

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CITY OF ELLENSBURG,)	
Petitioner)	
)	
CASCADE COLUMBIA ALLIANCE,)	
Petitioner)	Case No. 96-1-0017
)	
RIDGE,)	
Petitioner)	FINAL DECISION
)	AND ORDER
)	
MIKE WILLIAMS AND)	
PAULINE DIEFENBACH,)	
Petitioners)	
vs.)	
)	
KITTITAS COUNTY,)	
Respondent)	
)	
CITIES OF CLE ELUM AND SOUTH)	
CLE ELUM,)	
Intervenors)	
)	
JELD-WEN AND TRENDWEST RESORTS,)	
Intervenor)	
)	
PLUM CREEK TIMBER COMPANY,)	
Intervenor)	

I. Procedural History

On September 23, 1996, the City of Ellensburg, by and through its attorney, Paul Sullivan, filed a Petition for Review with the Eastern Washington Growth Management Hearings Board (the Board) seeking review of the Kittitas County Comprehensive Plan.

On September 30, 1996, Cascade Columbia Alliance of Olympia, Washington, by and through its attorney,

David A. Bricklin, filed a petition for review appealing Kittitas County's Comprehensive Plan.

On September 30, 1996, RIDGE, of Roslyn, Washington, by and through its attorney, David A. Bricklin, filed a petition for review also appealing Kittitas County's Comprehensive Plan.

On October 21, 1996, Mike Williams and Pauline Diefenbach of Ellensburg, Washington, by and through their attorney, James D. Maloney III, filed a petition for review also challenging the Kittitas County Comprehensive Plan. The issues relate to the designation of agricultural lands of long-term commercial significance as required by RCW 36.70A.170(1); whether the criteria used by Kittitas County for designation of agricultural lands are adequate under the GMA; whether Ordinance 95-15 assures the conservation of agricultural lands designated under RCW 36.70A.170(1) as required by RCW 36.70A.060(1) and whether Ordinance 95-15 violates RCW 36.70A.020 (8) natural resource industries.

On October 30, 1996, Jeld-Wen, Inc., and Trendwest Resorts, Inc., by and through their attorneys, John W. Hempelmann and Janet E. Garrow, filed a motion seeking intervenor status in the above captioned petitions for review. Issues relate to the designation of forest lands of long-term commercial significance and the adoption of zoning ordinance and map related to those designations as well as master planned resorts. Counsel's motion advised that counsel for Kittitas County and City of Ellensburg have advised them that they do not oppose intervention.

On November 5, 1996, Plum Creek Timber Company, by and through its attorneys, John W. Hempelmann and Janet E. Garrow, filed a motion seeking intervenor status in the above matters. Issues relate to designation of forest lands of long-term commercial significance as well as allowance of urban industrial growth outside of urban growth areas.

On November 7, 1996 the Board held a prehearing conference and determined the issues to be considered as well as consolidating allowing intervention and consolidating the cases.

On December 16, 1996, the Board convened its Motions Hearing . All parties were represented. Kittitas County's motion to dismiss RIDGE's petition was withdrawn at the motion hearing. Motion by Cities of CleElum and South CleElum to intervene was granted with the conditions that the Cities of Cle Elum and South Cle Elum would raise no new legal or factual issues not already raised by the remaining parties relating to the appealed Kittitas County Comprehensive Plan; the Cities of Cle Elum and South Cle Elum would neither brief nor argue issues except to the extent that they directly impact those cities and the cities will be bound by the existing Motions and Briefing Schedule. Motion by Olympic Pipe Line to intervene was withdrawn. Motion by City of Roslyn to intervene was withdrawn at the request by City attorney Ms. Proebsting. Motion by Intervenor JELD-WEN to dismiss RIDGE's forest land issues was withdrawn. Motion by Cascade Columbia Alliance to withdraw its petition for review was granted. Motion by Kittitas County to dismiss Cascade Columbia Alliance petition and intervention request of Olympic Pipe Line Company was withdrawn. Motion by Kittitas County to dismiss portions of the City of Ellensburg's petition

relating to designation of the urban growth boundaries for the City of Ellensburg was withdrawn. Motion by Kittitas County to supplement the record to include resolutions clarifying the legislative intent of both the master planned resort and clarifying the major industrial development sections of the comprehensive plan and an amendment to the plan was granted.

The parties stipulated following: 1. The parties shall brief in this action the Master Planned Resort issues including the County's recent resolutions and amendment relating to the legislative intent. 2. The Board's ruling on the MPR policies in this action will take into account the recent legislative intent language adopted by the BOCC through the resolution and amendment. 3. The Parties will be bound by the Board's decision in this appeal of those issues. Ridge does not need to file a new petition on the amendment. 4. The record will be supplemented to include the resolutions and the amendment to the Comprehensive Plan.

On February 3 and 4, 1997, the City of Ellensburg and Kittitas County entered into a Joint Resolution (Ellensburg Resolution No. 1997-02 and Kittitas County Resolution No. 96-17) wherein the City of Ellensburg withdrew its petition for review in this case.

II. Findings of Fact

1. December 27, 1990 Kittitas County opted into the Growth Management Act, RCW 36.70A, voluntarily by adopting Resolution 90-138.
2. August 12, 1994 Kittitas County adopted interim critical areas ordinance.
3. November 2, 1994 Kittitas County adopted Resolution No. 94-134 regarding the KC Comprehensive Plan and Zoning Code - Forest Lands of Long-Term Commercial Significance.
4. Sept. 15, 1995 the County adopted an Ordinance 95-13 designating agricultural resource lands.
5. July 25, 1996 Kittitas County adopted county-wide planning policies.
6. July 26, 1996 Kittitas County adopted Ordinance 96-10, the Kittitas County Comprehensive Plan pursuant to RCW 36.70A and amending the existing KCCP
7. Sept. 10, 1996 Kittitas County adopted Ordinance 96-15 amending Kittitas County Code; Kittitas County Zoning Map and creating Kittitas County Code 17.31 Commercial Agricultural Zone. Zoning map changes include the July 2, 1996 adoption of interim classification and designation system, designation and policies for Forest Lands of Long-Term Commercial significance for inclusion in the final comp. Plan including additional 1200 acres of forest lands included as FLLTCS. [Exhibit 49]

8. Dec. 3, 1996 Kittitas County adopted Resolution 96-193 regarding Comprehensive Plan Legislative Intent for Master Planned Resorts

9. Dec. 11, 1996 Kittitas County adopted Ordinance 96-20 - Comprehensive Plan Amendment

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III. Legal Issues
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ISSUE 1: WHETHER KITTITAS COUNTY ORDINANCE NOS. 96-10 AND 96-15 FAILED TO DESIGNATE ALL FOREST LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE AS REQUIRED BY THE GROWTH MANAGEMENT ACT INCLUDING THE LANDS IDENTIFIED IN EXHIBIT A TO THE PETITION FOR REVIEW (ISSUE 1) AND WHETHER THE KITTITAS COUNTY COMPREHENSIVE PLAN LAND USE ELEMENT FAILED TO DESIGNATE THE APPROPRIATE LOCATION AND EXTENT OF LAND TO BE USED FOR TIMBER PRODUCTION INCLUDING THE LANDS IDENTIFIED IN EXHIBIT A TO THE PETITION FOR REVIEW (ISSUE 3)?

A. Whether the County was Required to Designate as Forest Lands the lands Identified in Exhibit 1 attached hereto?

Petitioner’s position: Ridge contends Kittitas County refuses to designate the properties at issue as forest lands as required by the GMA. They contend the subject land meet the definition of “forest lands” found in RCW 36.70A.170, because they are not characterized by urban growth, and because they have long-term commercial significance for the commercial production of timber. They direct the Board’s attention to the previous decisions in this case where those lands were deemed to be forest lands of long-term commercial significance for the production of timber and should be included within the county’s forest lands designation. (Consolidated Case No. 94-1-0017). The Board ordered Kittitas County to so designate all or a portion thereof. The Petitioner contends that there is no new evidence which would change this decision. (RIDGE I, p. 9).

Ridge directs the Board to its April 3, 1995 decision in this case where the Board reviewed the 1994 amendment to RCW 36.70A.030. The Board determined the amendments to the GMA by the State Legislature clarified the definition and added four factors to be considered in making its determination. The changes were for clarification purposes, rather than to change the minimum guidelines for forest land designation. The Board went on to apply the new definition to the lands at issue in this case and concluded these lands should be designated as forest lands. (4/ 3/ 95 RIDGE III).

In their reply brief, Ridge contends “these are the same issues that have been hashed and rehashed in the prior two proceedings and rejected by this Board twice as a basis for failing to designate the disputed lands...the respondents have been unable to cite any new evidence in the record which could cause this Board to change its prior two decisions.”

They claim the County’s objection that Ridge’s opening brief made only passing reference to the application of the actual designation criteria to the subject property, is unfounded. Ridge referred to the Board’s prior decisions where this Board has analyzed those criteria. They also referred the Board to their earlier briefs in the earlier cases where they discussed these criteria at length. They asked these be incorporated by reference.

Respondent’s Position: The Respondent contends the guidelines established by DCTED do not set required minimums for designation in either quantity or quality. Nor do the forest lands guidelines require certain land grades be designated commercial forest nor does it require every piece of land with a tree be designated as forest lands. They believe the Counties are to evaluate, consider, and balance the factors and GMA goals and make the ultimate determination as to what should or should not be designated as resource lands.

The County believes it considered the criteria and established and designated forest land in excess of 661,000 acres under the Comprehensive Plan. They claim that Ridge has not carried its burden of proof. The County does not have the obligation to come forward with evidence, the Petitioner does and they have failed to provide the evidence necessary to rebut the presumption of validity the Act gives the County’s Plan..

The County contends if you follow Ridge’s rationale, their position calls for mandatory designation of all land with trees on it up to the urban growth boundaries. The Ridge analysis would call for a mechanical application without looking at any other factors. The County believes that the Forest Lands Guidelines do not require certain land grades must be designated commercial forest nor does it require every piece of land with a tree be designated as forest lands.

Plum Creek Timber Co. and Jeld-Wen’s Position: The Intervenor (Plum Creek) argues those lands not designated as Commercial Forest Lands (Exhibit 1), make up less than 2% of the lands designated as Commercial Forest Lands and less than 1% of all the lands within Kittitas County.

The Intervenor then discusses the additional evidence reviewed by the County after the previous hearings before the Board. They claim that this information and evidence gave the County cause to not designate these lands as Forest Lands. This new evidence was reviewed in the prehearing brief. They contend the subject property is adjacent to several town and urban growth areas. Portions of the lands already are characterized by urban , suburban or rural uses. The Cle Elum

River Property in this area has been segregated into the maximum number of parcels permitted under state and County regulations.

Cle Elum and South Cle Elum's Position: This Intervenor (Cle Elum) contends they anticipate extension of urban growth boundaries within the subject properties and would be precluded if Ridge's appeal is granted. A portion of the property is within the UGA boundaries for Cle Elum.

Cle Elum states they expect there will be a study of a portion of the subject property by the County and Cle Elum. They will be studying the suitability of extending the City of Cle Elum's Urban Growth Boundary into this area. The agreement has not been signed, but it is expected soon. They believe acceptance of the Ridge appeal would prevent the cities from conducting a realistic study to determine if they can expand their urban growth boundaries within any of these properties.

The Cle Elums believe the findings of the Board of Commissioners relating to forest lands of long-term commercial significance in their Exhibit 3, meets the intent of the GMA standards.

DISCUSSION: This is the key issue in this petition and it has been before this Board two times. RIDGE I and III.

Ridge, on January 31, 1994, filed a petition for Review, asking this board to review Kittitas County's decision to exclude from its designation of forest lands of long-term commercial significance, lands contained in Exhibit 1 of this order. After review of the briefing and the record, the Board found the disputed lands have the growing capacity, productivity, and soil composition to qualify as forest resource lands. These lands historically were, and continue to be, for the most part, productive forest lands. None of the parties disputed this. The question was whether the Act exempts some or all of these lands from the "forest resource lands" classification. If not, these lands must be designated.

The Board entered its decision on July 28, 1994, finding Kittitas County has failed to meet the requirements of the GMA. (RIDGE I). It was determined they should designate such properties as forest lands or an inclusion of a lesser portion of this property upon a showing the "excluded" property should not be so designated, consistent with the Growth Management Act and the principals of the Board's decision.

On February 27, 1995, this Board held a compliance hearing to determine whether the County had come into compliance and met the minimum designation requirements of the Growth Management Act. On April 3, 1995, the Board found the County was not in compliance with the Act.

During the final comprehensive planning process, the County Commissioners decided to designate an additional 1,280 acres as Commercial Forest Lands. On July 26, 1996, Kittitas County adopted the Comprehensive Plan pursuant to RCW 36.70A. Ridge has Petitioned the Board to review this Plan. The question of whether the County has properly designated the Exhibit 1 property, is again before us.

RCW 36.70A.040(4) provides:

(4) Any county or city that is required to conform with the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forest lands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; ...

RCW 36.70A.170(b) provides:

(1) On or before September 1, 1991, each county...shall designate where appropriate: ... (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber...

The County can be found in noncompliance, based on an examination of the record below, and the record before us here, if it failed to designate all lands that meet the definition of forest lands, unless these lands are located within a UGA. See RCW 36.70A.060(4). This Board has held in previous cases involving these same lands, RCW 26.70A.170(1)(b) requires counties to designate all forest lands that meet the definition. This statute requires counties and cities to designate all lands that met the definition of forest lands and RCW 36.70A.060(1) requires that counties and cities adopt development regulations to assure the conservation of all these designated forest lands. Within urban growth boundaries, these lands must be designated only if the city or county has enacted a program authorizing transfer or purchase of development rights.

The question the Board must resolve in this issue, is whether the County designated all forest lands as required by RCW 36.70A.170. In our past decisions dealing with the same land, the Board, upon review of the record before it, determined that all or much of these lands should be designated as forest lands. (RIDGE I & III)

The County has drawn our attention to new evidence, but this evidence does not persuade the

Board to find these lands are not forest lands and should not be so designated. Plum Creek et al points out a number of documents that are claimed to provide the County with information supporting its non-designation. The Board has reviewed each of these documents. These documents do not contain evidentiary facts; for the most part they contain only conclusions and assertions. They do not provide the claimed support for the actions of the County.

The major portion of the record before us is the same one before the Board in the previous cases where noncompliance was found. It is not necessary to address the evidence again in this opinion. This Board, in RIDGE I at 6, conducted a complete analysis of the three sub-factors that make up the long-term commercial significance test. This test requires consideration of (1) the growing capacity and productivity of the land, (2) the land's proximity to population areas and (3) the possibility of more intense uses of the land. RCW 36.70A.030. The Board considered these sub-factors and determined the long-term commercial significance test was satisfied. RIDGE I, 6-9. The Board found the lands at issue should be included within the county's forest lands designation. The County was ordered to designate the lands or a portion thereof as Forest Lands with Long-term Commercial Value. It was clear in the RIDGE I & RIDGE III decisions the county was ordered to designate all of the 7,500 acre River properties and all of the 4,800 acre Ridge property. The remainder of the subject lands were to be designated except where they "arguably should be excluded", from such designation. RIDGE III, 9-10.

There is nothing before the Board which would lead us to a different conclusion. Nowhere is there evidence the subject property has urban growth. The Cities of Cle Elum and South Cle Elum speak of urban growth and a desire to jointly study expansion of Urban Growth Areas into the subject property, but gives no specifics. The cities are claiming the designation of these lands as forest lands would lock them up and prevent the study from taking place. It is hoped these studies would occur sooner in the GMA process, but these designations do not "lock up" the land or prevent a study.

DECISION: The Board finds the County in noncompliance. The Petitioners provided sufficient evidence at this hearing and in the records and briefs found in RIDGE I, RIDGE II & RIDGE III to carry their burden of proof. The County then had the responsibility to come forward with additional evidence and argument to show why they did not designate these lands as Forest Resource Lands. They did not do so. The Board finds the County has failed to designate forest resource lands as required by the Growth Management Act. This matter is remanded to Kittitas County for the inclusion of the property described in Exhibit 1 as Commercial Forest Lands. If a lesser portion is designated, a showing must be made that the "excluded" property is not forest lands or otherwise should not be so designated consistent with the GMA and the holdings by this Board in this case.

B. Whether the County's Adoption of its Comprehensive Plan was Valid in Light of its Failure to Designate Forest Lands Identified in Exhibit A to the Petition for Review Under RCW 36.70A.170?

Petitioner's Position: Ridge believes the County's failure to properly designate the lands for timber production as required by RCW 36.70A.070 prevents it from adopting a valid comprehensive plan. They contend the County cannot proceed to adopt its comprehensive plan until the interim resource land designation is adopted unless it can leap the difficult hurdle to show good planning allowed such a deviation. There is nothing in the record to indicate good planning allows such a deviation.

Ridge's reply brief contends Plum Creek's argument the County has complied by designating some rural forest lands in its Plan is confusing the issue. The Petitioner states this rural forest designation provides less protection than afforded by the "forest land of long-term commercial significance" designation.

Respondent's Position: The County has not specifically addressed this aspect of the Petitioner's brief.

Plum Creek and Jeld-Wen's Positions: The Intervenors believe Ridge's claim is without merit. The Board's earlier decisions regarding the County's interim designations of Commercial Forest Lands are currently under appeal. They believe it would be a useless exercise for the County to again adopt interim Commercial Forest Lands designations when it has reached the point in its planning process to adopt its final designations for its Comprehensive Plan.

DISCUSSION: The County is required to do many things pursuant to the GMA. The designation of Forest lands is one. While the Board finds the County is out of compliance, such compliance does not invalidate the plan, only the portion named.

CONCLUSION: The Board will not remand the total comprehensive plan.

ISSUE 2: WHETHER KITTITAS COUNTY ORDINANCE NO. 96-15 FAILED TO ASSURE THE CONSERVATION OF ALL FOREST LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE AS REQUIRED BY RCW 36.70A.060 INCLUDING THE LANDS IDENTIFIED IN EXHIBIT A TO THE PETITION FOR REVIEW (ISSUE 2)?

Petitioner's Position: Ridge contends Kittitas County Ordinance No. 96-15 which amended the county's zoning map, fails to assure the conservation of forest lands by failing to designate the

lands at issue as “commercial forest” and fails to assure the use of lands adjacent to forest lands shall not interfere with the continued forest use of adjacent forest lands.

Ridge’s reply brief responds to Plum Creek’s contention the zoning given to the disputed land “is consistent with their Comprehensive Plan designations of forest multiple use and rural residential.” They contend the zoning is consistent with the Plan, but the Plan is flawed and therefore the zoning is also flawed.

Respondent’s Position: The County disagrees with the position of the Petitioner. They believe they have properly designated “commercial forest” lands and the separation of land from UGAs contributes to the protection of the forest lands. They do not directly address this issue.

DISCUSSION: The Board has found the County in noncompliance and has directed them to make the appropriate designations of forest lands. Upon the correct designation of these lands, the county must protect those lands as provided in RCW 36.70A.060(1).

CONCLUSION: The Board finds the County is not in compliance with the Act because of its failure to designate the property in Exhibit 1. Because of this finding, it is not necessary to address this issue.

ISSUE 3: **WHETHER KITTITAS COUNTY FAILED TO BE GUIDED BY THE ACT’S GOALS (PARTICULARLY GOALS 1-3, 5, 8-10, 12, AND 13) WHEN IT FAILED TO INCLUDE IN ITS COMMERCIAL FOREST LAND USE DESIGNATION AND ITS COMMERCIAL FOREST ZONING MAP THE LANDS DESIGNATED IN EXHIBIT A TO THE PETITION FOR REVIEW (ISSUE 4)?**

Petitioner’s Position: The Petitioners contend the County’s decision to exclude the disputed lands from forest land designation in its comprehensive plan was not guided by or consistent with the GMA planning goals and the action is inconsistent with the requirements of RCW 36.70A.020. Each of these Goals were discussed by the Petitioners.

Respondent’s Position: The County has not specifically addressed this point.

Plum Creek and Jeld-Wen Positions: The Intervenors contend the County’s designation decisions for the disputed lands was supported by GMA planning Goals. They believe the record of the County’s planning process demonstrates the Plan including its final designation of Commercial Forest Lands, was guided by the GMA’s Goals. They then list each of the Goals together with examples and explanations of how the Goals were followed. The Intervenors claim Ridge failed to establish the designations of the disputed lands as Forest Multiple-Use and

Rural Residential was not guided by the GMA's planning goals.

DISCUSSION: The Board believes the County is not in compliance with the act by their failure to designate and protect all eligible forest lands of commercial significance. We find it unnecessary to discuss the planning goals.

CONCLUSION: The Board finds it unnecessary to detail the County's failure to be guided by the GMA planning goals. When the County responds to the order of remand contained herein, they must be guided by the GMA Planning Goals and be consistent with the requirements of RCW 36.70A.020.

ISSUE 4: **WHETHER THERE ARE INTERNAL INCONSISTENCIES WITHIN THE COMPREHENSIVE PLAN WHEN THE PLAN FAILS TO DESIGNATE AS COMMERCIAL FOREST LANDS THE LANDS IDENTIFIED IN EXHIBIT A TO THE PETITION FOR REVIEW IN THE FACE OF COMPREHENSIVE PLAN POLICIES INDICATING SUCH LANDS SHOULD BE SO DESIGNATED, i.e. GPO 2.130, 2.131, 2.133, 2.34, 2.136 AND 2.140 (ISSUE 5)?**

Petitioner's Position: The Petitioner claims the Plan is internally inconsistent. The failure to designate the subject lands as forest lands is not only inconsistent with the GMA but inconsistent with several of the goals, policies and objectives (GPOs) included in the comprehensive plan, while the GMA requires a comprehensive plan to be an internally consistent document and all elements be consistent with the future land use map. RCW 36.70A.070.

The Petitioner lists the GPOs claimed violated and how they were violated by the failure to properly designate all the forest lands. They contend the designation of the subject lands as forest land is the only way the GPOs can be squared.

Respondent's Position: The County has not responded specifically to this issue.

DISCUSSION: The Board does not find it necessary to respond to this Issue. We have found the County out of compliance for not designating the subject lands as forest lands.

CONCLUSION: The County is directed to follow the goals, policies and objectives of the Comprehensive Plan as they respond to the order of remand contained herein.

ISSUE 5: **WHETHER THE COMPREHENSIVE PLAN'S DEFINITION OF "FOREST LAND" IS INCONSISTENT WITH GROWTH MANAGEMENT ACT'S DEFINITION OF "FOREST LAND" (ISSUE 6)?**

Petitioner’s Position: The Petitioner contends the County’s definition of forest lands is incorrect and they should be required to use the GMA’s definition which is significantly different. They also believes these changes are prohibited by the Washington State Constitution. The Washington Constitution, in its empowering local legislation, states, “any county... may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with the general laws.” Wash. Const. Art. 11 sec, 11. Because the Kittitas County comprehensive plan’s definitions conflict with the GMA’s, the petitioners claim they are unconstitutional.

Respondent’s Position: The County contends the definition of forest lands is identical to the original definition of forest lands in the GMA and it was inadvertently included in the Plan text rather than the current version. They contend this scrivener error can easily be corrected in the annual review process.

DISCUSSION: The original definition of forest lands appears to have been inadvertently included in the Plan text rather than the current version. This should be changed at the same time the Exhibit 1 lands are added to the forest lands designation.

CONCLUSION: The County is directed to correct the forest lands definition and have it reflect the current version of the GMA.

ISSUE 6: WHETHER THE COMPREHENSIVE PLAN IDENTIFIES SPECIFIC POLICIES TO GUIDE THE DEVELOPMENT OF MASTER PLANNED RESORTS AND, IF SO, WHETHER THOSE POLICIES ARE CONSISTENT WITH THE ACT’S GOALS AND OTHER ELEMENTS OF THE COMPREHENSIVE PLAN (ISSUE 7) AND WHETHER THE MASTER PLANNED RESORT SECTION OF THE COMPREHENSIVE PLAN IS INCONSISTENT WITH THE REQUIREMENTS OF RCW 36.70A.360 BY FAILING TO SPECIFICALLY IDENTIFY POLICIES TO GUIDE THE DEVELOPMENT OF MASTER PLANNED RESORTS YET AUTHORIZING MASTER PLANNED RESORTS IN ADVANCE OF THE ADOPTION OF SUCH SPECIFIC POLICIES (ISSUE 8)?

Petitioner’s Position: Ridge contends the MPR section of the Comprehensive Plan did not contain policies as required by the Act and, to the extent it did contain policies, the policies were too vague to meet the Act’s requirements. The Petitioner believes the County’s adoption of the Master Planned Resort Draft Comprehensive Plan Guidance (MPR Policy Guidance) does not comply with the GMA. RCW 36.70A.360. The MPR Policy Guidance was a guide and not a

model. The Introduction/Purpose section of the MPR Policy Guide clearly indicates it was a guide and not to be used wholesale. The Petitioners contend it may be used as a tool to develop specific policies but not used to substitute the tool for specific policies as has been attempted here.

In the Petitioner's reply brief, Ridge takes Plum Creek to task for their effort to legitimize the DCTED draft guidelines by referring to the "participants". This is not in the record and should not be deemed as approval of the draft. It has not been adopted by DCTED.

While Ridge recognizes that the level of specificity in comprehensive plan policies is less than required upon adoption of development regulations, this cannot be equated with a conclusion policy statements can be so vague as to be meaningless.

Respondent's Position: The County contends the GMA includes the requirement "the comprehensive plan specifically identifies policies to guide the development of master planned resorts." RCW 36.70A.360. The County specifically identified the "Master Planned Resorts Draft Comprehensive Plan Policy Guidance" prepared by Washington State Department of Community Development Task Force as their policies. They claim Ridge's assertion the County did not adopt adequate "policies" for master planned resorts is without merit. The Plan is a generalized policy statement. Development regulations are the detailed controls and ordinances placed on development or land use activities. They admit this policy does not have the specificity required for MPR development regulations. The County simply has not yet enacted development regulations regarding MPRs.

Cle Elum and South Cle Elums' Position : The Cities believe the Board should recognize that some flexibility appears to be intended in the marriage of specific policies with development standards. They believe the GMA anticipated in the interim period, the County can proceed with development agreements permitted under RCW 36,70A.360(1) as the County provided under Resolution No. 96-193.

DISCUSSION: The County appears to have adopted a "draft" of guidelines put together by a task force assembled by CTED. This document was entitled "Master Planned Resorts Draft Comprehensive Plan Policy Guidance." This draft has not been adopted by CTED. Upon review of the document, it is clearly guidance to a county is developing their Master Planned Resorts Policy. It is not "model" policy capable of being adopted as the County's own. The document is replete with examples supporting the belief the document is for guidance rather than for wholesale adoption.

The GMA provides :

A master planned resort may be authorized by a county only if:

- (1) The comprehensive plan specifically identifies policies to guide the development of master planned resorts;
- (2) The comprehensive plan and development regulations include restrictions 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.

The “draft” guidelines are not sufficient to comply with the GMA.

CONCLUSION: The Board finds the Master Planned Resort Policies contained in the County’s Comprehensive Plan are not consistent with the requirements of RCW 36.70A.360 and GMA’s planning goals. The County is not in compliance and this section of the Plan is remanded with direction to the County to develop Policies that will comply with the Act.

ISSUE 7: WHETHER THE FAILURE TO DESIGNATE AND ZONE THE LANDS IN EXHIBIT A TO THE PETITION FOR REVIEW FOR LONG TERM COMMERCIAL FOREST USE IS INCONSISTENT WITH COUNTYWIDE PLANNING POLICY “ENVIRONMENT POLICY B” (ISSUE 9)?

Petitioner’s Position: Ridge contends the failure to designate the disputed properties and the resulting dense development may lead to diminution of water for domestic uses in the county. There is no water available for appropriation in the large quantities needed for the development contemplated by Plum Creek. In order to comply with Environment Policy “B”, the county would have to designate the subject property as Commercial Forest Lands.

Respondent’s Position: The County asserts Ridge has mislead the Board by its assertion a portion of the disputed land has already been designated as a resort. The master planned resort is a possibility and the GMA authorizes this possibility, The County has not designated an MPR. Before any MPR could be allowed in the area, numerous other requirements and hearings will have to be undertaken.

CONCLUSION: The Board does not find it necessary to address this issue. The failure to designate the Exhibit 1 lands as forest lands is not in compliance with the Act and this portion of the Plan is remanded with directions to the County to come into compliance. When the County makes the necessary changes, they are directed to comply with Environment Policy “B”.

ISSUE NO. 8 DOES KITITAS COUNTY ORDINANCE 95-15 ASSURE THE CONSERVATION OF AGRICULTURAL LANDS DESIGNATED UNDER RCW

36.70A.170(1) AS REQUIRED BY RCW 36.70A.060(1)?

DISCUSSION: RCW 36.70A.060(1) requires the County to assure conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. These provisions must also be consistent with the criteria used in the selection of the resource lands. The selection criteria remains out of compliance pursuant to Case No. 95-0009. A compliance hearing will be held in that matter. When the County brings the designation of agricultural resource lands into compliance, the Board would be better able to determine if the Opt-out provisions found in County Ordinance 96-15, are valid.

CONCLUSION: The Board continues the invalidity of the “opt-out” criteria in Section 17A.55.030. These criteria fail to comply with the goals and requirements of the Growth Management Act, specifically RCW 36.70A.020(8).

ISSUE NO. 9: DOES KITTITAS COUNTY ORDINANCE 95-15 VIOLATE THE FOLLOWING SECTIONS OF RCW 36.70A.020 WHICH DELINEATES PLANNING GOALS UNDER THE GROWTH MANAGEMENT ACT: (8) NATURAL RESOURCE INDUSTRIES.

DECISION: See the above decision, Issue 8.

IV. Invalidity

The Petitioner requests the Board enter a finding of invalidity, declaring the County’s actions inconsistent with the Act’s goals and requirements. Ridge requests that the Board declare the portions of Ordinances 96-10 and 96-15 invalid with respect to those sections designating the lands described in Exhibit 1. They believe this would be appropriate because continued validity would substantially interfere with the fulfillment of the GMA’s goals. Because of the vast acreage involved, approximately 15,266 acres, and the imminence of harm, only a finding of invalidity can serve the GMA’s core purpose of promoting land use planning according to the goals set out in the Act. Without a finding of invalidity, applications for the development of a major resort on land this Board has twice already found to be forest lands may be filed and vest.

Findings of Fact

Part II of this decision contains the Board’s general findings of fact as required by RCW 36.70A.270(6). The Board incorporates by reference those findings in Part II and its discussion,

holdings and conclusions in this decision Part III, in addition to the following findings:

1. The County has failed to designate over 15,000 acres as forest lands of commercial value.
2. The owner of the largest share of these lands has segregated the disputed River Property into dozens of 20 acre parcels.
3. The resort developers are readying a MPR development application. The early vesting of development rights in this area is possible.

Reasons for Invalidity

As revealed by the Board's general discussion in Part III, its discussion of specific legal issues and the findings of Fact above, the County has repeatedly refused to properly designate forest lands. The impact of the County's noncompliance substantially interferes with Planning Goals 1, 2, 3, 8, 9, 10 and 12, each of which will be discussed below.

Planning Goals 1 and 2:

RCW 36.70A.020(1) encourages development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. **RCW 36.70A.020(2)** seeks a reduction in the inappropriate conversion of undeveloped land into sprawling, low-density development.

The plan has failed to encourage development in urban areas. This goal is not served when forest lands of long-term commercial significance are excluded from the protective benefits of the forest resource land designation.

By failing to apply the 80 acre minimum lot size of the forest conservation ordinance, the plan uses the current zoning which does not provide the same protection from sprawl.

Planning Goal 3:

RCW 36.70A.020(3) encourages efficient multi-modal transportation systems and is based on regional priorities and coordinated with county and city comprehensive plans. There is nothing in the record indicating plans by any jurisdiction to enhance transportation system access to this property. There is also no coordination with any city's comprehensive plan with respect to transportation issues.

Planning Goal 8:

RCW 36.70A.020(8) provides for the maintenance and enhancement of natural resource-based industries, including productive timber. The failure to designate the subject acreage as forest resource land clearly is inconsistent with this goal. The County's choice neither maintains nor enhances the timber based industry.

Planning Goal 9:

RCW 36.70A.020(9) seeks to retain open spaces and develop recreational opportunities, conserve wild life habitat and fish and increase access to natural resource lands and water and develop parks. The failure to preserve the subject acres as timber resource lands, clearly moves away from this goal and away from the open space and recreational opportunities that have existed for years on these acres.

Planning Goal 10:

RCW 36.70A.020(10) seeks to protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water. Designation of the acreage listed in Exhibit 1 will enhance the quality of life and protect water quality and the availability. At a time when water in this area is mostly over-allocated, increased development in this area would be a mistake.

Planning Goal 12:

RCW 36.70A.020(12) requires counties and cities to ensure that those public facilities and services necessary to support development be adequate to serve the development at the time development is available for occupancy and use without decreasing current service levels below locally established minimum standards. Trendwest has been working with the County on an application for a master planned resort yet the County has made no provision in the Plan for services in this area for the contemplated resort.

Conclusions of Law

During the period of remand (see below), the continued validity of Kittitas County's designation of the properties at issue in this appeal (Exhibit 1 attached hereto) and any and all development regulations adopted to implement said designations, whether specifically appealed to the Board or not - will substantially interfere with the fulfillment of Planning Goals 1-3, 5, 8-10, and 12 found at RCW 36.70A.020. Therefore, pursuant to the authority conferred by RCW 36.70A.300(2) as amended, the Board declares that portion of Kittitas County's Comprehensive Plan which designates the property described in Exhibit 1 attached hereto, and any site-specific development

regulations that implement these designations, are **invalid**.

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V. Order
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The County has spent many years and dollars preparing their Comprehensive Plan. This process involves a balancing of many points of view and interests. It is a difficult process. The Growth Management Act gave the Counties tremendous discretion in the planning process. The Act sets out the “side boards” within which the County can work. This gives the County great latitude. However, the Act does contain specific direction. Designation of Forest Lands of Commercial Significance is an example. The major thrust of the GMA is to preserve the remaining forests, lakes, streams and other valuable assets of our state while planning for future growth. In this area the Act does require specific minimums. The County must designate all forest lands meet the requirements specified in the GMA.

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Having reviewed the above-referenced documents and the file in this case, having considered the oral arguments of the parties, and having deliberated on the matter, the Board finds Kittitas County in noncompliance in the following three areas and these portions of the Comprehensive Plan are remanded and Kittitas County is directed to come into compliance with the Act:

1. The County has failed to designate, as Forest Lands of Long-term Commercial Significance, the lands identified in Exhibit 1, attached hereto.
2. The County failed to include the correct definition of “Forest Lands” in volume 1 page 190 of their Comprehensive Plan. This section is remanded to substitute the definition found in the Growth Management Act, for the one presently used by the County. (RCW 36.70A.030(8)).
3. The County has not adopted specific policies to guide the development of Master Planned Resorts as required by the Act and the County is directed to take actions necessary to comply with the GMA.

IT IS FURTHER ORDERED that:

1. The order of invalidity entered June 18, 1996 in Case No. 95-1-0009 and continued by this Board’s order entered November 22, 1996 herein, is continued until further order of this Board.

2. That portion of the Kittitas County Comprehensive Plan designating the lands described in Exhibit 1, and any site specific development regulations affecting such lands, are declared invalid.

The County shall file by 5:00 p.m. on Friday, June 13 , 1997 an original and three copies with the Board and serve a copy on each of the other parties, 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 complied with this order.

SO ORDERED this 28th day of March, 1997.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS

BOARD

Dennis A. Dellwo, Presiding Officer

Judy Wall, Board Member

D. E. "Skip" Chilberg, Board Member