

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

ACHEN, et al.,	)	
	)	No. 95-2-0067
Petitioners,	)	
vs.	)	ORDER ON
	)	RECONSIDERATION
CLARK COUNTY, et al.,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
CLARK COUNTY SCHOOL DISTRICTS, et al.,	)	
	)	
Intervenors.	)	
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After issuing an order on February 5, 1998, dealing with the issues from the Superior Court remand, cause #96-2-05498-8, we received a motion for reconsideration from Clark County on February 13, 1998. The motion and argument consisted of 11 pages with attached exhibits. On February 17, 1998, we received a motion for reconsideration from Clark County Natural Resources Council (CCNRC). We also received a motion from Rural Clark County Protection Association (RCCPA) for entry of additional findings and conclusions. On February 27, 1998, we received from RCCPA a response memorandum to Clark County's motion for reconsideration.

Although CCNRC's motion for reconsideration was dated February 16, 1998, it was not received by our office until February 17, 1998. Under WAC 242-02-830(2) a motion for reconsideration must be filed within 10 days of the issuance of the decision. Thus, for a February 5, 1998, decision filing was required no later than February 16, 1998. "Filed" is defined in WAC 242-02-240(1) as receipt in our office. Therefore, we will not consider CCNRC's motion because it was not timely. *Weber v. Town of Friday Harbor*, #98-2-0003.

RCCPA's request for additional findings and conclusions was in response to our comment in the February 5, 1998, order concerning CCNRC's failure to submit proposed findings or conclusions or to specify the areas where additional findings would be of assistance to the Superior Court. Although RCCPA did not participate in the February 5, 1998, order it was an original petitioner in this case. Clark County did not object to RCCPA's participation at this stage and supported inclusion of additional findings and conclusions. We have reviewed the proposed findings and conclusions and have adopted and set forth additional and supplemental findings and conclusions as attachment A, which are incorporated by reference. We hope they will assist the Superior Court in reviewing this decision.

In our final decision and order (FDO) dated September 20, 1995, we made the following observations:

“We have spent many pages of this Order discussing features and decisions found to be not in compliance with the Act. What must not be overlooked is the incredible scope of decisions that were made by the County and the cities that were correctly done. The record continually showed dedication, hard work, and intelligence from citizens, staff, and elected officials. While there are improvements that can be made, the overall quality of the work is excellent. We acknowledge the efforts of all who participated in this GMA process in Clark County.”

Since that sterling beginning, frustrations have steadily increased. We have expressed frustration both with the County's GMA actions and nonactions and with the methodology of the County's participation in the numerous compliance hearings that have occurred since the FDO. In those hearings and elsewhere, the County has also expressed frustration with our role in the GMA process. Communication between us and the County is not what it should be. We believe that the County has often misconstrued and misinterpreted our holdings and the reasons for them. The County believes that we have often misconstrued its actions and inactions. There is probably truth to both sets of beliefs. Whatever the reasons for this breakdown in communications, the time has come for it to end. The goal for everyone involved in these proceedings is compliance with the Act. Our pledge is to review the County's actions and reasons in an unemotional and objective view. While we believe we have always done that and have not derided the County's efforts, we will take extra efforts to ensure that the County understands that we recognize the very difficult decisions it is often required to make under the provisions of the Act.

In line with that approach we have taken additional time to thoroughly review the County's motion for reconsideration. We recognize the date of issuance of this order is much longer than we would normally take since the reconsideration hearing of March 20, 1998. Much of the reason for the extra length of time is related to scheduling issues which were discussed at the time of the hearing. Some of the delay is attributable to our desire to be completely thorough in our consideration of the County's motion for reconsideration.

In searching for better communication in this GMA process, it is appropriate for us to set forth what we interpret the GMA to say with regard to the role of a Growth Management Hearings Board. The initial decisions for compliance with the Act rest with the local government involved. We have continuously and consistently stated and recognized that truism since our very first case of *CCNRC v. Clark County*, #92-2-0001. Unlike provisions of the Planning Enabling Act, RCW 36.70, local planning decision-making and authority under the GMA has some constraints. Those constraints are demonstrated by the legislative findings contained in RCW 36.70A.010, the goals expressed in RCW 36.70A.020 and the general requirements found throughout the remainder of the Act.

We are a quasi-judicial Board established under the provisions of RCW 36.70A.250 *et seq.* We may only act after a petition is properly filed and only have authority to decide whether the action or inaction of a local government is or is not in compliance with the goals and requirements of the Act. RCW 36.70A.280, .300. If we determine that a lack of compliance has been shown after a review of the record, we may then also issue a determination of invalidity under the provisions of RCW 36.70A.302 and/or recommend to the Governor that sanctions be imposed under the provisions of RCW 36.70A.330. If we find a lack of compliance, the Act requires that we remand those actions or inactions found out of compliance to the local government with a specific timeframe within which to cure the noncompliant aspects.

We do not have authority to direct the local government to take a specific or particular action on remand. We have consistently held that after the remand period has expired, the issue presented at the compliance hearing is whether or not the local government has now complied with the Act, and not whether specific adherence to our FDO has been made. *Port Townsend v. Jefferson*

County, #95-2-0006. Ultimately, it is the local government's decision about how to comply with the Act. Our role is to decide what is shown by the record and whether compliance has been achieved. We have authority to adopt procedural rules under the provision of RCW 36.70A.270 (7), which rules must be in accordance with the Administrative Procedures Act, RCW 34.05.

As a foundation for its specific arguments on reconsideration, the County first set forth its concerns about the issue of deference. At p. 1 of its memorandum the County said:

“...Nevertheless, the Court concededly in dicta, suggested that ‘the parties should be mindful of the impressions the Court has formed with regard to the remaining [substantive] aspects of the appeal.’ The County earnestly believes that this Board’s *cavalier rejection* of such judicial invitation (Compliance Order at p. 2-3) disserves and frustrates the GMA process. Additionally, Clark County is *surprised and offended* that this Board would conclude that significant legal analysis and argument regarding the deference issue ‘would [not] be of any assistance in this matter.’ Compliance Order at p. 2.” (Emphasis supplied).

The County went on to say at p. 2:

“...Even more troublesome, you have declined (Compliance Order at p. 2) to even consider the substantial arguments presented to the trial court regarding the ‘deference issue.’ Such refusal is particularly troublesome (i.e., impossible to explain to elected commissioners and their constituents) given Judge Nichol’s letter opinion, including the following portion thereof *which you apparently view as non-binding and, therefore, irrelevant ‘dicta’*:” (Emphasis supplied).

Because the County evidently believes we rejected this material in a “cavalier” manner, which was certainly not our intent, we take this opportunity to more fully explain why we believe the comments in Judge Nichol’s December 10, 1997, letter opinion and the trial court briefing that led to that language, was not properly part of the material that we considered for our February 5, 1998, order.

Initially, as noted in our February 5, 1998, order, we established a deadline for submission for further written argument prior to our decision on the Superior Court remand issues. No party requested that we hold a hearing. The County provided the following comments concerning this issue as fully set forth in its letter dated January 20, 1998, as follows:

“If the Hearings Board is willing to take judicial notice thereof, I would be pleased to provide copies of the trial briefs which contain extensive argument regarding the deference issue breached by Judge Nichols *only in dicta*. Because of their bulk, I would prefer not to mail copies to all parties of record.” (Emphasis supplied).

RCW 36.70A.270(7) provides that the three Boards shall “adopt joint rules of practice and procedure.” That section goes on to state that, except as to conflicts with specific provisions of the Act, “the Administrative Procedure Act (APA), Chapter 34.05 RCW... shall govern the practice and procedure of the Boards.”

WAC 242-02-670 and RCW 34.05.452(5) set forth a specific process for taking “official notice.” Even if we treated the County’s January 20, 1998, letter as a motion requesting that we take official notice of the trial briefs submitted to Judge Nichols, the request came at the deadline for submitting further materials. Under the WAC and APA provisions cited above, we are required to give notice, allow response, and determine if the criteria for “official notice” have been met.

Secondly, it is clear from the County’s own view of Judge Nichol’s December 10, 1997, letter opinion that the comments concerning the deference issue was and is dicta. In spite of the inference from p. 2 of the County’s memorandum that we made that determination over the County’s objection, p. 1 of the County’s memorandum and the January 20, 1998, letter from the County, gave us no basis upon to which to believe other than Judge Nichol’s was “nonbinding dicta.” Ultimately, the controlling document with regard to our consideration of the Superior Court remand is the December 31, 1997, judgement issued by Judge Nichols and not the December 10, 1997, letter opinion.

The County’s argument also somewhat misperceives our role in a Superior Court appeal. Under *Kaiser Aluminum v. Labor and Industries*, 121 Wn.2d 776,854 P.2d 611 (1993), we do not have an appellate role over any “substantive” determinations. We are appropriately limited to participation in a Superior Court appeal only for procedural (jurisdiction, authority) issues. It is up to the parties to present their arguments to the Court concerning the substantive issues referred to by the County.

Ultimately, we believe that we did what the County requested by our decision to include the amendments embodied in ESB 6094 to this Superior Court remand proceeding. In part of its December 10, 1997, letter opinion, the Court stated:

“...It is the Courts (*sic*) hope that *full deference* along with the requisite *presumption of compliance* will be given the County upon remand.” (Emphasis supplied).

There is and was a substantial question as to whether the clearly erroneous test or the preponderance test would apply to this remand. In our desire to afford the County every possible presumption and deference, we applied the clearly erroneous test, established a presumption of validity on the County’s actions, and incorporated the direction of deference provided by RCW 36.70A.3201. Prior to our February 5, 1998, order we again reviewed the record as to the specific issues presented by the Superior Court remand and we have reviewed the record once again prior to issuance of this decision. We believe these decisions constitute an abundance of deference to the County.

As mentioned above, the three GMHB’s have a role within in the GMA process. By adoption of the Act, the Legislature has established a “state interest” in local planning decisions. This interest is set forth in the parameters contained in the goals and requirements of the Act. It is our role to interpret the sometimes ambiguous provisions of the Act, thoroughly review the record in a particular case, and decide if the local government action is or is not in compliance with the Act. We have not, do not, and will not establish any preferred result. We have consistently, and often, rejected arguments that a certain action would be the best result rather than attainment of compliance. Fundamentally, passage of the GMA significantly changed the planning discretion afforded to a local government by establishing parameters within which that discretion must be exercised. It is not the role of a Board to simply rubberstamp every decision of a local government on the basis of deference and historical development.

We turn to the specific issues of the Superior Court remand as set forth in the County’s motion for reconsideration.

As to the industrial reserve areas (IRAs) at p. 3 of the memorandum, the County notes that our February 5, 1998, order reconfirms our earlier decision that the County needed to eliminate

“nonprime industrial designations” within urban reserve areas (URAs) except for designations that would be considered “prime” but for a lack of access or utilities. The County characterized this earlier decision as follows:

“The Board’s Order in such respect strays beyond arbitrary and capricious, into the uncharted but unquestionably impermissible zone of ‘silly’.”

At p. 4, the County set forth its argument in support of the above quote acknowledging its lack of “detailed analysis of critical area limitations applicable to future development within urban reserve industrial areas.” The County went on to say that “to reject future industrial designations of a large parcel because ‘a stream runs through it,’ simply makes no sense.”

We obviously have done a poor job of explaining why the nonprime designations in URAs do not comply with the Act. Whether or not there are critical area limitations for those designations has never been an issue prior to this motion for reconsideration. The reason for noncompliance was first set forth in the FDO in 1995. Beginning at p. 42 of the FDO, we noted that Ex. 613 included an extensive industrial land survey. The survey concluded that throughout the County and within the cities there were approximately 12,000, acres of previously designated or zoned industrial land. Of those 12,000 only 4,800 acres were currently being used for industrial purposes. Twelve hundred acres of the vacant or unused industrial land were determined to be “prime” under the criteria established by the report. The remaining 6,000 acres were categorized as either marginal or poor. We noted at p. 44 that the record was unclear as to whether the designations that were made in the comprehensive plan (CP) took into account the existing 1,200 acres of vacant prime industrial land. We went on to note that the URAs did not have any standards for timing of, or criteria for, conversion to inclusion within urban growth areas (UGAs). We noted that the designations within the URAs were in addition to the market factor of 50% for industrial designations within UGAs. We determined that there were substantial questions as to the CP designations, particularly in the URA, and thus compliance had not been achieved, especially in light of the 1995 amendments found in ESB 5019. We recognized at p. 45 of the FDO that a stated purpose for inclusion of industrial designations within the URA was to provide “large scale acreage areas outside the UGA for potential ‘emergency’ use.” We also noted at p. 46 that the record demonstrated the City of Vancouver contained 5,562 acres of vacant, industrially-designated land within its UGA. Of that amount, only 530 acres had been identified as “prime”

with the remaining 5,000 acres noted as either marginal or virtually useless industrial properties (Ex. 161).

After the remand period the issue was revisited and further information was provided. Beginning at p. 16 of our October 1, 1996, compliance order, we noted that the reanalysis concluded that rather than 1,200 acres of vacant “prime” previously-designated industrial land, there was an excess of 2,100 acres. We then addressed the issue of the 4,000 acres which concededly was not “prime” and noted that approximately 3,000 of those acres were located within the Vancouver UGA. We determined that as to the industrial lands already within the Vancouver UGA, the actions of the City had complied with the Act. We noted that the briefing submitted by Vancouver acknowledged the existence of approximately 1,000 acres of nonprime industrial classifications outside the Vancouver UGA. None of the County briefing or arguments leading to the October 1, 1996, order addressed this 1,000 acres.

After the County’s motion for reconsideration in October 1996 we again reviewed this issue. We agreed with the County that URA designations of “nonprime” industrial areas that were essentially “prime” except for access and utility issues that could be resolved, did comply with the Act. We noted, however, at p. 6 of the reconsideration order, that if the designations included secondary (marginal) or tertiary (virtually useless) industrial lands within the URA, such designations did not comply with the Act. The gravamen of that decision was that the record clearly demonstrated that additional marginal or useless industrial lands that had no realistic expectation of use, particularly outside the UGA, were unnecessary and incorrectly designated. This was particularly true in light of amendments found in ESB 5019 now codified as RCW 36.70A.365 and .367. There was simply no dispute that this additional 1,000 acres of marginal or useless industrially-designated property could not possibly qualify for use outside the UGA under those statutory provisions.

The second Superior Court remand issue concerned the potential movement of UGAs. In our February 5, 1998, order, we expressed a certain amount of mystification as to why the issue was before us, given that we had found the subsequent action of Clark County in this regard compliant with the Act in a December 17, 1997, order. In its memorandum, at p. 4, the County explained that it “believed that its dissatisfaction was self-evident.” The County pointed out that

the only action taken after the October 9, 1996, compliance order, was the imposition of a 5-year minimum period between UGA revisions.

The County accurately pointed out that the original criteria for consideration of UGA movement were found in its 1994 CP. It was those criteria which we found to be non-compliant in the FDO in September, 1995. During the first remand period, the County did not add criteria or take any action with regard to that original non-compliance determination. During the compliance hearing process, leading to the October, 1996 order, the County reargued the original FDO determination, although it had not taken any appeal from that initial finding, nor had it asked for reconsideration.

As we read the Superior Court remand order, particularly Conclusion of Law #2, dismissing challenges to the 1995 decision, the UGA issue is not properly before us. What we said in 1995 was that the CP criteria set the stage for annual movement of UGAs and was not in compliance with the Act. As we noted in the December 17, 1997, order, significant changes were made, rather than just the 5-year minimum that the County argued here. In addition to that 5-year minimum, the request could only be initiated by a city and the criteria, which were established in the 1994 CP, were only for *consideration* of UGA movement, rather than criteria for mandating when the movement would take place, as was the case in the 1994 CP.

Beginning at p. 11 of the October 1, 1996, order, we discussed this issue, particularly as it related to our earlier recognition that the oversized UGAs were nonetheless compliant with the Act as noted on p. 7 of the order. At p. 11, we noted that ordinance 1995-12-19 provided that a UGA *would be* expanded if 75% of residential or commercial or 50% of industrial original designated land was consumed. It was on this basis, as explained at p. 12 of the original compliance order, that we held that ordinance 1995-12-19 as it was incorporated into Clark County code (CCC 18.610) substantially interfered with the Act. We noted that the specific reason for the non-compliance and invalidity was:

“...The type of fluidity in UGAs shown here, with minimal infilling DRs coupled with large sizing because of a significant market factor, does not provide the impetus for compact urban growth, nor the direction to funnel growth into urban areas....”

We noted in the order on reconsideration dated November 20, 1996, beginning at p. 10, and concluding at p. 12, that “criteria found in the ordinance constitute much more than advisory suggestions as contended by the County.”

In its motion for reconsideration, the County stated at p. 5:

“The 5-year rule in enacted in CCC 18.610.110, was not a matter of local discretion; it was forced by the constraints artificially imposed by this Board’s earlier decisions.”

We want to reiterate to the County that we did not, in any manner, mandate a 5–year minimum term. What we did say in 1995, was that the criteria established without constraints did not comply with the Act. What we said in 1996, was that the changes that were made worsened the non-compliance to the point where it substantially interfered with the goals of the Act. What we said in December, 1997, was that the change in the criteria from mandating to considering, the change in the manner in which request for changes in the UGA could be made and the change adopted by the County to limit movement to a minimum 5-year period all combined to be compliant with the Act. The County has focused on only one change made as its choice in reaching compliance. Nowhere in our earlier decisions did we say that there was a minimum 5-year requirement. What we said was that annual and easily moveable UGAs into URA areas (which were established for growth 20 years after the adoption of the CP) did not comply with the Act. The method of complying was one that was chosen by Clark County, although it was constrained by the parameters of the GMA.

As to the limited issue on this remand, we reaffirm our earlier decision of the invalidity of CCC 18.610 under the reasoning found in the October 1, 1996, and November 20, 1996, orders.

With regard to the rural/resource issues that remain, the County began its discussion at p. 6 of its memorandum. The County’s argument was segregated into the issue of the minimum density north of the East Fork and then the issue of resource buffering. Once again, we have obviously failed to make our rulings clear, since much of the County’s arguments misconstrue our decisions on this issue.

Additionally, we are somewhat uncertain to the scope of the remand order given Conclusion of

Law #2 that the County's "challenge to the 1995 decision is dismissed as untimely."

Nonetheless, the Superior Court, in its order at #5 stated:

"Finally, the Board is directed to give full credence to the County's determinations, especially in the area of rural minimum lot size, as the County is presumed to have taken into consideration the regional preferences and historical development and practices in formulating its comprehensive plan. The Court expects and instructs that deference be given, along with the requisite presumption of compliance, to the County Plan upon remand."

The buffering/minimum lot size for rural and resource lands decision originated in the 1995 FDO with a full discussion beginning at p. 26 and ending p. 32. Specifically, in the order section of the FDO, at p. 68, we stated that in order to comply with the Act (as we had found provisions of the CP were not in compliance) the County needed to:

- "3. Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of nonconforming lot sizes as well as other techniques to reduce the impact of the parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas;
4. Increase the minimum lot sizes of rural areas located north of the 'rural resource line';"

In the FDO, we pointed out at p. 26 that RCW 36.70A.060 requires a local government to adopt development regulations that "assure the use of lands adjacent to agricultural, forest, or mineral resource lands" shall not interfere "with their continued use." We also pointed out that the County itself adopted CFP Policy 3.2.10 that directed the establishment of buffers for resource lands to "lessen potential impacts to adjacent property." We noted that during the remand period Clark County needed to consider mechanisms to avoid the single most destructive reason for elimination of resource lands, incompatible land uses. We went on to point out at p. 28 that:

"...One of the most important symbiotic relationships is the one between rural and resource lands. Properly planned rural areas provide necessary support of and buffering for resource lands."

Noting that the “rural/resource line” (the area north of the east fork of the Lewis River) had been established early in the planning process to distinguish a part of the County where significantly less parcelization of 1 to 2.5 acres had taken place and where the prime resource areas still remained in Clark County we observed that the Farm Focus Group had recommended a 10-acre minimum in that area *to further both the CFP and CP policies of providing large minimum lot sizes for residential development in rural areas to maintain a rural character* (CFP 4.2.3). We further noted that both the planning commission and the staff supported that approach. The final supplemental environmental impact statement (FSEIS) provided a wealth of information concerning the factual basis and reasons why a 10-acre minimum lot size north of the rural resource line was appropriate. We stated at p. 29 of the FDO that “the record contained significant evidence concerning the relationship of minimum lot size to current resource activity and the necessity for buffering.” We noted that in our review of the record, the only statement made during the Board of County Commissioners’ discussion was that a minimum 5-acre size in that area would be consistent with the rest of the County. There was simply no evidence in the record, as it existed at that time, to support a uniform 5-acre minimum throughout the County. Specifically, we pointed at p. 31 of the FDO that the:

“...BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990. Regardless of fault, blame, or reasons why, the extraordinary divisions in resource and rural lands allowed since 1991 lessened the reasonable range of discretion normally afforded to local decision makers under the Act.”

The County continues to reargue that our initial FDO findings of noncompliance on these issues is incorrect. As we noted in our order on reconsideration of November 20, 1996, at p. 7, we cannot allow reconsideration of decisions via a compliance order over a year after the initial remand. Nevertheless, in order to make our reasons as clear as we can we reiterate them here.

The County contended that the original Farm Focus Group, planning staff, planning commission, and FSEIS recommendations have historic interest but no “apparent legal significance.” It is not simply the fact that all of these groups made that recommendation, it is the evidence upon which

those recommendations were made that are contained in the record in contrast, to the lack of evidence to support the BOCC decision to impose 5-acre minimums north of the rural/resource line, that has significance.

We disagree with the statement made at p. 8 of the County's current memorandum that "the GMA gives the County, ... the authority to determine appropriate lot sizes and uses in rural areas," if that statement means that the County believes there is no role for the GMA in that decision. As we stated above, the GMA does limit the amount of previously unbridled discretion of local governments to "determine appropriate lot sizes and uses in rural areas." This is because of RCW 36.70A.060, .070, .170, and .020(8).

At p. 9 of the County's memorandum the following statement was made:

"First, there is simply no GMA provision expressly mandating resource land buffering...."

The argument goes on to cite to RCW 36.70A.060(1). While it is true that there is no specific language in any of the cited sections that says "local governments must buffer," it is only the most strained of readings of the Act to say there is no requirement for a buffering provisions to conserve resource lands. Contrary to the assertion set forth at p. 9 that we are "substituting" a preferred policy and thus "engaged in unauthorized rule-making," we quite simply concluded in 1995 that the record submitted, in conjunction with the constraints set forth by the GMA, led to the inescapable conclusion that Clark County did not comply because of its lack of DRs to:

"assure that the use of lands adjacent to agricultural, forest, or mineral resource lands, shall not interfere with continued use... of these designated lands for production of foods, agricultural products, or timber, or for the extraction of minerals," (RCW 36.70A.060) and that would "discourage incompatible uses" (RCW 36.70A.020(8)).

With that background, the issue from the Superior Court remand is whether the County's action subsequent to the remand as set forth in our compliance order of October 1, 1996, and order on reconsideration of November 20, 1996, were shown by petitioners to be clearly erroneous, given the deference afforded to local governments under the Act. A subset of that issue is whether

petitioners further demonstrated that the actions and inactions of the County substantially interfered such that an order of invalidity was appropriate. In our February 5, 1998, order we found that petitioners had sustained both burdens of proof, even after the substantial deference afforded to the County by the GMA. That decision was based upon the record and the lack of evidence presented for the compliance hearing leading to the 1996 orders. In its most current motion for reconsideration the County submitted a recalculation of designated lands north of the rural/resource line. Additionally, the County submitted section 6 of CCC 18.302.095. That was the same code provision that we reviewed in 1996.

We noted in the 1996 orders that the “reanalysis” by the County was not sufficiently thorough to overcome the compelling evidence already in the record. At p. 26 of the October 1, 1996, order, we pointed out that CCC 18.302.060 reduced rear and side setbacks for dwellings in the resource area. We noted further that reduction for buffering of “urban building” in rural areas adjacent to resource lands, from 50 feet to 5 feet (if a road separated the two) exacerbated the problem of incompatible uses adjacent to and encroaching upon resource lands. We pointed out that there was no attempt to make more difficult the continuing development of “urban-zoned lots” or “multi-family zones” in the rural areas which again would have significant impact on resource designations. We found, based on the record, that the County had not found ways to limit or eliminate these “urban” uses of rural/resource lands north of the line, but had amended their ordinances to make urbanization of those lots for residential development easier and more accessible. It was on this basis of the County’s failure to conserve its resource lands and prevent incompatible uses that we determined that invalidity was appropriate.

We state once again, as we did in the order on reconsideration of November 20, 1996, that we are not, in any manner, requiring the County to establish a 10-acre minimum lot size. We merely pointed out in 1995 that the record consistently showed that to be the recommended size until the BOCC decision. One of the failures of the County’s current analysis is that it does not address any minimum lot size greater than 5 but less than 10 acres. This is not a decision about the “best” compliance methodology, but one that simply points out that more needs to be done in that area to comply with the Act. What will be done remains a decision of the County, as long as it is within the parameters of the GMA.

The County’s argument contained at p. 10 that we have failed to discuss “what additional

measures might be practical and effective” for other buffering techniques goes beyond the scope of our authority. We agree with the County that it is not our function to mandate specific GMA outcomes. We note that the County’s change in its ordinance from “buildable” lots to “reasonably buildable” lots was not accompanied by any explanation until this most recent motion for reconsideration. If in fact it is the County’s desire to limit reconfiguration and the use of nonconforming urban-type lots in the rural/resource areas, the language of the ordinance needs to be much clearer than as submitted for the 1996 compliance hearing. We note that the extensive record that has built up in this case provided effective suggestions for buffering techniques that would fulfill the County’s duty to “conserve” resource lands and “discourage incompatible uses.” Ultimately the Legislature, through its enactment of the GMA, has made the decision that those techniques are practical, regardless of the County’s perceived undesired political consequences. We do not have the authority to carve out an exemption from compliance because of potential political consequences.

So ORDERED this 30<sup>th</sup> day of April, 1998.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member