BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FRIENDS OF SKAGIT COUNTY, BARBARA RUDGE, and ANDREA XAVER,	)	No. 95-2-0065
Petitioners,	)	ORDER
vs.	)	GRANTING
	)	FRIENDS'
SKAGIT COUNTY,	)	AMENDED
	)	DISPOSITIVE
Respondent,	)	MOTION
	)	REGARDING
and	)	NATURAL
	)	RESOURCE
CITY OF ANACORTES and CITY OF MOUNT VERNON, municipal corporations,	)	LANDS AND CRITICAL
	)	AREAS
Intervenors.	)	

On April 27, 1995, Gerald Steel, on behalf of Friends of Skagit County, Barbara Rudge and Andrea Xaver (Friends), filed an Amended Dispositive Motion for an order determining that Skagit County has failed to designate and protect natural resource lands and critical areas (NRL/CA). On May 8, 1995, Skagit County filed a response to the dispositive motion. A hearing on the motion was held May 16, 1995, at the Port of Skagit County hearing room in Burlington, Washington.

Petitioner Friends cited the ruling by the Central Puget Sound Board in *Friends of the Law vs. King County*, CPSGMHB #94-3-0003 that states:

> "If the County at its discretion elects to incorporate by reference specific pre-existing ordinances or regulations to now comply with the Growth Management Act (GMA), it must do so by legislative enactment. Therefore, if the County elects to use such ordinances or other regulations to comply with the GMA, the County shall provide public notice; clearly indicating its intention to do so; specify which pre-existing regulations or ordinance it is relying upon; hold at least one public hearing; and

publish notice of the adopted ordinance pursuant to RCW 36.70A.290(2)."

In the Board question period following argument on this motion, Board Member Nielsen asked if there had been any re-adoption by legislative enactment or any notification of such an action. Mr. Moffat, representing the County, answered no.

Friends referenced discussion in the above cited Central Puget Sound case in which the Central Board declared that a jurisdiction

> "cannot simply decide without public hearing that a pre-GMA action has suddenly been ‘blessed’as meeting the requirements of GMA. Instead, the local government’s legislative body, when enacting a GMA regulation, (that therefore has the force of law) must make a specific determination that the pre-GMA action complies with the GMA. This can only be done after permitting the public the opportunity to comment upon the proposal. To hold otherwise would mock the GMA’s citizen participation goal at RCW 36.70A.020(11), which states: ‘encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile differences.’"

Friends contended that pre-existing ordinances with definitions different from those in RCW 36.70A.030 regarding agricultural land and forest land and with the basis of designation different from those in that statute would not be in compliance with GMA. Petitioner Friends points out that nowhere in the GMA is previous zoning identified as an appropriate criterion for future GMA designations. Friends stated that, if there is land which meets the GMA criteria for forest land designation other than land zoned "forestry" under pre-existing zoning, then the County may not designate only the pre-existing "forestry" zoned land as forest land.

In argument, the County stressed that there were numerous exhibits in the record that needed to be reviewed before deciding the question of proper designation and protection of NRL/CA.

Skagit County’s use of pre-existing ordinances to comply with the GMA in designation and protection of natural resource lands and critical areas, absent public hearing and legislative adoption, was not in compliance with RCW 36.70A.030 nor with the public participation requirements of the GMA. The Board found Petitioner Friends’ comments regarding the need to

consider criteria other than pre-existing zoning for forest and agriculture land designation and the Central Board's remarks concerning legislative enactment and public notice to be persuasive. Our strong suggestion to Skagit County is that it carefully consider these elements in its effort to bring the County into compliance with the GMA.

ORDER

Having reviewed the documents filed in this case and considered the oral argument of the parties and having deliberated upon the matter, the Board enters the following order:

> Petitioner Friends' Dispositive Motion Regarding failure to Designate and Protect of NRL/CA is granted. In order to comply with GMA, Skagit County is required to protect and designate NRL/CA by July 24, 1995. In determining whether the County has complied with this order, the Board will not determine whether the adopted protections and designations substantively comply with the GMA or prior Board decisions. In the event any person concludes that the newly-adopted protections and designations do not substantively comply, that person must file a new petition for review within sixty days of public notice of adoption, as provided by RCW 36.70A.290(2).

SO ORDERED this 26th day of May, 1995.

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Les Eldridge
Presiding Officer

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Nan A. Henriksen
Board Member

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William H. Nielsen
Board Member