

**STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

SADDLE MOUNTAIN MINERALS,
L.L.C., a Washington corporation,
GARY MAUGHAN, and MICHAEL
J. ALBERG,

Petitioners,

v.

GRANT COUNTY, WASHINGTON

Respondents

Case No.: No. 99-1-0015

FINAL DECISION AND ORDER

I. PROCEDURAL HISTORY

On November 29, 1999, Saddle Mountain Minerals, LLC, Gary Maughan, and Michael J. Alberg filed a Petition for Review raising nine issues, including public participation, designation of mineral resource lands of long-term commercial significance, adoption of development regulations, and concurrency review under the Growth Management Act (GMA or the Act) (Petition No. 99-1-0015).

Petitioners were represented by the McElroy law firm, Gregory S. McElroy. Respondent Grant County was represented by Stephen J. Hallstrom, Chief Deputy Prosecuting Attorney and Williams, Kastner & Gibbs PLLC, Dennis D. Reynolds and John A. Knox, Special Counsel. A preliminary conference was held on January 6, 2000. The pre-hearing order was entered on January 19, 2000. The pre-hearing order identified nine issues for consideration at the hearing on the merits. These issues are:

1. Is Grant County out of compliance with the planning goals and regulations of GMA by failing to inventory resource or critical area lands or to designate mineral lands of long-term commercial significance in its Comprehensive Plan?

2. Is Grant County out of compliance with the GMA by failing to adopt development regulations that protect resource lands and halt inconsistent land use activities on, or adjacent to, critical areas?

3. Is Grant County out of compliance with its responsibility under GMA by failing to protect resource lands or halt inconsistent land use activities in critical areas?
4. Is Grant County out of compliance with by failing to protect against conflicts with the use of mineral resource lands of long term significance?
5. Is Grant County out of compliance with the goals of GMA, including the property rights goals, by establishing criteria for mineral lands designation that preclude the designation of otherwise eligible mineral lands based solely on ownership criteria?
6. Is Grant County out of compliance with by failing to adopt single hearing procedures for land use approvals, by continuing to adopt ad hoc, piecemeal land use approvals, and failing to establish a planning procedure that allows for review of cumulative impacts and concurrency of land use proposals?
7. Is Grant County's Comprehensive Plan invalid because it amended the existing Comprehensive Plan more than once in 1999 in violation of the act?
8. Are Grant County's Comprehensive Plan and any alleged development regulations invalid because Grant County failed to adopt or review its existing development regulations for consistency?
9. Is Grant County's Comprehensive Plan and plan ordinance invalid because it was adopted by ordinance before the plan text was approved and ready for publication?

On February 23, 2000, the Board entered an Order granting Respondent Grant County's motion for partial summary judgment and dismissed Petitioner's issue regarding the alleged invalidity of the Comprehensive Plan due its adoption prior to actual publication of the final documents. Thus, only the first eight issues raised by Petitioners remained for decision by the Board.

This matter was scheduled for a hearing on the merits on April 26, 2000. Before hearing arguments, the Board resolved two pretrial motions brought by Respondent Grant County. First, the Board granted Respondent's Motion to Supplement the Record with errata sheets, interim zoning ordinances, building permit activity statistics and a January 19, 2000, letter from the Department of Community Development, Trade and Economic Development ("CTED"). Second, the Board granted Respondent's Motion to Strike Portions of Petitioner's Response and Declaration to its Prehearing Brief, in part, because it found that Petitioners' counsel had included allegations not contained in the administrative record relating to alleged defects in public participation. Other statements were accepted solely as legal argument, but not as factual representations.

After thoroughly reviewing briefs submitted by both sides, the parties' exhibits, and the arguments made by both parties, the Board concludes that Petitioners have failed to show that the County's adoption of its Comprehensive Plan was clearly erroneous as to any of the remaining issues.

II. FINDINGS OF FACT

1. In 1993, Grant County designated mineral lands and adopted protective measures through an Interim Resource Lands Ordinance, No. 93-49-CC. In 1999, the County revisited these designations and interim development regulations as part of its GMA planning process to designate mineral resource lands and specify criteria in its GMA Comprehensive Plan to protect natural resource lands and critical areas.

2. In preparation for adoption of its Comprehensive Plan, Grant County conducted a land use inventory of its mineral resource lands. This inventory established that the County's major minerals of economic importance are deposits of rock, sand, and gravel. The County relied primarily, but not solely, on Washington State Department of Natural Resources (DNR) data reflecting permits issued for surface mining. In addition to DNR permit records, however, the County also collected information from property owners, private mining associations, the DNR, the U.S. Dept. of Agriculture's Soil Conservation Service and the U.S. Bureau of Mines. Grant County also held numerous work sessions and public hearings to collect information from the public.

3. All DNR sites holding surface mining permits were designated mineral lands of long-term commercial significance by the County. Further, additional sites nominated by landowners which showed documented commercial quality deposits were also designated. A geologic report was required by the County as part of the designation process. Some lands proposed by the Petitioners were not included because of their failure to provide documentation as to commercial significance.

4. On September 30, 1999, Grant County adopted its Comprehensive Plan. The Plan designated 3,155 acres as mineral resource lands. These acres are located on 94 separate sites, all in rural areas, primarily in the agriculture or open space designations. These designations comprise approximately 79% of the County's total land base. The mineral resource lands designation is an "overlay" designation in the Comprehensive Plan.

5. Although the GMA only requires planning for a 20 year time horizon, the Comprehensive Plan establishes a goal to designate a mineral supply sufficient for 50 years. Respondent Grant County has committed to undertake supplementary surveys to locate and identify additional mineral resource lands to ensure compliance with this self-imposed standard.

6. The County's Comprehensive Plan provides that additional mineral resource lands may be designated and amendments to the Plan are possible in the future. One "action item" in the Plan obligates the County to continue its identification of commercially viable mineral resource sites through creation of a Mineral Resource Lands Task Force and to prepare a map of the County's mineral lands.

7. Grant County's existing Interim Resource Land Ordinance, No. 93-49-CC, remains in force and provides the following development standards for Mineral Resource Lands:

Protect areas identified as probable mineral resource areas from encroaching incompatible uses.

A. Mineral resources shall have the highest use priority where their removal is compatible with established uses.

B. Incompatible uses shall be discouraged from encroaching on mineral resource areas.

C. Sites used for the extraction of mineral resources shall be reclaimed in a manner consistent with all applicable laws and ordinances.

8. The Comprehensive Plan enacts mandatory goals which provide that mineral resource lands of long-term commercial significance shall be preserved in order to encourage an adequate resource base for public use. The Plan requires minimization of conflicts between mining and other land uses to avoid potential impacts with mineral excavation operations. No land development that may be incompatible with extraction of minerals is allowed. Removal of mineral resources is given a high priority and incompatible uses are discouraged from encroaching upon mineral areas.

9. Additional protections for mineral resource lands are found in the Grant County Comprehensive Plan, including a prohibition on new residential development within 200 feet of the boundary of any designated mineral land unless the owner acknowledges in writing the possibility of damage from nearby mining activities, waiving any ability to make a claim therefore. The Plan also contains other policies designed to minimize conflicts between mining and other land uses. Further, Ordinance No. 99-177-CC adopted a minimum density of one dwelling unit per 40 acres (1 DU/40A) for the agricultural lands and open space designations set out in the Plan, wherein the designated mineral resource lands are found.

10. At this time, the County has not yet issued final development regulations to implement the policies set out in its newly adopted Comprehensive Plan. Pending adoption of these regulations, the County suspended all further processing of long plat applications in rural areas. Ordinance No. 99-177-66. The County has begun a review process for all development proposals in its jurisdiction, screening them for conflicts with its Comprehensive Plan pursuant to Ordinance No. 2000-6-CC. In the event of any conflict between interim development regulations and the Plan criteria, the Comprehensive Plan controls.

11. Grant County is in the process of preparing final development regulations for mineral resource lands and intends to adopt them by approximately mid to late summer of this year.

12. Grant County's Comprehensive Plan contains an amendment process to allow individuals to request "natural resource lands" designation changes. Individuals wishing to nominate additional mineral resource lands must submit a geological report detailing the quantity and quality of the resource, a topographical map of the site, and parcel identification data.

13. Grant County's existing zoning code allows an owner, applicant, or operator to remove minerals by securing a conditional use permit. A CUP may be obtained on lands which are not designated as mineral resource lands in the Comprehensive Plan.

III. LEGAL ISSUES AND DISCUSSION

ISSUE NO. 1. IS GRANT COUNTY OUT OF COMPLIANCE WITH THE PLANNING GOALS AND REGULATIONS OF GMA BY FAILING TO INVENTORY RESOURCE OR CRITICAL LANDS OR TO DESIGNATE MINERAL LANDS OF LONG-TERM COMMERCIAL SIGNIFICANCE IN ITS COMPREHENSIVE PLAN?

Petitioners' position:

Petitioners contend the County's Comprehensive Plan designated mineral lands without formal analysis, inventory, or other proof of their long-term significance. Petitioners specifically criticize the County's primary reliance on records of DNR permits, which they contend do not reflect the significance or status of any given mineral deposit. Petitioners also maintain that the County's failure to publish a map of its mineral lands fails to comply with the GMA. Further, Petitioners contend the action items set out in the Comprehensive Plan should have been completed long ago. Finally, Petitioners contend current DNR permitted sites and other mineral lands designated by Respondent cannot provide a 50 year supply of minerals.

Respondent's position:

Respondent contends it designated mineral lands in its Comprehensive Plan as required by RCW 36.70A.170 based upon an inventory. Respondent notes Grant County adopted its Resource Lands and Critical Areas Ordinance, No. 93-49-CC, in 1993. Respondent contends that this ordinance both designated mineral lands and created protections for those lands, including “probable” mineral lands. Further, Respondent contends it has complied with all affirmative obligations set out in the CTED implementing regulations as to classifying and designating mineral lands and those requirements do not specify that a map of mineral resource lands be prepared. Respondent points out lands other than those with existing DNR permits were designated, including several parcels nominated by Petitioners. Finally, respondents challenged the absence of evidence or proof to support petitioners allegations or to an inadequate supply of minerals.

Discussion:

The County's GMA planning actions are presumed valid. RCW 36.70A.320(1). The burden of proof is upon the Petitioners to demonstrate to the Board that the County's mineral lands inventory and designation are not in compliance with the GMA. RCW 36.70A.320(2). The Board is further directed to find compliance unless it determines the action by the County is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3).

The GMA requires the County to designate “mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals.” RCW 36.70A.170(1)(c). In making these designations, the County is to follow, at a minimum, the CTED guidelines as published in WAC 365-190. In those regulations, CTED notes that “there is no specific requirement for inventorying or mapping” natural resource lands, but that maps are a practical way to let the community know where those lands are. WAC 365-190-040(d). Upon adoption of a Comprehensive Plan, CTED notes that the GMA requires counties to “evaluate their designations and development regulations to assure they are consistent with and implement the Comprehensive Plan.” WAC 365-190-040(f). The CTED regulations are guidelines, not substantive standards.

According to the CTED guidelines, mineral resource lands are “lands primarily devoted to the extraction of minerals or that have known or potential long-term commercial significance for the extraction of minerals.” WAC 365-190-030(14).

There is a specific CTED guideline for classifying and designating mineral resource lands,

WAC 365-190-070. This specific guideline controls over more general CTED guidelines. Mineral resource lands are to be classified based on “geologic, environmental, and economic factors, existing land uses, and land ownership.” WAC 365-190-070(2). CTED also recommends that “in classifying these areas, counties and cities should consider maps and information on location and extent of mineral deposits provided by the Washington state department of natural resources and the United States Bureau of Mines.” WAC 365-190-070(2) (b).

We find Grant County has designated mineral resource lands as required by the Act. The Respondent accomplished this through its original Resource Lands and Critical Areas Ordinance, No. 93-49-CC, adopted in 1993. Although this came after the statutory 1991 deadline, Petitioners did not file any challenge to that Ordinance within sixty days of its adoption, as required by the GMA. RCW 36.70A.290(2). Therefore, any portion of Petitioner’s appeal construed as a challenge to Respondent’s previously adopted interim development regulations is untimely.

We further find and conclude Respondent did not designate its mineral resource lands haphazardly or without the required forethought and consideration required by the GMA. Although not specifically required by the GMA, Respondent does have an inventory of its mineral resource lands of long-term commercial significance, even if it consists mainly of a list of permits issued by DNR. Further, Respondent made the designations of mineral resource lands in its Comprehensive Plan only after considering and analyzing all available data from the public and those sources recommended by the CTED guidelines, including geologic information, existing land uses, land ownership and economic and environmental considerations. Further, Respondent held numerous public hearings on the subject, many of which included participation by Petitioners. Additionally, the County has information showing the location and legal description of its designated mineral resource lands. Finally, although it would be helpful for Respondent to include a map illustrating the location of its resource lands, the GMA does not require it. Petitioners err in stating otherwise.

Petitioners did not support their contentions with data to demonstrate that the lands designated would not produce a 50 year supply or rock, sand, or gravel, let alone the 20 year supply required by the GMA. In fact, Petitioners failed to buttress their arguments with any specific information or evidence regarding mineral resource lands that should or should not have been designated as worthy of the “long-term commercial significance” label, relying only upon conclusory statements. Petitioners did not carry their burden of demonstrating that Respondent’s actions were clearly erroneous.

Conclusion:

The Board finds that Respondent Grant County has designated mineral lands of long-term commercial significance in its Comprehensive Plan in compliance with the GMA .

ISSUE NO. 2. IS GRANT COUNTY OUT OF COMPLIANCE WITH GMA BY FAILING TO ADOPT DEVELOPMENT REGULATIONS THAT PROTECT RESOURCE LANDS AND HALT INCONSISTENT LAND USE ACTIVITIES ON, OR ADJACENT TO, CRITICAL AREAS?

ISSUE NO. 3. IS GRANT COUNTY OUT OF COMPLIANCE WITH ITS RESPONSIBILITY UNDER GMA BY FAILING TO PROTECT RESOURCE LANDS OR HALT INCONSISTENT LAND USE ACTIVITIES IN CRITICAL AREAS?

ISSUE NO. 4. IS GRANT COUNTY OUT OF COMPLIANCE WITH GMA BY FAILING TO PROTECT AGAINST CONFLICTS WITH THE USE OF MINERAL RESOURCE LANDS OF LONG TERM SIGNIFICANCE?

Petitioners' position:

Petitioners contend Respondent's failure to adopt final development regulations implementing its Comprehensive Plan violates the GMA by failing to act before a mandated deadline. Petitioners focus on these development regulations as the only source for the Act's required protection of resource lands from incompatible uses. Further, petitioners contend Respondent "refuses to make maps and criteria available to parties who wish to participate in the designation or redesignation of critical areas" and "has not broadly disseminated a public participation program, despite holding meeting after meeting." Petitioner's Prehearing Brief, at 7. Finally, Petitioners argue that Respondent has not used the "best available science" ("BAS") to ensure its designations of resource lands and critical areas are appropriate.

Respondent's position:

Respondent points out it committed substantial amounts of time and money to developing and implementing a public participation plan to ensure maximum citizen involvement in creating and adopting its Comprehensive Plan. In fact, Respondent enacted a specific ordinance regarding this public participation plan, Grant County Ordinance No. 98-108-CC, and catalogued a plethora of meetings, hearings, and work sessions as part of its adopted Comprehensive Plan. See Appendix B to Grant County Comprehensive Plan. Respondent contends its actions exceed the public participation requirements of the GMA.

As to protection of resource lands and critical areas from conflicts with incompatible uses, Respondent concedes final development regulations to implement its Comprehensive Plan are not

yet published. However, Respondent predicts these regulations could be adopted as soon as mid to late summer of this year. In the meantime, Respondent points out its reliance on the Local Project Review Act, RCW 36.70B, and the requirements of its interim zoning, Ordinance No. 2000-6-CC, as adequate. Together, these laws require staff to consider all proposed projects for consistency with the adopted Comprehensive Plan, including its mineral lands criteria. Respondent also contends the plan's zoning densities on or around resource lands and critical areas, usually 1 DU/40A, and provisions for at least 200 foot setbacks from mining operations will provide adequate protection for those areas from incompatible residential uses. Respondent asserts the Petitioner has argued these issues using conclusory statements and has not met its burden of explaining how and why the protections set out in the plan do not meet the GMA's requirements. Finally, the BAS requirement does not apply to designation or protection of natural resource lands and respondent contends it has complied with this purely procedural requirement.

Discussion:

Public participation.

The GMA requires that counties and cities “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.... The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.” RCW 36.70A.140. Additionally, the GMA notes that “errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. Id.

As described more completely in Appendix B to the Grant County Comprehensive Plan, Respondent took at least the following measures to comply with the GMA's requirement of early and continuous public involvement:

1. Adopted (in response to a previous decision by this Board) a public participation program for conceiving, drafting and adopting its Comprehensive Plan, Ordinance No. 98-108-CC.
2. Held numerous study sessions before its Planning Commission to review background information, data, reports, citizen and staff recommendations, and exhibits during the development of the Comprehensive Plan. Each study session was widely publicized to encourage citizen involvement.

3. Scheduled, advertised, and held 11 public meetings and workshops over a six-month period to define the community's vision and plans for future growth. Each such meeting was preceded by a "legal notice" advertisement in the local official newspaper.

4. Published the *Grant County Skyline*, a periodic newsletter containing educational articles on various growth management topics in general and their impacts on the local area. Two of the six published editions were sent to every resident and post office box holder in the county. Additional mailings went out to at least 1500 individuals who had expressed interest in the process.

5. Disseminated the draft Comprehensive Plan and accompanying environmental impact statement at no charge to over 300 requesters and made the same documents available on the Grant County internet web site.

We have not found that a mistake has been made in Respondent's public participation program. To the contrary, Respondent's actions not only met but exceeded the demands of public participation under the GMA. From everything in the record, we believe that Respondent succeeded in meeting the requirements of RCW 36.70A.140. We commend Respondent Grant County for making a firm commitment to public involvement and participation and encourage Respondent to continue that commitment during its annual amendment cycles.

Best Available Science

BAS does not appear in the Petition For Review as an allegation or in the statement of issues contained therein. Further, in their prehearing and Reply Briefs, Petitioners only mention the "best available science" requirement of RCW 36.70A.172 in passing and do not provide any further citation to the record, analysis, explanation or provision of evidence to support their assertion that the County violated the BAS standard. Respondent Grant County urges the Board to disregard and refuse to address this issue as it has not been adequately briefed under WAC 242-02-570(b).

We agree with Respondent and, as is our previously stated policy, *see Wenatchee Valley Mall v. Douglas County*, EWGMHB No. 96-3-0029 (12-10-96), refuse to rule on issues that have not been adequately briefed for our review. Petitioners' allegations regarding Respondent's failure to use BAS are therefore denied. Respondent is correct that the BAS standard does not apply to designation of mineral lands.

Failure to Protect Resource Lands and Critical Areas

Respondent has enacted development regulations in response to the GMA, albeit those were adopted in 1993, and adopted additional interim GMA zoning in 1999 to assure consistency with the Comprehensive Plan while final development regulations are prepared and adopted. Additional and updated protections for mineral resource lands are contained in Respondent's Comprehensive Plan, adopted in 1999. As part of Respondent's preparation for adopting its Comprehensive Plan, the County evaluated the existing designations for consistency with the Plan. The Comprehensive Plan makes it clear that in the event of a conflict between the Plan and those interim development regulations, the Plan controls.

The GMA explicitly allows review of interim development regulations and mineral lands designations and an update *after* adoption of a comprehensive plan, allowing consideration of new information. RCW 36.70A.131. Under RCW 36.70A.130(1), Grant County is obligated to review its existing mineral resource land designations, and development regulations after adopting its Comprehensive Plan. The County is given until the year 2002 to complete this process, although the County's intent is to move more quickly. See RCW 36.70A.130(1).

RCW 36.70B.030(1) directs local government to determine, when making project permit decisions, a "proposed project consistency with applicable development regulations, or in the absence of applicable regulations, the comprehensive plan." Based on this provision, pending adoption of final development regulations, County staff is required to consider a proposed project's consistency with the Comprehensive Plan criteria addressing conservation and protection of mineral resource lands and critical areas from incompatible proposed uses. Nothing prevents Petitioners from involving themselves in the project permitting process if they believe that their proposed development is incompatible either with the designated mineral resource lands, or probable mineral lands.

We concur with Respondent's assessment of Petitioners' arguments being conclusory and, as such, deficient. According to RCW 36.70A.320(1), Comprehensive Plans are presumed valid upon adoption. Mere conclusory statements in a petition or pre-hearing brief are insufficient to overcome the statutory presumption of validity. *Bremerton, et al. v. Kitsap County*, CPSGMHB No. 95-3-0039c (2-8-99), 1999 WL 68675 at 25, 47-48, and 51. Other than the agreed fact that Respondent has not yet adopted its final development regulations, Petitioners have not adequately set forth an explanation of how or why the interim regulations, together with the newly adopted Comprehensive Plan, fail to protect Grant County's resource lands and critical areas. Therefore, Petitioners have failed to carry their burden of proof on these issues.

Conclusion:

The Board finds that Respondent Grant County developed and implemented an adequate plan for

public participation in adopting its Comprehensive Plan, in compliance with the GMA. The Board further finds and holds the Petitioners have failed to carry their burden of proof regarding the existence of adequate provisions to protect mineral resource lands and critical areas from incompatible uses.

ISSUE NO. 5. IS GRANT COUNTY OUT OF COMPLIANCE WITH THE GOALS OF GMA, INCLUDING THE PROPERTY RIGHTS GOALS, BY ESTABLISHING CRITERIA FOR MINERAL LANDS DESIGNATION THAT PRECLUDE THE DESIGNATION OF OTHERWISE ELIGIBLE MINERAL LANDS BASED SOLELY ON OWNERSHIP CRITERIA?

Petitioners' position:

Petitioners own the mineral rights on numerous parcels within Grant County where other parties own the surface rights. Petitioners contend the Respondent limited mineral lands designations only to lands where the landowner owned both the surface and mineral rights, in violation of the “property rights” goal of the GMA. Petitioners argue that divided ownership of surface and subsurface rights should not have been relied upon in designation of mineral resource lands. Finally, Petitioners suggest the County has “over designated” natural resource lands and critical areas.

Respondent's position:

Respondent contends “land ownership” is specifically listed among CTED’s criteria for designation of mineral resource lands. WAC 365-190-070(2). Respondent acknowledges it did not designate parcels as mineral resource lands where the surface owner did not join the request, because of the need to balance competing private property rights and in recognition that sand and gravel mining in Grant County is a surface mining activity. An attempt by the owner of mineral rights to remove sand or gravel from a property can leave a surface owner with nothing of value, essentially destroying the property. Respondent points out “such a designation is not a ‘right to mine’” and additional designations of mineral resource lands are planned for the future, as more information becomes available. Respondent’s Reply Brief, at 15. Such information may include agreements from owners of the surface rights acknowledging the rights of subsurface owners and plans for extraction of minerals without harm to existing surface uses. Respondent asserts it considered the existing law of mineral rights, the goals of the GMA, and the CTED guidelines in determining which lands it would designate as mineral resource lands. Respondent points out its decisions have not abridged or altered Petitioners’ property rights and Petitioners cite no authority for their allegation that the GMA mandates that mineral lands must be designated even if the surface owner objects or does not join a request to classify a parcel.

Discussion:

Respondent's decision not to designate all of Petitioners' lands as mineral resource lands was firmly within its discretionary powers, in particular, because geologic information demonstrating the presence of commercial quantities of sand and gravel was not presented. The record demonstrates that Respondent considered many more factors than the property ownership of only one entity, the owner of subsurface mineral rights. Respondent evaluated whether or not a proposed property contained sufficient mineral deposits to label it "commercially significant" and whether or not extraction of such minerals was an established or ongoing practice. We note local governments must balance *all* the competing goals of the GMA, including the competing rights of all private property owners. In deference to the rights of surface owners, Respondent chose not to designate lands with divided ownership unless the surface owner consented to such a designation. We do not believe this decision was clearly erroneous. If Respondent had done as Petitioners asked and designated *all* lands with potential long-term commercial significance without regard for surface ownership, it is entirely possible that those surface owners would be the ones before us. There is no requirement in the GMA to give the owners of subsurface mineral rights greater rights than is due under the law.

Respondent was obliged to designate mineral resource lands sufficient to ensure a twenty year supply of rocks, sand, and gravel for its future. As previously noted, Respondent's Comprehensive Plan endeavors to provide a 50 year supply of rock, sand, and gravel, more than twice what the GMA requires. If the lands designated actually meet this projection (petitioners have not provided us with any evidence that they do not), Respondent has complied with RCW 36.70A.170. Respondent's refusal to designate all of Petitioners' proposed mineral resource lands does not violate the GMA.

As to the claims that natural resource lands or critical areas are "over-designated," petitioners have presented no evidence or proof on this issue. Because of the importance of critical areas and natural resource lands, it is not clearly erroneous to err on the side of caution, when designating important natural resources and critical areas, pending adoption of final development regulations to protect these areas. Obviously, over-designating mineral lands cannot harm or injure petitioners, who engage in the gravel mining business. Grant County does not preclude gravel mining even in critical areas, with proper protections. Because a conditional use permit can be obtained, if impacts to critical areas are appropriately mitigated, Petitioners' property rights are not injured if critical areas are over-designated. Petitioners have no property right to engage in gravel mining which results in significant, adverse impacts to important critical areas.

Conclusion:

The Board finds that Respondent Grant County used appropriate criteria, including land

ownership, in designating its mineral resource lands and is in compliance with the GMA as to its mineral resource lands and critical areas designations.

ISSUE NO. 6. IS GRANT COUNTY OUT OF COMPLIANCE WITH GMA BY FAILING TO ADOPT SINGLE HEARING PROCEDURES FOR LAND USE APPROVALS, BY CONTINUING TO ADOPT AD HOC PIECEMEAL LAND USE APPROVALS, AND FAILING TO ESTABLISH A PLANNING PROCEDURE THAT ALLOWS FOR REVIEW OF CUMULATIVE IMPACTS AND CONCURRENCY OF LAND USE PROPOSALS.

ISSUE NO. 7. IS GRANT COUNTY’S COMPREHENSIVE PLAN INVALID BECAUSE IT AMENDED THE EXISTING COMPREHENSIVE PLAN MORE THAN ONCE IN 1999 IN VIOLATION OF THE ACT.

Petitioners’ position:

Petitioners contend the “Comprehensive Plan allows ‘Site-Specific Plan Amendments’ as an alternative means to allow spot-rezones, exemptions, and variances ‘in conjunction with private development proposals.’” Petitioners’ prehearing Brief, at 11. Petitioners argue the plan “leaves land use decisions to subjective interpretation of non-specific criteria, allows spot-rezoning, and attempts to shape future development primarily through special use permits.” Id., at 12.

Petitioners assert this approach allows for multiple amendments to the Comprehensive Plan each year, in effect amending the plan each time a site-specific application is reviewed by Grant County’s planning officials. Petitioners did not provide further explanation as to how Respondent amended its Comprehensive Plan “more than once” in 1999, the year it was adopted. At the hearing on the merits, Petitioners conceded its concern as to 1999 was answered, because a rezone constituting an alleged “Plan amendment” was invalidated and remanded back to the County for additional decision-making. Petitioners also complain that citizens are allowed to initiate GMA plan amendments, that there are no timelines for consideration of amendments, or opportunity for the public to comment or participate.

Respondent’s position:

Respondent explains its Comprehensive Plan allows for “site-specific” amendments, with such proposed changes to the Plan being considered at the same time as all other proposed amendments. Grant County Comprehensive Plan, pp. 2-9. Respondent asserts that any amendments to the Plan will be considered together, as required by RCW 36.70A.130. Id., at 2-10. Additionally, for any such site-specific rezones, Respondent maintains the Plan does set out specific criteria for any and all proposed amendments, including those that are site-specific, with explicit timelines and a road map for decision-making, with opportunity for the public to participate and comment, after Public Notice. According to these criteria, any proposed

amendment must contain “a statement of how the amendment complies with the Comprehensive Plan’s community vision statements, goals, objectives, and policy directives” as well as “a statement of how the change affects implementing land use regulations (i.e. zoning) and the necessary changes to bring the implementing land use regulations into compliance with the Plan.” Grant County Comprehensive Plan, pp. 2-8 to 2-9.

Respondent further contends site-specific quasi-judicial rezones under RCW 36.70B are not prohibited and limited only to comprehensive plan amendments. These types of quasi-judicial rezone actions are not, and should not, under Citizens v. Mount Vernon, 133 Wn.2d 861 (1997), be considered “amendments” to a Comprehensive Plan. Finally, the County alleged any rezone occurring prior to adoption of its Comprehensive Plan could not qualify as an “amendment” to the Plan and Petitioners offered no evidence of alleged amendments “more than once” in 1999, the year of adoption of its Plan.

Discussion and Conclusion:

The Board accepts withdrawal of the allegation that the Comprehensive Plan was amended “more than once” in 1999 and limits its analysis to site-specific rezones or plan amendments which may occur in the future. The Grant County Comprehensive Plan allows a number of different types of amendments. These include:

- Urban growth area boundary changes
- Plan policy or text changes
- Plan map changes
- Supporting document changes
- Emergency amendments
- Site-specific amendments

Each type of amendment is considered on an annual basis, no more frequently than once per year, with specified schedules for submittal of amendment requests and a time to decide them. Each amendment requires full public participation in a public hearing after public notice, with hearings held both before the Planning Commission and Board of County Commissioners. Site-specific amendments must be considered at one time, within forty-five (45) business days of the last business day of July. This is the same cycle for other Plan amendments, thereby preventing media amendments. Site-specific amendments are not prohibited by the GMA.

Additionally, we note the Respondent is correct in its interpretation of the Citizens v. Mount Vernon decision. Quasi-judicial rezones accomplished through RCW 36.70B, the Local Project Review Act, are not considered amendments to a GMA comprehensive plan.

The GMA does not preclude private citizens from submitting requests for amendment of a Comprehensive Plan. We find Respondent's Comprehensive Plan and its allowance for site-specific rezones complies with the GMA. Additionally, based on the evidence before us, we cannot conclude the Respondent has amended its Comprehensive Plan at all since its adoption in September 1999, let alone more than one time.

ISSUE NO. 8. ARE GRANT COUNTY'S COMPREHENSIVE PLAN AND ANY ALLEGED DEVELOPMENT REGULATIONS INVALID BECAUSE GRANT COUNTY FAILED TO ADOPT OR REVIEW ITS EXISTING DEVELOPMENT REGULATIONS FOR CONSISTENCY.

Petitioners' position:

Petitioners contend the Respondent does not dispute this allegation. Petitioner only explains the Respondent's newly adopted Comprehensive Plan identified but did not remedy inconsistencies between the plan and existing development regulations. Petitioner does not provide further briefing on this topic.

Respondent's position:

Respondent contends in adopting its Comprehensive Plan, it reviewed its interim development regulations. To ensure the Comprehensive Plan governs over any conflicts with existing development regulations, pending adoption of final development regulations, interim zoning was adopted which provides that in the event of a conflict between existing zoning and the Plan criteria, the Comprehensive Plan controls.

Conclusion:

Petitioners' brief on this issue is inadequate as it contains only conclusory statements. As noted previously in this opinion, such arguments are insufficient to support an allegation of non-compliance with the GMA. Therefore, the Board denies the Petitioners' allegations without further comment.

IV. ORDER

1. The Board denies Petitioners' allegations, Issues (1) through (8) in all respects for the reasons stated herein.
2. The Board finds that Grant County is in compliance with the requirements of Chapter 36.70A RCW, the Growth Management Act.

3. The Board further finds specifically that Grant County is in compliance with the Growth Management Act in classifying, designating and protecting its mineral resource lands of long-term commercial significance, as well as the public participation requirements it utilized in adoption of its Comprehensive Plan.

This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5).

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 24th day of May, 2000.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

D.E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Dennis A. Dellwo, Board Member