405 (2000) – "matter" is subject matter or broad topic of concern or controversy: *Friends of Guemes Island v. Skagit County,* Case No. 07-2-0023(Order on Dismissal, May 12, 2008) and *Friends of Skagit*

County et al v. Skagit County, Case No. 07-2-0025c (FDO, May 12, 2008).

- *See also: Karpinski et al v. Clark County,* Case No. 07-2-0027, Amended FDO at 10 (June 3, 2008) (Affirming the Board's position as to SEPA standing).
- Based on these comment letters, John Diehl has not established standing to bring his petition for review as an individual…. Since he expressly did not participate in his individual capacity, he does not have participation standing in his individual capacity. *ADR/Diehl v. Mason County*, Case No. 7-2-0007(Order on Standing, May 21, 2007).
- Since the definition of a "person" under the standing provisions of the GMA includes "any… entity of any character", the Board finds that this is sufficient. ARD is a "person" for purposes of participation standing under RCW 36.70A.280(2)(b). Therefore, ARD has standing to challenge the matters raised in its written comments under RCW 36.70A.280(2)(b). *ADR/Diehl v. Mason County*, Case No. 7-2-0007(Order on Standing, May 21, 2007).
- The Board does not agree with Petitioners' argument that the County lacks authority to set a comment period. However, such a comment period must be well-publicized and calculated to encourage public comment in order to achieve the public participation goal and requirements of the GMA. . The public participation goal and requirements of the GMA impose a duty on a local government to provide effective notice and opportunities for early and continuous public participation….There is no evidence before the Board showing that there was public notice of a limited comment period before the November 28, 2006 public hearing and no evidence that the time limitation on written comments after the November 28th public hearing was published. This is not sufficient notice to apprise the public that written comments will not be accepted at a public hearing on proposed legislation… Under these circumstances, the Board finds that ARD participated in the proceedings before the County below and has standing to raise the issues in its petition for review. *ADR/ Diehl v. Mason County*, Case No. 7-2-0007(Order on Standing, May 21, 2007)
- While Petitioner submitted evidence that it is a registered non-profit corporation,… it need not be a registered non-profit corporation to proceed under this section of the GMA. First as 1000 Friends of Washington and later under the new name of Futurewise, Petitioner clearly identified the issues it wished the County to address and made it plain that it was speaking as an organization rather than as an individual. Petitioner provided evidence that it submitted written comments, attended and testified at a Planning Commission meeting and at a public hearing before the Board of County Commissioners; and that in each instance the speaker and/or writer identified himself as speaking for Futurewise, rather than as an individual. …This is sufficient to qualify the Petitioner as a "person" who may bring this Petition for Review. *1000 Friends of*

Washington v. Thurston County, Case No. 05-2-0002 (Order on Motions to Dismiss, 8-21-05)

- RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO, remand. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- To achieve participation standing under RCW 36.70A.280(2)(b) a person must have participated during the local government process regarding the matter on which the review is being requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment". The word "matter" refers to a "subject or topic of concern or controversy." *Wells v. WWGMHB,* 100 Wn. App. 657 (2000). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- In order to acquire standing a petitioner's participation must be reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation and the issues raised is required. A GMHB has considerable discretion to determine whether the facts support the necessary connection in each case. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A local government fails in its attempt impose "participation standing" burdens on a petitioner when the local government did not hold any type of hearing on the SEPA issue now challenged by petitioner. It is not petitioner's duty to remind the City of its threshold SEPA compliance duties. *Achen v. Battleground* 99-2-0040 (RO 6-14-00)
- A party who is a petitioner in a consolidated case does not qualify as a petitioner for purposes of standing for the compliance hearing where the compliance hearing issue was not part of the party's original PFR nor brief or argued by that party during the HOM process. *ICCGMC v. Island County 98-2-0023* (MO 2-18-00)
- Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO, have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)
- A requirement to prepare an extensive and specific list of issues to present to the local government in order to preserve GMHB review would be contrary to the legislative goals of encouraging public participation at the local level and might well overburden local governments and their public hearings without any realistic corresponding benefit to them. Resolution for those valid and competing policy decisions rests with the Legislature. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- There is no authority in the GMA that would allow a GMHB to impose the issue-specific requirements of RCW 34.05.554 as a condition precedent to review of a local government GMA actions. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- The legislature resolved the concern with a local government being blindsided by a failure to raise a specific issue during the local government

process by directing that a GMHB review be based on the record rather than *de novo*. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

- An informal entity that participated during the adoption process continued to have standing during the GMHB process and was not disqualified simply on the basis of a subsequent incorporation changing its legal status. *Liveable La Conner v. La Conner* 98-2-0002 (MO 6-19-98)
- The GMA does not require that a petitioner address the specific issues raised in the appeal at the time of the local government process. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- WAC 242-02-210(2)(d) does not require dismissal if the standing information can be found in the body of the petition or in other information supplied in response to a challenge. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Because a city has an absolute right to file a PFR it has standing as a "participant" under RCW 36.70A.330(2). *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- A person, as defined in the GMA, does not have standing to challenge an amendment to a CPP. *FOSC v. Skagit County* 96-2-0032 (MO 3-7-97)
- Only cities or the Governor may challenge a CPP adoption or amendment. *FOSC v. Skagit County* 96-2-0032 (MO 3-7-97)
- RCW 36.70A.280(2) and (3) allow a city to have standing to raise all appropriate issues as a petitioner. The city is not limited to issues strictly relating to matters within its municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

2. Participation

- It has long been held, by both the Courts and the Boards, that the GMA does not require issue specific standing [for participation standing]. Rather, the GMA requires only that a petitioner's participation raise a subject or topic of concern or controversy which is reasonably related to the issues presented for resolution to the Board. *Skagit Hill Recycling v. Skagit County,* case NO. 09-2-0011, Order on Motions, at 3 (July 20, 2009)
- In order to acquire standing a petitioner's participation must be reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation and the issues raised is required. A GMHB has considerable discretion to determine whether the facts support the necessary connection in each case. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- To achieve participation standing under RCW 36.70A.280(2)(b) a person must have participated during the local government process regarding the matter on which the review is being requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment". The word "matter" refers to a "subject or topic of concern or controversy."

Wells v. WWGMHB, 100 Wn. App. 657 (2000). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- The submission of a petition signed by a person is sufficient to comply with the standard found in RCW 36.70A.280(2)(b) of participation in writing before the local government. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- Participation standing cannot be based on input by others unless petitioner can show that specific reference to petitioner's claim was made by another. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- Input placed after the contested action was taken is not a basis for participation standing. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

[**Information about appearance standing is included for historical context only**]

- Under RCW 36.70A.280(2)(b) appearance standing is obtained by the writing of a nonspecific letter to the local government during the GMA legislative process. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)
- In order to qualify as appearing under RCW 36.70A.280(2) a person must comment or attempt to comment upon the matter either verbally or in writing. Mere attendance is not sufficient. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)
- The purpose of appearance as the main test for standing to appeal is to encourage and require meaningful public participation at the local level. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

3. APA

- A petitioner who demonstrates that it is now subject to a conditional use permit requirement not previously required satisfies the APA standing requirements of RCW 34.05.530. *NAC v. Jefferson County* 01-2-0014 (MO 5-24-01)
- APA standing is based on RCW 34.05 and utilizes the two-prong test of *Trepanier v. Everett* 64 Wn. App 380 (1992). *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- To show an injury in fact evidence must be presented that shows an actual adverse effect that is not merely conjectural or hypothetical. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- The test for whether a person is aggrieved or adversely affected sufficiently to grant standing is found in RCW 34.05.530. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- The proper method of showing APA standing is through affidavits rather than allegations contained in a PFR or a brief. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)
- The APA standing requirements of an injury in fact and a zone of interest are the proper tests to be applied. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

- The test to determine APA standing is found in RCW 34.05.530. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)
- The APA standing requirements of RCW 34.05.530, in the legislative context of a GMA action, was satisfied under the facts of this case because petitioner owned property within an IUGA that was adversely affected by the local government action, a legitimate claim of GMA noncompliance for which the petitioner had a personal interest was provided, and the remedy of remand would provide a basis to eliminate the alleged prejudice. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

4. SEPA

- Petitioner has participatory standing to bring its SEPA claims regarding this comprehensive plan amendment based on the plain language of the statute providing that such claims may be raised by petitioners who have participated in the matter before the local jurisdiction below pursuant to RCW 36.70A.280. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- Since the Petition did not raise his SEPA concerns in the county proceedings below, he does not have participatory standing under RCW 36.70A.280(2)(b) to raise them to this Board. Since he is not a person aggrieved by the County's threshold DNS action, he does not have standing under the RCW 34.04.530, incorporated into the GMA through RCW 36.70A.280(2)(d). *Cal Leenstra v. Whatcom County* 03-2-0011 (Order on Motion to Dismiss 6-20-03)
- The same requirement for standing to challenge SEPA actions applies as to challenge any other GMA actions. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A local government fails in its attempt impose "participation standing" burdens on a petitioner when the local government did not hold any type of hearing on the SEPA issue now challenged by petitioner. It is not petitioner's duty to remind the City of its threshold SEPA compliance duties. *Achen v. Battleground* 99-2-0040 (RO 6-14-00)
- The legislature has the sole authority to impose conditions for standing to file a PFR. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for a SEPA challenge any differently than any other GMA standing requirement. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *Achen v. Clark County* 95-2-0067 (MO 5-24-95)
- Neither *Trepanier v. Everett* 64 Wn. App. 380 (1992) or *Levitt v. Jefferson County* 74 Wn. App. 668 (1994) apply to the question of whether a person

with "appearance standing" may bring a SEPA challenge under the GMA. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

- There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for SEPA challenges any differently than any other GMA standing challenge. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

5. Compliance

- This Board adheres to the view that an original party to the petition for review is not required to re-establish his or her standing in the compliance proceedings. RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as to any participant who has standing to challenge the legislation enacted in response to the FDO remand. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order – LAMIRDs and Lot Aggregation, at 22 (Nov. 30, 2007)
- RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)
- A party who is a petitioner in a consolidated case does not qualify as a petitioner for purposes of standing for the compliance hearing where the compliance hearing issue was not part of the party's original PFR nor brief or argued by that party during the HOM process. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

STATE ENVIRONMENTAL POLICY ACT (SEPA)

- [In the FDO, as to the SEPA claims, the Board had found that the City had failed to comply with those portions of RCW 43.21C and WAC 197-11 which require clear notice of reliance on existing environmental documents to satisfy environmental review requirements. At the compliance phase of the case, the Board found that the FDO's holding:] …addressed only a procedural requirement as opposed to possible substantive flaws in the FEIS itself … Beyond that, the Board set forth a clear requirement that parties alleging noncompliance with SEPA must exhaust any available administrative remedies prior to seeking review before the Board. In this instance, the City issued a DNS on December 4, 2009. The DNS stated an appeal of the determination was required to be filed no later than January 6, 2010, and the record fails to indicate any appeal was taken. During the compliance hearing, Heikkila admitted that she failed to appeal the DNS due to costly appeal fees. While perhaps understandable, this is not legal justification for a failure to exhaust this avenue of appeal prior to bringing a SEPA challenge to the Board.

Consequently, the Board will not consider Heikkila's substantive SEPA objections. *Heikkila/Cook v City of Winlock,* Case No. 09-2-0013c, Compliance Order at 9 (June 8, 2010)

- The overarching legislative intent of SEPA is to give decision-makers sufficient information regarding the environmental impacts of a proposed action so as to facilitate a reasoned decision. To accomplish this, SEPA requires, at the earliest possible time, the integration of the SEPA process with agency activities. In addition, to further SEPA's goals, the lead agency is required to prepare a threshold determination at the earliest possible point in the planning and decision-making process. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- SEPA review is to begin early in the process but it is only required to begin when a proposal's environmental impacts can be *reasonably identified and meaningfully evaluated*. Clarification as to the timing for SEPA review is set forth in WAC 197-11-055(2)(a) … For development regulations adopted pursuant to the GMA, guidance can also be drawn from WAC 197-11-220(3), which defines "Proposed GMA action"… Thus, not only does SEPA provide that the environmental review process is to commence when environmental impacts can be reasonably identified and their effects meaningfully evaluated, but SEPA expressly recognizes that preliminary decisions occur prior to the commencement of environmental review. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- A basic characteristic of the legislative process and an undeniable fact is that modifications to any proposal will probably occur as the process continues. Therefore, in order to determine environmental impacts and their effect, Winlock needed to determine the applicable zoning and related land use regulations, such as permitted uses, and this did not occur until a final draft of the development regulations was prepared. Without this final draft, the environmental impacts and effects would continue to fluctuate as modifications are made to previous drafts. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- {A complete draft of the development regulations was prepared and presented to the Planning Commission at its October 1, 2008 meeting, which approved them] It is this draft that the Environmental Checklist and DNS was based on and these environmental documents were available for consideration by the City Council. In light of the entire Record, the Board finds that it was this draft that triggered SEPA because the zoning and land use regulations were sufficiently definite to provide for the reasonable identification of environmental impacts and the meaningful evaluation of their effects. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [WAC 197-11-340(2)(f) and 197-11-340(3)(a) use of the word "shall" and the Board found] these SEPA provisions are mandatory. However, the

mere filing of a comment letter does not automatically require the withdrawal of a DNS. Rather, withdrawal is only mandated if (a) the responsible official determines significant impacts are likely, (b) the DNS was procured by misrepresentation, or (c) there was a lack of material disclosure. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)

- [Petitioner] neither in his briefing nor in the October 2008 comment letter, provides evidence of how the environmental impacts of Winlock's proposed development regulations rise to a level of significance. To meet his burden of proof, [Petitioner] must present actual evidence of probable, significant, adverse impacts resulting from the proposed action. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [Petitioner submitted comments focused primarily on economic viability] As the parties should be well aware, SEPA is concerned with the broad questions of environmental impact and effects, not economic interests such as individual property rights, property values, and the restrictions of the use of property. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- As to erroneous or missing information, the key question is whether this information had any bearing on Winlock's determination of whether a DS, DNS, or MDNS should be issued. That determination is based on whether Winlock found the proposed action would have probable, significant, adverse environmental impacts. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- An environmental checklist is an informational document utilized to assist the responsible official in making the threshold determination as to whether further environmental review is necessary (i.e. the need for an Environmental Impact Statement (EIS)). One of the primary functions of the Environmental Checklist is to help determine if the project or proposal has a probable significant adverse environmental impact by identifying potential impacts. A complete and accurate Environmental Checklist provides a solid foundation for the environmental review process. However, the items in the Environmental Checklist are not weighted and the mention of one or many adverse environmental impacts does not necessarily mean that the impacts of a proposal are significant so as to require an EIS. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [In reviewing allegations as to the inadequacy of an environmental checklist] the Board takes seriously the fact that the burden of proof is on the Petitioner for SEPA challenge and the direction given by RCW 43.21.090 that decisions on environmental determinations of local governments must be given substantial weight. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- [Winlock asserted that reliance for environmental review was made on a 2005 EIS] While it is true that SEPA permits the use of previously

prepared environmental documents in order to evaluate a proposed action's impacts, SEPA also establishes requirements for when and how the analysis contained in those previous documents can satisfy SEPA requirements. First, SEPA requires that the lead agency review the content of the prior document in order to determine if the information and analysis is relevant and adequate in regards to environmental considerations. Second, SEPA provides various methods by which previous review can be utilized, including adoption, incorporation by reference, addendum, and supplementation. However, regardless of the method employed, all require both a determinative review and clear notice of the reliance on the previous document. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)

- SEPA requires both substantive and procedural compliance with its mandates. Therefore, it is not possible for the Board to address the question of whether the 2005 EIS and the 2008 Environmental Checklist adequately addressed the probable impacts of the development regulations until the City has completed the review required by SEPA. Winlock states that it was not required to duplicate the environmental review it undertook for the 2005 EIS, but it failed to properly cite any reliance on the analysis contained in that document during the present adoption process. *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)
- *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0009c, Order on Dispositive Motion, at 4-7 (May 29, 2009)(Overruling the prior holding of the Western Board in regards to the need to exhaust administrative remedies prior to seeking review of a SEPA decision before the Board. RCW 43.21C.075(4) establishes a requirement for exhaustion of administrative remedies and, if an administrative process is available, a petitioner must exhaust in order to raise a SEPA issue before the Board). *See* Order On Reconsideration at 3-4 (June 30, 2009) for prospective application of this holding.
- [T]he County cited the agency SEPA policies that formed the basis of the conditions imposed. Petitioner has failed to demonstrate that the County was legally obligated to cite the supporting SEPA policy after each and every condition of approval. We do not read WAC 197-11-660 to impose such a requirement. *Brinnon Group, et al v. Jefferson County,* Case No. 08-2-0014, FDO at 30 (Sept. 15, 2008)
- *See also, Brinnon Group, et al v. Jefferson County,* Case No. 08-2-0014, FDO, at 28-34 (Sept. 15, 2008) (Affirming the Standard of Review in SEPA matters, addressing consideration of alternatives, and the analysis of environmental impacts for non-project actions).
- *See also, Petree, et al v. Whatcom County,* Case No. 08-2-0021c, FDO at 59-65 (Oct. 13, 2008) (Analyzing whether the County properly evaluated environmental impacts in relationship to a non-project action – UGA and Comprehensive Plan update – and whether the ultimate decision was within the scope of considered alternatives).

- Under SEPA rules, evaluation and comparison of the "no-action" alternative is a mandatory element of an EIS,"27 but WAC 197-11-440(5)(b)(ii) requires that a "no action" alternative be evaluated and compared to other alternatives and, RCW 43.21C.095 requires substantial deference to this rule. *Karpinski et al v. Clark County,* Case No. 07-2-0027(Amended FDO (June 3, 2008) at 11.
- The County's non-project EIS analyzed a complex plan with many assumptions. Here, the County changed the assumptions and how those assumptions relate to the current urban growth boundary. While we reject the County's implication that a "no action" alternative might not have been needed in its EIS and that the choice of a growth rate and related population projection is not a goal or an important policy choice, the Board does not find that it was clearly erroneous for the County to have chosen the alternative of not amending the UGA boundaries as the "no-action" alternative. Analyzing whether the new population assumption and the other adopted assumptions will affect the UGA boundary falls within the "rule of reason," the flexibility given to counties and cities in designing a non-project EIS by WAC 197-11-442, and RCW 43.21C.090's direction that the decision of the local government be given substantial weight - all supporting the County's action. *Karpinski et al v. Clark County,* Case No. 07-2-0027 (Amended FDO, June 3, 2008) at 16-17.
- [T]he Board finds that the County was not required to issue a new threshold determination pursuant WAC 197-11-600(2)(b) because the environmental impacts caused by the Council's changes were not more significant than similar impacts that were previously analyzed by the County for Ordinance 21-2002 and incorporated in the April 5, 2006 checklist. *Friends of San Juans, et al v. San Juan County,* Case No. 03-2-0003c coordinated with *Nelson, et al v. San Juan County,* Case No. 06-2-0024c, FDO/Compliance, at 59 (Feb. 12, 2007).
- With respect to the SEPA challenges, the Board finds that the failure to reference the prior environmental studies, notably the 2000 Supplemental Environmental Statement done for the Lopez Village and Eastsound UGAs, in the DNS for the designation of the 2005 Lopez Island UGA fails to comply with Ch. 43.21C RCW and WAC 197-11-600. This failure is not merely a matter of form – publication of the DNS should give the public notice of the information that was used to make the negative threshold determination. However, this error can be corrected with the County's remand work. *Stephen Ludwig v. San Juan County,* WWGMHB Case No. 05-2-0019c (FDO, Compliance Order, 4-19-06)
- Petitioners base their attack on the FSEIS on the absence of a consideration of a moratorium on certain kinds of land development (Petitioners' Brief on Belfair Issues at 4) and the failure to discuss reserving implementation of development within the Belfair UGA. *Ibid* at 6-7. A moratorium on development would not attain the objectives of the proposal because it would not implement the existing plan policies on the Belfair UGA. While the County might have elected to revisit those plan

policies, there is nothing in SEPA requiring them to do so. *Overton et al. v. Mason County,* WWGMHB Case No. 05-2-0009c (FDO, November 14, 2005)

- The SEPA analysis of the no-action alternative should consider that alternative in terms of its environmental impacts, not in terms of the legal ramifications of adopting that alternative as a policy choice. The legal advisability of adopting the no-action alternative is a question apart from the SEPA analysis. *Hood Canal Coalition v. Jefferson County* 03-2-0006 (Compliance Order, 10-14-04)
- The County must analyze potential significant environmental impacts of its nonproject action in terms of the maximum development that might occur as a result of the nonproject action. *Hood Canal Coalition v. Jefferson County* 03-2-0006 (Compliance Order, 10-14-04)
- The City's adoption of substantive SEPA policies is not intended to substitute for adequate critical areas protections. The City must bring its critical areas protections into compliance with the GMA, but its use of substantive SEPA policy to protect the environment as a supplementary protective measure complies with the GMA. *1000 Friends of Washington, Evergreen Islands, and Skagit County v. City of Anacortes* 03-2-0017 (FDO, 2-10-04)
- Despite the evidence presented to the County the Department of Fish and Wildlife and the neighboring tribes, the County failed to analyze the probable significant adverse environmental impacts on fish and wildlife habitat in the Brinnon region. SEPA does not require the County to evaluate a laundry list of unrelated environmental considerations, but it does require that the County evaluate probable significant environmental impacts. WAC 197-11-402(1). Simply providing, as Jefferson County has, that any impacts will be addressed on a permit basis fails to assess the cumulative impacts and to fully inform the decision makers of the potential consequences of the designations challenged here. *Better Brinnon Coalition v. Jefferson County* 03-2-0007 (Amended FDO, 11-3-03)
- The [environmental] impacts that must be considered for this non-project action are the impacts that are allowed by virtue of the change in designation itself. While project level impacts may properly be deferred to the permitting stage, the County must evaluate the impacts allowed under the changed designation at the time of that non-project action. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- Deferring environmental review of the uses established by this non-project action to the permitting stage is an improper use of phasing that would divide a larger system into exempted fragments and avoid discussion of cumulative impacts. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- The introduction of urban level uses into a large, unique critical area requires a more complete environmental review at the non-project level to allow decision makers to more thoroughly evaluate the implication of this

change. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)

- It was premature for the County to fully evaluate the pit-to-pier project as part of the EIS for the mineral resource overlay designation. Although the applicant did advise the County that it might propose such a project after the mineral resource overlay designation was obtained, a pit-to-pier project involves many more specific elements than the designation of a type of land use area and those specific elements are best evaluated at the project level. *Hood Canal, et al. v. Jefferson County* 03-2-0006 (FDO, 8-15-03)
- The supplemental environmental impact statement failed to analyze any alternative except the one recommended by staff. Planning staff were clearly trying to make the best possible recommendation to the county commissioners but, in doing so, they neglected to provide the commissioners with adequate environmental information about alternatives. *Hood Canal, et al. v. Jefferson County* 03-2-0006 (FDO, 8-15-03)
- The SEPA rules require evaluation of the "no action" alternative which, under Jefferson County regulations, was the mining of a site of a maximum of ten acres in size. The supplemental environmental impact statement ("SEIS") should have analyzed the no action and other alternatives; failure to do so makes the SEIS inadequate and not compliant with Ch. 43.21C RCW. *Hood Canal, et al. v. Jefferson County* 03-2-0006 (FDO, 8-15-03)
- A county, in creating 194 new LAMIRDs, may not ignore the obvious cumulative effect of such creation and must assess those effects under an appropriate SEPA process. Failure to do so substantially interferes with the goals and requirements of the Act. *Dawes v. Mason County*, 96-2-0023c (Compliance Order, 8-14-02)
- Under pertinent SEPA regulations, a SEPA official properly considers the environmental checklist but disregards information later submitted to a hearings board that was not provided during the public comment period. *Clean Water Alliance, et al. v Whatcom County*, 02-2-0002 (FDO, 8-9-02)
- A petitioner may timely raise issues regarding SEPA after the SEPA comment period and after the consideration of the SEPA official. The issues may be raised during the hearings afforded by the county for general consideration of the subject action prior to adoption by the county legislative body. *Clean Water Alliance, et al. v Whatcom County*, 02-2-0002 (FDO, 8-9-02)
- A change in density of a particular area from 1 du per 0.5 acre to 1 du per 5 acre, does not have a probable adverse environmental impact and the County's SEPA actions are in compliance with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- Petitioners have the burden of showing a lack of SEPA compliance for GMA purposes based on the clearly erroneous standard. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- A county effort to avoid any effective SEPA review, particularly where the public and agencies with expertise have been precluded from comment on the SEPA analysis, fails to comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- The failure to include any reference to the thirteen new LAMIRDs not previously designated within a supplemental FSEIS, fails to comply with SEPA requirements under GMA. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)
- Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Where a County significantly amended its 1992 CAO, adopted several existing environmental documents under WAC 197-11-630 and issued a DNS, petitioners did not sustain their burden of showing the DNS was clearly erroneous. *PPF v. Clallam County* 00-2-0008 (FDO, 12-19-00)
- The clearly erroneous standard applies to a determination of non-significance. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- A petitioner did not sustain its burden of showing that the potential cumulative impacts of lowering an LOS standard for transportation was "significant." *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- A phased environmental review process under WAC 197-11-060(5)(b) for an amended DR that incorporated previous environmental documents, complied with the GMA. *Servais v. Bellingham* 00-2-0020 (FDO, 10-26-00)
- Where a compliant SEPA process was fully set forth in the limited record accompanying a dispositive motion, the motion is granted. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- The same requirement for standing to challenge SEPA actions applies as to challenge any other GMA actions. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- An FEIS is required to contain sufficient alternatives in its analysis to comply with WAC 197-11-442 and/or –440(5)(b) and thus to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The use of a phased approach during an integrated approach authorized by WAC 365-195-760(3) that requires that the front end of the GMA/SEPA analysis be thorough, is critical. A phased approach may not be used to

simply delay SEPA analysis until permitting decisions. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)

- An EIS is designed to ensure awareness of potential environmental impacts by the decision maker. It does not dictate a particular legislative action and is thus an inappropriate document upon which to impose a finding of invalidity. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A local government fails in its attempt impose "participation standing" burdens on a petitioner when the local government did not hold any type of hearing on the SEPA issue now challenged by petitioner. It is not petitioner's duty to remind the City of its threshold SEPA compliance duties. *Achen v. Battleground* 99-2-0040 (RO 6-14-00)
- A change in LOS standards involving a different methodology of traffic measurement does not substantially increase nor lower the LOS standards and a DNS determination was not clearly erroneous. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO, 5-16-00)
- In revealing the adequacy of an EIS or SEIS, a GMHB reviews the documents *de novo* under a rule of reason basis, giving substantial weight to the government agency's determination of adequacy. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)
- An SEIS is prepared in the same way as an EIS, except that scoping is optional under WAC 197-11-620(1). *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)
- The record demonstrated full compliance with the notification procedure as set forth in WAC 197-11-455(1) for a draft SEIS. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)
- The sufficiency of the alternatives discussed in the SEIS as required by WAC 197-11-442 was met under the record in this case. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)
- A review of a DNS by a GMHB is conducted under the clearly erroneous standard. The burden of proof is on petitioners. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)
- The concept of a demonstration wetlands bank involves both creation and distribution functions. Creation of a new wetland, under the record here, did not have any probable significant adverse effect. A non-conditioned DNS for the distribution of banking credits for the newly created wetland satisfies the clearly erroneous test and does not comply. *Willapa v. Pacific County* 99-2-0019 (FDO, 10-28-99)
- Where SEPA challenges are limited specifically to DOE's approval of SMP amendments, a GMHB reviews DOE's decision. Thus, a county motion to dismiss SEPA challenges is meaningless where the motion was not joined by DOE. *Floatplane v. San Juan County* 99-2-0005 (MO 5-3-99)

- The Legislature has the sole authority to impose conditions for standing to file a PFR. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- The exhaustion of administrative remedies requirement found in RCW 43.21C.070(2) and WAC 197-11-608(3)(c) for SEPA review is specifically directed to actions taken in order to qualify for *judicial review* and does not apply to GMHB review under RCW 36.70A.280(1). *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)
- Where a local government failed to analyze alternatives in a FSEIS based upon a population projection that was within the range developed by OFM, compliance with the SEPA provisions of GMA was not found. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- Where minor and insignificant changes were made in the FSEIS after the draft SEIS was issued, a new SEPA review was not required. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Where a prior EIS covered the range of alternatives available for a new ordinance adopted some 2 years later, the mere passage of time was not a lack of SEPA compliance. *Hudson v. Clallam County* 96-2-0031 (Compliance Order, 12-11-97)
- If an amended ordinance did not change the meaning of the prior ordinance in any substantive manner but was only a procedural action, no SEPA threshold determination was necessary. *Pellett v. Skagit County* 96-2-0036 (FDO, 6-2-97)
- Under the evidence shown in this record, adoption of SEPA policies did not fulfill the mandatory requirement of RCW 36.70A.060(2) to adopt DRs that protect CAs. *CCNRC v. Clark County* 96-2-0017 (FDO, 12-6-96)
- A FEIS which inadequately addresses the impacts of a CP did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- The standard of GMHB review for a DNS is the clearly erroneous test. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- A GMHB does not have authority to direct the preparation of an EIS. Rather, an incorrectly adopted DNS will be remanded with a finding of noncompliance. It is up to the local government to determine the appropriate level of SEPA analysis and appropriate action after the remand. *Seaview v. Pacific County* 96-2-0010 (FDO, 10-22-96)
- Where a new IUGA designation was made without even a threshold determination required by WAC 197-11-310, compliance with the GMA was not achieved. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The emergency provisions allowing waiver of SEPA compliance did not apply to “citizen confusion over property rights” after a determination of invalidity under WAC 197-11-880. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

- A DNS is reviewed under the clearly erroneous standard. The removal of mitigating measures from the DNS by the local government in the face of overwhelming evidence of significant adverse environmental impacts satisfied the requirement that a GMHB have a definite and firm conviction that a mistake was made. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- A pending appeal to the County Council of a hearing examiner's SEPA decision did not deprive a GMHB of jurisdiction to render a decision on SEPA under RCW 36.70A.280. *WEC v. Whatcom County* 95-2-0071 (FDO, 12-20-95)
- For a non-project action the scope of an EIS is determined by WAC 197-11-442(4) which limits the scope to a general discussion of the impacts of alternative proposals for policies contained in the CP. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A supplemental EIS must be prepared under WAC 197-11-405(4)(a) if there are substantial changes to a proposal such that the changed proposal is likely to have significant adverse environmental impacts. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A discussion of a no-action alternative in the EIS for a previously adopted community framework plan did not need to be rediscussed in the FSEIS for the CP. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The "rule of reason" directs a GMHB to determine whether the environmental effects of the proposed action were sufficiently disclosed, discussed and substantiated by supportive opinion and data. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Proposed affidavits and/or oral testimony concerning the adequacy of the FSEIS were not shown to be necessary nor of substantial assistance because the issue was sufficiently disclosed by the existing record. A motion to supplement the record was denied. *CCCU v. Clark County* 95-2-0010 (MO 7-19-95)
- There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for a SEPA challenge any differently than any other GMA standing requirement. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *Achen v. Clark County* 95-2-0067 (MO 5-24-95)
- Neither *Trepanier v. Everett* 64 Wn. App. 380 (1992) or *Levitt v. Jefferson County* 74 Wn. App. 668 (1994) apply to the question of whether a person with "appearance standing" may bring a SEPA challenge under the GMA. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)
- There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for SEPA challenges any differently than any other GMA standing challenge. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

- The decision of a local government to accept a FEIS is entitled to substantial weight. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A GMHB examines the FEIS *de novo* but such review is restricted to examination of the record submitted. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- The adequacy of a FEIS is determined by the "rule of reason." *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- Under WAC 197-11-442 a non-project FEIS has a great deal of flexibility and the discussion of impacts and alternatives is only required at a level appropriate to the scope of the non-project proposal. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A FEIS is adequate for a non-project CP where the environmental consequences are discussed in terms of a maximum potential development of the property. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- When not all commercial forestlands were designated and the status quo was maintained there was no action that required environmental review. Therefore, a DNS complied with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO, 2-16-95)
- A GMHB review of a DNS is governed by the clearly erroneous standard of review. A GMHB does not review the action *de novo,* nor is it a proper body for lead agency status. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- Where an IUGA was reduced in size to protect environmentally sensitive CAs, the action did not have a probable adverse environmental impact. *Mahr v. Thurston County* 94-2-0007 (FDO, 11-30-94)
- A GMHB has jurisdiction to rule on SEPA challenges that relate to a GMA action or non-action. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- A referendum filing qualifies as a legislative proposal under WAC 197-11-704(1)(c). A legislative proposal is an action. Thus a threshold determination was required and an environmental checklist should have been prepared. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- Where a threshold determination was required for an amendment to a DR and none took place, an ordinance was void. The entire process must begin again at the point where the initial SEPA review was required. *North Cascades v. Whatcom County* 94-2-0001 (FDO, 6-30-94)
- A DNS is reviewed under the clearly erroneous standard. The burden of proof rests with the petitioner. *CCNRC v. Clark County* 92-2-0001 (FDO, 11-10-92)

STAY

- *Futurewise v. Thurston County,* Case No. 09-2-0006, Order Denying Stay (Sept 3, 2009)(The Board noted that it had granted stays in other cases, but this was not done in a manner that would stay the Board's mandatory

duty to rule on GMA compliance. Instead, the Board had issued stays where it would be wasteful of the local jurisdiction's resources to pursue legislative action to achieve compliance where the matter of GMA compliance is in dispute and under appeal or when intervening legislation resulted in the inability of a jurisdiction to achieve compliance. Neither of these circumstances was present in this case)

- *Hadaller v. Lewis County,* Case No. 09-2-0017, Order Denying Stay (Nov. 25, 2009)(No provision in the GMA or Board's Rules for issuance of a stay prior to issuance of the FDO; issuance of the FDO may be postponed only for settlement negotiations as provided in RCW 36.70A.300(2)(b))
- *Karpinski, et al v. Clark County,* Case No. 07-2-0027c, Order Granting Limited Stay (Aug. 6, 2009), Reconsideration denied (Sept. 3, 2009)
- *Adams Cove/Futurewise v. Thurston County,* Case No. 07-2-0005, Order Granting Stay (Aug. 14, 2009)
- [All parties requested a stay of the proceeding in order to await resolution of matters pending before the State Legislature, in denying the request the Board stated:] [T]at the Board may only "…extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve settlement …" … [here the stated reason] failed to meet the statutory requirements. *Evans, et al v. City of Olympia,* Case No. 09-2-0003, Order Denying Request for Stay, at 1-2 (March 24, 2009)
- Where the Board has been reversed on an issue but the judicial appeal is still pending, this Board generally finds it appropriate to stay the compliance requirements on the issue until the mandate has been received. [The Board's authority to grant a stay pursuant to RCW 34.05.550] is not the authority to grant specific relief within 10 days of the issuance of a final order (as granted in RCW 34.05.467) but a broad grant of authority to grant a stay if the agency finds in its discretion that it is appropriate and not otherwise prohibited. This Board has found that a judicial reversal generally forms the basis for such an administrative stay since enforcement of a Board decision in the face of a judicial reversal compels the jurisdiction to take an action which a reviewing court has found not justified. *1000 Friends v. Thurston County*, Case No. 05-2-0002, Compliance Order – Agricultural Lands and Rural Densities (Oct. 22, 2007) at 11-12.
- Therefore, although the GMA does not directly authorize the board to issue stays, the APA provisions apply to the practice and procedure of the boards and those do authorize the boards to issue stays, unless there is a direct conflict with the GMA. *Swinomish Indian Tribal Community v. Skagit County,* Case No. 02-2-0012c (Order Granting a Stay, July 9, 2007)

STIPULATION

- The fact that the parties to other petitions have agreed to dismiss them does not require CCNRC to dismiss *its* petition. Under board rules, the Board can only dismiss a case when all parties stipulate to a dismissal.

(WAC 242-02-720). It is not proper for the Board to dismiss the CCNRC petition without either a stipulation on the part of CCNRC to dismiss it or a final decision on the merits of the issues raised in that petition. *The Building Association of Clark County, et al v. Clark County* (Order Denying Motion to Dismiss, 2-15-05)

- Therefore, because Petitioner has not given the Board a tool for evaluating the effectiveness of these two measures, we are not persuaded that Ordinance 020040017's approach to reducing substandard lots is less effective in reducing substandard lots in Resource and Rural Lands than the County's current lot aggregation requirement, or is noncompliant. *Evergreen Islands, et al v. Skagit County,* Case No. 00-2-0046c (Compliance Order, 5-19-05)
- Under RCW 36.70A.300(2)(b), if the parties so stipulate and a GMHB finds that potential settlement of all or some of the issues in a case could resolve significant issues in dispute, an extension of the 180-day limitation for issuing a ruling is appropriate. *Abenroth v. Skagit County* 97-2-0060 (MO 10-28-97)
- Where a local government stipulates that it has not adopted a CP and implementing regulations by the deadline established by the Legislature, compliance with GMA will not be found. *Rosewood v. Friday Harbor* 96-2-0020 (MO 10-2-96)

STORMWATER

- [The Board found that the County's decision to emphasizes the use of low impact development, infiltration, dispersion, and natural vegetation retention in regards to stormwater management within a UGA was acceptable; however, despite the fact that the County's plan contained a forecast of future needs and proposed locations for expanded and new capital facilities] … Because there is no six-year plan that will actually finance the six-year capital facilities needs, the storm water plans are not compliant with RCW 36.70A.070(3)(d). *ADR/Diehl v. Mason County,* Case No. 06-2-0005, Compliance Order, at 9-11 (Jan. 25, 2008).
- A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A County is required to resolve floodplain and stormwater issues between it and its cities and make the CP policies consistent as required by RCW 36.70A.070(1). *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- RCW 36.70A.070(1) requires a review of current "drainage, flooding, and stormwater runoff" and "guidance for corrective actions" to be included within the land use element of a CP. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- RCW 36.70A.070(1) requires that existing stormwater deficiencies be addressed and corrective action be taken by means of a county's CP

and/or DRs where the record demonstrated that significant issues of groundwater quality and quantity used for public water supply existed. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)

- A CP must comply with the stormwater drainage aspects of RCW 36.70A.070(1). *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The mere listing of existing facilities does not comply with the mandate of RCW 36.70A.070(1) to adopt drainage and stormwater goals, policies, strategies and regulations. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- RCW 36.70A.070(1) requires that CP policies and DRs to provide solutions for existing as well as future problems of stormwater drainage must be adopted. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

SUBAREA PLANS

- Subarea plans are optional elements of a comprehensive plan. While a jurisdiction has discretion to utilize subarea plans, RCW 36.70A.080(2) requires that subarea plans be consistent with the comprehensive plan and are subject to the goals and requirements of the GMA. Subarea plans are, as the prefix "sub" implies, a subset of the comprehensive plan of a jurisdiction and they typically augment or amplify policies contained in the comprehensive plan. There is no GMA requirement that a subarea plan contain all the mandatory elements required by RCW 36.70A.070. Thus, the Eastsound Subarea Plan is not required to contain a housing element since the goals, objectives, and policies of the Housing Element in the County's Comprehensive Plan apply and govern in the Eastsound area. *Campbell v. San Juan County,* Case No. 09-2-0014, Final Decision and Order at 21 (Jan. 27, 2010)
- [The Bayview Ridge Subarea Plan], must conform to the existing comprehensive plan and use the same planning period. If they did not, the planning period in the Subarea Plan would be inconsistent with the comprehensive plan in violation of RCW 36.70A.070 [preamble] and 36.70A.080(2). *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 12 (Aug. 6, 2007)
- The adoption of new population projections is the triggering event for the revision of the planning period in the comprehensive plan, rather than the revision of the planning period being triggered by the adoption of a subarea plan. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 13 (Aug. 6, 2007)
- In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the

rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)

- Where an area is in an UGA but still under County jurisdiction, a County must use a joint and collaborative planning process under RCW 36.70A.210 and .020(11) rather than treat the City as "just another critic." *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)
- A GMHB has jurisdiction to decide whether a county has complied with the GMA when it adopted a new CP and DRs and continued use of a previously adopted subarea plan without any review for consistency or readoption at the time of adoption of the CP and/or DRs. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)
- The GMA is clear that a CP and DRs are to be adopted first and that the subarea plan process is supplemental to the original CP. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)
- A CP and any subarea plan contained therein must be internally consistent. Internal consistency is defined by WAC 365-195-500. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)
- A CP must comply with the goals and requirements of the GMA. A CP must have uniform policies and standards throughout in order to achieve internal consistency. Any subarea plans are subject to the same level of scrutiny as the entire CP. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)
- The land use element and any subarea plans adopted through it must be consistent with all other elements of the CP. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

SUBJECT MATTER JURISDICTION – *SEE* JURISDICTION

SUPPLEMENTAL EVIDENCE (SEE ALSO EXHIBITS/EVIDENCE)

- [In reviewing the motion to authorize discovery, the Board found that discovery in this case will not supply relevant information for the Board as it makes its decision. The Board's decision is also based upon the short timeline for board decisions, which may be impacted by discovery] Discovery is normally not allowed for cases before the Board as is specified in the Board's administrative code: "Discovery shall not be permitted except upon an order of a board or its presiding officer." WAC 242-02-410(1) Discovery is discouraged in large part due to the fact that the evidence upon which a board may base its decision is limited to the "record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision." *Caitac, et al v. Whatcom County,* Case No. 10-2-009c, Order on Motion at 2 (June 8, 2010)
- [In granting Skagit D06's Motion, the Board stated] While the initial Index of the Record should contain all the documents relied upon by the City in

taking the action under appeal, a party may move to supplement the record with "additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision." [RCW 36.70A.290(4)] Such "additional evidence" need not have been considered by the local legislative body whose action is under appeal. *Skagit D06 LLC v City of Mount Vernon,* Case No. 10-2-0011, Order on Motion to Supplement at 3 (May 6, 2010)

- *Skagit Hill Recycling v. Skagit County,* Case No. 09-2-0016, Order on Reconsideration (Jan 4, 2010)(For the purposes of reconsideration, an Order on Motion to Supplement the Record is not a "final order" as that term is defined by WAC 242-02-040(3))
- *Heikkila/Cook v. City of Winlock,* Case No. 09-2-0013c, Final Decision and Order (Oct. 8, 2009)(Denying supplementation with a petition signed by 400 citizens and business owners)
- In regard to Petitioners' assertion that the Board's denial [of post-hearing submittals] prevented it from having a fair hearing on the issues the submittals pertained to, Petitioners are reminded that its case is presented in briefing (opening and reply) and at oral argument, with the evidence supporting such argument to be provided at that time. If the information contained within these documents was so vital to the Petitioners' case, these documents should have been submitted with the briefing or, in the alternative, the Petitioners should have moved for authorization to file additional documents subsequent to the HOM. *Friends of Skagit County et al v. Skagit County,* Case No. 07-2-0025c (Order on Reconsideration, (June 18, 2008), at 9-10. [For discussion on the denial of the post-hearing submittals see the May 12, 2008 FDO at 9-10].
- [Petitioner seeks to submit additional evidence to support his argument on reconsideration, the Board concluded …] If such evidence was available, but not offered until after the opportunity had passed, the Petitioner is not entitled to another opportunity to submit the evidence. When a motion for reconsideration is submitted after a final decision has been rendered, the Board must base its decision on the evidence considered at that time. There was ample opportunity, with reasonable diligence, for the Petitioner to present this evidence prior to the Board's issuance of its Order. All of the documents that the Petitioner relies on were available at the time of briefing on the issues presented to the Board with the County's Motion to Dismiss. Therefore, the Board will not consider the Declaration and the related attachments. *Powers v. Jefferson County,* Case No. 08-2-0010 (Order on Reconsideration, May 22, 2008) at 7
- In examining proposed supplemental evidence, we look to both the relevance of the proposed evidence and its reliability. First, supplemental evidence must have a bearing on the issues in the case. The party offering the evidence must be able to show that the evidence will help illuminate the issues before the board. Second, the evidence must be of a nature that the board can rely upon to be objective and trustworthy. Even if relevant to an issue before the board, evidence will not be admitted if it

is mere opinion or argument. *Ray, Jacobs, Jorbensen, Lean and Friends of the Waterfront v. City of Olympia and Department of Ecology,* Case NO. 02-2-0013 (Order Re Motion to Supplement the Record, 4-1-03)

- Tapes of a BOCC meeting which occurred approximately four months after adoption of an ordinance would not be necessary or of substantial assistance in reaching a Board decision. A motion to supplement the record is denied. *Diehl v. Mason County* 95-2-0073c (Compliance Order, 6-27-01)
- BOCC findings are not "varieties" on appeal to a GMHB. *Panesko v. Lewis County* 00-2-0031c (FDO, 3-5-01)
- As a general proposition requested supplemental evidence compiled after the decision of the local government has been made will not be permitted. Such supplemental evidence may occasionally be admitted for issues involving a request for invalidity. Supplemental evidence of materials available to the local government, often developed by the local government, but not included in the record of deliberations are often admitted. Newspaper articles are not admitted for supplemental evidence. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)
- An exhibit that was listed in the index but was not submitted for the HOM is not part of the record and will not be considered on a reconsideration motion. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)
- Where a local government moves to supplement the record with a scientific study on the day before the compliance hearing is held, post-hearing briefing on the issue of admissibility was allowed. *ICCGMC v. Island County* 98-2-0023 (Compliance Order, 11-17-00)
- In determining what is "science" under BAS a process that consists of four stages of (1) making observations, (2) forming hypothesis, (3) making predictions and (4) testing those predictions are fundamental to the establishment of an appropriate "science." A major principle of scientific inquiry is replication. The principle of replication is most generally used in the scientific community as "peer review". *FOSC v. Skagit County* 96-2-0025c (Compliance Order, 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO, 8-9-00)
- A motion to supplement the record with, or take official notice of, new ordinances adopted late in the PFR process will be denied. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)
- Expert witnesses are allowed as supplemental evidence under RCW 36.70A.290(4). *Diehl v. Mason County* 95-2-0073 (Compliance Order, 3-22-00)
- Petitioners have the burden of demonstrating that their requested discovery would lead to evidence that would be necessary or of substantial assistance to a GMHB. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)
- The test of RCW 36.70A.290(4) for supplemental evidence to be of substantial assistance to a GMHB is reaching its decision was not met by a proposed exhibit involving a set of notes taken at a public meeting and

an unsigned memorandum, both of which were prepared by petitioners. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)

- A party requesting supplemental evidence must convince a GMHB that such evidence is necessary or of substantial assistance in reaching the decision. RCW 36.70A.290(4). *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)
- WAC 242-02-650 allows the admission of all relevant evidence including hearsay evidence if the offered hearsay is the type of evidence upon which reasonable and prudent persons are accustomed to rely in the conduct of their affairs. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- A GMHB will only accept supplemental evidence that is necessary or of substantial assistance in reaching its decision. RCW 36.70A.290(4). In order for a GMHB to consider such supplemental evidence a request from a party to admit the evidence is necessary. *Diehl v. Mason County* 95-2-0073 (Compliance Order, 9-18-97)
- Even if a GMHB assumed that expert opinion interpreting the evidence in the record constituted supplemental evidence in this case, it was not necessary nor would it have been of substantial assistance. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)
- Where discrepancies existed between the titles of maps and the titles in the index, the proposed exhibits were not necessary nor of substantial assistance in reaching a decision. *FOSC v. Skagit County* 95-2-0065 (MO 8-7-95)
- The record is the source of evidence upon which a GHMB bases its decision about compliance or noncompliance. Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute valid challenges, the preponderance test will be met. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- The absence of evidence is often as compelling as its presence. *WEC v. Whatcom County* 94-2-0009 (FDO, 2-23-95)
- In order to be allowed, supplemental evidence must be necessary or of substantial assistance in reaching the decision by a GMHB. RCW 36.70A.290(4). *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)
- A tour and view of a portion of the county prior to the hearing on the merits did not constitute evidence but was simply an aid to understanding the issues. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

TIERING

- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within

municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)

- A three-tier approach for maximizing efficient use of existing infrastructure and providing for future infrastructure complied with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)
- A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- RCW 36.70A.110(3) provides a phasing requirement for urban growth to be located first in areas that have adequate existing facilities and services and then in areas where a combination of existing and additional facilities and services will be provided through either public or private sources. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- The use of contingent and holding district zoning within the UGA outside of municipal boundaries to support concurrency and provide a mechanism for tiering of urban growth complied with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A local government must direct growth first to an area that contains existing public facilities and services and then expand such an area only after an analysis of the need for, cost of and ability to pay for new public facilities and services. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

TIMELINESS

- That the County designated the Hadaller property as ARL in 2007 and did not subsequently amend that classification raises what the Board believes a more foundational basis for granting the County's motion – timeliness [citing to RCW 36.70A.290(2)'s 60-day limitation] … The Board recognizes Petitioner's challenge is to legislative actions taken in August 2009. However, as noted above, the Hadaller property was designated ARL in 2007. While a timely appeal was filed in Case No. 08-2-0004c, the present appeal, effectively challenging a decision that was made in 2007, is not timely. *Hadaller v. Lewis County,* Case No. 09-2-0017, Order on Motion to Dismiss at 5 (Jan. 27, 2010)
- [A]ny challenge to the exclusion of Petitioner's property or any other property from the Glen Cove LAMIRD should have been raised when Jefferson County finalized the boundaries for this LAMIRD in 2002 or reviewed them in 2004 as part of the update to its comprehensive plan required by RCW 36.70A.130(1). The time to challenge the enactment of these boundaries has long passed according to RCW 36.70A.290(2).

Widdell v. Jefferson County, WWGMHB Case No. 06-2-0004 (Order on Dispositive Motion, 5-2-06).

- Those issues addressed to provisions of [the existing code] that were not raised when those provisions were originally adopted and were not amended by [the challenged ordinance] are not timely and may not be raised now. .. Unchanged comprehensive plan provisions and development regulations may not be challenged in a petition for review of subsequent enactments. *Wristen-Mooney v. Lewis County,* WWGMHB Case No. 05-2-0020 (Order on Motion to Dismiss, 12-8-05)
- The time for bringing any claims alleging noncompliance in the revision of or failure to revise *any* portions of the Whatcom County comprehensive plan will not begin to run until the County has either completed its update as required by RCW 36.70A.130; or failed to meet the statutory deadline of December 1, 2004. *1000 Friends v. Whatcom County* 04-2-0010 (Order on Motions to Dismiss 8-2-04)

1. PFR

- An agricultural overlay amendment adopted in conjunction with readoption of the land use map created an issue of inconsistency which was timely appealed. *Hudson v. Clallam County* 96-2-0031 (MO 3-21-97)
- A petition that is not filed within the 60-day period after publication, as required by RCW 36.70A.290(2), will be dismissed. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A PFR must be filed within 60 days after notice of publication is made. There is no provision in the GMA for any expansion of the 60-day filing period. *Schlatter v. Clark County* 95-2-0078 (FDO, 8-16-95)
- Under the facts of this case the doctrine of laches did not apply and a PFR was timely filed. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- Whether the act of adoption is by resolution or by ordinance, the GMA requires publication of a notice of that adoption in order to start the 60-day clock for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)
- The 60-day limitation period for filing a PFR does not start until a notice of adoption has been published by the local government. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

2. FDO

- While the GMA does now allow for an extension of time to issue a FDO if the parties are engaged in a settlement process, it does not allow a GMHB to suspend the deadline for issuance of a FDO or otherwise dismiss a case because the issues may soon become moot. *WEAN v. Island County* 97-2-0064 (MO 2-23-98)

TRAFFIC MANAGEMENT ZONE (TMZ)

- A temporary moratorium on development in a TMZ complies with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)

TRANSFER OF DEVELOPMENT RIGHTS (TDRS)

- The removal of most agriculturally designated property from the UGA and the enactment of a transfer of development rights program by the city for the 17 acres of prime agricultural lands still within the city's UGA complied with the GMA. *Abenroth v. Skagit County* 97-2-0060 (Compliance Order, 3-29-99)
- Under RCW 36.70A.060(4), land within an UGA may not be designated agricultural unless the local government has enacted a program authorizing transfer or purchase of development rights. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- A city cannot designate property within its municipal boundaries as agriculture unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- TDRs provides a tool for permanent preservation of sensitive lands and open space. The GMA encourages its use. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- The allowance of TDRs from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (Compliance Order, 8-17-95)

TRANSFORMATION OF GOVERNANCE

- The County's position is not compliant with the GMA as to concurrency and transformance of governance within the Sedro-Woolley UGA because it would allow development through subdivisions at greater than rural densities but at less than urban densities, without annexation, without urban infrastructure, and without any realistic certainty that urban infrastructure will soon be able to be provided, or if it ever could be. *City of Sedro-Woolley, et al. v. Skagit County* 03-2-0013c (Compliance Order, 6-18-04)
- We have held that efficient phasing of urban infrastructure is the key component to transformance of governance from a county to a city. Assurance of annexation should occur before urban infrastructure is extended within the unincorporated portions of a UGA because the extension of services is the primary inducement that cities have to bring unincorporated areas within their jurisdiction into their cities. If land is not appropriate for urban development (due to the inability to provide for urban services), it should be left out of a UGA. *City of Sedro-Woolley, et al. v. Skagit County* 03-2-0013c (Compliance Order 6-18-04)
- Where a county adopts a position that for many years that interlocal agreements adequately substituted for DRs to accomplish the purpose of transformance of governance, it cannot now complain that it does not have the ability to amend those interlocal agreements in order to achieve compliance. *FOSC v. Skagit County* 00-2-0050c (RO 3-5-01)

- A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- That which is urban should be municipal. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- Implicit in RCW 36.70A.110(4) is the principle that incorporations and annexations must occur. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- Under RCW 36.70A.210(1), counties are providers of regional government actions and cities are the primary providers of urban governmental services. The long-term purpose of CP policies is the transformance of governance of urban growth to municipalities. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- The GMA has a strong preference for urban areas being served by and incorporated into municipalities and thus it is inappropriate to establish a non-municipal UGA in close proximity to an existing municipal UGA with no plan for transformance of governance. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)

TRANSPORTATION ELEMENT

- A county is not in noncompliance when it uses the corridor approach as a level-of-service methodology in rural areas. *Mudge, Panesko, Zieske, et al. v. Lewis County*, 01-2-0010c (Compliance Order, 7-10-02) Also *Panesko v. Lewis County*, 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (Compliance Order, 7-10-02)
- A petitioner did not sustain its burden of showing that the potential cumulative impacts of lowering an LOS standard for transportation was

"significant." *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)

- A local government must establish a level of service, inventory transportation facilities and services to define existing facilities and travel levels, project future needs, and adopt a multi-year financing plan that is coordinated and consistent with the TIP plan. *Achen v. Clark County,* 95-2-0067 (Compliance Order, 11-16-00)
- A local government may adjust any of its LOS, needs analysis and/or funding analysis to fit local circumstances as long as the ultimate decision concerning these elements are consistent with each other, based upon facts established in the record and are not based upon artificial standards designed to avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027 (FDO, 6-30-00)
- A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Transportation policies contained in the CP must be consistent in order to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- A city's change of methodology for the measurement of traffic in the establishment of new LOS standards did not significantly raise or lower the LOS standards. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A temporary moratorium on development in a TMZ complies with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A change in LOS standards involving a different methodology of traffic measurement does not substantially increase nor lower the LOS standards and a DNS determination was not clearly erroneous. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A new corridor-approach LOS standard discourages sprawl and encourages multi-modal transportation by avoiding costly intersection improvements that promote single occupancy vehicle use. *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- A "less-than-ten-trip" exemption for requiring a transportation impact study would lead to an incomplete assessment of cumulative impacts on LOS and thus fails to comply with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO, 5-22-00)
- Transportation concurrency and LOS standards are tasks for the CP process and are not required in the designation of IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO, 4-5-99)

- A regional transportation plan that provides regional coordination and discusses applicable LOS levels and is adopted in the CP complies with the GMA. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- RCW 36.70A.070(e) requires that after adoption of a CP, DRs must prohibit approval of a development which would cause a transportation facility LOS to decline below that which was designated in the CP. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A 10-year traffic forecast required by RCW 36.70A.070(6)(iv) that was contained in a computer model available to anyone but which was not published in the CP did not comply with the GMA. Publication serves two purposes: to ensure that the analysis was prepared and to make such analysis readily available to the local decision-maker and members of the public. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)

UPDATES

- [In determining whether development regulations which had been adopted in 2001 but are incorporated by reference within regulations adopted as part of the County's required RCW 36.70A.130(1) update are open to challenge, the Board stated:] … the reasoning and rationale set forth by the Supreme Court in the *Thurston County* matter, in regards to updates conducted pursuant to RCW 36.70A.130 for comprehensive plans, applies equally to development regulations. [Based on the Supreme Court's holding the Board concluded Petitioner was limited to challenges for failures to update provisions directly affected by new or recently amended GMA provisions and the Board found no amendments to the GMA which would have required the County to update these 2001 regulations. Thus, Petitioner's challenge was untimely]. *OSF/CPCA v. Jefferson County,* FDO, at 11-13 (Nov. 19, 2008)
- This Board has consistently held that the update requirement applies to all provisions of a comprehensive plan or development regulation. While the Board agrees that one of the reasons for the update requirement is to respond to changes in the GMA, the GMA does not distinguish between a need for revision caused by a change in the GMA and a need for revision caused by non-compliance generally. Indeed, it would have been relatively easy to make such a distinction in terms of the obligation to update by providing that the review was for the purpose of according with changes in the GMA only. No such language is in RCW 36.70A.130 nor is it suggested by any other provision of the Act. The objective in statutory interpretation is to ascertain and give effect to the Legislature's intent as expressed by the plain language of the statute. The Legislature should be presumed to have meant what it said and to have chosen to impose the broader obligation by choosing not to limit the update obligation to only conformity with changes in the law. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c, Order on Motion to Dismiss, at 4-5 (Jan 10, 2008) (Board member McNamara dissenting).

- The update requirement should also be read in the context of the GMA overall. A comprehensive plan lays out the "blueprint" for planning in the jurisdiction, providing guidance to local officials and developers alike in making later project decisions … the update requirement strikes a balance between finality of land use decisions and the need to accord with changes in the law. In addition to changes in the GMA itself, updates should incorporate board and court decisions on the applicability of GMA goals and requirements. By requiring periodic updates, RCW 36.70A.130(1) and (4) calls on counties and cities to incorporate legal changes and other changes as well – changes based on new information, new data, new planning and management practices, changing community conditions, and new science. The updates also encourage cities and counties and their citizens to evaluate the vision and direction encompassed in their plans, determine if their approach is working, and change direction if needed. The update requirement is also important as a means for the citizenry to take part in land use decision-making ... The update process gives citizens new to the planning process in their communities the ability to familiarize themselves with their community's plans and the goals and requirements of the GMA ... The update requirement thus is also important in providing the opportunity for citizens to bring new data, information, and best available science required for the development of plans and regulations to the attention of local decision-makers, In this way, the update requirement balances the desire for predictability of land use decisions with the ability of the public to participate on a periodic basis in ensuring that State goals and objectives for growth apply locally. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c, Order on Motion to Dismiss, at 5-6 (Jan 10, 2008) (Board member McNamara dissenting).
- [RCW 36.70A.130(3) requires that a jurisdiction review its UGAs every 10 years from the date of designation] Whatcom County has failed to review its UGA boundaries, the densities permitted within the UGA boundaries, and the extent to which the urban growth occurring within the county has located with each city and the unincorporated portions of the [UGA] within the timeframe established by RCW 36.70A.130(3). *Wiesen v. Whatcom County,* Case No. 07-2-0009, Order on Motions, at 7 (Aug. 27, 2007)
- To prevail upon his claim [that the County established its own deadline in its comprehensive plan], Petitioner would have to show a clear commitment in the comprehensive plan to a new deadline for a GMA-required action. The referenced language in the Whatcom County comprehensive plan is simply not unequivocal. It provides that "the City and Whatcom County should review certain areas identified in this plan on a priority basis" and it refers to "Bellingham's Five-Year Periodic Review". It states that "the plan envisions two general types of plan amendments" of which the first type "is a review conducted every five years." Petitioners point to nothing in the plan language which states that it is setting a new schedule for the RCW 36.70A.130(3) review. Since it is the plan itself

upon which Petitioner must rely, it is the plan itself that must create the new deadline. Petitioner has not met his burden to show that the County established a mandatory new deadline for review of the Bellingham UGA in its comprehensive plan. *Wiesen v. Whatcom County,* WWGMHB Case No. 06-2-0008 (Order Denying Reconsideration, 8-14-06).

- [The challenged ordinance] does not contain a statement that a review and evaluation has occurred of any changes in the comprehensive plan that may be needed to assure compliance with the GMA. [It] similarly lacks such a statement with respect to the City's development regulations. Neither contains a finding that certain revisions were made or that revisions were not needed. The public notices sent by the City are primarily about the proposed UGA expansion. Some of them could be read to address the comprehensive plan generally, such as the City Council agenda item on June 13, 2005 entitled "Update on Status of UGA Expansion/Comp Plan". However, none of them advise the public that the comprehensive plan and development regulations are being reviewed for the purpose of ensuring compliance with the GMA… Therefore, the City has not completed its Update of its comprehensive plan and development regulations as required by RCW 36.70A.130. *Harader v. Winlock,* WWGMHB Case No. 06-2-0007(FDO, 8-30-06).
- The County timely conducted the Update required by RCW 36.70A.130. The only update of the Resource Ordinance that the County determined was necessary was to incorporate the 2005 GMA changes which encouraged accessory uses on Agricultural Resource Lands. Petitioners have failed to show that revisions of the Resource Ordinance were necessary to make these development regulations compliant with RCW 36.70A.060 and 36.70A.170, and that the County failed to make those necessary revisions. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- Further, the last part of the County's comprehensive plan and development regulations to be revised and found compliant were the parts pertaining to rural development. Compliance on these parts of the County's plan and regulations was found in November 2004. The Update challenged here relies in large part on these policies and regulations. Therefore, the County has not yet had the opportunity to develop much data on whether its strategy for promoting growth in urban areas and restricting growth in rural areas is working. One of the purposes of the Update mandated by RCW 36.70A.130 is to give citizens and local governments an opportunity to assess the success of plans and regulations. The County's next update of its UGAs and development regulations will provide a better picture of the success of the County's strategy and its compliance with the sprawl reduction goal of the GMA. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- The Board's examination of the Ordinance shows that the City has not made "a finding that a review and evaluation has occurred and identifying

the revisions made, or that a revision was not needed and the reasons therefore." Ordinance 2702, Opening Recitals and Findings. The Board concludes that, without such a finding, no update pursuant to RCW 36.70A.130(1), (2)(a), and (4) has occurred. Therefore, to the extent the City has not acted to update its CAO, any challenges to the sufficiency of that update under RCW 36.70A.130 are not ripe. *Evergreen Islands, Futurewise and Skagit County Audubon Society v. City of Anacortes*, WWGMHB Case No. 05-2-0016 (FDO, 12-27-05)

- The GMA requires that the County adopt a resolution or ordinance finding that a review and evaluation has occurred. RCW 36.70A.130(1)(a). The County did this in Resolution 2005-06, finding that the County had "hereby completed its seven-year review pursuant to RCW 36.70A.130." Resolution 2005-06. Resolution 2005-06, therefore, constitutes the County's "update" and a petition for review of Resolution 2005-06 is the mechanism by which compliance may be challenged. *Futurewise v. Whatcom County,* WWGMHB Case No. 05-2-0013 (Order on Dispositive Motions, 6-15-05).
- The County's designation and regulation of limited areas of more intensive rural development must accord with the criteria in RCW 36.70A.070(5)(d). While those criteria were not in effect at the time that the County's comprehensive plan was first adopted, the update requirement applies to incorporate any GMA amendments into the review and revision of comprehensive plans and development regulations under RCW 36.70A.130. This motion to dismiss is denied. *Futurewise v. Whatcom County,* WWGMHB Case No. 05-2-0013 (Order on Dispositive Motions, 6-15-05).
- Now that there is direction in the GMA on how to address areas of more intensive rural development, the County's update must ensure that it complies with those terms. *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, 7-20-05)
- The County's update requirement under RCW 36.70A.130 includes a requirement for a population allocation analysis. Whether the County was required to take further compliance efforts with respect to its UGA boundaries and densities will depend, at least in part, on the population allocation analysis itself. *Futurewise v. Whatcom County,* WWGMHB Case No. 05-2-0013 (Order on Dispositive Motions, 6-15-05).
- This [update] requirement imposes a duty upon the County to bring its plan and development regulations into compliance with the GMA, including any changes in the GMA enacted since the County's adoption of its comprehensive plan and development regulations. While some provisions of the County's plan and development regulations may not have been subjected to timely challenge when originally adopted, a challenge to the legislative review required by RCW 36.70A.130(1) and (4) opens those matters that were raised by Petitioner in the update review process. See RCW 36.70A.280(2). *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, 7-20-05)

- "Updates" require a review and revision, if needed, of both the comprehensive plan and the development regulations to ensure their compliance with the GMA. *1000 Friends v. Whatcom County* 04-2-0010 (Order on Motions to Dismiss 8-2-04)
- Nowhere in Ordinance 2004-017 does the County find that it has undertaken a review and evaluation of its comprehensive plan (or any part of it), nor does it state that the amendments are revisions of the comprehensive plan to meet the update requirements. The statute provides that such findings are a minimum requirement for legislative action to meet the update requirements. *1000 Friends v. Whatcom County* 04-2-0010 (Order on Motions to Dismiss, 8-2-04)

URBAN DENSITIES

- Futurewise's argument is based on academic literature that sets forth the costs and impacts of low-density sprawl, something that the GMA seeks to reduce. From this literature, Futurewise gleans a 4 du/acre minimum urban density. However, Futurewise spends little time providing the requisite analysis for the Board and the Board does not see sprawl simply as development at less-than-minimum-density; rather sprawl refers to development that, under the GMA's regional planning framework, is at a low *relative* density and, a density that may be *too costly to maintain*. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c(FDO (April 23, 2008) at 68-69.
- This is not to say that the Board approves of urban densities which are substantially less than the County's other urban densities, especially given the justification that the County presents **-** existing residential lot sizes, distance to city services (e.g. sewer), the presence of critical areas, and the proximity to a wastewater treatment facility. The Board has previously stated that the presence of critical areas provides reasonable justification for reduced density, however, the RCW 36.70A.110(3) and RCW 36.70A.020(1) seeks to focus growth into UGAs so utilizing established residential land use patterns as a basis for reduced densities is not a reasonable justification. The Board recognizes that in this Order it concluded existing land use patterns assisted in establishing the appropriate rural density for Clallam County. However, rural development is not the same as urban development. To allow historic, sprawling land use patterns in and around urban areas to control future development would simply negate the intent and purpose of the GMA itself – directing urban growth into urban areas - in other words, for some areas sprawl would simply continue in perpetuity. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO, April 23, 2008) at 69.
- As the Board has noted in previous cases allowing new development to occur in a UGA prior to the availability of urban services requires a delicate balance. Without urban services new development cannot achieve an urban density. Alternately, new development at non-urban densities must not preclude the eventual achievement of urban densities

when urban services become available" ... For the County to attempt to justify lower density development based on the City's inability to provide services to the area at the time of development, is a clear violation of the GMA. Although the County did note that density would be modified upon the provision of urban services, this is unlikely to happen as the land would have already been developed at sprawling, low-density levels with little potential for re-development at more intense levels. *Dry Creek Coalition/Futurewise v. Clallam County,* Case No. 07-2-0018c (FDO April 23, 2008) at 70.

- While we do not doubt Mason County's good faith in pursuing its sewer plan, it does not have a compliant sewer plan for the Belfair UGA yet. Since the amendments to MCC 1.30.030 and 1.30.031 are predicated upon the existence of a sewer plan for the entire Belfair UGA and do not set minimum urban densities, we cannot find they achieve compliance at this time. They are clearly erroneous and continue to violate RCW 36.70A.110(3), 36.70A.020(2) and 36.70A.020(12). *ADR/Diehl v. Mason County,* WWGMHB Case No. 06-2-0005, Order on Compliance (May 14, 2007)
- [P]hasing is one mechanism for achieving urban densities concurrent with needed urban levels of service but phasing itself is not a GMA requirement. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 42 (Aug. 6, 2007)
- The change in urban residential densities allowed pursuant to the Belfair Urban Growth Area Plan does not reduce the allowable urban densities except in environmentally sensitive areas where densities of 3 dwelling units per acre (R-3) are allowed. MCC 17.22.110. Otherwise, the allowable urban residential densities are 5 per acre (R-5) (MCC 17.22.200) and 10 per acre (MCC 17.22.300) (R-10). Petitioner does not challenge the R-3 zone and offers no evidence to suggest that the County has not properly adjusted residential densities to allow for steep slopes and critical areas. Since the increase in allowable urban densities to 5 dwelling units per acre and 10 dwelling units per acre encourages urban densities within the established UGA, they are appropriate for the Belfair UGA. *Overton et al. v. Mason County,* WWGMHB Case No. 05-2-0009c (FDO, 11-14-05).
- [W]e do not find that the County's choice to use densities of 3.5 dwelling units per acre for certain residential portions of the Irondale and Port Hadlock UGA to be clearly erroneous. Because environmentally sensitive areas are present, lesser densities are justifiable. *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, 5-31-05)
- UGAs are those areas of a county in which urban levels of development are expected to occur. Urban levels of densities are typically at least four dwelling units per acre. Rural densities are, as all three growth hearings

boards have held, densities no greater than one dwelling unit per five acres. When higher than rural densities are allowed, they must be located either in a limited area of more intense rural development ("LAMIRD") or in an urban growth area. *City of Sedro-Woolley, et al. v. Skagit County* 03-2-0013c (Compliance Order, 6-18-04)

- A county may not include extensive non-urban densities of 1 unit per acre within a non-municipal urban growth area absent a plan to increase the density of such areas at the time of incorporation. *Klein v. San Juan County, 02-2-0008* (FDO, 10-18-02)
- A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A CP policy directing minimum densities must be implemented by DRs that are consistent. Compliance cannot be found until both actions are complete. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- Projected densities for IUGAs at the end of the planning period, which only slightly increased current densities, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Urban density goals and requirements of the GMA relate primarily to anti-sprawl and compact development. They do not, in and of themselves, address affordable housing goals and requirements. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- There is no authority under the GMA to place an UGA within the confines of the federal national scenic area, particularly when the maximum density allowed is one dwelling unit per two acres, which is not an urban density. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A 2-4 dwelling unit per acre designation for a residential/sensitive area where the record demonstrated a complete analysis by the city and the designation was limited to areas of "unique open space character and sensitivity to environmental disturbances" complied with the GMA. *Berschauer v. Tumwater* 94-2-0002 (Compliance Order, 12-17-94)
- Urban densities of 1 dwelling unit per acre and 2-4 dwelling units per acre did not comply with the GMA. *Berschauer v. Tumwater* 94-2-0002 (FDO, 7-27-94)

URBAN GROWTH

- SEWER FACILITIES: The County provides for development with only septic tanks, both individual and community, in the Carlsborg [UGA]. The

Board has found that septic tanks are not an urban level of service. The County has not adopted a capital facilities plan compliant with the provisions of RCW 36.70A.070(3) for providing sewers. The County cannot provide sewer service to enable urban development at the time of development. Therefore, CCC Section 33.20 which permits urban uses before the advent of sewers in the Carlsborg UGA, is non-compliant [the GMA]. *Dry Creek Coalition/Futurewise v. Clallam County,* case No. 07-2-0018c (FDO April 23, 2008) at 79-80.

- Under the *Quadrant* decision, land that is already developed at suburban densities may be considered as being "characterized by urban growth" for purposes of inclusion in a UGA. Therefore, we find that the inclusion of the westernmost properties in the Eastsound UGA does not violate the requirement that lands within a UGA be "characterized by urban growth". RCW 36.70A.110(1). However, those lands may still not be designated as part of a UGA until a compliant capital facilities plan demonstrates that urban services can be provided to those areas within the planning period. RCW 36.70A.110(3) and RCW 36.70A.020(12). Further, once included in the UGA, those lands must be zoned for appropriate urban densities so that landowners may pursue more intensive development in the future, if they wish. See RCW 36.70A.110(2). *Stephen Ludwig v. San Juan County,* WWGMHB 05-2-0019c and *Fred Klein v. San Juan County,* WWGMHB 02-2-0008 (Compliance Orders, June 20, 2006) and *John Campbell v. San Juan County*, WWGMHB Case No. 05-2-0022c (FDO, 6-20-06)
- RCW 36.70A.070(5)(d) clarifies that the Legislature did not intend to have appropriately designated LAMIRDs looked upon as urban growth. *Diehl v. Mason County* 95-2-0023c (Compliance Order, 11-12-03)
- To allow new uses of urban scale and intensity and that require urban services in an area designated as Rural is clearly erroneous and is inconsistent with RCW 36.70A.020(1), (2); RCW 36.70A.110(4). *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- The concept of establishing an unincorporated UGA at Eastsound and Lopez Village complied with the Act because the areas were "characterized by urban growth." *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Goal 1 of the Act allows and encourages expansion to take place in urban areas where public facilities can accommodate such growth at a lower cost and with less burden to taxpayers and to the natural environment. *Dawes v. Mason County* 96-2-0023c (Compliance Order, 3-2-01)

- An urban reserve designation of a remainder area from a cluster development that is implemented throughout the county and at the owner's discretion does not comply with the Act. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- A shift of an urban commercial industrial lands allocation to non-urban areas under the record in this case does not comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)
- While the sizing of the UGAs was compliant, the resulting densities were woefully inadequate to satisfy the GMA requirement to achieve urban growth within UGAs. A county does comply with its own CPPs nor with the GMA when it directs more than 50 % of the allotted population projection to rural areas. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. *Solberg v. Skagit County* 99-2-0039 (FDO, 3-3-00)
- Where an area is in an UGA but still under County jurisdiction, a County must use a joint and collaborative planning process under RCW 36.70A.210 and .020(11) rather than treat the City as "just another critic." *Birchwood v. Whatcom County* 99-2-0033 (FDO, 2-16-00)
- Except in extremely unusual circumstances not shown in the record here, 2 acre and ½-acre lots constitute urban growth. *Friday Harbor v. San*

Juan County 99-2-0010 (FDO, 7-21-99) *See Diehl v. Mason County* 94 Wn. App. 645 (1999)

- The record revealed that the Clinton and Freeland areas were areas involving non-municipal urban growth and were not appropriately designated as an AMIRD. *ICCGMC v. Island County* 98-2-0023 (FDO, 6-2-99)
- Urban growth represents more than just residential densities. Commercial and industrial growth is a component that must be addressed. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO, 4-5-99)
- Under the GMA infill is the intensification of density within a constrained area. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- The failure of a local government to rezone areas which were no longer needed or appropriate for commercial and industrial use outside of UGAs, when a local government also took action to make it possible to create new commercial and industrial zones in the rural area, did not comply with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- The readoption of all previous commercial and industrial zoning outside of UGAs with no analysis of the need for, the cost of, or the appropriateness of the location of the zones, did not comply with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Under the GMA land is included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development it should be left out of an UGA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Simply because water and/or sewer are available does not justify allowance of new urban growth. Need and availability of alternatives must be analyzed as well as the overall tax burden or cost of the various alternatives. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- Existing development alone does not justify allowance of new urban growth outside of properly established IUGAs or UGAs. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- The GMA does not allow designation of an UGA that is not expected to ever develop at urban densities simply to allow a city to have greater control over its water supply, particularly when the county would continue to exercise planning jurisdiction over the area and no interlocal agreement had been made. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- A failure to provide minimum lot sizes and maximum number of lots per site in clustering provisions of a DR which continued to allow urban growth outside of properly established UGAs, did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- The county must size an IUGA large enough to accommodate the growth that will be directed into it. The Legislature has determined that directing

growth to urban areas provides for better use of RLs and more efficient use of taxpayer dollars. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)

- The GMA requires local governments to adopt policies, DRs, and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- The GMA does not allow designation of areas for urban growth where no such urban growth is expected within the planning period. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- Scattered residential areas which have serious public facility and service deficiencies are not allowed to be developed at urban levels. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO, 9-12-96)
- RCW 36.70A.110(3) provides a phasing requirement for urban growth to be located first in areas that have adequate existing facilities and services and then in areas where a combination of existing and additional facilities and services will be provided through either public or private sources. *TRG v. Oak Harbor* 96-2-0002 (FDO, 7-16-96)
- Urban growth in non-urban areas discourages development where adequate public facilities and service exist, encourages sprawl, does not allow for efficient multi-modal transportation systems, interferes with the maintenance and enhancement of resource-based industries, discourages the retention of open space and conservation of fish and wildlife habitat. Such new urban growth also decreases access to RLs and water, and fails to protect the environment and our state's high quality of life, including air and water quality and availability of water. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- The GMA makes no provisions for new suburban development. Urban growth is to be placed within UGAs and areas outside of UGAs are to have rural growth. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- The allowance of new urban commercial and new urban industrial growth outside properly established IUGAs substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)

- There is no discretion for local governments to allow new urban growth outside UGAs. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- Urban growth is the use of the land for the location of buildings, structures, and impermeable surfaces and as such is incompatible with the primary use of the land for food, agriculture, fiber or materials. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- The increase in intensity of both residential and commercial uses, a minimum density, higher density bonuses and adjustments, and accessory dwelling unit ordinance, a mixed use district and a transit overlay district, all of which allowed for more compact urban development within the city, complied with the GMA with regard to adoption of infill mechanisms. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- Industrial growth outside of UGAs can only occur under the specified criteria set forth in the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Availability of public facilities does not in and of itself define an area as characterized by urban growth. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- There is no authority under the GMA to place an UGA within the confines of the federal national scenic area, particularly when the maximum density allowed is one dwelling unit per two acres, which is not an urban density. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The failure to prohibit new urban development in existing undeveloped commercial and industrial zones outside an IUGA did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (Compliance Order, 12-14-94)
- New urban growth is prohibited outside of a properly established IUGA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

URBAN GROWTH AREAS (UGAS)

- Petitioner argues that, based on the language of RCW 36.70A.110(2) which requires that "The county shall attempt to reach agreement with each city on the location of an UGA within which the city is located," the County has the responsibility to "press this issue." Among the many tenets of the GMA is the requirement for neighboring cities and counties to plan and coordinate their comprehensive plans. This is reflected in RCW 36.70A.100. However, as this Board has held … and as Petitioner concedes, "coordination and consistency does not equate to plans being mirror images". In addition, comprehensive plans can achieve the same goals or purpose even though they may not be identical. *Campbell v. San Juan County,* Case No. 09-2-0014, FDO at 11 (Jan. 27, 2010)
- *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 19 -36 (Oct. 13, 2008) See for general background discussion as to the designation and sizing of UGAs and the County's duty.

- The language of the GMA is clear – the ultimate authority to size UGAs resides with counties and, therefore, any assertions set forth within arguments presented … that purport otherwise are not supported by the plain language of the GMA. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 21 (Oct. 13, 2008)
- Under the GMA it is the responsibility and duty of Whatcom County to establish UGA boundaries. Although the GMA does require a county to consult with its cities as to boundary lines, as noted above, cities have no power, in and of themselves, to delineate UGAs. Cities are only capable of submitting a recommendation for the location of the UGA and filing any objection with Washington State Department of Community, Trade and Development (CTED) over the UGA designation or filing an appeal before the Board … the fact that the County didn't appeal the City's determination does not transform the City's recommendation into a binding mandate the County was forced to follow. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 22-23 (Oct. 13, 2008)
- [U]pon a proper challenge to the validity of a UGA delineation, the County's Record must contain an analytical analysis for assumptions utilized to make a UGA determination. That is, the County needs "to show its work" in developing its assumptions in order for a proper evaluation by the public and the Board of whether or not the County's action in delineating the UGA complies with the GMA. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 26-27 (Oct. 13, 2008)
- At the heart of the required analysis for determining the appropriate size of the UGA is a Land Capacity Analysis (LCA) in which the County determines if a UGA has sufficient capacity to absorb the projected growth. The LCA is a critical mechanism for the sizing of a UGA because it is utilized to determine how much urban land is needed. It is prospective – looking forward over the coming 20 years to see if there is enough land within the UGA to accommodate the growth that has been allocated to the area. However, part of this determination of how much land is available is filled with assumptions or "educated guesses" that lack absolute certainty. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 27 (Oct. 13, 2008)
- The Board reiterates that its role is not to determine whether one assumption is better than another assumption or to substitute its judgment for that of the County. Rather, its role is to ensure that the County's actions comply with the goals and requirements of the GMA, in this case – that the Bellingham UGA is sized to accommodate its allocated population projections. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 28-29 (Oct. 13, 2008)
- Although a UGA boundary drawn smaller than Bellingham may have originally recommended will undoubtedly entail changes in how the City will accommodate its allocated growth, this does not displace the City's authority to plan within its borders. Given the GMA's directive to counties

to assign UGA boundaries, it is a statutorily permissible restraint. *Petree, et al v. Whatcom County,* Case No. 08-2-0021c at 34 (Oct. 13, 2008)

- See *Streicher v. Island County,* Case No. 08-2-0015, FDO at 6-15 (Sept 29, 2008) for a general discussion in regards to the land capacity analysis for the sizing of a UGA and locational criteria, which noted for sizing: (1) requirement to size the UGA for the 20-year *projected* population growth; (2) to determine whether there is enough land to accommodate projected, new growth by subtracting acreage which currently contains structures, areas that are impacted by critical areas, and areas which would be utilized to provide for future public use, including rights-of-way, sewer or water treatment facilities, parks and schools, along with the application of a reasonable market factor so as to ascertain a *net developable* acreage; and (3) once all reductions have been applied, the true net developable acreage is compared to the population demand in order to determine if a UGA is appropriately sized based on proposed uses and densities. And for locational criteria, RCW 36.70A.110, when read in conjunction with RCW 36.70A.030(18), provides that land "characterized by urban growth" is not just land that has urban growth on it but that is also land located in relationship/proximity to an area of urban growth.
- [RCW 36.70A.110(2)] requires counties to include areas and densities sufficient to permit the urban growth that is *projected to occur* for the succeeding twenty-year period. *Panesko, et al v. Lewis County,* Case No. 08-2-0007, FDO, at 20 (Aug. 15, 2008)
- [In the original FDO, the Board found that allowing a change from residential to commercial without linking it to an analysis of the commercial needs for the Irondale/Port Hadlock UGA or an analysis of the impacts of these commercial needs did not comply with the GMA. The Board concluded the County achieved compliance by amending] … Policy 1.6 to provide that parcels designated as Urban Residential on the UGA zoning map may be designated Urban Commercial provided that "The parcel rezone request is presented and approved through the annual comprehensive plan amendment process specified in JCC 18.45 JCC and the parcel rezone request is consistent and compatible with the Comprehensive Plan and future needs, documented through a commercial needs analysis …[and Policy 1.6 provides] that any change from Urban Residential to Urban Commercial shall be reflected on both the Comprehensive Plan Zoning Map and the Jefferson County Zoning Map, as they are the same. *ICAN v. Jefferson County,* Coordinated Case Nos. 03-2-0010, 04-2-0022, 07-2-0012, Order on Compliance, at 6 (Oct. 22, 2008).
- [I]f a UGA needs to be expanded to accommodate population growth, the County is to first look to land already characterized by urban growth, to rural lands, and then, if no other suitable land is available, [the County] could evaluate if natural resource lands should be de-designated to accommodate growth. Coordinated Cases *Hadaller, et al v. Lewis County,* Case No. 08-2-0004, *Butler, et al v. Lewis County,* Case No. 99-

2-0027c, *Panesko, et al v. Lewis County,* Case No. 00-2-0031c, FDO and Compliance Order, at 52 (July 7, 2008).

- [In response to Intervenor's assertion that the Housing Cooperation Law, RCW 35.83, authorized Lewis County's action in expanding a UGA, the Board stated:] … CITH's assertion that the HCL has a broad, pre-emptive scope which allows for cities and counties to act outside of the scope of the GMA's mandate. As noted *supra,* the HCL was adopted in 1939 and was last amended in 1991, after the adoption of the GMA, but only in regards to slight modifications to existing provisions. The GMA was enacted in response to a statewide need for planned and coordinated growth and seeks to, among other things, reduce sprawl, protect the environment, maintain and enhance natural resource industries, ensure public facilities and services, and encourage affordable housing. Although discretion and deference is given to local jurisdictions, there is no indication in either piece of legislation to indicate that the GMA is subordinate to the HCL nor is there any language in the HCL which appears to provide for an exemption from the requirements of any other state law, including the GMA. *Panesko, et al v. Lewis County,* Case No. 08-2-0007, FDO, at 27 (Aug. 15, 2008).
- [A]llowing new development to occur in a UGA prior to the availability of urban services requires a delicate balancing of two principles. On one side of the equation, the new development cannot be at urban densities because urban services are not yet available. On the other side of the equation, new development at non-urban densities must not preclude the eventual achievement of urban densities when urban services become available. *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 15-16.
- Where a UGA is developed at non-urban densities and intensities due to a lack of adequate urban services, then it is unlikely to ever become urban in nature. Counties and cities need to ensure that new development which is not yet served by urban services does not become permanent sprawl or environmentally damaging if capital facilities planning assumptions do not come to fruition or if growth does not occur when and how it was expected. *ADR/Diehl v. Mason County,* Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 16.
- It is true that urban growth must be assessed on a countywide basis, rather than on a UGA by UGA basis since urban growth is allocated for the county as a whole. *Skagit County Growthwatch v. Skagit County,* Case NO. 07-2-0002, FDO at 34 (Aug. 6, 2007)
- Urban levels of service to non-urban development encourages rather than discourages such suburban sprawl. Designating an area a UGA but allowing non-urban densities of residential development fails to meet the urban density requirements for UGAs. Without some mechanism to assume minimum urban densities, the new residential portions of the UGA area all to likely to become suburban sprawl. *Skagit County*

Growthwatch v. Skagit County, Case NO. 07-2-0002, FDO at 41(Aug. 6, 2007).

- RCW 36.70.110(1) requires a city to be to part of a UGA. Land within an urban growth area (UGA) may be considered to be "characterized by urban growth" because it is designated for urban densities and uses. Even if those densities and uses have not yet been built out, the designation of land as part of a UGA is a decision to allow urban densities and uses. RCW 36.70A.110(2). Adding territory to a UGA which is adjacent to compliant UGA boundaries is therefore adding territory which is adjacent to territory already characterized by urban growth. *Futurewise v. Skagit County,* Case No. 05-2-0012c, Consolidated FDO/Compliance, at 12 (April 5, 2007).
- The City of Winlock does not have the ability or the duty under the GMA to set or alter the boundaries of the UGA of which it forms a part. The adoption in Ordinance 892 of the expanded Winlock UGA boundaries established by Lewis County achieves coordination and consistency between the comprehensive plan of the City and the comprehensive plan of Lewis County as required by RCW 36.70A.100. *Harader v. Winlock,* WWGMHB Case No. 06-2-0007(FDO, 8-30-06).
- [P]arcel-by-parcel contiguity is not what is required by the phrase "adjacent to territory already characterized by urban growth". *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, August 14, 2006).
- Apart from the assertion that it does not, Petitioners have not explained how the territory included in the proposed UGA expansion fails to meet the requirement that it be adjacent to land characterized by urban growth. *Futurewise v. Lewis County,* WWGMHB Case No. 06-2-0003 (FDO, 8-30-06).
- The purpose of the UGA review is to determine whether the urban growth areas and the densities within them are appropriately accommodating urban growth. The statute clearly contemplates that the jurisdiction will have a period of up to ten years to measure and evaluate the relative success of the UGA boundaries and densities it has chosen. To conduct that review without a sufficient period of time for evaluation would not allow a meaningful review. Under the analysis proposed by Petitioner, a jurisdiction that, for example, adopted its comprehensive plan in 2002, would have to conduct a review of its urban growth areas immediately thereafter. Such a review would not have a meaningful function since there would be no basis for reviewing the relative success of the original urban growth boundaries and densities… RCW 36.70A.130(3) allows the County up to ten years from the date of designation of its UGAs to complete its review of UGA boundaries and densities. *Wiesen v. Whatcom County,* WWGMHB Case No. 06-2-0008 (Order Granting Motion to Dismiss, 7-17-06)
- The size of any UGA must be based upon the projected population growth allocated to that UGA. Since the supply of urban residential lands (18,789

acres) significantly exceeds the projected demand for such lands over the course of the 20-year planning horizon (11,582 acres), the County's UGAs fail to comply with RCW 36.70A.110. *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002 (FDO, 7-20-05).

- Because non-municipal UGAs may allow an extension of urban growth to areas that do not already have a governmental structure for the provision of urban levels of service, it is important to have a plan for the provision of urban services to the entire non-municipal UGA. If this cannot be done, the boundaries of the non-municipal UGA are likely too large. *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31, 2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, 5-31-05)
- A county cannot be found in compliance with its urban growth boundaries when data are still being collected on water capacity and where the final UGA line should be drawn. *Klein v. San Juan County*, 02-2-0008 – Lopez Island Urban Growth Area (FDO, 10-14-02)
- A county cannot be found compliant with the requirements of the GMA regarding UGAs until its capital facilities analysis with respect to wastewater and drainage services is complete, it has considered an appropriate market factor, it has established appropriate urban densities for a non-municipal UGA, and until it has precluded incompatible uses in the Airport Overlay Zone. *Klein v. San Juan County*, 02-2-0008 - Eastsound NMUGA (FDO, 10-15-02)
- A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO, 8-17-01)
- An additional designation of municipal UGA areas that have existing sewer and water or that can be efficiently provided with the same, that are outside any floodplain designation and that impose a 1:5 lot size until the city completes a very detailed planning process complies with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO, 7-10-01)
- The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- The proper sizing of an UGA is not simply a density calculation. The community residential preference is not an appropriate criterion for sizing under RCW 36.70A.110. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The concept of establishing an unincorporated UGA at Eastsound and Lopez Village complied with the Act because the areas were "characterized by urban growth." *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The use of the term "interim" in a designation of UGA process where a county acknowledged that the designations were a "work in progress" did not relieve the county of the duty to comply with all the goals and requirements concerning UGAs before compliance with the GMA can be achieved. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- Counties are required to identify "green belt and open space areas" within UGAs and to "identify open space corridors within and between" UGAs. Official maps, which do not show these areas fail to comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Within municipal UGAs efficient phasing of infrastructure is the key element, not the interim shape of the city limits boundary. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO, 2-6-01)
- Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- Where a county has limited resources and a predominantly rural configuration a GMHB will give latitude to implement new UGAs in a way that reflects the county's unique character. *Dawes v. Mason County* 96-2-0023 (Compliance Order, 1-14-99)
- One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO, 9-23-98)
- Because the GMA directs that growth will first be channeled to municipalities and then areas already characterized by urban growth, non-municipal UGAs which include assignment of new urban population to unincorporated areas not already characterized by urban growth will be closely scrutinized. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- In the UGA delineation contained in the CP a greater deference to local governments as to size is appropriate over that given to IUGAs. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)

- In order to comply with the GMA, large UGAs must have measures in place to ensure development is truly urban and efficiently phased. In the case of oversized industrial UGAs conversion to other uses must be precluded to ensure long-term preservation of industrial land. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- A GMHB will always scrutinize the size of an UGA much more closely if it includes RLs. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Under the GMA land is included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development it should be left out of an UGA. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- Under RCW 36.70A.060(4) land within an UGA may not be designated agricultural unless the local government has enacted a program authorizing transfer or purchase of development rights. *Abenroth v. Skagit County* 97-2-0060 (FDO, 1-23-98)
- In the absence of an interlocal agreement giving the city control over land use policies and DRs, no additional protection for CAs in the proposed UGA was available. The record did not reveal why the county was unable to protect the watershed had it not been designated for urban growth. *Wells v. Whatcom County* 97-2-0030 (FDO, 1-16-98)
- Where an area of only 195 acres contained little or no vacant land for future residential or commercial growth and was already serviced by city water and sewer and would not contribute to sprawl or insufficient expansion of public services and facilities, the inclusion of such area in an UGA complied with the GMA, particularly taking into account the added deference directed by RCW 36.70A.3201. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- Where a county established a 5-year minimum period before changes to the boundaries of UGAs can be made and established criteria for the consideration of such UGA movement, such action was in compliance with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 12-17-97)
- The language of the GMA is clear; counties designate UGAs, cities do not. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- Without county adoption, city-adopted UGAs extending beyond municipal boundaries have no regulatory effect. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)
- The definition of urban growth in RCW 36.70A.030(14) does not distinguish between residential and other types of urban growth. The key question is whether the allowed growth is urban in nature and if so whether it occurs in an area suitable for and delineated by GMA for urban growth. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)
- A proposed resort with a population of nearly 1,000 people in an area involving a maximum of 160 acres that will require urban services and facilities meets the RCW 36.70A.030(14) definition of urban growth. Location of such a resort outside of an IUGA where no GMA CP has been

adopted for over 3 years after the deadline did not conform to GMA goals and substantially interfered with the fulfillment of those goals. *WEAN v. Island County* 95-2-0063 (Compliance Order, 10-6-97)

- The protection of CAs is a function of a proper ordinance, not by the establishment of an UGA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- A failure to provide minimum lot sizes and maximum number of lots per site in clustering provisions of a DR which continued to allow urban growth outside of properly established UGAs did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)
- An ordinance which allowed expansion of existing commercial or industrial uses other than resource based or rural neighborhood commercial uses to the full size of the existing parcel in areas outside of an UGA, substantially interfered with the goals of the GMA and was declared invalid because it allowed urban growth in rural areas. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)
- RCW 36.70A.110 prohibits new urban growth outside of properly established UGAs. *Hudson v. Clallam County* 96-2-0031 (FDO, 4-15-97)
- Where a city adopted its CP prior to the one adopted by the county and the city included conceptual analysis for a potential UGA outside of municipal limits, compliance with the GMA was achieved. *Eldridge v. Port Townsend* 96-2-0029 (FDO, 2-5-97)
- Where an UGA would allow an approximately 40,000 increase in population, and the projected population increases amounted to approximately 27,000, the UGA did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Establishment of specific UGAs with finite boundaries and a quantifiable allocation of population must first be made before any credible capital facilities analysis can occur. *Dawes v. Mason County* 96-2-0023 (FDO, 12-5-96)
- Continued incremental movement of an UGA boundary that promotes sprawl and inefficient use of tax money did not comply, and also substantially interfered, with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)
- The purpose of recognizing and projecting rural growth is not to encourage growth in rural areas but rather to decide an appropriate and correct foundation for determining the proper size of the UGAs. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- The GMA requires counties to adopt policies, DRs and innovative techniques to prohibit urban growth outside properly established UGAs. The more a county utilizes these techniques to funnel growth into urban areas, the more discretion is afforded under the GMA in sizing UGAs. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)

- If an area is within municipal boundaries it must be included in an UGA under RCW 36.70A.110(1). *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- A city cannot designate property within its municipal boundaries as agriculture unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- Where a local government adopts a 50% market factor for industrial use and establishes UGAs consistent with that projection, the actually siting of an industrial property two years later cannot be used as the basis for expanding the UGA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- A DR that allows annual movement of UGAs, combined with minimal infilling regulations and initial large sizing because of a significant market factor, does not provide the impetus for compact urban growth and did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (Compliance Order, 10-1-96)
- The GMA makes no provisions for new suburban development. Urban growth is to be placed within UGAs and areas outside of UGAs are to have rural growth. *WEAN v. Island County* 95-2-0063 (Compliance Order, 4-10-96)
- There is no discretion for local governments to allow new urban growth outside UGAs. *WEC v. Whatcom County* 94-2-0009 (Compliance Order, 3-29-96)
- A municipal CP which demonstrated that the current municipal limits were well in excess of any population projection, which did not have any infill policies nor regulations and which provided for a 30% open space requirement for any new development, did not comply with the goals and requirements of the GMA and could not be the basis for establishing an UGA outside of municipal limits. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)
- The use of an “urban reserve” planning mechanism for timeframes in excess of the 20-year requirement of the GMA did not violate the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A proper UGA location involves more than just population projections. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The use of an urban reserve area without defined standards of conversion to an UGA, in conjunction with a large market factor, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Constant incremental movement of an urban growth boundary to always have a 20-year reserve does not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The use of contingent and holding district zoning within the UGA outside of municipal boundaries to support concurrency and provide a mechanism for tiering of urban growth complied with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)

- The inclusion of 5,000 acres of unusable industrial acres as part of the UGA did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The lack of appropriate density and infill provisions in a CP and/or DR did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Where the record demonstrated that even at a minimum of six dwelling units per acre a city would not have to expand beyond its municipal boundaries for more than the next 20 years, there is a lack of compliance with the GMA by including an UGA outside of the municipal boundaries. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The fact that water and sewer services are or could be made available to an area does not mean the area is required to be included in an UGA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Public facility availability cannot be the sole criterion for inclusion of an area within an UGA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- There is no authority under the GMA to place an UGA within the confines of the federal national scenic area, particularly when the maximum density allowed is one dwelling unit per two acres, which is not an urban density. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Existing urbanization does not always dictate inclusion of the area within an UGA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The establishment of a noncontiguous UGA connected to a contiguous UGA by means of exclusion of thousands of acres of land that would otherwise have been designated as RLs, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- A local government has a wide range of discretion in determining specific designations within a properly established UGA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- The GMA does not establish specific goals or requirements for particular designations within a properly established UGA. *Achen v. Clark County* 95-2-0067 (FDO, 9-20-95)
- Where a unique three-city configuration coupled with excellent anti-sprawl goals, policies and strategies are present in a CP, the UGA boundary complied with the GMA even though from a strict numerical formula it was overly large. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)
- A county has the ultimate responsibility of determining population figures and urban growth boundaries. *Reading v. Thurston County* 94-2-0019 (FDO, 3-23-95)

URBAN SERVICES (SEE ALSO THE SPECIFIC SERVICE – I.E. SEWER, WATER)

- [T]he GMA requires that urban levels of service be available to serve urban levels of development. RCW 36.70A.110(3), read together with Goal 12 (RCW 36.70A.020(12)), requires urban levels of service in urban growth areas … Because the lack of urban services within the UGA also precludes development at urban densities, the lack of urban services

additionally threatens to create low-density sprawl in contravention of Goal 2, RCW 36.70A.020(2). *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 9.

- The GMA defines "urban services" as "those public services and public facilities *at an intensity historically and typically provided in cities*, specifically including storm and sanitary sewer systems… *associated with urban areas and normally not associated with rural areas*." (emphasis added) This means that urban services must both be typically provided in cities and also not normally associated with rural areas. *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007) at 12.
- The remaining non-compliant features of the Sewer Plan and development regulations primarily center around the lack of a plan for financing sewer to North and East Belfair; and the lack of an adequate plan for connectors between the sewer mains and the residential hook-ups in the outlying areas of the UGA. *ARD/Diehl v. Mason County*, Case No. 06-2-0006, Order Finding Non-Compliance (Nov. 14, 2007).
- There must be urban levels of sanitary sewer provided to the entire UGA [by the end of the planning period], not within 20 years of the date of subsequent approval of development on holding tanks. This is because the designation of areas for urban growth must ensure that urban services are available when the urban growth occurs. The UGA boundaries may only extend as far as urban levels of service are ensured for the planning period. If urban services cannot be provided in the planning period, then the areas which cannot be served should not be designated for urban growth, i.e. included in the UGA. Moreover, if urban levels of service will not be provided at the time of development, development must be phased so that there are not urban levels of development until urban services are provided. In the meantime, the development that does occur with the UGA must allow for eventual urban densities, typically by platting and locating initial growth so that higher densities will be available as urban services are available. *Skagit County Growthwatch v. Skagit County,* Case No. 07-2-0002, FDO at 62-63 (Aug. 6, 2007)
- Without a requirement that residential development within the UGA connect to sewer when public sewer is available within the UGA, there is no assurance that such urban residential development will ever be connected to public sewer. Further, urban levels of residential development are allowed within the Belfair UGA before urban sewer service can be connected. This violates RCW 36.70A.110(3) and the concurrency goal (12) of the GMA. *ARD and Diehl v. Mason County,* WWGMHB Case No. 06-2-0005 (FDO, 8-14-06)
- Public sanitary sewer is a key urban governmental service (RCW 36.70A.030[19]) Creating a non-municipal UGA to acknowledge pre-existing growth is only responsible if urban levels of services are provided within that non-municipal UGA. *Irondale Community Action Neighbors, et al. v. Jefferson County,* WWGMHB Case No. 04-2-0022 (FDO, May 31,

2005) and *Irondale Community Action Neighbors v. Jefferson County,* WWGMHB Case No. 03-2-0010 (Compliance Order, 5-31-05)

- RCW 36.70A.110(4) does not prohibit the extension of urban levels of service from one UGA to another, nor does it prohibit the crossing of rural or resource lands to extend those services. *OBCT v. Lewis County,* WWGMHB Case No. 04-2-0041c (FDO, 5-13-05).
- The Board also decides that RCW 36.70A.110(4) does not preclude the City from providing municipal water service to another UGA. The City intends to provide water service to the newly approved major industrial development (MID) urban growth area (UGA) site approved by Lewis County for a new Cardinal float glass facility. To the extent that the City comprehensive plan amendments allow an extension of water service to this MID UGA, they are compliant with the GMA. *Heikkila, et al. v. Winlock and Cardinal FG Company*, Case No. 04-2-0020c (FDO, 4-15-05)
- The words "any additional needed public facilities and services that are provided by either public or private sources" (RCW 36.70A.110(3)) show that the public facilities and services for urban growth can be provided by private entities and still be considered urban governmental or urban services. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- The words "historically and typically provided by cities" (RCW 36.70A.030(19)) means that this is a general rule, and does not preclude other entities including counties, public utility districts, or private entities from providing sewer service. *Whidbey Environmental Action Council v. Island County* 03-2-0008 (FDO, 8-25-03)
- The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO, 5-30-01)
- A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)
- A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county

properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

- Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO, 2-6-01)
- Under the provisions of RCW 36.70A.110(4) prohibiting urban governmental services in rural areas except in limited circumstances the phrase "basic public health and safety and the environment" involves two components. "Basic public health and safety" involves a component that encompasses a variety of protections for human well-being. "The environment" relates to protections that are directly beneficial to flora and fauna, but usually only indirectly beneficial to human well-being. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- RCW 36.70A.110(4) does not allow a county to extend a 4-inch sewer line when the county has not shown that the extension is "necessary to protect public health and safety and the environment". The record only demonstrated that a "betterment of health and/or environment" would be obtained. *Cooper Point v. Thurston County* 00-2-0003 (FDO, 7-26-00)
- Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. *Solberg v. Skagit County* 99-2-0039 (FDO, 3-3-00)
- Compliance with the language of a local government's own ordinance is required before compliance with the GMA can be achieved. The availability of public water services only, without public sewer and other urban services, does not provide the basis for logically-phased and efficiently-served urban development. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)
- The absence of language within a DR that prohibits extension of urban governmental services outside an IUGA does not comply with the CPPs and therefore did not comply with the GMA. *OSC v. Skagit County* 95-2-0065 (FDO, 8-30-95)
- Urban government facilities and services are not totally prohibited in rural areas but may only be placed there for compelling reasons. *Port Townsend v. Jefferson County* 94-2-0006 (FDO, 8-10-94)

UTILITIES ELEMENT

- A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO, 5-7-01)

VESTED RIGHTS

- A determination of invalidity does not affect previously vested rights under RCW 36.70A.302(2). *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

WATER

- Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (Compliance Order, 2-9-01)
- Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO, 2-6-01)
- A County is required to provide in its CP measures that provide for protection of quality and quantity of groundwater used for public water supplies. The County may not determine that water quality and quantity issues will be resolved in the permit process. *Butler v. Lewis County* 99-2-0027c (FDO, 6-30-00)
- Under RCW 36.70A.070(1) a CP must provide for protection of quality and quantity of groundwater used for public water supplies. Such protection is different than and separate from an ordinance for CAs. The protection may be specifically included in the CP by regulation or later implemented by DRs. Compliance cannot be found until one or the other has been accomplished. *MCCDC v. Shelton* 96-2-0014 (FDO, 11-14-96)
- The failure to provide for an adequate water supply for urban densities showed that the establishment of an IUGA did not comply with the GMA. *Loomis v. Jefferson County* 95-2-0066 (FDO, 9-6-95)

WETLANDS – *SEE* CRITICAL AREAS

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	95-2-0078
	95-2-0067
	92-2-0001
Ecology, Department of	07-2-0003
	99-2-0005
	98-2-0002

RESPONDENT	CASE
	97-2-0002
	96-2-0010
Ferndale, City of	01-2-0011
Friday Harbor, Town of	01-2-0026
	98-2-0003
	96-2-0020
Island County	08-2-0032
	08-2-0026
	08-2-0025
	08-2-0023
	08-2-0022
	08-2-0015
	07-2-0001
	06-2-0023
	06-2-0012c
	06-2-0011
	06-2-0010
	02-2-0004
	00-2-0054
	00-2-0001
	98-2-0023c
	97-2-0064
	95-2-0072
	95-2-0063
Jefferson County	09-2-0012
	09-2-0007
	08-2-0029
	08-2-0027
	08-2-0024
	08-2-0014
	08-2-0010
	07-2-0030
	07-2-0012
	06-2-0004
	05-2-0006
	04-2-0022
	03-2-0010
	03-2-0008
	03-2-0007
	03-2-0006
	01-2-0015
	01-2-0014
	00-2-0019
	98-2-0018
	98-2-0017

RESPONDENT	CASE
	95-2-0066
	94-2-0014
	94-2-0006
LaCenter, City of	95-2-0067
Lacey, City of	08-2-0028
La Conner, Town of	98-2-0002
	94-2-0021
Lewis County	10-2-0010
	09-2-0017
	09-2-0005
	08-2-0007
	08-2-0005
	08-2-0004
	08-2-0003
	08-2-0002
	06-2-0025
	06-2-0003
	05-2-0020
	04-2-0041c
	04-2-0014
	03-2-0003c
	03-2-0020
	03-2-0018
	02-2-0007
	01-2-0010c
	00-2-0031c
	00-2-0007
	99-2-0027c
	98-2-0004
	98-2-0011c
	98-2-0004
Magnano, John	92-2-0001
Mason County	07-2-0010
	07-2-0006
	06-2-0005
	05-2-0009c
	01-2-0025
	00-2-0030
	96-2-0023c
	95-2-0073
Mount Vernon, City of	10-2-0011
	98-2-0012
	98-2-0006
Napavine, City of	04-2-0017c
Nooksack, City of	06-2-0003

RESPONDENT	CASE
	03-2-0002
Nutley, Busse	92-2-0001
Oak Harbor, City of	97-2-0061
	96-2-0002
Olympia, City of	09-2-0003
	09-2-0001
	08-2-0001
	07-2-0007
	95-2-0069
Pacific County	99-2-0019
	98-2-0024
	96-2-0010
	95-2-0076
Port Townsend, City of	05-2-0018
	96-2-0029
Ridgefield, City of	95-2-0067
San Juan County	10-2-0012
	09-2-0014
	08-2-0030
	08-2-0006
	07-2-0014
	07-2-0013
	06-2-0024c
	05-2-0022c
	05-2-0019c
	03-2-0003c
	02-2-0008
	02-2-0001
	01-2-0006c
	00-2-0062c
	00-2-0053
	00-2-0016
	99-2-0010c
	99-2-0008.
	97-2-0006
	95-2-0081
Sequim, City of	01-2-0021
Shelton, City of	10-2-0013
	98-2-0005
	96-2-0014
Skagit County	09-2-0016
	09-2-0011
	07-2-0026
	07-2-0025
	07-2-0024

RESPONDENT	CASE
	07-2-0023
	07-2-0022
	07-2-0021
	07-2-0020
	07-2-0019
	07-2-0008
	07-2-0004
	07-2-0003
	07-2-0002
	05-2-0012
	04-2-0004
	03-2-0013c
	02-2-0012c
	02-2-0009
	01-2-0022
	01-2-0004c
	01-2-0002
	00-2-0049c
	00-2-0048c
	00-2-0047c
	00-2-0046c
	00-2-0033c
	99-2-0016
	99-2-0015
	99-2-0012
	99-2-0011
	98-2-0016
	98-2-0007
	97-2-0060c
	96-2-0036
	96-2-0032
	96-2-0025c
	95-2-0075
	95-2-0065
Skagit County, Board of Health	07-2-0008
Sturdevant, Dave	92-2-0001
Thurston County	09-2-0006
	07-2-0017c
	07-2-0016
	07-2-0011
	07-2-0005
	05-2-0002
	00-2-0003
	94-2-0019
	94-2-0007

RESPONDENT	CASE
Tumwater, City of	09-2-0010
	94-2-0002
Vancouver, City of	01-2-0023
	99-2-0038
	97-2-0005
	96-2-0017
	95-2-0067
Washougal, City of	02-2-0002
	00-2-0052
	00-2-0011
	00-2-0002
	99-2-0033
	98-2-0025
	97-2-0062
	97-2-0030
	96-2-0008
	95-2-0071
	94-2-0013
	94-2-0009
	94-2-0003
	94-2-0001
	93-2-0001
Whatcom, County of	10-2-0001
	10-2-0003
	10-2-0004
	10-2-0005
	10-2-0006
	10-2-0007
	10-2-0008
	10-2-0009
	08-2-0031
	08-2-0021
	08-2-0020
	08-2-0019
	08-2-0018
	08-2-0017
	08-2-0012
	08-2-0011
	08-2-0009
	08-2-0008
	07-2-0028
	07-2-0009
	06-2-0008
	05-2-0017
	05-2-0013

RESPONDENT	CASE
	04-2-0010
	03-2-0011
	02-2-0002
Winlock, City of	09-2-0013
	09-2-0009
	09-2-0008
	06-2-0007
	04-2-0020c
Yacolt, City of	95-2-0067

APPENDIX A – GLOSSARY OF ACRONYMS

ADU	Accessory Dwelling Units
AMIRD	Areas of More Intense Rural Development (no longer used – see LAMIRD)
APA	Administrative Procedures Act
ARA	Aquifer Recharge Areas
BAS	Best Available Science
BMP	Best Management Practice
BOCC	Board of County Commissioners
CA	Critical Area
CAO	Critical Area Ordinance
CARA	Critical Aquifer Recharge Area
CFE	Capital Facilities Element
CO	Compliance Order
CP	Comprehensive Plan
CPP	Countywide Planning Policy
CTED	Community, Trade & Economic Development, Department of
DOE	Department of Ecology
DNS	Determination of Nonsignificance
DR	Development Regulation
EIS	Environmental Impact Statement
EPF	Essential Public Facility
FCC	Fully Contained Community
FDO	FDO
FEIS	Final Environmental Impact Statement
FFA	Frequently Flooded Area
FWHCA	Fish and Wildlife Habitat Conservation Areas (FWH previously)
GHA	Geologically Hazardous Area
GMA, Act	Growth Management Act
GMHB	Growth Management Hearings Board
HMP	Habitat Management Plan
ILA	Interlocal Agreement
ILB	Industrial Land Bank
IUGA	Interim Urban Growth Area
LAMIRD	Limited Areas of More Intensive Rural Development
LOS	Level of Service
LUPP	Lands Useful for Public Purposes
MCPP	Multi-County Planning Policies
MPR	Master Planned Resort
MO	Motion Order
NRL, RL	Natural Resource Land, Resource Land
OFM	Office of Financial Management
PFR	Petition for Review

PHS	WA Dept. of Fisheries and Wildlife Priority Species and Habitat Manual
PUD	Planned Unit Development
RAID	Rural Areas of Intense Development (no longer used – see LAMIRD)
RO	Reconsideration Order
SCS	Soil Conservation Service
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMP	Shoreline Master Program
TDR	Transfer of Development Rights
TMZ	Traffic Management Zone
UGA	Urban Growth Area

APPENDIX B – GMA LEGISLATIVE HISTORY

1990
Laws of 1990, 1st Ex. Sess., ch. 17

1991
Laws of 1991, ch. 322
Laws of 1991, Sp. Sess., ch. 32

1992
Laws of 1992, ch. 207
Laws of 1992, ch. 227

1993
Laws of 1993, Sp. Sess., ch. 6
Laws of 1993. ch. 478

1994
Laws of 1994, ch. 249
Laws of 1994, ch. 257
Laws of 1994, ch. 258
Laws of 1994, ch. 273
Laws of 1994, ch. 307

1995
Laws of 1995, ch. 49
Laws of 1995, ch. 190
Laws of 1995, ch. 347
Laws of 1995, ch. 377
Laws of 1995, ch. 378
Laws of 1995, ch. 382
Laws of 1995, ch. 399
Laws of 1995, ch. 400

1996
Laws of 1996, ch. 167
Laws of 1996, ch. 239
Laws of 1996, ch. 325

1997
Laws of 1997, ch. 382
Laws of 1997, ch. 402
Laws of 1997, ch. 429

1998
Laws of 1998, ch. 112
Laws of 1998, ch. 171
Laws of 1998, ch. 249
Laws of 1998, ch. 286
Laws of 1998, ch. 289

1999
Laws of 1999, ch. 315

2000
Laws of 2000, ch. 36
Laws of 2000, ch. 196

2001
Laws of 2001, 2nd Sp. Sess. ch. 12
Laws of 2001, ch. 326

2002
Laws of 2002, ch. 68
Laws of 2002, ch. 154
Laws of 2002, ch. 212
Laws of 2002, ch. 306

2003
Laws of 2003, ch. 39
Laws of 2003, ch. 88
Laws of 2003, ch. 286
Laws of 2003, ch. 321
Laws of 2003, ch. 332
Laws of 2003, ch. 333

2004
Laws of 2004, ch. 28
Laws of 2004, ch. 196
Laws of 2004, ch. 197
Laws of 2004, ch. 206
Laws of 2004, ch. 207
Laws of 2004, ch. 208

2005
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Laws of 2005, ch. 328
Laws of 2005, ch. 360
Laws of 2005, ch. 423
Laws of 2005, ch. 477

2006
Laws of 2006, ch. 147
Laws of 2006, ch. 149
Laws of 2006, ch. 285

2007
Laws of 2007, ch. 159
Laws of 2007, ch. 194
Laws of 2007, ch. 236
Laws of 2007, ch. 353
Laws of 2007, ch. 433

2008
Laws of 2008,, ch 289

2009
Laws of 2009, ch. 80

Laws of 2009, ch. 121
Laws of 2009, ch. 342
Laws of 2009, ch. 459
Laws of 2009, ch. 479
Laws of 2009, ch. 514
Laws of 2009, ch. 565

2010
Laws of 2010, ch. 26
Laws of 2010, ch. 62
Laws of 2010, ch. 107
Laws of 2010, ch. 203
Laws of 2010, ch. 210
Laws of 2010, ch. 211
Laws of 2010, ch. 216

APPENDIX C – COURT DECISIONS (PUBLISHED DECISIONS)

2010

Court of Appeals

- **Division One**

Citizens for Rationale Shoreline Planning v. Whatcom County, 155 Wn. App. 937 (2010)

- **Division Two**

Advocates for Responsible Development v. Western Washington GMHB, 155 Wn. App. 479 (2010)

2009

Supreme Court of Washington

Gold Star Resorts, Inc. v. Futurewise, 167 Wn.2d 723 (2009)

Court of Appeals

- **Division Two**

Samson v. City of Bainbridge Island, 149 Wn. App. 120, 202 P3d 334 (2009)

Kitsap Alliance of Property Owners v. Central Puget Sound GMHB, 152 Wn. App. 190, 217 P.3d 365 (2009)

- **Division Three**

Spokane County v. City of Spokane, 148 Wn. App. 120 (2009)

Feil v. Eastern Washington GMHB, 153 Wn. App. 394; 220 P.3d 1248 (2009)

2008

Supreme Court of Washington

City of Arlington v. Central Puget Sound Growth Management Hearings Board, 164 Wn.2d 768, 193 P.3d 1077 (2008)

Thurston County v. Western Washington Growth Management Hearings Board, 164 Wn.2d 329, 190 P3d 38 (2008)

Futurewise v. Western Washington Growth Management Hearings Board, 164 Wn.2d 242, 189 P3d 161 (2008), *Reconsideration Denied*

Court of Appeals

- **Division One**

Citizens' Alliance for Property Rights v. Sims, 145 Wn.App. 649, 187 P3d 789 (2008)

- **Division Three**

Yakima County v. Eastern Washington Growth Management Hearings Board, 146 Wn.App. 679, 192 P3d. 12 (2008)

Stevens County v. Loon Lake Property Owners Association, 146 Wn.App. 124, 187 P.3d 846 (2008)

Stevens County v. Futurewise, 146 Wn.App. 493, 192 P.3d 1 (2008)

Coffey v. City of Walla Walla, 145 Wn.App. 435, 187 P.3d 272 (2008)

2007

Supreme Court of Washington

Woods v. Kittitas County, 162 Wn.2d 597; 174 P.3d 25 (2007)

Biggers v. City of Bainbridge Island, 162 Wn.2d 683; 169 P.3d 14 (2007)

Swinomish Indian Tribal Community v. W. Wash. Growth Mgmt. Hearings Bd., 161 Wn.2d 415; 166 P.3d 1198 (2007)

Court of Appeals

- **Division One**

Gold Star Resorts, Inc. v. Futurewise, 140 Wn. App. 378; 166 P.3d 748 (2007)

City of Arlington v. Central Puget Sound Growth Mgmt. Hearings Bd., 138 Wn. App. 1; 154 P.3d 936 (2007), *Reconsideration denied*

Swinomish Indian Tribal Community v. Skagit County, 138 Wn. App. 771; 158 P.3d 1179 (2007)

MT Development LLC v. City of Renton; 140 Wn. App. 422; 165 P.3d 427 (2007)

- **Division Two**

Futurewise v. Central Puget Sound Growth Mgmt. Hearings Bd., 141 Wn. App. 202; 169 P.3d 499 (2007)

Kitsap County v. Central Puget Sound Growth Mgmt. Hearings Board, 138 Wn. App. 863; 158 P.3d 638 (2007)

Thurston County v. W. Wash. Growth Mgmt. Hearings Bd., 137 Wn. App. 781; 154 P.3d 959 (2007)

2006

Supreme Court of Washington

1000 Friends of Washington v. McFarland, 159 Wn.2d 165, 149 P.3d 616 (2006).

Interlake Sporting Association Inc. v. Wash. State Boundary Review Bd. for King County, 158 Wn. 2d 545, 146 P.3d 904 (2006)

Lewis County v. W. Wash. Growth Mmgmt. Hearings Bd., 157 Wn. 2d 488, 139 P.3d 1096 (2006).

City of Olympia v. Drebick, 156 Wn. 2d 289, 126 P.3d 802 (2006).

Court of Appeals

- **Division One**

Preserve Our Island v. Shorelines Hearings Board, 133 Wn. App. 503, 137 P.3d 31 (2006), *Review pending*

- **Division Two**

Alexanderson v. Board of Clark County Commissioners, 135 Wn. App. 541, 144 P.3d 1219 (2006).

Peste v. Mason County, 133 Wn. App. 456, 136 P.3d 140 (2006), *Review denied*

2005

Supreme Court of Washington

Viking Properties v. Holm, 155 Wn. 2d 112, 118 P. 3d 322 (2005).

James v. Kitsap County, 154 Wn. 2d 574, 115 P. 3d 286 (2005)

Quadrant Corporation v. Central Puget Sound Growth Mgmt. Hearings Bd., 154 Wn. 2d 224, 110 P. 3d 1132 (2005)

Chevron USA, Inc. v. Central Puget Sound Growth Mgmt. Hearings Bd., 156 Wn. 2d 131; 124 P.3d 640 (2005)

Ferry County v. Concerned Friends, 155 Wn.2d 824; 123 P.3d 102 (2005)

Court of Appeals

- **Division Two**

*Tahoma Audubon Society v. Park Junction Par*tners, 128 Wn. App 671, 116 P. 3d 1046 (2005)

Clallam County v. W. Wash. Growth Mgmt. Hearings Bd., 130 Wn. App. 127; 121 P.3d 764 (2005), *Review pending*

- **Division Three**

Woods v. Kittitas County, 130 Wn. App. 573; 123 P.3d 883 (2005), *Review granted*

2004

Supreme Court of Washington

Diehl v. W. Wash. Growth Mgmt. Hearings Bd., 153 Wn.2d 207; 103 P.3d 193 (2004)

Court of Appeals

- **Division One**

Whidbey Environmental Action Network v. Island County and W. Washington Growth Mgmt. Hearings Bd., 122 Wn. App. 156; 93 P.3d 885 (2004), *Reconsideration Denied; Review Denied*

Chevron USA, Inc. v. Central Puget Sound Growth Mgmt. Hearings Bd., 123 Wn. App. 161; 93 P.3d 880 (2004)

City of Seattle v. Yes for Seattle, 122 Wn. App. 382; 93 P.3d 176 (2004)

- **Division Two**

Biggers v. City of Bainbridge Island, 124 Wn. App 858, 103 P. 3d 244 (2004); *Reconsideration denied, Review granted (*See Supreme Court Cases 2007)

City of Olympia v. Drebick, 119 Wn. App. 774; 83 P.3d 443 (2004); *Reversed* (See Supreme Court Cases 2006)

Ferry County v. Concerned Friends of Ferry County and E. Wash. Growth Mgmt. Hearings Bd., 121 Wn. App. 1004; 90 P.3d 698 (2004), *Review granted, in part* (See Supreme Court Cases 2005)

2003

<u>Court of Appeals</u>

- **Division One**

Quadrant Corp. v. Central Puget Sound Growth Mgmt. Hearings Bd., 119 Wn. App. 562; 81 P.3d 918 (2003), *Review granted, Affirmed in part/reversed in part* (See Supreme Court Cases 2005)

City of Bellevue v. E. Bellevue Community Municipal Corp., 119 Wn. App. 405; 81 P.3d 148 (2003)

City of Redmond, v. Central Puget Sound Growth Mgmt. Hearings Bd., 116 Wn. App. 48; 65 P.3d 337 (2003); *Review denied*

- **Division Two**

Low Income Housing Institute v. City of Lakewood, Central Puget Sound Growth Mgmt. Hearings Bd., 119 Wn. App. 110; 77 P.3d 653 (2003)

John E. Diehl v. W. Wash. Growth Mgmt. Hearings Bd., 118 Wn. App. 212; 75 P.3d 975 (2003), *Review granted, Reversed/Remand* (See Supreme Court Cases 2004)

2002

Supreme Court of Washington

Thurston County v. Cooper Point Ass'n, 148 Wn.2d 1; 57 P.3d 1156 (2002)

Isle Verde International Holdings, Inc. v. City of Camas, 146 Wn.2d 740, 49 P.3d 867 (2002)

Court of Appeals

- **Division One**

Montlake Community Club v. Central Puget Sound Growth Mgmt. Hearings Bd., 110 Wn.App. 731, 43 P.3d 57 (2002), *Reconsideration denied*.

- **Division Two**

Manke Lumber Co., Inc. v. Central Puget Sound Growth Mgmt. Hearings Bd., 113 Wn. App. 615; 53 P.3d 1011 (2002), *Reconsideration denied, Review denied*

Lewis County, v. W. Wash. Growth Mgmt. Hearings Bd.,, 113 Wn. App. 142; 53 P.3d 44 (2002)

City of Burien v. Central Puget Sound Growth Mgmt. Hearings Bd., 113 Wn. App. 375; 53 P.3d 1028 (2002)

2001

Supreme Court of Washington

Moore v. Whitman County, 143 Wn.2d 96; 18 P.3d 566 (2001)

Court of Appeals

- **Division One**

Cooper Point Association v. Thurston County, 108 Wn. App. 429, 31 P.3d 28 (2001), *Review granted* (See Supreme Court Cases 2002)

Sammamish Community Council v. City of Bellevue, 108 Wn. App. 46, 29 P.3d 728 (2001), *Review denied*

Somers v. Snohomish County, 105 Wn. App. 937, 21 P.3d 1165 (2001), *Reconsideration denied*

- **Division Three**

Citizens for Responsible and Organized Planning v. Chelan County, 105 Wn. App. 753, 21 P.3d 304 (2001)

2000

Supreme Court of Washington

King County v. Central Puget Sound Growth Mgmt. Hearings Bd., (Green Valley), 142 Wn.2d 543; 14 P.3d 133 (2000)

Wenatchee Sportsmen Association v. Chelan County, 141 Wn.2d 169; 4 P.3d 123 (2000)

Association of Rural Residents v. Kitsap County, 141 Wn.2d 185; 4 P.3d 115 (2000)

Court of Appeals

- **Division One**

Faben Point Neighbors v. City of Mercer Island, 102 Wn. App. 775; 11 P.3d 322 (2000)

Stewart v. Review Bd., 100 Wn. App. 165; 996 P.2d 1087 (2000)

Wells v. W. Wash. Growth Mgmt. Hearings Bd., 100 Wn. App. 657; 997 P.2d 405 (2000), *Reconsideration denied*

Craswell v. Pierce County, 99 Wn. App. 194; 992 P.2d 534 (2000)

1999

Supreme Court of Washington

King County v. Central Puget Sound Growth Mgmt. Hearings Bd., (Bear Creek) 138 Wn.2d 161; 979 P.2d 374 (1999)

City of Bellevue v. E. Bellevue Community Council, 138 Wn.2d 937; 983 P.2d 602 (1999)

Court of Appeals

- **Division One**

City of Des Moines v. Puget Sound Regional Council, 98 Wn. App. 23; 988 P.2d 27 (1999), *Reconsideration granted in part*

City of Des Moines v. Puget Sound Regional Council, 97 Wn. App. 920; 988 P.2d 993 (1999)

Honesty in Environmental Analysis & Legislation v. Central Puget Sound Growth Mgmt. Hearings Bd., 96 Wn. App. 522; 979 P.2d 864 (1999), *Reconsideration granted in part*

Duwamish Valley Neighborhood Preservation Coalition v. Central Puget Sound Growth Mgmt. Hearings Bd., 97 Wn. App. 98; 982 P.2d 668 (1999), PUBLISHED IN PART

Assoc. of Rural Residents v. Kitsap County, 95 Wn. App. 383; 974 P.2d 863 (1999)

- **Division Two**

Diehl v Mason County, 94 Wn. App. 645; 972 P.2d 543 (1999)

Clark County Citizens United v. Clark County National Resources Council, 94 Wn. App. 670; 972 P.2d 941 (1999), *Review denied*

Weyerhaeuser v. Pierce County, 95 Wn. App. 883; 976 P. 2d 1279 (1999), *Review granted*

- **Division Three**

Glenrose Community Ass'n v. City of Spokane, 93 Wn. App. 839; 971 P.2d 82 (1999)

Federal Court – Ninth Circuit

Buckles v. King County, 191 F.3d 1127 (1999)

1998

Supreme Court of Washington

City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd., 136 Wn.2d 38; 959 P.2d 1091 (1998)

Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542; 958 P.2d 962 (1998)

Court of Appeals

- **Division One**

Litowitz v. Central Puget Sound Growth Mgmt. Hearings Bd., 93 Wn. App. 66; 966 P.2d 422 (1998)

King County v. Central Puget Sound Growth Mgmt. Hearings Bd., 91 Wn. App. 1; 951 P.2d 1151 (1998)

- **Division Two**

Project for Informed Citizens v. Columbia County, 92 Wn. App. 290; 966 P.2d 338 (1998)

1997

Supreme Court of Washington

Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861; 947 P.2d 1208 (1997)

Court of Appeals

- **Division One**

Hale v. Island County, 88 Wn. App. 764; 946 P.2d 1192 (1997)

Federal Court - Western District

Children's Alliance v. City of Bellevue, 950 F. Supp. 1491 (1997)

1996

Court of Appeals

- **Division One**

Postema v. Snohomish County, 83 Wn. App. 574; 922 P.2d 176 (1996) *Review Denied*

1995

Supreme Court of Washington

Vashon Island Comm. For Self-Government v. Washington State Boundary Review Board, 127 Wn.2d 759; 903 P.2d 953 (1995)

Court of Appeals

- **Division Two**

Matson v. Clark County Board of Commissioners, 79 Wn. App. 641; 904 P.2d 317 (1995)

1994

Supreme Court of Washington

Whatcom County v. Brisbane, 125 Wn.2d 345; 884 P.2d 1326 (1994)

Snohomish County v. Anderson, 123 Wn.2d 151; 868 P.2d 116 (1994)

Court of Appeals

- **Division One**

Snohomish County Property Rights Alliance v. Snohomish County, 76 Wn. App. 44; 882 P.2d 807 (1994)

Jones v. King County, 74 Wn. App. 467; 874 P.2d 853 (1994)

- **Division Two**

Save Our State Park v. Board of Clallam County Commissioners, 74 Wn. App. 637; 875 P.2d 673 (1994)

1993

Supreme Court of Washington

King County v. Washington State Boundary Review Board, 122 Wn.2d 648; 860 P.2d 1024 (1993)