

State of Washington  
GROWTH MANAGEMENT HEARINGS BOARD  
FOR EASTERN WASHINGTON

CASCADE COLUMBIA ALLIANCE,	)	
	)	Case No. 98-1-0004
Petitioner	)	
	)	<b>FINAL DECISION</b>
v.	)	<b>AND ORDER</b>
	)	
	)	
KITTITAS COUNTY,	)	
	)	
Respondent	)	

I.    PROCEDURAL HISTORY

On August 11, 1998, Cascade Columbia Alliance, by and through its counsel, Bricklin & Gendler, filed a Petitioner for Review.

Case No. 98-1-0001 previously filed by Petitioners was consolidated with this case.

On August 24, 1998 at 2:00 p.m., the Board held a Prehearing Conference and on August 28, 1998 issued the Prehearing Order.

Olympic Pipeline Company and the City of Kittitas were added as Intervenors upon their motion.

On December 4, 1998, the Board held a Hearing on the Merits in the Kittitas County Courthouse. All parties were present or represented.

II.    FINDINGS OF FACT

The City of Kittitas proposed a UGA for itself that includes 178 acres outside of the current city limits.

The County's planning staff and other personnel worked with the City to develop the UGA and

the information gathered was primarily through the offices of the County. Later in the process, the City hired a consultant and that person completed a recommendation to the City for their review.

When the County held a hearing for review of the City's UGA, the City and County staff presented considerable evidence. This evidence has been submitted to the Eastern Washington Growth Management Hearings Board and is before us now. Upon the review of this information by the County, the Board of County Commissioners (BOCC) adopted the UGA as part of the County's comprehensive plan. (August 6, 1998 Ordinance 98-18)

It is clear the parties expect the Intervenor, Olympic Pipeline Company, to locate a gas pipeline terminal within the new UGA and will require 27 acres of land.

The evidence shows there are 43 acres of the UGA within the floodplain.

The evidence also shows there has already been an increase in the population growth for the City exceeding the population allocated for the 20-year period planned for.

### III. STANDARD OF REVIEW

The Petitioners have the burden to demonstrate non-compliance with the Growth Management Act (GMA). The UGA adopted by the County is presumed valid upon its adoption. The Petitioner must demonstrate such action is not in compliance with the requirements of the GMA. It is required "the board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter." RCW 36.70A.320(3).

The Legislature, in RCW 36.70A.3201, stated its intention "the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law."

### IV. LEGAL ISSUES AND DISCUSSION

**Issue 1:** Whether the unincorporated Urban Growth Areas (UGA) for the City of Kittitas complies with the GMA including RCW 36.70A.020(1), (2), (5), (6), (8), and (12); RCW 36.70A.040(4); RCW 36.70A.070 preamble, (1) (2), (3), and (4); and RCW 36.70A.110. (From Case No. 98-1-0001)

**Petitioner's Position:** The primary objection of Cascade to the City of Kittitas's UGA is its size and the failure of the County to perform their own land capacity analysis before it designated a

UGA extending beyond municipal boundaries.

Cascade contends the City has more than twice the capacity for the allocated residential development within the present municipal boundary. They then point to the additional 80 acres of unincorporated land for additional residential development. They further contend the city has 9 to 17 times the necessary vacant commercial net acreage and 59 to 137 times the necessary vacant industrial net acreage within the municipal boundaries. This is based upon an examination of the unused lots within the City and acres identified by the Ordinance.

Cascade contends the county failed to comply with the requirement that the County do a land capacity analysis before it designates a UGA extending beyond the city limits. This is based upon RCW 36.70A.110(2), which requires the County to size the UGA for the City for the projected 20-year growth that is allocated to the City.

Cascade cites a perceived violation of RCW 36.70A.110(1), claiming this section requires land outside the City of Kittitas must already be characterized by urban growth to qualify for inclusion in a UGA. Cascade admitted at the hearing that this is not a totally accurate statement of the law. The statute provides a UGA may include land adjacent to territory already characterized by urban growth as well as land already characterized by urban growth.

**Respondent/Intervenors' Position:** The City of Kittitas (the City) contends they adopted a UGA meeting all the requirements of the GMA. The City determined an expanded Urban Growth Area was needed to accommodate the anticipated growth in population and economic development, both commercial and industrial. They believe these decisions were based on the conditions unique to the City. They state they reviewed the available lots and the expected needs and found it necessary to expand the available number of lots. This review included the special nature of the town and its available lots. The record used has been provided.

Olympic Pipe Line (Olympic) contends the UGA for the City of Kittitas complies with the act and our previous decisions. They believe the County may provide more capacity for more population than that allocated to them, just not less.(citations omitted). The County allocated 2.5% of its growth to the City of Kittitas, however Olympic contends the city has already received more than 100% of that allocation. The City believes the actual 20 year growth for the city of Kittitas would be closer to 1200 if this trend continued. Olympic believes the city/county provided for such growth, taking in to consideration available lots, flood areas, non-conforming lots and uses, existing farms and other local conditions affecting residential growth. They believe the city/county used the discretion given them and provided for expected growth.

Olympic further defends the addition of Industrial lands. They contend the city and county considered the needs for future industrial development and provided what was needed. Examples of expected uses included the Olympic Pipeline terminal. This project will require 27 contiguous

acres. Additional acreage was provided for the expected support industry. Other examples include the industrial lands near and around the freeway interchange. Olympic expects this will be the new location of transportation related industrial development.

The County believes the Growth Management Act requires them to work with the City in the development of a UGA and the County must be able to demonstrate a valid basis for not adopting a UGA developed by a City. (RCW 36.70A.110). The County believes there is no requirement to perform their own land capacity analysis prior to accepting the City's UGA. They claim they lacked justification for rejecting the UGA, which had been adopted by the City of Kittitas in their comprehensive plan after reviewing the record before them. The County believes the planning was based upon reality and what is expected in this area.

**Discussion:** The Board has been directed by the State Legislature to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. (RCW 36.70A.3201) We take this seriously. The sizing of the UGA for the City of Kittitas is a prime example of where this deference is important. The City is unique. We see a small city with small and large city lots, farms and residences with horses and opportunity for industrial and residential expansion. The City planned for likely industrial development and its special needs, residential development inquiries, expectations of industrial development at the freeway interchange and continued farming on much of the industrial lands.

The City and County worked together to develop the UGA. This was primarily because the City did not have the resources for independent planners. Later the City was able to hire a planner to finish their plan. The County rejected the first UGA proposed by the City because it was too large. After additional work a new UGA was proposed and accepted by the County. That UGA was less than one third of the original proposal. The County did not feel an additional land capacity analysis was required. They were very familiar with the process and were able to review the record. The City had shown their work.

The City has been able to justify the size of their UGA. They appear to have taken into consideration the particular needs of their city and sized the UGA accordingly. They showed their work both to the County and to this Board. The County was able to review the record and determine whether the UGA was properly sized.

**Conclusion:** The Petitioners have failed to carry their burden and we do not find the City's UGA is clearly erroneous in view of the entire record.

**Issue 2:** Whether the unincorporated UGA for the City of Kittitas complies with the Countywide Planning Policies as required by RCW 36.70A.210(1). (From Case No. 98-1-0001)

**Petitioner's Position:** Cascade contends the City's UGA is inconsistent with the County Comprehensive Plan Designation Criteria. They cite RCW 36.70A.210(1) as requiring the Comprehensive Plan to be consistent with the CPPs. They then cite CPP I.1.A:

The County, in cooperation with the Cities, will designate Urban Growth Areas (UGAs). The designation of the UGAs beyond the existing limits of the incorporation will be based on a demonstration by the cities that municipal utilities and public services either already exist, or are planned for and can be effectively and economically provided by either public or private sources. Exhibit 337, Appendix 4 at 4.

Cascade believes this Designation Criterion is not met. They believe the City has no multi-year-financing plan for public facilities and services, and has neither demonstrated municipal utilities and services exist nor demonstrated they can be effectively and economically provided.

**Respondent/Intervenors Position:** The City claims they have complied with CPP I.1.A and have demonstrated municipal utilities and public services either already exist, or are planned for and can be effectively and economically provided. The City cites the provisions of the comprehensive plan providing for the expansion of the water system to meet anticipated growth. Additional land is provided for expanded school needs.

Olympic goes into more detail in their brief regarding the provision of facilities and services to support the growth. They summarize by listing what the city has done. They contend the City has secured the water supply, citing an exhibit. The city has adopted Capital Facilities and Transportation Elements for its Comprehensive Plan. Olympic points out the City has also submitted detailed water, sewer and wastewater treatment plans to support its projected residential and industrial growth.

**Discussion:** The City of Kittitas has provided for water, sewer and other services to be extended to the unincorporated lands within the City's UGA when these lands are incorporated and developed. The reality of the financial situation for this and other small towns prevents the actual commitment of taxes to these projects until development occurs. It is clear, however, development is prohibited without the provision of the needed services.

The GMA does not require these facilities and services to be in place until development occurs. (RCW 36.70A.020(12)). We require the cities to provide these facilities and services at least concurrently with the projected growth. The City has adopted Capital Facilities and Transportation Elements for its Comprehensive Plan. They have submitted detailed water, sewer and wastewater treatment plans to support its projected residential and industrial growth. Exhibits 221-223. The Capital Facilities Plan/utilities Element, at Appendix L, goes into great

detail. This Element makes an inventory of existing capital facilities, shows the location and capacities, forecasts the future needs, proposes locations and capacities, projected funding needs and sources, and reassessment of the Land Use Element to ensure that these elements are coordinated and consistent.

**Conclusion:** The City of Kittitas has complied with the GMA by ensuring public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards. Further, the UGA is consistent with the Countywide Planning Policies.

**Issue 3:** Whether the unincorporated UGA for the City of Kittitas should be found invalid pursuant to RCW 36.70A.302. (From Case No. 98-1-0001)

Cascade asks the Board find the urban growth boundary to be invalid. They believe the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter. Because RCW 36.70A.300 requires a finding of noncompliance before invalidity may be considered, this issue lacks a key element and the request for a finding of invalidity is denied.

#### IV. ORDER.

**Issue 1:** The Board finds Kittitas County has properly accepted the UGA prepared for the City of Kittitas.

**Issue 2:** The Board finds the City of Kittitas and Kittitas County has properly complied with the GMA and is consistent with the County-wide Planning Policies.

**Issue 3:** The Board denies the motion requesting a finding of invalidity.

**This is a final order for purposes of appeal.**

**Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.**

SO ORDERED this 21st day of December, 1998.

EASTERN WASHINGTON  
GROWTH MANAGEMENT HEARINGS BOARD

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Dennis A. Dellwo, Presiding Officer

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Judy Wall, Board Member

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D. E. "Skip" Chilberg, Board Member