

State of Washington

**GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

**WENATCHEE VALLEY MALL PARTNER-)
SHIP; ROKAN IDAHO, LLC;)
WL PARTNERS,)
Petitioners)**

**CITY OF EAST WENATCHEE,) Case No. 96-1-0009
Petitioner)**

**CITIZENS FOR QUALITY OF LIFE IN)
DOUGLAS COUNTY,) FINAL DECISION AND ORDER
Petitioner)**

v.)

**DOUGLAS COUNTY,)
Respondent)**

**DOUGLAS COUNTY CITIZENS FOR)
RESPONSIBLE GROWTH,)
Intervenors)**

Procedural History

On January 24, 1996, Wenatchee Valley Mall Partnership, ROKAN IDAHO, LLC, and WL

Partners, by and through their attorney, James C. Tracy, filed a Petition for Review with the Eastern Washington Growth Management Hearings Board (the Board) subsequently numbered 96-1-0002.

On January 30, 1996, the Board issued a notice setting the hearing on the merits for May 29, 1996 and scheduling a prehearing conference for February 28, 1996.

On February 26, 1996, the Board received a motion for intervenor status from Douglas County Citizens for Responsible Growth by and through their attorney, David A. Bricklin and thereafter on February 28, 1996 the Board issued its Prehearing Order wherein it granted intervenor status to Douglas County Citizens for Responsible Growth.

On April 22, 1996, Wenatchee Valley Mall Partnership, ROKAN IDAHO, LLC, and WL Partners, by and through their attorney, James C. Tracy, filed a Petition for Review with the Board. This petition was filed in response to Douglas County's adoption of the Greater East Wenatchee Area Comprehensive Plan, by Resolution TLS 96-17 on April 17, 1996. Petitioner alleges the action appealed from violates the requirements of the Growth Management Act and the State Environmental Policy Act.

On May 24, 1996, Petitioners file Dispositive Motions with the Eastern Washington Growth Management Hearings Board, the "Board". On May 29, 1996, the Board set the Dispositive Motions hearing for June 6, 1996.

On May 28, 1996 the Board held a second prehearing conference in the Douglas County Courthouse in Waterville, Washington. The legal issues were discussed in detail. The parties agreed to submit a joint list of issues by June 28, 1996.

On June 5, 1996 the Petitioner City of East Wenatchee petitioned for review with the Eastern Washington Growth Management Hearings Board (the Board). On June 19, 1996, an order was entered by this Board consolidating this with similar cases as case No. 96-1-0009.

On June 27, 1996, the Petitioner, City of East Wenatchee, moved the Board to amend their Petition for Review. The stated purpose for such amendment was to reduce to number of issues presented on behalf of the Petitioner and on July 10, 1996 the motion was granted.

On September 18, 1996, the Board held a hearing on the merits in East Wenatchee, Washington in Fire District No. 2 meeting room. All parties or their representative was present. Present for the Board were Dennis Dellwo, Presiding Officer; Judy Wall and D. E. "Skip" Chilberg, Board Members. Also present was Court Reporter Brooke Robinson.

FINDINGS OF FACT

1. Douglas County began preparing comprehensive plans under the growth Management Act on October 31, 1990.
2. A GMA region council, consisting of one elected official from each incorporated community and the three County Commissioners, was established to provide direction for how to meet the requirements of the Act.
3. The County was separated into 4 different geographical areas call Planning Units with at least one city included in each unit with the exception of one (planning Unit #4).
4. Each planning Unit had a citizens advisory committee made-up of people from different interests in those areas appointed by the GMA Regional Council.
5. The Planning Unit #4 members, as well as a few members from the other 3 units, became the Rural Lands Committee, charged with the task of completing a countywide plan to address issues outside the urban areas. This committee met a total of 15 times between 1993 and May of 1995 to develop a draft comprehensive plan for rural areas.
6. The County contracted with a consulting firm (KCM, Inc.) to complete the technical portions of the Capital Facilities and Transportation elements for the draft plan.
7. Douglas County Resource Lands and Critical Areas Policy Plan (RLCAPP) was adopted by Resolution #92-059 on March 30, 1992 and its notice of adoption was published on April 2 and April 9, 1992.
8. The County adopted the Douglas County Regional Policy Plan (DCRPP) on June 2, 1992 by Resolution #92-080.
9. The Resource Lands Committee forwarded their recommended draft comprehensive plan to the Douglas County Regional Planning Commission for their consideration and review on June 9, 1995.
10. The Wenatchee Retail Market Study and Economic Impact Study, Phase I: Assessment of Retail Demand, was prepared by BST Associates on October 20, 1993.
11. The Planning Commission held Public hearings in Waterville, Bridgeport, East Wenatchee and again in Waterville to provide a review process for the general public to consider the draft plan and make comments.

12. The Plan was submitted to the Washington Department of Community, Trade and Economic Development, pursuant to the GMA, as an integrated draft Plan/EIS issued under WAC 197-11-235 (4) on August 25, 1995 with a subsequent 60-day combined SEPA/GMA review period, ending on October 23, 1995.

13. A final EIS was prepared and issued on October 27, 1995.

14. The resolution adopting the Comprehensive Plan, TLS 95-88, resolved that the Plan will be amended later to include the Greater East Wenatchee Areas (GEWA) Plan as an addendum including a Final Urban Growth Area.

15. November 28, 1995, the Board of County Commissioners adopted the Douglas County Comprehensive Plan. The Plan was adopted by Resolution and contained language stating that the action does not include any of the land areas contained within the Greater East Wenatchee Planning Areas and that the Plan will at some future date be amended to include the Greater East Wenatchee Areas (GEWA) Plan as an addendum.

16. A draft plan was prepared by the Greater East Wenatchee Area Comprehensive Plan Citizens Advisory Committee. Throughout the preparation of the Plan, public hearings, community visioning, surveys, open houses, joint public meetings and public hearings were held by the County Planning Commission and City of East Wenatchee Planning Commission.

17. The Greater East Wenatchee Planning Area includes the City of East Wenatchee, which encompasses an area of approximately 16,660 people within the urban growth area. The 1995 estimated population was 21,810 with approximately 18,825 residing in the urban growth area.

18. OFM population projections for the year 2015, range between 28,394 and 33,604 or a 33% to 43% increase over 1990. The County determined that 1,180 acres would be needed for single family development and 325 acres for multi-family development to serve the population needs for 2015.

19. The County allocated approximately 300 acres of commercial land for East Wenatchee Central Business District and associated areas, and an additional 200+ acres for the remainder of the planning area, for a total of 500 acres to accommodate existing and future commercial development.

20. There is a statement in the Findings of Facts and Conclusions of the EWPACP that the

Plan and the UGA were reviewed for consistency with the City of Wenatchee and Chelan County Comprehensive Plans and is consistent.

21. April 17, 1996, The Board of County Commissioners of Douglas County by Resolution TLS 96-17, adopted the Greater East Wenatchee Area Comprehensive Plan as a final action. Two duly advertised public hearings were held prior to such adoption. Final Urban Growth Areas were adopted for GEWA as part of such resolution.

22. June 11, 1996, The Douglas County Interim Zoning Ordinance No. TLS 96-36 was adopted.

GENERAL DISCUSSION

Douglas County has adopted a comprehensive plan (DCCP) to comply with the Growth Management Act (GMA). The City of East Wenatchee (City) and Wenatchee Valley Mall Partnership; Rokan Idaho, LLC; and WL Partners, (Partners) petitioned the Eastern Washington Growth Management Hearings Board for review, raising the issues discussed herein. The County has responded. The Douglas County Citizens For Responsible Growth (Intervenor) received Intervenor status.

The issues raised by the City and the Partnership will be listed below with a brief summary of the parties' positions. We will discuss each issue. The hundreds of pages of briefs and exhibits are difficult to summarize in this opinion, but the issues were well briefed by the parties. The GMA provides that comprehensive plans and development regulations, and amendments thereto, adopted under this Act are presumed valid upon adoption. The Board's role is to determine if the County's comprehensive planning and development regulations are in compliance with the state's Growth Management Act (GMA). The Board is not to substitute its judgment or policy preferences for that of either the County or the State Legislature. Nor is the Board to add to, delete, or fix provisions of the Growth Management Act. RCW 36.70A.320(1).

Within a framework of certain state mandates, and regional policies, the GMA leaves broad discretion for locally adopted comprehensive plans to reflect local choices. In general, the Board is to defer to policy choices of the County. However, the Board must determine if policy choices of the County conflict with the clear policy mandates that the legislature stated in the GMA.

DISCUSSION OF LEGAL ISSUES AND CONCLUSIONS

ISSUE 1 - WHETHER DOUGLAS COUNTY HAS PROPERLY ADOPTED ITS GMA COMPREHENSIVE PLAN AS REQUIRED BY RCW 36.70A.140?

The Petitioners contend Douglas County's adoption of its comprehensive plan was piecemeal. They further claim the respondent had taken a variety of distinct actions in its adoption of the components of its GMA Comprehensive Plan and the record is completely devoid of any public hearing held for the purpose of considering a GMA Comprehensive Plan which covered the entire geographic area of Douglas County.

The County contends it developed a public participation procedure which established extensive opportunities for citizen input. The Respondent has provided the Board with 50 pages listing the public hearings that occurred in the process of the development and adoption of the plan. The county developed a planning area method, reflecting the geography, resources, history and population of that area. Six planning areas were used by the County in its preparation of the Comprehensive plan. While the County does not dispute it has six planning areas, they assert they have only one comprehensive plan. The plan is comprised of separate volumes including the 6 planning areas.

DISCUSSION: The Act's citizen participation requirements are set forth as a goal at RCW 36.70A.020(11), and substantively at RCW 36.70A.140. To satisfy the requirements of these sections during the development of an initial comprehensive plan, a government body engaged in planning, must establish procedures to ensure both early and continuous public participation. Of equal importance, the government body must then follow those procedures. The key issue here appears to be whether the Act requires a public hearing on one over-all county-wide plan before it is adopted or is the public participation plan developed by Douglas County's sufficient under RCW 36.70A.140?

RCW 36.70A.140 provides as follows:

Each county...shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. ...Errors in exact compliance with the established program and procedures shall not render the comprehensive plan use plan or development regulations invalid if the spirit of the program and procedures is observed.

There is no evidence before the Board that would lead us to believe the public hearings provided were inadequate, proper notice was not given or the public did not have an opportunity to express their opinions on the plan or any portion of it. The County provided numerous opportunities for its citizens to have input into the planning process, learn of the Plan's progress, and comment on the elements of the plan. The Petitioners themselves received a meaningful opportunity to review, comment upon and otherwise participate in the Douglas County GMA planning process. The

hearings successfully integrated the plans and presented a complete picture, thereby meeting the requirements of the GMA.

The division of the process into the 6 geographical areas is a creative way to encourage comment from those affected and allow the plan to better coordinate the planning of such a diverse county. A single meeting or several meetings on a single plan might not have provided the same level of public comment. Such a complex and massive meeting might very well diminish the public input. We must look at the process and judge whether the spirit of the act is carried out.

The notices to the public for comment reflected the County's intention to address the planning for the county as a whole. The information received from the public participation was available when the final plans were adopted by the County Commissioners.

The record shows that the hearings for the sub-area plans integrated those plans and presented a complete picture, thus allowing the County to meet the requirements of RCW 36.70A.140. The Act does not prescribe how public participation shall occur, it provides only that there be extensive public participation. Extensive public participation clearly occurred. The division of the hearings into geographical areas is not a violation of the public participation requirements of the Act.

CONCLUSION: The Board holds that the County has complied with the requirements of the Act to establish a process for extensive public participation. The County provided numerous opportunities for its citizens to provide input into the planning process, learn of the Plan's progress, and comment on the elements of the plan. The Petitioners took good advantage of the opportunities by attending meetings, speaking at many of the meetings, writing letters and, in general, making both the Planning Commission and the Council aware of their viewpoints.

ISSUE 2 - HAS DOUGLAS COUNTY FAILED TO ADOPT DEVELOPMENT REGULATIONS TO PROTECT CRITICAL AREAS, OR IF ADOPTED, DOES DOUGLAS COUNTY COMPREHENSIVE PLAN AND CRITICAL AREA REGULATIONS FAIL TO PROTECT CRITICAL AREAS AND THUS FAIL TO COMPLY WITH RCW 36.70A.060(2), RCW 36.70A.020(8),(9),(10), AND APPLICABLE PROVISIONS OF THE WASHINGTON ADMINISTRATIVE CODE (WAC 365-190-080(5) AND 365-195-410)?

The Petitioners claim the County has failed to adopt development regulations to protect critical areas. The Petitioners further are claiming the Plan and Critical Area Regulations are inadequate.

The Douglas County Resource Lands and Critical Areas Policy Plan was adopted by Resolution #92-059 on March 30, 1992 and notice of its adoption was published on April 2 and April 9, 1992. (ex.I-4) The ordinance meets the procedural requirements of RCW 36.70A.170 and .060 to

designate and conserve/protect natural resources lands and critical areas.

Challenges to the substance of the natural resource and critical areas development regulations must come within 60 days of the April 2, 1992 notice of adoption date.

While the Critical Area Regulations must be reviewed for consistency with the comprehensive plan, the County is not required to alter them. The County contends they did not find it necessary to make such changes. The 60 days would have begun to run as set forth above.

CONCLUSION: It is the determination of this board that the petitioners are barred from challenging the content of these development regulations. The Petition raising these issues was not timely.

ISSUE 3 - WHETHER DOUGLAS COUNTY HAS FAILED TO ADOPT DEVELOPMENT REGULATIONS THAT CONSERVE DESIGNATED NATURAL RESOURCE LANDS, OR IF ADOPTED, WHETHER THESE AND THE DOUGLAS COMPREHENSIVE PLAN PROVISIONS FAIL TO COMPLY WITH RCW 36.70A.020 (5), (8), (10), RCW 36.70A.060(1) AND (3), RCW 36.70A.070(1) AND RCW 36.70A.170 FAILING TO CONSERVE FOREST AND AGRICULTURAL LANDS AND BY ALLOWING INCOMPATIBLE DENSITIES AND USES IN AND ADJACENT TO SUCH LANDS?

The Petitioners claim Douglas County has excluded resource lands from the effect of the Resource lands and Critical Areas Policy Plan adopted in April of 1992. They claim this occurred when the Douglas County Regional Planning Policy was adopted in June of 1992. Further, they contend the interim inclusion of agricultural lands of long term commercial significance within the GEW IUGA violates the Act.

The Petitioners further argue Douglas County designated all its land then in agricultural use, as agricultural resource land, and thereby failed to differentiate between "rural" lands and "resource" lands.

The Petitioners next assert the cluster development section, described as "urban type development", constitutes urban growth.

The Respondent county contends there is nothing in the GMA which prevents agricultural resource lands of long term commercial significance from being included within an IUGA. Further they point out the maps clear up any confusion regarding the argued inconsistencies within the Douglas County plan as to agricultural designations.

The County asserts that the Petitioners base their argument on the Rural Lands and Critical Areas

Policy Plan which, on an interim basis, designated all existing agricultural lands as resource lands of long-term commercial significance. The final plan does not make the same blanket designation.

The County's believes the Board should examine the substance of the plan dealing with Cluster developments and not the phrase that describes it. They claim such a review would demonstrate that "urban type" development is not synonymous with "urban growth" as urban growth results in incompatibility with the primary use of the land for agriculture and requires urban governmental services. Thus, urban growth will not occurring the cluster developments.

The Intervenor again points out the Partnership is barred from challenging the contents of the Natural Resource Lands Regulations in the same manner they are barred from challenging the Critical Area Regulations. The time for appeal has passed.

The Intervenor asserts the general location of agriculture lands is adequately shown on DCCP Map 4 and non-agricultural lands are identified by actual name places in DCCP at 22. Potential Development Areas, UGAs and Sub-Area Plans are shown on Map 4 of the DCCP.

The Intervenor believes the Partnership has not carried its burden of proof and that the elimination of the current-use language does not create a conflict between the unnumbered policy in DCCP and Policy 15.

The Intervenor, however, does believe the cluster development allowed by the County Plan creates a problem because they allow relatively intense development on agricultural lands. It believes rural "clustering" is only appropriate for lands not designated for urban growth, agriculture, forest, or mineral resources." They believe the DCCP must be remanded to prohibit clustering, an urban or rural use, from occurring on agriculture and other resource lands.

DISCUSSION: The time for challenging the content of the Natural Resource Lands Regulations has passed and we will not consider issues arising from those regulations. The time for requesting review of the Natural Resource Lands Regulations is within 60 days of the publication, which notifies the public of the County's adoption of the regulations. The Regulations were adopted June 2, 1992 and no request for review was filed until the one before us now.

However, the review of the plan and the maps give an adequate description of the location of the agricultural lands required by the GMA (RCW 36.70A.070). The GMA requires a "general distribution and general location of the uses of the land, where appropriate, for agriculture..."

RCW 36.70A.070(5) provides for cluster development on rural lands if urban growth outside urban growth areas is prohibited. RCW36.70A.110(1). The County plan allows lots of 2.5 or less for clustered developments outside of the UGAs. The interim development regulations

implemented for cluster developments allow these developments to occur on the least productive portion of the parcel and requires preservation of agriculture on the parent parcel. All buffering, roads and utilities must occur within the developed parcel, rather than the parent parcel. Land may only be developed once within any five-year period. There is also maximum lot size and maximum lot numbers, and percentage of parent parcel limitations, which will limit the amount of land, which may be converted. Cluster developments in Douglas County under the Plan will be strictly limited and compatible with the agricultural nature of the area where the development takes place.

There are, however, policies that allow cluster development on agricultural lands. Clustering is only appropriate for lands not designated for agriculture, forest, or mineral resources. RCW 36.70A.070(5).

CONCLUSION: The Partnership is barred from challenging the content of the Natural Resource Lands Regulations, the time to seek review under the GMA passed prior to the filing of the present Petition (RCW 36.70A.290). However, the designation of the Agricultural lands is adequate and in compliance with RCW36.70A.070.

The density of cluster developments allowed by Douglas County outside UGAs and within agricultural resource lands designation areas is incompatible with agricultural use and would be urban in nature and should be prohibited outside the UGA. RCW 36.70A.110(1)and RCW 36.70A.020(8). This section of the Plan is remanded to prohibit clustering, an urban or rural use, from occurring on agriculture or other resource lands. The DCCP further needs to include a maximum residential density for rural non-resource lands. (DCCP at 33, 36-41 and GEWAP at 112)

ISSUE 4 - WHETHER THE DOUGLAS COUNTY COMPREHENSIVEPLAN IS COORDINATED AND CONSISTENT WITH THE PLANS OF ADJACENTJURISDICTIONS WITH WHICH DOUGLAS COUNTY SHARES COMMON BORDERSAND/OR COMMON REGIONAL ISSUES AS REQUIRED BY RCW 36.70A.100?

RCW 36.70A.100 requires the comprehensive plans of each county or city adopted pursuant to the GMA be coordinated with, and consistent with, the comprehensive plans adopted by the other counties and cities with which the county has, in part, common borders or related regional issues. Because it is the only jurisdiction that has adopted a plan under the GMA, the Petitioners are asserting that Douglas County failed to coordinate and achieve consistency with the GMA comprehensive plan of the city of Wenatchee.

The Respondents claim the Petitioners have failed to carry their burden of proof. They point out the Petitioners have not identified the "related regional issues" or provide the Board with the

record necessary to address this issue. The county provided evidence the plan was reviewed and found consistent with that of other jurisdictions. In addition, the County had established a GMA Regional Council to guide the development of the Comprehensive Plan and provide inter-jurisdictional review.(DCCP at iv)

DISCUSSION: The Petitioners have the burden of proof, and the "Board shall find compliance unless it finds by a preponderance of the evidence that the...county...erroneously interpreted or applied this chapter." RCW 36.70A.320(1). There is no evidence of an inconsistency or lack of coordination. The Respondent has provided evidence of its efforts to coordinate with adjacent counties and cities. There is nothing in the record to support the claim Douglas County has failed to comply with RCW 36.70A.100.

CONCLUSION: The Petitioner has failed to meet its burden of proof on this issue.

ISSUE 5 - WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.110 AND RCW 36.70A.020(1) AND (2) WHEN IT : (a) FAILED TO SHOW THAT ITS UGAs ARE SIZED APPROPRIATE TO ACCOMMODATE ONLY 20 YEARS OF GROWTH AT PROPOSED URBAN DENSITIES; AND, (b) FAILED TO EITHER ACCEPT THE CITY OF EAST WENATCHEE'S UGA OR JUSTIFY IN WRITING THE REASONS FOR NOT ACCEPTING THOSE RECOMMENDATIONS?(CITY 3.3) (c) FAILED TO ESTABLISH AND APPROPRIATELY DOCUMENT PROPER JUSTIFICATION FOR THE MANNER IN WHICH POPULATION HAS BEEN ALLOCATED BETWEEN AND AMONG THE UGAs?

This issue will be broken into sub-issues for ease of consideration:

ISSUE 5(a) FAILED TO SHOW THAT ITS UGAs ARE SIZED APPROPRIATE TO ACCOMMODATE ONLY 20 YEARS OF GROWTH AT PROPOSED URBAN DENSITIES.

The Petitioners claim the County has failed to show its UGAs are sized appropriately to accommodate only 20 years growth at proposed urban densities. The Petitioners are primarily concerned with the UGAs for the East Wenatchee area. Their main contention is the County did not "show its work". They claim there is no evidence to support the boundaries as they were established. The Petitioners further claim the County has never articulated its rationale for the eventual commercial designations in the Odabashian Bridge area and has never meaningfully responded in writing to the City's concerns regarding the GEWAC, as they believe the GMA requires.

The Respondent County asserts the Petitioners have an obligation to come forward with some evidence from the record that the size of the UGAs or the manner they were developed was wrong. The County claims the Petitioners don't argue that any of the analyses are inaccurate, nor

do they suggest alternatives to the analyses in the GEW plan. The County also contends the City had never disagreed with the UGA boundaries.

The Intervenor, on the other hand, details the evidence in the record showing the process the County used in the setting of the growth boundaries. This review provided the Board with the data which could be used to determine the legitimacy of the size of the UGA. While the Intervenor stated the Partnership might have liked the County to "show its work" more concisely, it believes the work had been shown with enough detail to allow the size of the UGA to be assessed.

DISCUSSION: The GMA does not specify the mannerly which the county should show its work. The Boards decisions have required a county to "show their work", but do not provide a uniform method for such a showing. The Intervenor and the County did show the work and where it could be found in the record. While the petitioners claim it is inadequate, its substantial.

CONCLUSION: The Board determines the County adequately showed the work used to develop the UGAs and without evidence the designations were incorrect, the petitioners have not carried their burden of proof and the County is found here to be in compliance with the GMA.

ISSUE 5(b): FAILED TO EITHER ACCEPT THE CITYOF EAST WENATCHEE'S RECOMMENDATIONS FOR THE LAND USE WITHIN ANDLOCATION OF THE GREATER EAST WENATCHEE UGA OR JUSTIFY IN WRITINGTHE REASONS FOR NOT ACCEPTING THOSE RECOMMENDATIONS.

The Petitioners claim that on May 16, 1995, the City of Wenatchee formally registered its objections to the changes made by the County in the UGA. They claim the County has not justified in writing the reasons for their disagreement with the City.

The County states the City of East Wenatchee and Douglas County have never disagreed over the GEW UGA boundary, and the County has adopted the Citizens Advisory Committee Recommendation. Thesis shown to be the same UGA boundary recommended by the City.(ex 16; ex 24; R-30, GEQ CAC final recommendation) The County claims the City has consistently recommended and accepted the"final" citizens Advisory Committee plan. The recommended plan is claimed to mirror the GEW plan adopted by the County and has the same UGA boundary. Therefore the County believed they have accepted the City's recommendation and therefore need not" justify" their action.

The Intervenor agrees with the County. They believe the City did not object to the location of the Growth boundaries and therefore there is no need to justify in writing the reasons for the location. The Intervenor further contends, had the City disagreed with the designations of uses within the

UGA, nothing in the GMA requires the County to justify in writing any such disagreement. Only disagreements in the boundary of the UGA must be justified in writing.

DISCUSSION: RCW 36.70A.110(2) requires the counties to "attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area." Nowhere does the law require the same for a disagreement as to the uses to be allowed in such UGAs.

CONCLUSION: The record supports the County's contention the City did not object to the location of the growth boundaries and therefore no explanation or justification is required. The Board further finds the County does not have to justify in writing their reasons for the designations of uses within the UGA. The Petitioners have not shown these acts of the County were in violation of the GMA.

ISSUE 5 (c) FAILED TO ESTABLISH AND APPROPRIATELY DOCUMENT PROPER JUSTIFICATION FOR THE MANNER IN WHICH POPULATION HAS BEEN ALLOCATED BETWEEN AND AMONG THE UGAs?

The Petitioners have abandoned this issue. Neither have addressed it in their briefs and will not be considered by the Board.

ISSUE 6 - WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN ESTABLISHES RESIDENTIAL DENSITIES AND USES OUTSIDE ESTABLISHED IUGAs AND UGAs THAT VIOLATE RCW 36.70A.020(1), (2), (5), (7),(8), (9), (10), (11), (12) AND (13) AND RCW 36.70A.110?

The Petitioners assert the County has inappropriately established urban densities outside the FUGA in the GEWAP and believe this would violate the GMA. The petitioners contend the DCCP, at 39 and 41, allows cluster development which that may be urban in nature. The Intervenor has similar concerns. It believes that an unnumbered policy in the DCCP at 33 allows urban densities outside the UGA.

The Intervenor believes there are two problems with the proposed cluster development outside the UGAs. First, there is no cluster cap for a single development. A cluster could become so large it would become an urban development. Second, there appears to be no limit, either on the placement of multiple clusters on one parcel or on the placement of adjacent clusters on adjoining parcels, so that urban growth can be avoided outside urban growth areas.

The Intervenor further contends that "designated rural service centers" are violations of RCW

36.70A.110(1). The new residential development is not limited to rural densities and new non-residential development is not limited to uses dependent by their very nature on a rural location and functionally and visually compatible with the surrounding rural/resource land character. (citation omitted).

The County claims the GMA suggests the use of cluster development outside urban growth areas as a land use development technique. RCW 36.70A.070(5). Douglas County believes the cluster development they allow, promotes the conservation of agricultural lands. Details of the restrictions for a cluster development will be found in Issue 3.

DISCUSSION: Discussion of the concern we have with cluster development may be found in Issue 3. Discussion of the problems with Master Planned Resorts may be found in Issue 23. Further discussion of these two issues is unnecessary here.

The County's decision to allow "designated rural service centers" is restrained by the same prohibition against urban growth outside the urban growth areas. The DCCP at 33 does not seem to limit the new residential development in these centers to rural densities nor does it limit the non-residential growth to uses dependent by their very nature on a rural location and functionally and visually compatible with the surrounding rural/resource land character.

CONCLUSION: See Conclusion in Issue 3 for the remand for further action concerning the issue involving Cluster Development. See the Conclusion in Issue 23 for the remand of the provisions of the Plan involving Master Planned Resorts. The provisions of DCCP and GEWACP dealing with designated rural service centers is remanded to provide density limitations on such centers, thus prohibiting urban growth from occurring outside UGAs. (DCCP at 33 and 35).

ISSUE 7 - WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN FAILS TO COMPLY WITH RCW 36.70A.020(1) AND (2), RCW 36.70A.110, AND RCW 36.70A.070 BY:

1. FAILING TO PRECLUDE URBAN GROWTH OUTSIDE DESIGNATED IUGAs AND UGAs; AND
2. FAILING TO CONTAIN THE REQUIRED CONTENT OF .070(1) THROUGH(6)?

Much of 7(a) is resolved in our discussion in Issue 6 and Issue 3. Further discussion is not needed here. The balance of 7(a) deals with Pangborn and Baker Flats Industrial Areas.

The Petitioners claim that the County has allowed urban growth outside growth areas. They point to two areas, the Pangborn Airport industrial area and the Baker Flats industrial park. They provide evidence showing the lack of urban services existing at those sites and the encouragement of urban type development there. The Petitioners further state, in claimed

violation of the GMA, the County has designated the Airport as an industrial area to "encourage the provision of utilities that will make those lands viable." They state the GMA requires an analysis of the adequacy of the utilities to these two areas before designation as an industrial area. They state the siting of industrial areas where adequate facilities do not currently exist, encourage the provision of utilities and promotes sprawl.

The Respondent notes the Petitioners support the location of the Pangborn Airport industrial area. The Respondent points out the Airport exists, and the question is whether Douglas County may encourage industrial use at or adjacent to Pangborn Airport. The Intervenor notes this area is not outside the UGA as the Petitioner claims. Appendix C of the GEWACP at 158-9 gives the legal description of the "Greater East Wenatchee Urban Growth Areas" which includes the Pangborn Industrial Service Area. They add, because it is included within the UGAs, the other objections are baseless.

The respondent addresses Issue 7(2)(b) by pointing out that sewer services are in many cases not required for some industry and urban use of the industrial area could occur without sewer facilities. They conclude by stating the city has failed to carry its burden of proving that the discussion of sewer services in the utilities element is inadequate. They believe the Utilities Element in the DCCP at 53-56 provides an adequate description of the general location, proposed location and capacities of utilities as required by the GMA.

DISCUSSION : Pangborn and Baker Flats Industrial Areas were outside the IUGA but have been included in the final UGAs. The encouragement of urban growth in these area is expected. Many of the assertions of the Petitioners appear to be based upon the belief these industrial areas are outside of UGAs. The Board does not agree. Urban services are expected to be provided to urban growth areas. The extension of services is appropriate.

CONCLUSION: The issue of cluster development raised in Issue 7(a) is resolved in Issue 3 and need not be again dealt with here.

The issue dealing with the industrial areas are resolved in favor of the Respondent. The Petitioners have failed to carry its burden of proving the discussion of sewer services in the utilities element is inadequate. Additionally, the encouragement of urban activities in these areas is expected, these areas being UGAs. At the time the two areas were included in the final UGAs, both were characterized by industrial development. The Utilities Element in the DCCP is adequate and provides the general location, proposed location and capacities of utilities as required by the Act.

ISSUE 8: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.110 AND RCW 36.70A.020(1),(2) AND (12) BY FAILING TO PROVIDE THAT NEW URBAN

GROWTH SHALL BE LOCATED FIRST IN AREAS ALREADY CHARACTERIZED BY URBAN GROWTH THAT HAVE EXISTING PUBLIC FACILITIES AND SERVICE CAPACITIES TO SERVE SUCH DEVELOPMENT?

The Petitioners claim that the GEWAC permits urban growth in rural areas. This is based primarily on their belief that two industrial areas were designated outside the final UGA

The County contends that the plan and the interim development regulations establish uses and densities which further the location of urban growth within the UGA in a manner consistent with the GMA. Urban growth is to occur in a manner consistent with the Act.

The Intervenor asserts the Petitioners have identified nothing in the DCCP conflicting with the requirement in RCW 36.70A.110(3) and that urban growth should first be located in that portion of urban growth areas already characterized by urban growth with adequate services to serve such growth. They point to policies in the urban and sub-area plans supporting this locational criteria.

DISCUSSION: The final UGAs have been adopted by the County and they include the two industrial areas. The DCCP provides sufficient evidence that supports the County's contention they are in compliance with the Act. The plan and the interim development regulations establish uses and densities, which further the location of urban growth within the UGA in a manner consistent with the GMA. Urban growth is directed to occur, as the law requires.

CONCLUSION: The petitioners have failed to carry their burden of proof. The presumption of validity remains. The Act does not require growth only in areas already characterized by growth with adequate services for such growth. The goal of the Act is to avoid sprawl and encourage growth in the vacant properties adjacent to established utilities systems. DCCP accomplishes that goal.

ISSUE 9: WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN FAILS TO CONTAIN THE REQUIRED ELEMENTS AND CONTENTS OF RCW 36.70A.020(1) AND (2) RCW 36.70A.070(1) THROUGH (6), 100, .110, .140, .150, .160, .200?

The Petitioners argue the County has failed to include plan elements requiring a listing of lands intended for public use, open space corridors, and a process for siting essential public facilities. Additionally the Petitioners argue the County plan violates the GMA by precluding the siting of essential public facilities on resource lands or in critical areas.

The County draws our attention to the sections of their plan which addresses the lands intended for public use, open space corridors and a process for siting public facilities. They further quote the section which provides the manner for siting essential public facilities in resource lands or in

critical areas.

The Intervenor contends the petitioners' claim that the Plan failed to contain the required elements and contents of RCW 36.70A.020(1) and (2) is "legally flawed." Those statutes are two goals which guide development of a comprehensive plan. Neither of these goals are required "elements" of the comprehensive plan. The required elements are set forth in RCW 36.70A.070.

The Intervenor further argues the Partnership misstates the requirements of RCW 36.70A.150. This statute does not establish a requirement that must be addressed in the plan.

DISCUSSION: The County has demonstrated they have identified open space corridors and lands intended for public use. The plan is a policy document and the county has met the requirement to create a "process" with the following:

Provisions will be made in the County's and Municipalities' development regulations for siting important and essential public facilities of county, regional or state wide significance. DCCP at 88.

The Partnership's argument that the DCCP illegally prohibits essential public facilities with their policy of not allowing such facilities to be located in resource lands if they are incompatible with these uses (DCCP at 88), is misplaced. The County retains the ability to address this problem when the development regulations are written.

CONCLUSION: The petitioners have failed to meet this burden of proof on this issue.

ISSUE 10: WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN IS INVALID AS IT PERTAINS TO UGAs BECAUSE IT IS , BY A PREPONDERANCE OF THE EVIDENCE, CONTRARY TO .070, .100, .110, .140, .150, .160, .200, AND THE COUNTY CPPS?

The Petitioners claim to have clearly established that the Douglas County Comprehensive Plan is riddled with both substantive and procedural defects with regard to its compliance with the goals and requirements of GMA and the directives of past Growth Planning Hearings Board decisions. They also detailed the manner in which the Baker Industrial and Odabashian Bridge Area was approved. They ask that the plan be found invalid in its entirety. They believe the continued existence of the Plan would substantially interfere with the fulfillment of the goals of GMA.

The County responds in detail to the claim the designation of commercial use in the vicinity of the Odabashian bridge was flawed.

The Intervenor points out the County has the discretion to make many choices about

accommodating growth. RCW 36.70A.110(2). Intervenor asserts there is no basis for an invalidity order.

DISCUSSION: RCW 36.70A.300(2)(a) authorizes a declaration of invalidity if the "plan or regulations would substantially interfere with the fulfillment of the goals of this chapter." The violation or violations of the act by the County must be such that allowing them to continue with only a remand would be interfering with the fulfillment of the goals of the Growth Management Act. The Board has found the County in non compliance in the following three areas: the portions of the DCCP dealing with Cluster Development, Master Planned Resorts and Rural Service Centers. These determinations do not rise to the level required by the statute allowing a determination of invalidity. We expect the County to make appropriate corrections in an expeditious manner.

CONCLUSION: The request by the petitioner to declare portions of the Plan invalid is denied.

ISSUE 11: WHETHER NON-RESIDENTIAL GROWTH OF THE KIND AND TYPE NOW PERMITTED IN THE PLAN AND EXISTING ZONING CODES OF DOUGLAS COUNTY OUTSIDE OF UGAs ARE DEPENDANT BY THEIR VERY NATURE ON A RURAL LOCATION AND FUNCTIONALLY AND VISUALLY COMPATIBLE WITH THE SURROUNDING RURAL/RESOURCE LAND CHARACTER, AND IF NOT, WHETHER THIS VIOLATES RCW 36.70A.070(5) AND PRIOR BOARD DECISIONS RELATING TO ACCEPTABLE NON-RESIDENTIAL USES IN THE RURAL AREAS?

The Partnership states the County Plan permits non-residential development outside the UGAs that are not by their very nature dependent on a rural location and functionally and visually compatible with the surrounding rural/resource land character. They base this upon the pre-existing zoning codes that existed prior to the development of the plan.

The Intervenor asks this Board to follow the other GMA Hearing Board's decisions and require that non-residential uses outside UGAs 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. The Intervenor then points out the zoning regulations complained of were pre-existing and this Board has no jurisdiction. The County has not yet adopted zoning regulations to implement the DCCP.

DISCUSSION: While this Board would be persuaded to join the other Growth Management Hearings Boards in their conclusion that non-residential uses outside UGAs 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, we need not address this issue. The regulations cited are pre-existing and this Board has no jurisdiction to review them. We hope the County, when adopting zoning regulations dealing with this, will note previous Board decisions and gain guidance from them.

CONCLUSION: The Board finds in favor of the Respondent and finds the Petitioners have not sustained their burden.

ISSUE 12: WHETHER THE PLAN'S PROVISIONS FOR NATURAL RESOURCE LANDS ARE CONSISTENT WITH THE REQUIREMENTS OF RCW 36.70A.170,.070 (1), .030 (2), AND RCW 36,70A.020 (8), (9) AND (10)?

The Petitioners make no argument in their briefs concerning RCW36.70A.020 (9) and (10). They do argue the County has not shown its work upon which to base its designation of agricultural lands of long-term commercial significance.

The County believes the Petitioners failed to provide evidence as required by the statute to carry their burden. The County states there must be sufficient evidence, which standing alone, overcomes the presumption of validity. They see no evidence in the record which supports the Petitioners' argument the designated lands are not agricultural lands of long-term commercial significance, their burden of proof has not been met.

The Intervenor contends the Petitioners may no longer challenge the designation of natural resources land, the time for review has passed.

DISCUSSION: The petitioners must seek review of the Resource Lands Plan within 60 days of publication of the notice of its adoption. More time has passed sense the adoption and publication of the Douglas County Resource Lands Plan and the petitioners are unable to challenge this portion of the Douglas County Plan.

CONCLUSION: The petition for review of the Natural Resources Land Plan is not timely and will not be considered.

ISSUE 13: WHETHER DOUGLAS COUNTY'S COMPREHENSIVE PLAN FAILS TO CONTAIN THE REQUIRED ELEMENTS AND CONTENTS OF RCW36.70A.020(1) AND (2), RCW 36.70A.070 (1) THROUGH (6), .100, .110,.140, .150, .160, .200?

This issue has been explicitly abandoned by Petitioners.

ISSUE 14: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.020 (10), RCW 36.70A.040(3), AND WAC 365-190-020 BECAUSE ITS COMPREHENSIVE PLAN WAS BASED UPON AND DEVELOPED BY USE OF AN INAPPROPRIATE PLANNING SCHEMA WHICH IMPROPERLY EXCLUDED LANDS FROM CONSIDERATION AND CONSERVATION DUE TO THE PRIOR AND/OR CONTEMPORANEOUS

ESTABLISHMENT OF AN IUGA?

The Petitioners claim the County failed to appropriately designate and conserve agricultural resource lands and protect critical areas.

The County contends the validity of the Resource Lands and Critical Areas Policy Plan, the Regional Policy Plan, and the IUGAs aren't the subject of this appeal and review is time barred. They move to strike all Petitioners' argument on these issues.

The County further contends the Petitioners have failed to present any record evidence that Douglas County has failed to protect the environment and therefore have failed to meet their burden of proof. They further point out the Petitioners have failed to present any record evidence that Douglas County has failed to designate and conserve resource lands and again, have failed to meet their burden of proof and there has been no evidence that Douglas County has not complied with WAC 365-190.

The Intervenor joins the County in asserting the Petitioner has tried to meet its burden of proof merely by casting aspersions and making unfounded assertions and the GMA requires substantially more.

CONCLUSION: The time has passed for any challenge to the Resource Lands and Critical Areas Policy Plan, the Regional Policy Plan and the IUGAs. Further the Petitioners have failed to carry their burden of proof and come forward with sufficient evidence to show the Respondent has failed to designate and conserve resource lands.

ISSUE 15: WHETHER THE PLAN'S CAPITAL FACILITIES ELEMENT IS CONSISTENT WITH THE REQUIREMENTS OF RCW 36.70A.020(1),(2), (3), (5), (11), (12) AND RCW 36.70A.070(3)?

The Petitioners assert the Capital Facilities Element does not contain the required content for sewers, water and schools. They claim the lack of a complete capital facilities plan is a fatal legal defect in the County's plan.

The County contends because the sewer and water school districts are outside their direct control or authority, they can only request information and coordination, they have no ability to control the timing or quality of the efforts by these independent districts. That they have done what they were able to do.

The Intervenor asserts less is required of the County in cases where the services are provided by special districts or districts beyond their county's legislative control. They believe the County

must show inventory and capacity data for special districts and provide population and land use information sufficient to estimate future needs. Planning future facilities to meet those needs and estimation of the cost of those facilities must be left to the special districts.

DISCUSSION: The GMA requires that a County Comprehensive Plan include:

A capital facilities plan element consisting of:

1. An inventory of existing facilities owned by public entities, showing the locations and capacities of the capital facilities;
2. a forecast of the future needs for such capital facilities;
3. the proposed locations and capacities of expanded or new capital facilities;
4. at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes: and
5. a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. RCW 36.70A.070(3)

This would make more sense if the facilities were owned by the planning jurisdiction, the County. That is not always the case. It is often the case, as it is here, the sewers, water, school, etc. systems are owned and operated by special districts. These districts are not required to plan under the GMA. The GMA requires county to analyze some of the capital facility planning issues relevant to special districts, but we believe this should not be construed to required a county to do the detailed planning required of the special district itself. In fact it would be a fruitless effort to plan for the special district and tell them what they will do and how the money will be raised. This would-be useless duplication and normally unenforceable.

The County must provide an inventory of existing capital facilities and forecast the future needs for such capital facilities. More than this is not needed for special districts or facilities not owned or operated by the County. We decide, as the Central Board has, that RCW36.70A.070(3c) be read:

"...as if the phrase 'owned or operated by the city or county' existed at the end. This interpretation is required by necessary implication. To hold otherwise would require a county government as the regional planning entity within a county, to conduct capital

planning for all public facilities regardless of ownership...."Sky Valley v. Snohomish County CPSGMHB#95-3-0068c at p.1675.

To require this would be costly and in some cases, impossible.

CONCLUSION: The DCCP meets the requirements for the Capital Facilities Element. The County has here complied with the Act.

ISSUE 16: WHETHER THE PLAN'S CAPITAL FACILITIES ELEMENT VIOLATES RCW 36.70A.110(1), (3), AND (4) BY PLANNING FOR THE EXTENSION OF URBAN SERVICES IN RURAL AREAS?

The Petitioners argue resource lands have been improperly excluded from conservation by including these lands within the GEW UGA, with specific reference to the commercial land use designation at the Odabashian Bridge. Petitioners argue Douglas County has violated the GMA by allowing urban services to be extended to these lands. Petitioner City also argues permitting extension of sewer services to an industrial island outside service district boundaries of the East Wenatchee Sewer District, Pangborn Airport and its industrial area, is a violation of the GMA.

The County contends the GMA does not prohibit the extension of urban services outside a UGA. The Act states only that it is not appropriate to extend such services. Further the County points out the Odabashian Bridge area is within the GEWUGA. The County also points out this UGA is intended to provide for the next twenty years of growth and it is unknown when development will occur in this area. Facilities will be provided at some future time and no development is allowed to occur until such services are provided.

The County points out the Pangborn Airport and its supporting industrial uses are pre-existing. Before development may occur, adequate facilities and utilities will be necessary and paid for by the developers pursuant to a master site plan.

The Intervenor goes further and points out the Airport is in the UGA and providing services to UGA is certainly expected. The Intervenor asserts the possible future extension of water and/or sewer to land within the UGA does not violate the GMA and, in fact, is allowed by the GMA. The County states the fact a junior district's future plans include the extension of sewer services to such land, does not violate the GMA.

DISCUSSION : The briefs of the parties disagree concerning the inclusion of the Pangborn Airport Industrial area within the UGA. Upon review of the exhibits, it is clear the airport area is one of the two Greater East Wenatchee urban growth areas. Because of that, the provision of services to that area and to other areas included in the UGA may be appropriate in the future.

This is not the extension of urban services in rural areas.

The other areas complained of are also part of the designated Gas and services to those areas are expected.

CONCLUSION: The Board finds the Petitioner has not met their burden of proof and the County is not in violation of the GMA.

ISSUE 17: WHETHER THE PLAN'S TRANSPORTATION ELEMENT FAILS TO COMPLY WITH RCW 36.70A.020(5) AND RCW 36.70A.070(6) BY FAILING TO FORECAST INTERNAL AND EXTERNAL EMPLOYMENT RELATED TRAFFIC AND OTHERWISE INCLUDE THE REQUIRED CONTENT?

This issue was not briefed by the Petitioners and therefore is abandoned.

ISSUE 18: WHETHER THE GEWAC PLAN FAILS TO COMPLY WITH RCW 36.70A.210, .100, .110, AND WAC 365-195-300, -305, 510, -520, -530 BECAUSE IT IS NOT CONSISTENT WITH THE DOUGLAS COUNTY ADOPTED CPPs, INCLUDING BUT NOT LIMITED TO POLICIES 1, 2, 3, 6, 7, 9 AT PAGE 4 AND 5; POLICIES 1, 2, 3 AND 4 AT PAGE 6; POLICY 1, 3, 4 AND 7 AT PAGE 7; POLICY 1 AT PAGE 9; AND POLICY 3, 4, AND 5 AT PAGE 10?

This Issue will be broken into sub-issues for ease of discussion.

1. DCRRP Policy #1 at 4: Developments within UGAs will be contiguous, orderly and coordinated between the County and Municipalities' governments and utility service purveyors.

The Petitioners first argue Douglas County has failed to comply with CPP Policy #1 regarding coordination with the City of East Wenatchee, and utility service purveyors. The Petitioners claim the Baker Flats industrial designation, the Pangborn Airport industrial area boundary, and the Odabashian Bridge commercial designation violate this policy, as they are contrary to the desires of the City of East Wenatchee.

The County asserts it has demonstrated its public process and efforts to coordinate planning within Douglas County. The County contends the City of East Wenatchee consistently supported the "final" GEW CAC plan which recommends the UGA boundary, the Baker Flats Designation and the Pangborn Airport designation adopted by the County. The Odabashian Bridge commercial designation, while not the "exact image" of the desires of the City, does not require such concurrence.

The Intervenor contends policy #1 addresses development within the UGA and not the location or land use designations of the UGA addressed by the Petitioners. The Intervenor further notes the comprehensive plan has many policies that adequately address this issue, including the first four unnumbered policies in the Utilities Element of the DCCP at 53 and policies of the urban and sub-area plans.

2. DCRRP Policy #2 at 4: Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development; and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

The Petitioners argue Douglas County has failed to comply with the "tiered" location of growth within the GEW UGA. They argue that agricultural resources lands have been included within the GEW UGA, that Baker Flats and Pangborn airport industrial uses are invalid, and cluster development outside the GEW UGA is impermissible urban growth.

The County contends the plan, interim development regulations and zoning maps adopt policies which comply with this policy and RCW 36.70A.110.

The Intervenor contends the policy is taken directly from RCW36.70A.110(3). The Intervenor point out the Petitioners have-not identified any policies in the plan that conflict with this section of the GMA.

3. DCRRP Policy #3 at 4: It is appropriate that urban government services be provided by cities, when practical, and urban government services should not be provided in rural areas.

The Petitioner here contends Douglas County has failed to comply with this policy which provides that urban government services be provided by cities and when practical, not provided in rural areas. They contend designations at Baker Flats, Pangborn Airport, and the Odabashian Bridge and allowed cluster developments violate this policy.

The County claims the Petitioner's argument does not apply to Baker Flats and Odabashian Bridge areas, which are within the UGA. The County directs us to their arguments in previous and later issues dealing with the Airport and cluster developments. Cluster development allowed is limited by the plan and development regulations to preclude urban growth. The County also contends they do not provide urban services other than police and street maintenance, and to suggest otherwise is contrary to the evidence.

The Intervenor, in a previous issue, pointed out the Airport is within a UGA and the argument

would not apply. At this issue, they point out that the Partnership "does not like the County's lawful exercise of its discretion to include 'an area' - not identified by the Partnership - within the UGA." But the Intervenor contends, without knowing what area the Partnership now addresses, it is impossible to respond to this issue and it should be considered abandoned.

4. DCRRP Policy #6 at 4: Urban development in an UGA which is not contiguous to the municipal boundary may be allowed only if:

- a. Infrastructure standards are equal to or greater than those required in adjacent municipalities in Douglas County.
- b. The same UGA plan has been adopted by the adjacent municipalities and the County.
- c. Critical areas and resource areas are protected
- d. Provisions are made for urban services.
- e. Provisions are made for infrastructure construction and maintenance.
- f. Off-site infrastructure needs are met.
- g. A note is placed on the plat and made part of the title report informing property owners that the development is within an UGA and it is intended to ultimately be within a municipal boundary.

The Partnership contends that authorizing commercial development at Odabashian Bridge violates the second and third conditions of this policy.

The Intervenor contends the Partnership did not cite any evidence to support its assertion the third condition is violated and have not carried their burden of proof. The Intervenor then addresses the second condition. It contends the "same UGA plan" referred to in this policy is the one the County has adopted. They point out the City agreed to the location of the UGA but not the specific commercial designations within that boundary and the Board should find the same UGA plan has been adopted by the City and the County, and therefore , urban development maybe allowed in these areas.

5. DCRRP Policy #7 at 4: The forming of unincorporated enclaves shall be avoided in the UGAs.

The Petitioners claim the location of a regional goods center more than three miles from the existing municipal limits of the City will result in the creation of an unincorporated area and

would direct urban growth away from the County's central city rather than focus urban growth on the City as required by the GMA. The City's discussion of the cluster developments has been addressed by the Board at Issue three, and will not be dealt with here.

The County argues the Petitioners have failed to demonstrate how those areas constitute the "forming of unincorporated enclaves." Baker Flats and Pangborn Airport exist now. All three areas are limited in size, scope and use, they do not present a potential for the unregulated development of an unincorporated community.

The Intervenor contends Policies in the comprehensive plan support orderly expansion of the UGA would not result in unincorporated islands. Further they contend the Petitioners cite nothing to support their assertion that commercial development at Odabashian Bridge " would direct urban growth away from" East Wenatchee.

6. DCRRP Policy #9 at 5: Urban development should not be permitted outside of UGAs except in master planned communities, or commercial development in planned/designated rural service centers.

The City claims urban growth will be allowed outside the UGA at the Pangborn Industrial area.

The County argues the Airport is pre-existing and located within an industrial service boundary which limits size, scope and use. The Intervenor points out again the Airport is within an UGA and therefore urban growth will be encouraged there.

7. DCRRP Policy #4 at 5: Essential public facilities sited outside of urban and urban growth areas must be self-supporting and must not require the extension, construction, or maintenance of urban services and facilities by Municipalities. Criteria shall be established that address the provision of services when siting an essential public facility.

The Petitioners' seventh argument claims Douglas County has violated Policy #1 through #4 by allowing the extension of urban services to "essential public facilities" outside the GEW UGA, Pangborn Airport, and by failing to designate lands within the GEW plan for future essential facilities.

The County responds by directing the Board's attention to Issue20 where siting of essential public facilities is discussed. They proceed to point out the Petitioners cite no violation of the Act or the regulations and have failed to meet their burden of proof.

The Intervenor again points out the Airport is a UGA and the policy is therefore irrelevant.

8. DCRRP Policy #1 at 6: Provisions shall be made in the County's and Municipalities' comprehensive plans and development regulations for siting important and essential public or quasi-public facilities of County or State-wide significance. Examples include, but are not limited to, airports, state education facilities and solid waste handling facilities. The objective is to achieve inter-jurisdictional consistency in these plans and regulations.

The Petitioners contend the County violated Policy #1 at 6 by the City's failure to adopt the County's plans. The City contends the County has failed to provide for essential public facilities.

The County summarizes their planning and points out that the Petitioner's argument has no merit. The Intervenor contends the Partnership limits its argument to the claim the City has not adopted the County plans. The Intervenor believes this cannot be a flaw in the County's plan. A separate action is necessary to challenge a city's failure to act. The location of the essential public facilities is addressed in other Issues.

9. DCRRP Policy #1 at 8: A wide range of housing development types and densities throughout the County should be encouraged and promoted to meet the needs of a diverse population and provide affordable housing choices for all income levels.

The Petitioners' believes the County has violated Policy #1 at 8 by failing to coordinate capital facilities.

The County claims the Petitioners present no evidence in their briefs there has been a failure to coordinate capital facilities planning with the City. The Intervenor agrees and points out the Petitioners' argument does not appear to be directed toward the specific policy and have not carried their burden of proof.

10. DCRRP Policy #1 at 9: Ensure future economic vitality, broaden employment opportunities and meet the needs of projected growth while retaining a high-quality environment.

The Petitioners' argument here is the County has violated Policy# 1, Policy #3, Policy #4 and Policy #5 because the County can support only one regional goods center. The City of East Wenatchee claims it has not approved a regional goods center at Odabashian Bridge, and a regional goods center at the Bridge will destroy the economy of the City of East Wenatchee.

The County states there is no City of East Wenatchee GMA plan which the County can look to for consistency, just the expressed desires and fears of Petitioners. They point out the City has no "veto" power over the County land use decisions which are supported by the record and permitted under the GMA.

The Intervenor joins with the County and points out the Petitioners have not provided evidence to support the assertion there is insufficient commercial demand to justify the amount of lands designated for commercial use within the UGA. In fact, the County and the Intervenor point to a study revealing there is not an oversupply of commercial land, even if both the Odabashian and downtown commercial districts were included.

11. DCRRP Policy #3 at 9: Formulate a joint comprehensive economic development plan aimed at diversifying the economy in inappropriate areas of the County. Economic Development should implement and be consistent with the Comprehensive Land Use and Capital Facilities Plans. The Plan should: (the subsections for this policy are not included here)

The Petitioners contend, because the City has not given their approval to the proposed new regional goods center at the Odabashian Bridge prescribed in the GEWAP, and because the County has not completed the Capital Facility Element in the GEWAP, the GEWAP is fatally flawed. Petitioners claim to have established that the adopted CPPs are directive.

The Intervenor contends this policy is irrelevant to assessing the content of the Plan. This policy #3 at 9 directs creation of a separate economic development plan. Because this policy is not directive as to the Plan, there can be no inconsistency at this juncture.

DISCUSSION: A number of the issues raised in the discussion of the above policies have been dealt with in other issues herein. We do not find it necessary to address them further. The issues raised herein, not dealt with otherwise, are subject to the same burden of proof. The Comprehensive Plan of Douglas County adopted under the GMA is presumed valid upon adoption. The Board shall determine whether there is compliance with the requirements of the GMA or the County erroneously interpreted or applied the Act. Petitioners have the burden of proving by a preponderance of the evidence that a plan does not comply with the ACT RCW 36.70A.320.

The Petitioners have not carried their burden of proof for these issues. The presumption of validity has not been rebutted. The GMA does not require the Petitioners to concur or agree with the decisions made by the County. The Act requires a certain process be followed prior to the County making those decisions. The County followed this process and have made its decisions. If the decisions are in compliance with the Act, they stand.

CONCLUSION: Except as otherwise dealt with herein, the Petitioners have not met their burden of proof. The DCCP is presumed valid upon its adoption. The Petitioners have not provided evidence sufficient to rebut this presumption of validity. We do not find the County in violation of the Act.

ISSUE 19: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 326.70A.140, RCW 36.70A.020(11), AND WAC PROVISIONS IMPLEMENTING THOSE SECTIONS BY FAILING TO PROVIDE FOR HEARINGS ON A TRULY COMPREHENSIVE PLAN, FAILING TO PROVIDE FOR BROAD DISSEMINATION OF PROPOSALS, FAILING TO PROVIDE FOR OPEN DISCUSSION OF THOSE PROPOSALS, FAILING TO RESPOND TO PUBLIC COMMENTS, AND FAILING TO SHOW THEIR WORK RELATING TO PROPOSALS ACTUALLY ADOPTED?

The Petitioners, Respondent and Intervenor restate their arguments found in Issue 1. The Intervenor contends the County had an extensive public process. They point out the County has discretion in its plan to make many choices about accommodating growth. The Intervenor contends the choice of the Board of Commissioners to adjust the commercial land use designation at the Bridge was within their discretion. These designation options were open to public comment and voted on by the Planning Commission.

DISCUSSION: The issue of public participation has been dealt with at Issue 1. The second issue raised here involves the designation of the number of acres included at the Bridge site. The record and argument of counsel satisfies this Board the public did have an opportunity to comment on the size and commercial designation of the lands at the Bridge. It might have been handled better, but it did meet the procedural requirements of the Act.

CONCLUSION: The portion of this issue dealing with public participation has been decided in Issue 1 and we do not alter our decision.

The question involving the acreage and commercial designation at the Bridge site is decided in favor of the County. It is well within the discretion of the County to adjust the commercial land use designation at Odabashian Bridge site. The public had an opportunity to comment on the various options and those options were voted on by the Planning Commission. The Petitioners have not shown the Act was violated here.

ISSUE 20: WHETHER DOUGLAS COUNTY FAILED TO COMPLY WITH RCW 36.70A.200 AND APPLICABLE WAC PROVISIONS BY FAILING TO INCLUDE A PROCESS FOR IDENTIFYING AND SITING ESSENTIAL PUBLIC FACILITIES?

This issue was adequately dealt with in our decision in Issue 9.

ISSUE 21: WHETHER DOUGLAS COUNTY UTILIZED DEFINITIONS INCONSISTENT WITH THE STATUTORY DEFINITIONS CONTAINED IN RCW 36.70A.030?

This issue was abandoned by petitioners.

ISSUE 22: WHETHER THE DOUGLAS COUNTY COMPREHENSIVE PLAN FAILS TO CONTAIN DEFINITIONS OF KEY TERMS AS REQUIRED BY PRIOR GROWTH PLANNING HEARINGS BOARD DECISIONS?

This issue was abandoned by Petitioners.

ISSUE 23: WHETHER THE DOUGLAS COUNTY COMPREHENSIVE PLAN PROVIDES FOR MASTER PLANNED RESORTS IN A MANNER WHICH VIOLATES RCW 36.70A.360?

The Petitioner argues Douglas County has failed to preclude new urban or suburban land uses in vicinity of a MPR, pursuant to subsection (2) of RCW 36.70A.360 and failing to require a finding during the approval process the land is better suited, and has more long-term importance for the MPR than for commercial forestry or agriculture, if located on resource land of long-term commercial significance, pursuant to subsection (3).

The County points out the policies specifically adopted for MPR development do not include the excerpted language quoted by Petitioners and the word Industrial does not appear in the MPR policies or implementation criteria. Industrial uses are not allowed in MPRs by the plan.

The County then points out there is no requirement the "missing" language be included in a GMA Plan. The Act provides MPRs may only be authorized if a finding relating to use and long-term importance is made during the approval process. They point out the MPRs are not implemented through the interim development regulations and, therefore are not permitted in Douglas County.

The Intervenor refers to Issue 3 where it contended that the DCCP has one criteria that does not meet the requirements of RCW 36.70A.360. They point out the fourth policy (DCCP at 42) only "discourages" urban growth around an MPR while RCW 36.70A.360(2) requires the Plan to "preclude" such growth.

DISCUSSION: RCW 36.70A.360(2) provides that "the comprehensive plan and development regulations include restrictions that preclude new urban or suburban land uses in the vicinity of the master planned resort, except in areas otherwise designated for urban growth under RCW 36.70A. 110." While the MPRs are not implemented through the interim development regulations and therefore are not permitted in Douglas County, DCCP at 42 needs to be changed to reflect the statutory requirement that the Plan "preclude" such urban growth.

CONCLUSION: The Comprehensive Plan is remanded with direction to the County to make the changes necessary for the DCCP, at 42, to preclude such urban or suburban growth in the vicinity of the MPRs when and if implemented.

ISSUE 24: WHETHER THE DOUGLAS COUNTY COMPREHENSIVE PLAN ADOPTION PROCESS FAILED TO INVOLVE REVIEW OF DESIGNATION OF AND DEVELOPMENT REGULATIONS FOR THE PROTECTION OF CRITICAL AREAS AND THE CONSERVATION OF AGRICULTURAL, FOREST AND MINERAL RESOURCE LANDS AS REQUIRED BY RCW 36.70A.060?

The Petitioners claim the record is devoid of any analysis or discussion that took place as part of a public hearing to review previous critical area and resource land designation and regulations as required by the GMA.

The County states there is nothing in the statute requiring the analysis and/or discussion to occur at a "public hearing." They further note one of our previous decisions, Benton County Fire Protection District No.1 v. Benton County, EWGMHB No. 94-1-0023 at 30-31 where we rejected the need for a "tangible procedural demonstration" of procedural compliance, but adopted a substantive test which requires a showing of inconsistencies.

DISCUSSION: RCW 36.70a.060(3) requires interim resource lands and critical area designations and regulations be reviewed when adopting a comprehensive plan and implementing development regulations to insure consistency. The Petitioners have the burden to show that the review was not done and there're in fact. inconsistencies. A public hearing is not required. This review is normally done by staff and reported to the legislative body.

CONCLUSION: The Petitioners have not shown the County is in violation of the GMA.

ISSUE 25: WHETHER THE GEWAC PLAN'S TRANSPORTATION ELEMENT FAILS TO COMPLY WITH RCW 36.70A.020(5) AND RCW 36.70A.070(6) BECAUSE THE PLAN IS BASED UPON AND REFLECTS LAND USE DESIGNATIONS INSIDE THE EAST WENATCHEE INTERIM URBAN GROWTH AREA AND URBAN GROWTH AREA THAT WERE NOT COORDINATED WITH AND ARE INCONSISTENT WITH PUBLIC INPUT AND PLANS OF THE CITY OF EAST WENATCHEE.

The Petitioners refer to previous issues for their argument. They argue the GEW plan's transportation element is not coordinated and consistent with the public input and plans of the City of East Wenatchee. They focus on a proposed north-south arterial that addresses the traffic flow and safety deficiencies on SR28.

The County asserts the Petitioners again failed to provide key evidence as part of the record, the Wenatchee Area Transportation Study. The County further contends they fail to cite or quote from WATS and failed to provide any record evidence the transportation element, specifically a

north-south alternative to SR 28, violates the GMA planning goal. The County claims the City of East Wenatchee has participated in the Wenatchee Area Transportation Study (WATS) for more than five years prior to the adoption of the GEW plan. The WATS preferred land use plan was submitted by each of the participating jurisdictions in February of 1995, including the City of East Wenatchee. This land use alternative included the Odabashian Bridge commercial designation.

The County goes on to say there have been numerous public workshops, informational meetings and open houses held for WATS planning, as well as public committee meetings. The County believes the Petitioners ignore the five years of coordinated and detailed transportation planning that has been completed by Douglas County, the City of East Wenatchee, and the other participating jurisdictions under WATS.

DISCUSSION: The City disagreed with what the County decided regarding land use designations inside the East Wenatchee Interim Urban Growth Area. This was communicated to the County. The County has the discretion to make these choices after considering public input and comments from the City. The Act presumes the actions carried out hereunder are valid and the Petitioners must provide substantial evidence rebutting this presumption. The Petitioners have not carried this burden.

CONCLUSION: The City has failed to carry its burden of proof there is non-compliance with GMA in this area.

ISSUE 26: WHETHER THE GEWAC PLAN FAILS TO LIMIT DEVELOPMENT CHARACTERIZED BY URBAN GROWTH TO THE EAST WENATCHEE URBAN GROWTH AREA OR PERMITS THE SAME TO OCCUR ADJACENT TO THE EAST WENATCHEE URBAN GROWTH AREA, SPECIFICALLY IN THE CASE OF THE PANGBORN MEMORIAL AIRPORT AND SURROUNDING AREA IN VIOLATION OF RCW 36.70A.110(4)?

The City claims inappropriate urban growth is allowed outside the urban growth area at the Pangborn Industrial Area.

The Intervenor points out the Pangborn Airport Industrial Area is within an Urban Growth Area and is where urban growth is to be encouraged. They also contend the 1995 amendments to the GMA provides express authority for the creation of "island" UGAs. RCW 36.70A.110(1).

CONCLUSION: This issue is addressed in previous issues and will not be further addressed here. Island UGAs must be scrutinized in detail because of the Act's goal to stop sprawl. The Petitioners have not shown us the Airport Industrial area and the restrictions placed thereon

encourages sprawl. We find in favor of the County.

ISSUE 27: WHETHER THE GEWA PLAN IMPROPERLY DESIGNATES LAND USES FOR AREAS OUTSIDE THE EAST WENATCHEE URBAN GROWTH AREA PRESENTLY DEVELOPED AND IN USE FOR NON-AGRICULTURAL PURPOSES AS AGRICULTURAL LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE IN VIOLATION OF RCW 36.70A.030(2) AND GROWTH PLANNING HEARING BOARD DECISIONS?

The City contends the County has not conducted the necessary analysis of existing land uses and has improperly designated agricultural resource lands which do not meet the requirement of the GMA and are actually, in some instances, urban in character.

The County insists that the existence of roads, domestic water systems, and the possibility of sewer service being available in the future do not mean the land is not agricultural land of long-term significance. The land is certainly agricultural and devoted to commercial production. The County contends the evidence or lack of it does not rise to the level required to carry their burden of proof.

DISCUSSION: RCW 36.70A.030(2) provides that agricultural resource lands shall be "primarily devoted to ... commercial production ... that has long term commercial significance for commercial production." The County has shown it has included that type of lands within its Agricultural Resource lands designation. The fact there are some pockets of urban or industrial uses within that area does not invalidate such a designation.

CONCLUSION: The City has not met its burden of proof showing the agricultural lands between the EWUGA and the Pangborn UGA are inappropriately designated.

ORDER

The County has worked hard to meet the requirements of the GMA and for the most part has succeeded. While there are improvements that can be made, the overall quality of the work is excellent. We acknowledge the efforts of all who participated in the GMA process in Douglas County. While the Petitioners and others might disagree with some of the decisions of the County, the County has the discretion in its comprehensive plan to make many choices about accommodating growth and designating uses of property. They have done this and with the exception of a few changes that require remanding, the County is in compliance with the direction given by the GMA.

Having reviewed the exhibits and arguments of the parties, the Board finds Douglas County in noncompliance in the following three areas. The first is the manner in which the County has provided for "cluster developments." The second is in the manner in which the County has provided for "rural activity centers" in rural areas. These sections of the Plan are remanded for correction of the language which needs to prohibit urban development on agricultural or other resource lands and on lands outside UGAs. The third deals with the Master Planned Resorts and the failure to prohibit new suburban or urban land uses in the area surrounds the MPRs.

The County shall file by 5:00 p.m. on Friday, January 24, 1997 one original and three copies with the Board and serve a copy on each of the other parties of a statement of actions taken to comply with the Final Decision and Order. The Board will then promptly schedule a compliance hearing to determine whether the County has procedurally complied with this order. Substantive compliance will not be determined until and unless new petitions for review are filed within sixty days of publication of notice of adoption of the sections changed in the Plan.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

SO ORDERED this 10th day of December, 1996.

**EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD**

Dennis A. Dellwo, Presiding Officer

Judy Wall, Board Member

D. E. "Skip" Chilberg, Board Member

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