

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

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| ACHEN, et al., |) | |
| |) | No. 95-2-0067 |
| Petitioners, |) | |
| vs. |) | COMPLIANCE ORDER |
| |) | AND ORDER OF |
| CLARK COUNTY, et al., |) | INVALIDITY |
| |) | |
| Respondents, |) | |
| |) | |
| and |) | |
| |) | |
| CLARK COUNTY SCHOOL DISTRICTS, et al., |) | |
| |) | |
| Intervenors. |) | |
| _____ |) | |

Subsequent to the September 20, 1995, Final Order in this case, and even during the period of time prior to the December 6, 1995, Order on Reconsideration, Clark County and the cities began work to comply with the items found to be violative of the Growth Management Act (GMA, Act). The GMA steering committee was resurrected and held at least four meetings to address regional issues. The Clark County Planning Commission (PC) and Board of County Commissioners (BOCC) met numerous times prior to 1996. Some ordinances concerning the remand items were adopted in 1995. In 1996 the PC began a series of twelve public hearings, ending in April. At the onset of the public hearings, a generalized mailing was sent by the County concerning the issues raised by the remand. The BOCC held public hearings on April 15, April 30 and May 1, 1996. BOCC deliberations occurred on May 2 and 3, 1996. A comprehensive ordinance was enacted May 3, 1996, (1996-05-01).

Some, but not all, original petitioners and intervenors participated in the compliance hearing process. Clark County, Vancouver, Camas, Battle Ground and Ridgefield participated. A compliance hearing prehearing order was entered June 25, 1996. Twenty-eight separate issues were presented for resolution. The participating petitioners raised issues concerning sanctions

and/or invalidity. The burden of proof to show compliance was placed on the local government. The burden of meeting the standard for a finding of invalidity remained with the petitioners.

In some instances, Clark County ultimately decided that it would take no further action in response to the remand order. That was decided after additional analysis and/or the infusion of new information. Petitioners contended that it would be impossible for the County to come into compliance unless some modifications were made regardless of the reanalysis and/or new information.

RCW 36.70A.330(1) provides in part that after the remand period has ended:

“...The Board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.”

We have previously held in *Port Townsend v. Jefferson County*, WWGMHB #94-2-0006 (*Port Townsend*) that the clear language of RCW 36.70A.330(1) directs that the ultimate question in a compliance hearing is whether there is compliance with the Act, not necessarily whether there is specific compliance with the remand order. As we noted in *Port Townsend* that holding was consistent with the overall concept of GMA to allow local governments discretion, within the confines of the Act, to make local decisions best suited to their individual situations.

Not all of the findings of non-compliance from the Final Order were challenged. Nonetheless, we reviewed the record and argument concerning compliance of these unchallenged portions. The County and City of Vancouver both included a ten-year traffic forecast within their comprehensive plans (CP) as required by the Act. The County eliminated the portion of the Washougal UGA that was included within the Columbia River Gorge National Scenic Area. The County resolved the inconsistencies between CP Policy 6.2.2, .3 and .7 concerning extension of water. The County adopted different development regulations (DRs) under RCW 36.70A.200 for airport siting and reevaluated the Sadre/Mill Plain property.

In association with some original petitioners, the City of Ridgefield set about revising its recommended urban growth area (UGA). The goal of the parties was to reduce the use of

resource lands within the UGA and modify the barbell effect. Ridgefield and some of the petitioners ultimately reached a stipulated agreement which was submitted to Clark County. The County approved the modifications to the Ridgefield UGA. We have independently reviewed the agreement and the County's action and find that the Ridgefield UGA is now in compliance with the Growth Management Act, except as to the Swigert property discussed later.

There was no challenge to the adoption of implementation mechanisms for historic preservation for Clark County, Vancouver or Camas. There was however, a challenge to the implementation mechanisms for archeological preservation. A new petition was filed challenging Clark County's DRs to protect critical areas. A new petition was also filed challenging the readoption of the critical area ordinances of Vancouver and Camas. We consolidated those petitions under WWGMHB #96-2-0017 and they are the subject of a separate action under that cause number, along with the archeological preservation challenges.

We received new petitions concerning the continuation of the prohibition of mining within the 100-year floodplain. Those petitions were consolidated under cause WWGMHB #96-2-0016. Subsequent to the filing, we and the parties determined that the issues presented by these petitions were within the scope of a compliance hearing rather than new legislation requiring a new petition. However, we decided to maintain a separate cause number and proceed with that case separately from this.

We thus turn to the contested issues in this compliance hearing.

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URBAN

(Nan Henriksen did not participate in hearing or deciding the Urban portion of this Order)

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Population Projections

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The 1996 Legislature directed that the Office of Financial Management (OFM) establish a range of population projections rather than a single figure as before. The projections were to include a most likely population scenario (medium) a high and a low. The legislation also directed that a county would not be out of compliance with the Act if it used any number within the range.

During the remand process staff recommended that the County adopt the high range 2012 population figure of 416,071. Arguments were presented to the PC and deliberations engaged in which supported the medium population projection. On the initial vote the PC recommended adoption of the medium figure, but later recommended the high figure. After public hearing before the BOCC the high population projection was adopted. Petitioners challenged the County's use of that figure.

Regardless of the wisdom of using the high population projection, the legislation is clear that any projection within the range shall not be held to fail to comply. Thus, the County has complied with the requirement of the Act to adopt a proper OFM figure.

In the Final Order we noted that the County had ignored existing population growth between the time of the commencement of the CP process and its final adoption. That deficiency has been cured. We also noted that the County had arbitrarily assigned a figure of 15,000 for the population growth that would occur over the planning period in the rural areas. The County reanalyzed the potential rural growth under three different scenarios and concluded that a mid-range estimate of 10,901 above the 15,000 arbitrary figure was the most realistic. The new growth over the planning horizon of 25,901, represented approximately 95% capacity of existing rural lots and a County trend of 80/20 split in the location of new urban/rural growth. This figure represented a more realistic and reasonable analysis than the arbitrary 15,000 previously chosen. The purpose of recognizing this growth is not to encourage growth in rural areas, but rather to decide an appropriate and correct foundation for determining the proper size of the UGAs.

The County acknowledged in its brief that staff reports prepared for population projections "admittedly engender[ed] some confusion at the PC" which confusion was carried on through our review of the record. Ultimately the methodology was explained, but a great deal of wasted time could have been saved by approaching the population analysis in reverse order.

We still have some concerns about the sizing of UGAs and the use of figures that appears to allow an extra 10,000 population projection over the OFM high figure. Candidly, petitioners did not provide much specific assistance on this issue. We are therefore uncertain as to whether the

“muddled” approach by staff was an attempt to allow larger UGAs than necessary.

Ultimately, the proper sizing and location of an UGA involves more than simple mathematical analysis. Many other factors are appropriately considered by a county in determining UGAs. RCW 36.70A.110(2) directs that a county shall establish an UGA boundary "sufficient to permit" urban growth projections. Recently in *C.U.S.T.E.R. v. Whatcom County*, WWGMHB #96-2-0008, citing the Final Order in this case, we said:

"We do not want the County to misinterpret this decision as license to justify or encourage more growth in rural areas. One of the primary purposes of the Act is to direct new growth into IUGAs or UGAs. The Legislature has determined by adoption of the GMA that directing growth to urban areas provides for better use of resource lands and more efficient uses of taxpayer dollars. A county must size an IUGA large enough to accommodate the growth that will be directed into it. A recognition of growth that has already taken place will prevent undue oversizing of the IUGAs. Likewise a recognition of the growth that will occur outside IUGAs (due to preexisting lots in rural areas) should not encourage growth in those areas but merely recognize its existence. The GMA requires counties to adopt policies, DRs and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. The more a county utilizes these techniques to funnel growth into urban areas, the more discretion is afforded under the Act in sizing IUGAs or UGAs."

With those foundational concepts in mind we examine the record in this compliance hearing. Given the adoption of the high OFM projection, the County then set about determining if the already adopted UGAs could be "justified" with the additional 50,000+ population projection. As with the analysis concerning existing population and rural expansion, the County appears to have reached a result and then worked backwards to fit the analysis into that result. The preferred method, of course, would be to start with the analysis and see what result is obtained.

Nonetheless, with the exception of the two matters discussed in the next paragraph, the UGAs, as established, do now comply with the Act. Under the reanalysis by Clark County that is contained in this record the UGAs are within the range of discretion afforded by the Act. The 25% residential and commercial market factor and the 50% industrial market factor, as well as other analysis contained in this record, demonstrates that the UGAs are oversized from a strictly mathematical viewpoint. However, taking other factors into consideration, including the unusual amount of urban growth still found within County jurisdiction, the choice the County has made to

place UGAs in their current location is one that complies with the Act. The two exceptions involve the UGAs for Ridgefield and for Camas.

The Ridgefield UGA issues concerned property owned by William Swigert that is located within the municipal boundaries of the City of Ridgefield. Mr. Swigert owns approximately 505 acres on the southern portion of the City. His petition for annexation was approved in 1993. The same property had previously been approved by the Boundary Review Board of Clark County (BRB) from a petition of Swigert's predecessors in interest.

Approximately 170 acres of the property lies south of a canyon named "Flume Creek Canyon". At the time of the annexation in 1993, the City determined that the cost of providing public facilities and services for that 170 acre parcel would be prohibitive. The BRB, nonetheless, required the entire 505 acres to be annexed if any was to be annexed. The City then annexed the entire package, although it claimed that an agreement had been reached to "de-annex" the 170 acres. Not surprisingly, Mr. Swigert now disputes whether any such agreement had been reached.

At the time of adoption of the UGA and the Ridgefield CP and DRs, the 170 acre parcel was not included in the Ridgefield UGA. The City totally ignored the 170 acre parcel in its CP and specifically did not address it in the capital facilities element. The City zoned the 170 acre parcel "agriculture". The County did not include the parcel within the designated UGA but designated it "rural estate" on the rural and natural resources land use map. Mr. Swigert petitioned this Board at the time of the origination of this case. Ridgefield, Clark County and Swigert agreed that a remand was appropriate and entered into a stipulation to that effect. It was the parties' contention that further time was needed to resolve this quandary. We agreed. Further time has passed and the quandary was not resolved. Supplemental briefing was submitted by petitioner and Ridgefield.

Regardless of how or why this 170 acre piece was annexed to the City, the fact is undisputed that it is located within the municipal boundaries. RCW 36.70A.110(1) provides that:

"... Each city that is located in such a county shall be included within an urban growth area."

This portion of the Act is clear and affords no discretion to local governments. As long as the

area remains within the municipal boundaries, the County must include it within the UGA. Likewise the City must plan appropriately for the parcel and include it in its CP. Absent some de-annexation determination, or a change in the Act by the Legislature, the City is stuck. It cannot simply ignore the problem and hope that it will go away.

The CP designation by Clark County is irrelevant since the property is located within municipal limits. The City's action in designating the property as agriculture does not comply with the requirement of RCW 36.70A.060(4), which states that forest and agricultural land "within urban growth areas" shall not be designated unless the City has "enacted a program authorizing transfer or purchase of development rights." No such program was asserted by the City. The City's zoning designation does not comply with the Act.

We disagree with petitioner's request that a finding of invalidity is appropriate under these circumstances. Petitioner has not sustained his burden of showing that the action is egregious and rises to one of "substantial interference with the goals of the Act."

The Camas UGA non-compliance comes as a result of a "re-designation" by the BOCC at the conclusion of the public hearings and deliberations. This "re-designation" does not comply with the Act and is not based upon sufficient reanalysis and/or new information.

The most telling flaw in the new Camas UGA involves the fact that the population projection allocation to Camas remained exactly the same as before the "re-designation". Four of the five areas which were included in the "re-designation" were initially recommended by staff and the PC to not be included. Subsequent to that decision, Camas developed "further refinements" to its vacant lands analysis, which indicated that more critical areas existed than originally understood. This had the effect of showing an additional 90 acres of wetlands that was "lost". The second "loss" involved the recent siting of WaferTec (also known as Taiwan Semi-conductor). The County attributed a reduction in existing industrial inventory of 200 acres for the site while the City contended 260 acres were removed.

The additional 90 acre wetlands delineation does not provide sufficient basis for a change in the Camas UGA. The initial vacant lands analysis contains sufficient "fudge factors" to cover the 90

acres. If the County wished to emphasize with more preciseness the information in this additional wetlands delineation, the changing of the "fudge factors" would be necessary. The two analyses are inconsistent for the purposes used.

The emphasis on acreage now being developed by Taiwan Semi-conductor, as will be more fully discussed in the urban reserve section, does not provide sufficient analytical basis for these "re-designations". The County adopted a 50% market factor for industrial use. Existing inventory was analyzed and a 20 year plan was developed, even though at the time of initial adoption, only 18 years remained. Now two years later the actual siting of industrial properties within the projection cannot be used as a basis for expanding what was found to be a non-compliant UGA in our Final Order.

The inclusion of "re-designated" areas west of Camas also fails to comply because of the failure of the County to appropriately designate the area between the Camas and Vancouver UGAs. Given that the BOCC has adopted large-sized UGAs and the maximum population projection allowable by law, an even more compelling need to adhere to RCW 36.70A.160 for identification of open space corridors exists. Additionally County CP Policy 2.1.2 provides that such corridors should exist and use "natural features" to define those boundaries. An excellent opportunity is provided for the area between Camas and Vancouver, particularly because of the existence of Fisher Swale. Staff proposed a policy of "special consideration" for this area. The policy was rejected by the BOCC. Given the very minimalistic approach of the "special consideration" it is clear that the failure to adopt even that does not comply with the Act. Finally, at least one of the areas "re-designated" for inclusion in the UGA as a single-family low designation has potential impacts to an existing quarry operation. There is no analysis in this record to show why placing a low density family residential area in the vicinity of a quarry does not violate RCW 36.70A.010 (1) requirements that a county "shall assure that the use of lands adjacent to.... mineral resource lands shall not interfere with"... its continued use.

Market Factor/Urban Reserve Areas

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In the Final Order we noted that the concept of an urban reserve area (URA) was "laudable" because it took into account and planned for efficient transition to urban development beyond the

20 year planning horizon directed by the GMA. We expressed concern about the interplay between the URA and market factor. In response, the County prepared a "white paper" on the difference between the URA and market factor. We understood the difference then, and we understand it now. Our concern was not with the URA concept as it related to planning *beyond* the period, but rather the use of the urban reserve areas in conjunction with the expansive market factors *during* the planning period. We said in the Final Order at p. 40 that:

As noted earlier, the noncompliance in Clark County's use of urban reserve areas is *because of a lack of criteria for conversion of the urban reserve area to urban growth area*. In conjunction with that flaw, the use of a 25 or 50% market factor in setting the initial UGA in effect "double-dips" the land area under consideration. In its CP the County established an annual review of the factors used to establish the urban growth boundary. The purpose of this annual review was to determine whether the location of the boundary "is working" or whether it needed to be expanded or contracted. The effect is to have a fluid UGA with inadequate infill provisions that does not achieve the anti-sprawl cornerstone of the Act. (italics supplied)

Ex. #49 for the remand hearing did not address our concerns about the urban reserve areas. Ordinance #1995-12-19 (Ex. #283) is relevant. In conjunction with Clark County Code (CCC) 18.610.110, the ordinance provided that a UGA would be expanded if 75% of the residential or commercial vacant land base originally designated had been consumed (only 50% of the industrial). The County had no data to determine whether these levels had been already reached. The ordinance provided some minimalistic criteria for limiting that expansion. This expansion can still occur annually and still involves the County's concept of "incremental movement of the urban growth boundary" which we found not in compliance in the Final Order.

The "procedural amendment" (1995-12-19) does not contain stringent requirements for moving UGA designations and thus does not comply with the Act. In addition to that failure, the County has established "large" UGAs with maximum market factors and has planned for the maximum possible population projections. All of those factors considered together lead us to the inescapable conclusions that the use of Ordinance #1995-12-19 and/or CCC 18.610.110 substantially interferes with the goals of the Act, most specifically goals 1, 2, 9 and 10, under the standards provided in RCW 36.70A.300(2)(a). The currently established UGAs which we have found comply with the Act (this excludes the "re-designations" outside Camas municipal boundaries) may not be expanded until the County adopts specific requirements based on

adequate GMA criteria that will prevent short-term expansion of UGAs. 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. None of the policies nor regulations concerning expansion of the UGAs into the URAs comply with the Act and all are invalid because they substantially interfere with the goals of the Act.

CAMAS

Camas has complied with the previous inconsistency in its failure to follow County Comprehensive Plan Policy 5.7.1 which stated that the County and the City would:

"Provide opportunities for new development to occur in a housing-type ratio of 60 percent single-family and 40 percent multi-family."

Camas amended its CP to adopt a 60/40 ratio and set forth strategies to achieve affordable housing objectives through CP policies, as well as amended DRs. The inconsistency between Camas and Clark County on this issue has been resolved and the actions of Camas comply with RCW 36.70A.020(4) to *encourage* availability of affordable housing.

Likewise, Camas has complied with the requirements of the Act to review its critical areas DRs for consistency with the CP. City staff prepared a report that was reviewed in public hearings by both the City PC and City Council. Copies of the ordinances, the CP policies and GMA requirements were reviewed in addition to the report. Ultimately the Council decided that there were no inconsistencies under RCW 36.70A.040. We agree. Camas also cured the deficiency in its stormwater provisions of the CP as required by RCW 36.70A.070(1). The City drafted amendments to its CP, held public hearings before the PC and Council and adopted Ordinance #2074, which incorporated references to the Puget Sound Water Quality Authority, stormwater management quality and quantity standards, and erosion control handbook and Fisher Basin Utility Ordinance. The Camas CP now provides "guidance for protective actions to mitigate or cleanse those discharges that pollute waters of the state" as required by RCW 36.70A.070(1).

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VANCOUVER

(All 3 Board members participated hereafter)

The initial issue relating specifically to the City of Vancouver involved the process of adopting DRs to implement the infill and density provisions of its CP. A related matter involved the City's Transit Overlay District Ordinance. An additional issue concerned industrial lands in the Vancouver UGA. That issue will be covered later in the industrial section of this Order.

As the starting point of its infill DRs, the City provided for more intensive uses of both residential and commercial areas along the major transportation routes. The record indicated that approximately 1,000 additional dwellings could be accommodated because of those "upzones". Additionally, Vancouver modified its zoning ordinance in a number of ways to allow greater densities in all zoning districts. A minimum density threshold of 65% of the maximum was established. Higher density bonuses and adjustments to development standards were adopted. The zoning code was amended to allow planned developments in medium and high densities districts. Small scale retail/service uses were also added within residential zones through a conditional use permit system. An accessory dwelling unit ordinance was established. Changes to the standards involved in residential and commercial lots were added. A mixed use district was established that could be applied within any of nine different zoning designations. The transit overlay district was made voluntary until December 31, 1996, when it will become mandatory. The major purpose of the transit overlay district was to provide for increased transit use, while at the same time allowing for more compact urban development. Our review of this record shows that Vancouver has adopted many infill mechanisms and does now comply with the Act with regard to that issue.

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BATTLE GROUND

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As part of the remand process, Battle Ground addressed the issue of the Community Framework Plan (CFP) and CP Policy of providing a 60% single family to 40% multi-family ratio for new construction (60/40). The City adopted a policy exactly like the one adopted by Clark County to provide for such a ratio as part of its CP. While petitioner complained that the policies were directed to providing "opportunities" for such a ratio, that in and of itself is sufficient minimal compliance with the Act. Battle Ground also reviewed and changed other policies and DRs to increase density and provide more opportunities for affordable housing. The allowance of duplexes in residential zones, accessory units in single family zones, assisted living and group

housing, manufactured homes on individual lots in residential zones and density bonuses in PUDs, in the City of Battle Ground context, reflect a shift towards achieving affordable housing, infill and density goals and requirements of the Act. The actions shown by this record is sufficient to comply with the Act.

The remaining issue concerning Battle Ground involved its failure to adopt "drainage and stormwater goals, policies, strategies and regulations." Battle Ground adopted Ordinance 96-802 on May 16, 1996, and thereafter published notice of such adoption. Battle Ground observed that no petition for review had been filed challenging the ordinance. Battle Ground noted that we have in the past distinguished between "failure to comply" cases, which would normally be handled through a compliance hearing process, and a "failure to act" case which is normally handled through a new petition. Since no prior action had been taken with regard to stormwater and flooding issues, Battle Ground concluded that a substantive challenge to the ordinance through the compliance hearing process was inappropriate.

Battle Ground makes a valid point. We have previously said that in *Whatcom Environmental Council v. Whatcom County*, WWGMHB #94-2-0009 (Order dated March 29, 1996) that ordinarily a new ordinance in response to a failure to act remand must be challenged by means of a new petition. That case, however, did hold that ultimately a Board has discretion to determine whether a new petition or a compliance hearing is the proper vehicle. We adhere to that ruling in this case. We are disinclined to adopt a technical rule requiring a new petition in all instances in the absence of clear legislative direction. There are ambiguities in the Act concerning the compliance hearing/new petition dichotomy. Under all those conditions we decline the City's invitation to dismiss the substantive challenge to the ordinance.

The City also contended that even if review through the compliance hearing process was appropriate, the presumption of validity for this new ordinance should attach and the burden should be placed on the petitioner. We decline to rule on that contention because regardless of whether the presumption attaches and who has the burden, our review of this record makes it clear that the ordinance complies with the Act. The ordinance does that which is required by RCW 36.70A.070(1) in that it reviews the "drainage, flooding, and stormwater runoff in the area and nearby jurisdictions" and provides "guidance for corrective actions to mitigate or cleanse those discharges that pollute waters of the state." The ordinance uses the Puget Sound Water

Authority manual as its basis. While petitioner points out matters which may well have made the ordinance better, the record in this case shows that it does meet the minimum requirements of the Act and is therefore in compliance.

INDUSTRIAL LANDS

Two major issues were involved in the industrial section of the Final Order. The first concerned appropriate designations of some 6,000 acres of non-prime industrial areas, 5,000 acres of which were contained within the Vancouver UGA. The second major issue concerned the conversion of prime industrial lands. While the Clark County remand brief concluded that there were only 5,000 acres originally designated, it is clear that the 5,000 acres related only to the Vancouver UGA. At p. 43 of our Final Order we noted that based upon the Columbia River Economic Development Council report, 4,800 acres of industrial land were in use, 1,200 acres of vacant land was "prime" and the remaining *6,000 acres* were marginal or poor.

The County did an extensive reevaluation of the industrial lands designation and determined that approximately 2,000 acres were either incorrectly classified either as secondary that should have been prime (938 acres) or were not vacant but in fact were used for staging and parking. Thus, the original existing inventory of prime industrial land was in reality in excess of 2,100 acres. The question presented by the remand dealt with the appropriateness of industrial designation of the 4,000 acres concededly not "prime". According to the reanalysis as set forth in Vancouver's compliance hearing brief at p. 11, less than 3,000 of these acres were located within the Vancouver UGA. Vancouver has assumed that the additional demand of 432 acres over the 1,215 acres of existing prime industrial lands within its UGA would actually reduce the marginal lands within its UGA to approximately 2,500 acres. None of the staff reports, nor briefing, address the 1,000 acres of non-prime industrial classifications outside the Vancouver UGA, although Vancouver's brief does at least acknowledge its existence. Insofar as these non-prime industrial areas are contained in the urban reserve area, under the record in this case, such designation does not comply with the Act.

As to the designations of non-prime industrial lands within the Vancouver UGA, the reanalysis and additional information provided in this record substantiates the current designations. Many of the parcels are irregular in shape, some are isolated and most are contained within overall

larger industrial designations. While we note that a report entitled "Urban Capacity Analysis" dated June 9, 1995, concluded that none of the tertiary industrial lands would develop during the planning period (2,000 acres) and only 60% of the secondary lands (4,600 acres) would expect to be developed, we do not reach the same conclusion as petitioners that pressure to convert this acreage to residential will be "immense". The site by site analysis contained in this record of these non-prime lands demonstrates that the pressure to convert to residential uses may not even be likely. Ultimately, none of the presently designated non-prime industrial areas within the Vancouver UGA are beyond the scope of discretion afforded local governments by the Act. We observe that the question of industrial designations in the Vancouver low-land area, which is fraught with critical areas and resource lands, presents a much closer question. Nonetheless, after review of the record presented here, we find that the non-prime industrial designations within the Vancouver UGA comply with the Act.

The second major issue involved the relationship of resource lands within the urban reserve area (industrial) designations. The Final Order recommended that DRs needed to be adopted to prohibit the conversion of prime industrial land to other uses. No such regulations were adopted. The County did adopt two new policies for its CP that would "restrict" rezones by "preserving industrial land primarily for manufacturing purposes". This is wholly insufficient. Clark County used the *3,000 acres of prime industrial lands* as a mantra, one of the very foundational cornerstones of the entire CP. Thus, it is incomprehensible that effective action would not take place to protect conversion of that prime industrial land to other uses. The conclusion is almost inescapable that the County does not really mean what it says when it emphasizes the need for industrial land by placing a 50% market factor on it and by putting significant amount of acreage in urban reserve areas. None of this means anything if there is no real desire to protect conversion of that which is in existence.

The record is also "muddled" concerning a no-net-loss policy. There was a new policy concerning secondary and tertiary industrial lands that had as a criterion a no-net-loss aspect. This makes no sense because the County recognized that few, if any, of those lands would ever be developed. Why the County would wait to redesignate additional non-prime industrial lands if any of them were ever developed is puzzling.

If in fact the no-net-loss policy also applies to prime industrial land, that policy without effective preclusion of conversion, does not comply with the Act. Under the record that exists here the no-net-loss policy would have the ultimate effect of net-loss of resource lands. Without a prohibition against conversion, once land was converted to some non-industrial use (which has happened recently in Clark County), the County would then re-designate some existing property to keep the inventory at its current level. Since it is very unlikely that residential acreage or rural 1 and 2 1/2 acre tracts could or would be designated for these large scale prime industrial areas, the new locations would be of necessity in the resource lands area. This most clearly does not comply with the Act. That scenario appears to be exactly what the County contemplated with its urban reserve industrial designations.

As part of the Final Order we noted that the URAs appeared to contain lands that would otherwise have been categorized as resource lands. We noted that such would not be in compliance with the Act. In response, the County identified some seven different areas involving thousands of acres that would have been classified resource lands except for their classification as urban reserve. After identification, the County then proceeded with a number of justifications of why the areas should remain in the URA context. None of these rationalizations contained analyses that comply with the Act. The overall scheme appears to be to allow conversion of prime industrial areas to non-industrial uses, then convert resource lands to industrial uses, then convert the industrial uses to non-industrial, then continue to convert resource lands. The Act does not allow such a system. Rather, the first step is designation of resource land. Clark County did not do that until 1994. Since there is no effective regulation to prevent conversion of prime industrial lands to other uses, and since the record now reflects that an additional 938 acres of land is available for prime classification, we specifically find that not only does the inclusion of resource lands within the urban reserve area for both industrial and residential designations fail to comply with the Act, but also such inclusion substantially interferes with goals 8 and 9 of the Act. The URA designations are therefore declared invalid under the test set forth in RCW 36.70A.300(2)(b). As noted in the urban reserve section of this order, we recognize that the urban reserve areas are to be used in the post- 2012 planning period. The County has never explained why putting these areas in a resource land designation would somehow not allow them to be available for the post- 2012 period. If they are resource lands, the Act requires that they be designated and conserved as resource lands until a proper analysis

demonstrates a needed different designation.

COMMERCIAL

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During the remand period in which Clark County had much work to do, it also decided to completely rewrite its existing commercial code which was then adopted as part of the overall County Ordinance #1996-05-01. An original petitioner, North Salmon Creek Neighborhood Association (NSCNA), challenged this rewritten code as a participant in the compliance hearing. Intervenor Roundup Company (d.b.a. Fred Meyer) and Clark County urged us to deal with the issues as part of the remand process rather than requiring a new petition from NSCNA. Because of a lack of clear legislative direction concerning the scope of compliance hearing and because the parties requested it, we agreed to do so. The issues thus framed became whether the adopted commercial code complied with the public participation goals and requirements of the Act and if so whether they were consistent with the CP. We answer the first part of the question in the negative and therefore do not address the consistency issue.

As noted in the September 21, 1995, Final Order the siting of a Fred Meyer store in the North Salmon Creek area (outside Vancouver city limits but within the UGA) involved a long history of NSCNA involvement. According to NSCNA it first learned of the proposal to completely rewrite the commercial code from an assistant Vice President for Fred Meyer on February 21, 1996. NSCNA contacted Clark County approximately 2 days later about a desire to participate as part of the code development team. Approximately 2 weeks later the request to participate was approved and a meeting was set for April 4, 1996. At that meeting, which also involved a second neighborhood association, a draft staff report dated March 28, 1996, was presented. The revised code was scheduled to be presented to the PC at its April 18, 1996, meeting and the final staff report was to be completed April 8, 1996.

A third neighborhood association sent a letter to the PC dated April 17, 1996, requesting additional time for consideration. Another letter of that same date, presented by 6 separate neighborhood associations noted that none of them had had an opportunity to participate in the commercial code amendment process to that point. NSCNA presented testimony at the April 18, 1996, PC hearing. The PC voted that night to recommend approval to the BOCC. The BOCC held hearings on April 30, 1996, and May 1, 1996, and commenced deliberations on May 2,

1996, concerning the remand order and the new commercial code. The code was approved by a BOCC vote on May 3, 1996. One of the comments made during the deliberation process by the BOCC involved the fact that Commissioner Magnano was scheduled to resign May 10, 1996, and that the BOCC wished to complete all of this remand work prior to his departure.

This "streamlined" adoption process for a brand new commercial code which was not part of the remand order does not comply with the Act. The Act provides goals and requirements for "early and continuous" and "effective" public participation. The adoption of this comprehensive and completely revised commercial code within one month of the time it was first presented to any neighborhood association violates the GMA. While it is understandable the BOCC wished to have Commissioner Magnano available for the remand work, this commercial code did not fall into that category. Even if it did, that fact alone does not justify precluding effective public participation by shortening the period of consideration for this extensive code revision to less than a month.

Additionally, the "early and continuous" prong of the GMA public participation goals and requirements was violated. The clear direction of the commercial code revisions was to moot an existing court case in which NSCNA, the County and Intervenor Roundup were involved. The County knew from extensive past experience that all or some of these neighborhood associations would want to be involved in such a project. The County took no steps to notify them in the beginning and allow them to participate effectively. The GMA does not require local governments to notify any possible group of any possible action under consideration. The very specific involvement of these particular groups on this particular project makes early notification necessary.

Whether or not the County has complied with the GMA as to the substantive aspect of the code's adoption is not decided here because of the flaws in the public participation process. The manner of which Clark County adopted this code does not comply with the Act.

CRITICAL AREA CONSISTENCY

In the Final Order we noted that both Clark County and Vancouver had failed to review their critical area ordinances for consistency with the CP under RCW 36.70A.060(3). In Clark County's situation that involved only a wetlands ordinance because the remaining critical area

requirements had not yet been completed as of the date of the Final Order. The subsequent adoption by Clark County of those ordinances is the subject of a pending case. Clark County and Vancouver have shown that a review by staff, the PC and BOCC/Council took place that analyzed the existing critical area ordinances and the existing CPs. Petitioners contended that the ordinances in question were not consistent with the CPs. Our review of the record is to the contrary and we find both Clark County and Vancouver in compliance in the consistency review of their respective critical area ordinances. We reject petitioners' assertion that the County's wetlands ordinance must also be consistent with the vacant lands analysis. We do not find any such requirement in the GMA.

Petitioners also claimed that the requirements of RCW 36.70A.172(1) (best available science and special consideration for anadromous fish) applied. The statute by its terms does not apply to a consistency review. Rather it applies to the "designating and protecting" aspects of critical areas.

CAPITAL FACILITIES ELEMENT

In the Final Order we determined that Clark County's failure to include an inventory of existing capital facilities and otherwise comply with the requirements of RCW 36.70A.070(3) needed to be rectified. The County thereafter adopted by reference the CPs of the Clark County Public Utility District (CPU), Hazel Dell Sewer District (HDSD) and the City of Vancouver.

Vancouver's capital facilities element was included because a large amount of the UGA remains in County jurisdiction. The record thereafter consisted of the conclusions by staff that review of those plans satisfied the requirements of .070(3) and was consistent with the land use element of the County CP. This conclusion was reached in spite of the acknowledgment that the Vancouver capital facilities element was still in process as to the land outside of municipal boundaries but within the UGA, and a much greater population projection was now to be used.

The statement by staff concerning the now incorporated version of the capital facilities element is not supported by any discernible analysis. For instance, in discussing the use of the 416,000 population projection versus the original 361,000 population projection, the County relied on a 3 page convoluted explanation given to the BOCC by staff. Included in that explanation, which begins at p. 38 of the County brief, is an explanation concerning the transportation element. The

explanation consists of nothing more than an assertion by staff that the additional 55,000 population projection over the original, actually did contemplate this abundant population projection, even though staff had asserted at that time that the lower 361,000 population projection was being used. The explanation also noted that the Vancouver capital facilities element was “in process” concerning some major revisions. The bottom line to all of this was in spite of the significant increase in population projection planning the capital facilities element remained exactly as it had been. Such lack of analysis and incomplete data does not comply with the Act. An additional 2 ½ pages adopted by the remand ordinance that merely references the CPU and HDSO plans without analysis, and without analysis of a finished Vancouver capital facilities element, does not comply with the Act.

WATER AND STORMWATER

In the Final Order we noted that the County had made a significant study of water issues through its water plan incorporated into the CP. The County had also adopted “direct” concurrency requirements for water, sanitary sewer and storm drainage. We noted that once such concurrency requirements were adopted the GMA required that implementing DRs be imposed that prohibited new development from reducing previously established levels of service standards. In response to that finding of non-compliance the County reclassified its stormwater concurrency to “indirect”. CCC 13.25 requires any development that creates over 2,000 ft. of impervious surfaces to provide necessary stormwater treatment prior to the point of discharge to surface or ground water. The County also adopted Ordinance #1995-12-33 that lowered the standards for treatment of stormwater prior to reaching the point of discharge. None of these actions are sufficient to comply with the Act.

The County adopted additional policies concerning untreated stormwater runoff from existing developments. The FEIS noted that many of the potable water problems in southern Clark County are a direct result of lack of requirements for stormwater treatments when the developments were approved. The County has adopted a stormwater basin plan for the Burnt Bridge Creek area. The County has not implemented the plan yet, nor has the County addressed any of the stormwater issues for the remaining areas where water quality is being impacted by stormwater pollution from existing developments. The actions that were taken and the lack of

other actions leads to the inescapable conclusion that the inaction of the County does not comply with the Act with regard to stormwater issues.

RURAL/RESOURCE

Beginning at p. 26 of the Final Order and concluding at p. 32, we reviewed the resource buffering and rural lands decisions of Clark County. We specifically incorporate that discussion by reference into this Order. We do so because Clark County has refused to take any effective action to comply with the Act for buffering of resource lands and solving the rural lands problems of their own making. The record shows that the County took action that will make the situation worse. As we said at p. 42 of the Final Order in discussing the problems that many rural land owners found themselves in after adoption of the CP and DRs:

“We understand the expressed frustration that many of the site-specific petitioners had toward the predicament they found themselves. Those who did not take advantage of the County’s benign neglect between 1991 and 1994 now see their neighbors allowed unencumbered rights to load the landscape with incompatible uses. There are implementation measures the County could take to level this playing field and re-inject some fairness into the situation. Aggregation of the segregated lots, restrictions on lots under five acres in the vicinity of resource lands, and other vehicles are available. Whether the BOCC will adopt such measures remains to be seen. If they do not, the unfair position that many of the site-specific petitioners find themselves in will be perpetuated.”

The BOCC did not, and the unfair position remains. The County refuses to comply with the Act and is continuing to allow egregious violations of the goals of the Act in the rural and resource areas.

In providing direction for the County to achieve compliance, we stated that the following actions needed to be taken:

3. “Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of non-conforming 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”;...

Within the backdrop of this situation, Clark County amended its code (CCC) 18.302.060 to reduce rear and side setbacks for dwellings in the resource area from 200 ft. to 50 ft. The County increased the “buildability” of non-conforming lots by applying these reduced setbacks. Thus if anything the County, by this action, made available more building sites for residential purposes within the resource areas.

For urban-zoned lots that abut resource areas staff recommended increasing the landscaping buffer widths to 50 ft. for a single-family zone. The PC recommended that the maximum buffer also apply within multi-family zones. The BOCC did neither, but instead adopted an ordinance that would allow as little as 5 ft. of buffering (landscaping) between residential and resource lands. No attempt was made to change or make more difficult the continuing development of “urban-zoned lots” or “multi-family zones” in the rural areas. The County also amended CCC 18.302.095, which previously had permitted reconfiguration of existing non-conforming resource lots, to increase the ability of these non-conforming lots to have more residential buildings. Rather than find ways to limit or eliminate these non-conforming lots in resource areas, the County actually made the lots more attractive for residential development. For instance, the criteria to allow reconfiguration and reduction in size was increased from “buildable” to “reasonably buildable”, whatever that term may mean.

The County expressly decided that “a lot aggregation program would be ineffective and should not be pursued”. Most of the staff analysis involved setting forth reasons why various proposals suggested by petitioners and others would not work. Nothing in this record shows that the County ever considered or made proposals for techniques that would work.

The increase in minimum lot size north of the “rural resource line” (east fork of the Lewis River) was a classic example of manipulating figures and denying the need to comply. In what must have taken a significant amount of staff time, maps and tables were developed that reached a conclusion that only 8% of the potential “buffering” parcels north of the resource line would even be impacted by changing minimum lots sizes from 5 to 10 acres. The maps and tables only addressed parcels which were *adjacent to or within 100 ft. of resource lands*. The FEIS, prior

extensive staff reports and PC recommendations were directed at the entire rural landscape north of the resource line. To now draft this set of figures and hope that we would not notice the significant change in analysis is extremely disturbing and certainly not to the level of professionalism shown at the original hearing.

In any event, even if the conclusions were correct, the fact that some of the resource land buffering issues could still be addressed by increases in minimum lot sizes in this area is better than nothing. The attitude of Clark County now appears to be that since the area is already messed up, nothing can be done to save it. While that might be more true for the area south of the resource line the evidence in this record is that is not true for the area north of the east fork of the Lewis River.

Clark County has adopted a maximum population projection, maximum market factor, maximum vacant lands analysis and maximum urban growth areas. It must be consistent with that process by minimizing rural growth and doing anything and everything available to direct new growth into the urban growth areas. The rural growth protection of 25,071 does not provide for any new lots and only a 95% build-out of existing lots. Given the evidence contained in this record particularly the neglect of Clark County to take action from 1991 through 1994 for rural and resource lands, the current failure to take effective steps to conserve resource lands once they were designated and prevent the kind of sprawl in rural areas that the Act is designed to prohibit, the present rural zoning code DRs adopted at the time of the CP and as part of Ordinance #1996-05-01 substantially interfere with the goals of the Act and are found to be invalid under the test provided in RCW 36.70A.300. Specifically CCC 18.302, 18.303 and those sections of Ordinance #1996-05-01 relating to resource lands, rural lands and urban reserve areas are declared to be invalid. Those sections substantially interfere with goals 1, 8, 9 and 10.

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We have set forth findings of fact and conclusions of law with regard to the invalidity sections of this Order. We incorporate those by reference.

ORDER

In order to comply with the Act Clark County must take appropriate action to:

1. Include all property of the Ridgefield municipal boundaries within the UGA;
2. Eliminate the new “redesignated” UGA of the City of Camas and redesignate the area between Camas and Vancouver;
3. Adopt appropriate criteria to determine if and/or when UGA boundaries need to be moved;
4. Determine the proper designation of “non-prime” industrial lands outside the Vancouver UGA;
5. Eliminate all non-prime industrial designations within the urban reserve area;
6. Adopt development regulations to prohibit the conversion of prime industrial land to other uses;
7. Clarify or eliminate the “no net loss” industrial policy concerning both “prime” and “non-prime” industrial lands;
8. Eliminate any and all resource lands from the urban reserve area and place appropriate resource designations on the properties;
9. Adopt and implement a public participation process that complies with the Act for the commercial code;
10. Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of non-conforming lot sizes, as well as other techniques to reduce the impact of parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas;
11. Increase the minimum lot sizes of rural areas located north of the “rural resource line”;

12. Adopt effective implementing DRs for existing stormwater pollution.

13. Analyze and make appropriate changes to the capital facilities element taking into consideration the incorporated plans, the completed Vancouver capital facilities element and the increase population projection.

In order to comply with the Act, Ridgefield must take appropriate action to correctly designate and analyze all property within its boundaries.

The County is allowed 135 days to complete items 2 through 7. The County is allowed the full 180 days to complete items 1 and 8 through 13. Ridgefield is allowed the full 180 days to complete its reevaluation.

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

SO ORDERED this 1st day of October, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

FINDINGS OF FACT

Appendix I

1. The County has adopted the highest possible populations projections allowable by law.

2. The County has adopted a 25% market factor for residential and commercial areas within the UGAs.
3. The County has adopted a 50% market factor for industrial siting within the UGAs.
4. Ordinance #1995-12-19 and CCC 18.610.110 provide for expansion of UGAs into URAs. The criteria used allows for annual movement of the UGAs without adequate restrictions to prevent sprawl.
5. The established UGAs are very large and include maximum populations projections and maximum market factors.
6. The cities and Clark County have minimal density and infill regulations.
7. The County failed to adopt resource land and critical area designations (except for wetlands) by September 1, 1991, and did not do so until the CP adoption, December 1994.
8. The County did not have adequate rural lot sizes prior to the CP adoption in December 1994, and still does not have adequate minimum lot sizes in the rural area north of the east fork of the Lewis River.
9. The County has included thousands of acres of resource lands within the urban reserve area designations.
10. The purpose of the urban reserve area is to allow transition to urban development past the 2012 planning period. Designation and conservation of resource lands now designated within the urban reserve area will accomplish the same purpose. Placing such resource lands within urban reserve areas does not maintain and enhance natural resource based industries.
11. The County has allowed the rural areas to develop with a proliferation of 1 acre and 2.5 acre lots which are not conducive to resource-based industries.

12. The County has refused to adopt DRs that prevent incompatible uses from encroaching on resource land areas.

13. The County has refused to adopt techniques to buffer resource lands.

14. The County has refused to adopt techniques to reduce the impact of the tremendous number of parcelizations that occurred between 1991 and 1994 during the period the County had not complied with the September 1, 1991, designation and conservation requirements of the Act.

CONCLUSIONS OF LAW

1. The action of the County set forth in the findings of fact substantially interfere with the goals of the Act, specifically 1, 2, 8, 9 and 10.
2. CCC 18.302 is declared invalid under the test set forth in RCW 36.70A.300(2)(a).
3. The allowance of 5 acre minimum lot size north of the east fork of the Lewis River is declared to be invalid under the test set forth in RCW 36.70A.300(2)(a).
4. The allowance of resource lands to be included in the urban reserve area designations is found to be invalid under the test set forth in RCW 36.70A.300(2)(a).
5. Ordinance #1995-12-19 and/or CCC 18.610 is found to be invalid under the test provided in RCW 36.70A.300(2)(b).