

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

WILLIAMS, TEITGE & MCCOLLUM and	)	
LEE & BARBARA DENKE	)	
Petitioners,	)	
vs.	)	No. 94-2-0013
	)	
WHATCOM COUNTY,	)	ORDER ON
	)	RECONSIDERATION
	)	
Respondent.	)	
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A. PROCEDURAL BACKGROUND

The Western Washington Growth Management Hearings Board (Board) issued a final order in the above referenced case on October 13, 1994. On October 24, 1994, we received a motion for partial reconsideration from the Denkes and a motion for reconsideration from Whatcom County. On October 31, 1994, we received petitioners' reply to County's motion for reconsideration.

B. DISCUSSION

In their motion the Denkes agreed with #2 of our order:

“2. Ensure that proper analysis of current data is done including the reconsideration of Denkes' property and pass an ordinance delineating a new IUGA or UGA for Bellingham by March 15, 1995.”

The Denkes asked us to delete #1 of our order:

“1. Eliminate inclusion of those areas of Bellingham's IUGA that are outside its

city limits within 30 days of this order.”

The Denkes argued that this element of our order exceeds the Board’s authority under GMA and violates due process rights of property owners not parties to this action.

In its motion for reconsideration the County also voiced no objection to #2 of the order and asked that #1 be deleted. Accompanying the motion, for the first time in this case, the County supplied briefing and exhibits to support its contention that Bellingham had made a “fairly comprehensive consideration of appropriate factors” in delineating the proposed IUGA.

In the Denkes’ reply to the County’s motion for reconsideration they objected to “...this *post facto* attempt to litigate the propriety of the IUGA...” We agree and will not allow the County or any other party to submit previously available evidence for the first time on a motion for reconsideration.

In *Whatcom Environmental Council vs. Whatcom County*, WWGMHB #94-2-0009, issued today, we discuss our authority under GMA and the necessity for #1. Our comments in that case concerning IUGAs at municipal boundaries and compliance directions apply equally to this case. To achieve consistency for both cases we are amending the time frame of #1.

### C. ORDER

We find that Whatcom County is not in compliance with the Growth Management Act with the adoption of Bellingham’s IUGA in Ordinance #94-033. In order to achieve compliance the following steps must be taken within the time frame specified.

1. Eliminate inclusion of those areas of Bellingham’s IUGA that are outside its city limits within 60 days of this order.
2. Ensure that proper analysis of current data is done including the reconsideration of Denkes’ property and pass an ordinance delineating a new IUGA or UGA for Bellingham by March 15, 1995.

This decision constitutes the Board's final decision and order for purposes of judicial review.

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DATED this 9<sup>th</sup> day of November, 1994.

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Nan A. Henriksen  
Presiding Officer

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Les Eldridge  
Board Member

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William H. Nielsen  
Board Member