

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

FRIENDS OF SKAGIT COUNTY,)	
)	No. 95-2-0075
Petitioner,)	
)	ORDER REGARDING
vs.)	DISPOSITIVE MOTION
)	
SKAGIT COUNTY,)	
)	
Respondent.)	
_____)	

On September 21, 1995, we received the above-referenced motion regarding Issues 4 and 5 of the prehearing order from Friends of Skagit County (Friends). On October 4, 1995, we received the County's response. The matter was heard on October 10, 1995.

DISCUSSION

Friends alleged that each issue involved a "failure to act" and therefore lent itself to challenge through a dispositive motion which could establish such a failure "using a limited record."

Issue 4 alleges that the County "failed to adopt development regulations to conserve mineral resource lands in areas not designated agricultural or forestry that are not covered by the Shorelines Master Program." Friends argued that County Ordinance 14.24.160 (Ex. 3) "provides no absolute protection" and that protection of mineral lands is permissive under this measure. They stated that "the Environmental Policy Ordinance (14.24.160) is not sufficient to provide the protection required by the Growth Management Act (GMA)."

The County argued that its 1 dwelling unit(du)/5 acre ordinance protects mineral lands until passage of a comprehensive plan because its purpose was to reduce sprawl and protect natural resource lands. The County stated that less than 5 percent of the mineral land was located outside forest and agricultural land and 50 percent of that was operating. They argued that the 1 du per 40 acre and 20 acre zones in forest and agriculture lands were more than adequate protection for the 95% of mineral lands located therein.

Issue 5 asks: "Did Skagit County fail to comply with the GMA because it excluded from agricultural and forest designation, those lands included in [interim] urban growth areas?" Friends argued that the inclusion of some mineral lands in urban growth areas proposed for adoption in the comprehensive plan constituted a failure to "designate and protect natural resource lands." The County argued that it is prohibited from

designating resource lands in interim urban growth areas “already established.”

CONCLUSION

The issues in dispute are more accurately characterized by the question “did the County act in compliance” rather than “did the County fail to act.” As such, the record required for review and decision is more extensive than limited.

ORDER

We reserve ruling on Issue 4 and 5 until following the Hearing on the Merits. The motion is denied.

So ordered this 31st day of October.

Les Eldridge
Presiding Officer

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member