STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

BEATRICE M. BERTELSEN and MERTON R. RAINE, Petitioners, v. YAKIMA COUNTY, Respondent, G. M. GREEN, WESLEY D. HAZEN, DR. GALEN AND PATRICIA HOOVER, FRED W. RIEBE III AND KATE E. REIBE AND WENAS CITIZENS ASSOCIATION, INC., Intervenors.	Case No. 00-1-0009 **FINAL DECISION AND ORDER**

I. Procedural History

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On April 5, 2000, Petitioners Beatrice M. Bertelsen and Merton R. Raine, by and through their attorney, James C. Carmody, filed a Petition for Review requesting review of YCC Title 15 as that ordinance related to properties owned by Petitioners in the Upper Wenas Valley.

On April 11, 2000, Respondent appeared in this matter by and through a Notice of Appearance filed by Terry D. Austin, Deputy Prosecuting Attorney, Civil Division.

On May 2, 2000, a Motion to Intervene relating to Ms. Bertelsen and Mr. Raine's Petition for Review was filed with this Board by G. M. Green; Wesley D. Hazen; Galen and Patricia

Hoover; Fred W. and Kate E. Riebe; and the Wenas Citizens Association, Inc.

On May 11, 2000, this Board held a prehearing conference. At that conference, Petitioners and Respondent expressed an interest in and a willingness to participate in mediation in this matter and were informed that a member of the Western Washington Growth Management Hearings Board, Les Eldridge, was available and willing to serve as mediator in such mediation.

On June 16, 2000, this Board received a Stipulation for Mediation, indicating that mediation would occur on June 19, 2000, in Yakima, Washington, with Mr. Eldridge as mediator.

On July 7, 2000, Petitioner's counsel, Mr. Carmody, informed this Board that no acceptable solution had been found through mediation and asked for re-establishment of a motion and briefing schedule in this matter.

On July 13, 2000, this Board issued a Prehearing Order setting forth the motion and briefing schedule subsequently followed, with minor variations, by the parties to this matter.

On August 3, 2000, this Board held a Motions Hearing, and, at that time, heard argument relating to the Motion to Intervene filed by Green, et al, on May 2, 2000.

On August 7, 2000, this Board issued an Order Allowing Intervention of Green, et al.

On September 26, 2000, this Board held a Hearing on the Merits in Room 420 of the Yakima County Courthouse, Yakima County, Washington. Mr. Dennis A. Dellwo and Mr. D.E. "Skip" Chilberg were present for the Board, with Mr. Dellwo acting as presiding officer. Mr. Carmody appeared at this Hearing on behalf of Petitioners. Mr. Austin appeared at this Hearing on behalf of Respondent. Mr. Hazen appeared at this Hearing on behalf of Intervenors.

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II. FINDINGS OF FACT

1. On May 20, 1997, Yakima County, Washington, adopted its Growth Management Act (GMA) comprehensive plan, commonly known as Plan 2015, through adoption of Yakima County Ordinance No. 4-1997 by the Board of Yakima County Commissioners.

2. Properties owned by Petitioners in the Upper Wenas Valley (hereinafter referred to as "subject properties") were designated Rural Self-Sufficient (RSS) in *Plan 2015*. The land use designation was depicted on the Policy Plan Map. Petitioners were active participants in the comprehensive planning process.

3. *Plan 2015* was not successfully appealed and became the adopted comprehensive plan for Yakima County. *Plan 2015* has not been amended in any respect material to this proceeding.

4. The Rural Self-Sufficient designation in *Plan 2015* provides for, among other things, maximum development densities of 1 dwelling unit(du)/5 acres where hard surfaced roads are available and fire services are sited within 5 miles and 1/du/10 acres where hard surfaced roads are not available.

5. The RSS land use designation also permits clustering of dwelling units during development; local service establishments; and use of community wells.

6. YCC Title 15 identifies the Mountain Rural (MR) and the Valley Rural (VR) zoning districts was intended to implement the RSS land use designation. Other use districts identified by the ordinance as compatible with the Rural Self-Sufficient designation are Agricultural (AG), Forrest Watershed (FW), and Remote/Extremely Limited Development Potential (R/ELDP). Initial staff recommendations proposed Mountain Rural zoning for the subject properties.

7. On February 8, 2000 Board of Yakima County Commissioners adopted development regulations (YCC Title 15, Zoning Ordinance of Yakima County) for the purpose of

implementing provisions of Yakima County Comprehensive Plan - *Plan 2015*.

The legislative action establishing county-wide zoning ordinance and districts was undertaken pursuant to Growth Management Act (GMA) and for the purpose of establishing "development regulations that are consistent with and implement their comprehensive plans; . . ."

Ordinance No. 1-2000 contains site-specific map changes for an area denominated "North Wenas." The site-specific modification language included the following:

> D. Upper Wenas: The Board concurs with the Planning Commission's assessment of the need to provide for zoning that would be consistent with all of the provisions of the Comprehensive Plan, and that zoning-induced development pressure in the upper Wenas is not appropriate or timely, particularly given additional service demands posed by increased residential development. However, the Board does not concur with the Planning Commission's recommendation to zone the area Agriculture (AG), because that zone would result in small lot land divisions and more untimely development pressure, and apply resource land zoning to land not designated as AG Resource. The Board finds that the record supports Remote/Extremely Limited Development Potential zoning as being more consistent with the Plan and the development capacity of the area (includes all properties in the area northwest of Wenas Lake that the Planning Commission proposed to be zoned AG.)

8. The R/ELDP zoning district is in conflict with the land use designation of Rural Self-Sufficient. Conflicts include differences in permitted maximum densities, development standards (e.g., clustering and community wells), and permitted land uses.

III. LEGAL ISSUE AND DISCUSSION

LEGAL ISSUE: Is Yakima County's zoning ordinance, as that ordinance relates to the subject properties, consistent with the RSS land use designation adopted for the subject properties by Plan 2015 and does the R/ELDP zoning district adopted by Yakima County for the subject properties implement the RSS land use designation for those properties?

Petitioners' Position: Petitioners contend that the zoning ordinance adopted by Yakima County

on February 8, 2000, violates the GMA as that ordinance and Plan 2015 are not consistent with respect to the subject properties. Petitioners also contend that Yakima County's zoning ordinance fails to implement Plan 2015 with respect to the subject properties because the R/ELDP zone does not implement the RSS land use designation.

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Respondent's Position: Respondent contends that Yakima County's zoning ordinance is consistent not only with Plan 2015, but also with goals for rural lands added to GMA in 1997 after Plan 2015 had been adopted; with current uses and ownership of the land around the subject properties; and with the general character of the Upper Wenas Valley.

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Intervenors' Position: Intervenors contend that Yakima County's adopted zoning of the subject properties (i.e., R/ELDP) is both appropriate and necessary, given the unique characteristics of the Upper Wenas Valley. Intervenors further contend that the R/ELDP zoning district applied to the subject properties advances GMA and Plan 2015 goals related to restricting development to areas that can support development and to preserving fragile natural areas.

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Discussion: RCW 36.70A.280(a) provides that "(a) growth management hearings board shall hear and determine only those petitions alleging ... (t)hat a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter." Petitioners challenge Yakima County's compliance with the GMA requirement that a county's development regulations be consistent with and implement its comprehensive plan.

In assessing Petitioners' challenge to Yakima County's GMA compliance, we first identify the appropriate legal standards to be applied and allocate the burden of proof. By statute, this Board applies a clearly erroneous standard, RCW 36.70A.320(3), and allocates the burden of

proof to Petitioner. RCW 36.70A.320(2). A Board may find non-compliance under the clearly erroneous standard when the Board is "left with the firm and definite conviction that a mistake has been made." See, e.g., Friends of Skagit County v. Skagit County, WWGMHG No. 96-2-0025, 2000 WL 1175121, *5 (2000).

We are left with just such a conviction in this case. It is undisputed that the subject properties are designated Rural Self-Sufficient (RSS) in Plan 2015. With reference to the RSS land use designation in Yakima County, Plan 2015 states:

> The intent of the Rural Self-Sufficient land use category is to implement Growth Management Act planning goals related to reducing sprawl, protecting the environment, and providing adequate facilities and services commensurate with the density of development. The Rural Self-Sufficient category provides a broad choice of areas within rural Yakima County where an independent and private lifestyle can be sustained on acreage home sites. This category is intended to maintain rural character by establishing lot sizes which will make feasible individual wells and septic systems on each parcel, by minimizing conflicts with adjoining or nearby resource land uses through buffers and special set-backs that will permit farm, forestry and mineral resource uses to continue. The category provides density incentives to encourage development where fire protection services and hard-surfaced county roads or state routes are available. The Self-Sufficient category also provides for flexible parcel sizing or clustering to encourage development that more effectively uses the site to reduce infrastructure and services cost. Plan 2015, I-53.

Plan 2015 provides that the Rural Self-Sufficient (RSS) land use designation contemplates two separate density provisions (1) a maximum density of one unit per five acres (hard surfaced road and within five miles of responding fire station); or (ii) "four units per quarter/quarter section, with no parcel being less than five acres." Plan 2015, LU-R 10.4, I-68. Clustering of residential parcels and community wells are also permitted. Plan 2015, LU-R 10.5, I-68.

The R/ELDP zoning district, on the other hand, does not provide for the development flexibility contemplated by and incorporated into the RSS land use designation. As noted above, the R/ELDP zoning district establishes a maximum density of 1 du/40 acres in all cases (i.e.,

minimum lot size of forty acres), irrespective of proximity to hard surfaced roads and fire services, and does not permit clustering of developments. R/ELDP does not encourage clustering of residential lots nor community wells, and limits permitted land uses.

GMA requires that development regulations enacted by planning entities be consistent with the comprehensive plans of those entities, RCW 36.70A.040(4)(d). The zoning regulations adopted by Yakima County are not consistent with the land use designations established for the area by Plan 2015.

Growth Management Act (GMA) also requires that development regulations "implement" the policies and provisions of the comprehensive plan. "Implement" has a more affirmative meaning than merely "consistent with." Implement connotes not only a lack of conflict but sufficient scope to carry out fully the goals, policies, standards and directions contained in the comprehensive plan. We find that the R/ELDP zoning district does not implement Plan 2015's RSS land use designation.

Finally, we address Respondent's contention that the zoning decision made by Yakima County with respect to the subject properties was within the County's discretion. On this issue, we find the reasoning of the Washington Appellate Court in Diehl v. Mason County, 94 Wn.App. 645, 972 P.2d 543 (1999) persuasive:

> Local governments have broad discretion in developing CPs and DRs tailored to local circumstances. But this discretion is limited by the requirement that the final CPs and DRs be consistent with the requirements and goals of the GMA. Id., 94 Wn.App. at 651 [quotations omitted].

A fundamental requirement of the GMA is that development regulations be consistent with and implement comprehensive plans, RCW 36.70A.040(4)(d), and we find that the development regulations that are the subject of this proceeding are neither consistent with nor implement Yakima County's comprehensive plan. Thus, we find that Yakima County exceeded

its discretion in enacting the subject regulations.

The Board compliments the County for the work it has done in the Wenas Valley to protect the aquifer and the character of the area. However, even though the goals of the County are laudable, an amendment of the comprehensive plan would be required for their implementation. This was not done. The R/ELDP zoning appears to be an effort by the County to afford greater protection to the area by restricting development at a greater degree than that contemplated by the RSS comprehensive plan designation. If the County wishes to make the changes that it tried to implement by the zoning, it would require a comprehensive plan change.

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IV. ORDER

1. The Board finds that the R/ELDP zoning district adopted by Respondent for the subject properties violates RCW 36.70A.040(4)(d) in that it is not consistent with and fails to implement the land use designation established by the comprehensive plan (Plan 2015).

2. Yakima County has 90 days to come into compliance with this Order and the Growth Management Act.

Pursuant to RCW 36.70A.300, 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 2nd day of November, 2000.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS
BOARD

Dennis A. Dellwo, Presiding Officer

D. E. "Skip" Chilberg, Board Member