BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

C.U.S.T.E.R. ASSOCIATION and DR. JOHN S. HRUBY, WATERSHED DEFENSE FUND and WHATCOM ENVIRONMENTAL COUNCIL,

Petitioners,

v.

WHATCOM COUNTY,

Respondent,

JIM & RUTH TRULL, husband and wife, TRILLIUM CORPORATION, a Washington corporation, LEE & BARBARA DENKE, CITY OF LYNDEN, CITY OF BLAINE, and CITY OF BELLINGHAM, MICHAEL and JEAN FREESTONE,

Intervenors.

No. 96-2-0008

FINAL DECISION AND ORDER

The establishment of a proper interim urban growth area (IUGA) under RCW 36.70A.110 is not simply an accounting exercise. Counties, in consultation with cities, "shall permit a range of urban densities and uses." Cities and counties are afforded discretion under the Growth Management Act (GMA, Act) "to make many choices about accommodating growth." The boundaries shall be "sufficient to permit urban growth projections. RCW 36.70A.110(2).

Nowhere is the GMA concept of regionality better exemplified than within the counties and cities in our jurisdiction. An urban growth area, and the densities within it, may look entirely differently in Vancouver than in Friday Harbor or Sumas. Diversity even within individual counties could well lead to different densities in Nooksak than in Bellingham. Thus, it is impossible to establish a standard average density per acre, or other mathematical baseline, to determine whether a county has complied with the Act in the sizing and/or location of an IUGA.

We recognize that some, if not many, local governments would prefer the predictability of a decision setting mathematical minimum standards. Nonetheless, the discretion and diversity afforded to local governments under the Act is of more paramount concern, and overrides the predictability aspect. That discretion is not absolute nor unfettered, however, but must be within the range of reasonable options directed by the goals and requirements of the GMA. *CCNRC v. Clark County*, WWGMHB #92-2-0001.

County-Wide Planning Policies (CPPs) play a major role in determining proper IUGAs. RCW 36.70A.210(3)(a) requires that CPPs shall address "policies to implement RCW 36.70A.110." IUGAs are part of the requirements of section .110. To conclude that CPPs were not intended to apply to IUGAs would lead to the result of requiring policies to address IUGAs, but then ignoring those policies. *Pt. Townsend v. Jefferson County*, WWGMHB #94-2-0006 *(Pt. Townsend).* CPPs must themselves comply with the Act. Using them cannot be a justification for failure to comply with the GMA.

The purpose of IUGAs, as evidenced by the language and legislative history of ESHB 1761, is to establish IUGAs at municipal limits and minimize their expansion until "a proper analysis of land capacity, existing and future capital facilities impacts, and existing and future fiscal analysis" has taken place. *Pt. Townsend*. This requirement does not shift the burden of proof to a county, but simply provides an analytic framework for a county to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used, or that it was used in a way that does not comply with the Act, is on a petitioner.

Whatcom County's history in attempting to comply with the Act relating to IUGAs is extensive. The initial deadline for establishment of IUGAs was October 1, 1993. Whatcom County did not meet that deadline. In *Watershed Defense Fund v. Whatcom County*, WWGMHB #94-2-0003, filed March 9, 1994, petitioners challenged the County's failure to act in accordance with RCW 36.70A.110(4). The County adopted an IUGA ordinance on May 24, 1994. We dismissed the original failure to act petition. On July 25, 1994, a new petition was filed by Watershed Defense Fund and Whatcom Environmental Council under cause #94-2-0009. A Final Order was entered November 9, 1994, finding that the County had not complied with the Act in the establishment of

IUGAs. A Compliance Hearing Order was entered February 23, 1995, in which the County conceded that no action to comply with the Act had been taken and none was contemplated. We recommended to the Governor that sanctions be imposed.

A later Compliance Hearing Order was entered December 28, 1995. It established Whatcom County's failure to even consider attempts to comply. It also held that invalidity was available and would be considered at a January 30, 1996, hearing. On January 23, 1996, the County Council passed two new identical IUGA ordinances, as an emergency (96-004) and as a regular ordinance (96-006). We shall hereafter refer to both as the Ordinance. The compliance hearing was rescheduled for February 28, 1996. We determined, by Order dated January 30, 1996, that the issue of whether development regulations (DRs) to prohibit urban growth outside the IUGAs complied would be the focus of the rescheduled compliance hearing. We also ruled that a new petition would need to be filed if there was a challenge to the size and/or location of the newly established IUGAs. Subsequently, we determined by Order dated March 29, 1996, that the required DRs to prohibit urban growth outside of IUGAs were not in compliance with the Act and in many instances were invalid under the test set forth in RCW 36.70A.300(2)(a).

On March 22, 1996, we received a petition from C.U.S.T.E.R. Association and one of its members, Dr. John S. Hruby (*C.U.S.T.E.R*). This petition challenged the IUGA established at or near the unincorporated area of Custer, Washington. On March 27, 1996, we received a joint petition from Watershed Defense Fund and Whatcom Environmental Council (*WDF*). This petition challenged all of the IUGAs established by Whatcom County. On April 1, 1996, we received a petition from Lee and Barbara Denke (Denke) which challenged the Ordinance because it failed to include their property within the Bellingham IUGA. The three petitions were consolidated as cause #96-2-0008.

On April 15, 1996, Whatcom County moved to dismiss the Denke petition for failure to file within 60-days after publication as required by RCW 36.70A.290(2). Determining that publication occurred on January 27, 1996, we granted the motion at the time of the prehearing conference.

On April 22, 1996, Jim and Ruth Trull (Trull) filed a motion to intervene. On April 29, 1996,

Trillium Corporation also filed a motion to intervene. After the prehearing conference on April 30, 1996, during which no objection was raised to the interventions of Trull and Trillium Corporation and the subsequent intervention request of Denke, an Order was entered May 22, 1996, granting intervention status to those three parties. Additionally, the cities of Bellingham, Lynden and Blaine were granted intervenor status. All of the intervenors supported the ordinances passed by Whatcom County.

The May 22, 1996, Order granted *amicus curie* status to potential intervenors Richards, Bartley and Martin. Written information was received from Bartley and Martin and considered herein. Nothing was received from Richards.

The May 22, 1996, Order also denied the request of 47 citizens to intervene. The citizen interventions were denied on a number of grounds including the lack of factual information provided in the request to intervene, and a determination that the existing parties could adequately represent the interest of the individual citizens. Prior to the Order, an opportunity for any of the 47 potential intervenors to factually supplement the initially deficient requests had been granted. Most of the potential intervenors declined that opportunity.

Subsequent to the entry of the May 22, 1996, Order, potential intervenors Michael and Jean Freestone (Freestone) appealed to Whatcom County Superior Court. Shortly before the July 23, 1996, Hearing on the Merits, the Superior Court ruled that error had been committed by excluding Freestone as intervenors. An Order was entered July 19, 1996, rescheduling the Hearing on the Merits to August 12, 1996, to provide Freestone with an opportunity to submit a brief and participate in the hearing. The hearing concluded August 13, 1996.

During the Hearing on the Merits we ruled on the admissibility of previously offered exhibits from *C.U.S.T.E.R.* and from Freestone. Exhibits 171 through and including 182 were admitted. We did not admit an affidavit by planner Jeff Griffin as offered by Whatcom County.

Much of the brief and oral argument from Whatcom County was premised upon the use of the new Office of Financial Management (OFM) projections released in January, 1996. The County's arguments were directed at population projections for the year 2015. The County

acknowledged that the Council had not yet made a decision regarding these updated population projections, but contended that the information was the most current available and should be used in evaluating the IUGAs.

The County had no right to rely upon the recent OFM projections for the year 2015 or even for the year 2010, as a rationale now for the establishment of its IUGAs. First, CPP #B-6 required that the County base its urban growth areas upon a population projection of 189,100 for the year 2010. That is what was done in the Ordinance. That projection and year was also in line with the draft Whatcom County Comprehensive Plan (CP) dated November 17, 1994, which was used by the Council as a basis for its IUGA analysis. A subsequent staff reallocation based on different projections that were not consistent with the CPPs and had not received approval from the County Council cannot be used as a rationale for the sizing of IUGAs. Thus, much of the County's argument in its brief and at the Hearing on the Merits was unpersuasive.

The Ordinance findings, and draft CP, recognized that some of the city requests for IUGAs were based upon population projections and analysis for the year 2015. Again, these analyses do not comply with the CPPs, nor with the GMA. In order to obtain the consistency required by the GMA, the County and each of its cities must start from the same point and follow the agreements set forth in the CPPs. Here, some of the cities were planning under one set of population projections for a particular year, while the County and other cities were planning under a different set of projections for a different year. Cities are required to adhere to the CPPs in the same manner that a county is. Not only must all IUGAs be "based upon" OFM projections, they must all be "based upon" the same OFM projections in order to comply with the GMA. The use of different OFM projections than called for in the CPPs would require an amendment to the CPPs for either the IUGAs or a subsequently adopted final UGA.

Two other general deficiencies were evident concerning the IUGAs. The first was the failure of Whatcom County to take into account growth that had occurred since the beginning of its base year of 1990 until 1995 when the IUGA was adopted. In its CPPs and findings attached to the Ordinance, the County acknowledged that it was planning for 52,000 additional residents by the year 2010. Obviously, since 1990 some of the 52,000 population expansion have reached Whatcom County. The County also recognized in its argument during the Hearing on the Merits,

that the population projection figures and analysis did not accurately represent the number of people in areas outside of IUGAs nor the number that were projected by year 2010. We found the same failure to analyze for existing growth and rural population expansion did not comply in *Achen v. Clark County*, WWGMHB, #95-2-0067. (*Achen*).

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 use 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.

A second general flaw in Whatcom County's analysis was the use of the draft CP as a basis for establishment of IUGAs. As we examined the record, we found that on some occasions, the draft CP was based upon another draft document. Candidly, these drafts upon drafts were not very persuasive evidence. Additionally, by adoption of a draft at this stage the County gives a very negative signal that public participation, on this part of the CP (which is ongoing at this moment), would not likely be very effective.

In the County brief at pg. 4, the County noted that ongoing updates (Ex. 65a) of the draft CP were incorporated into its arguments. As with the Griffin affidavit, these arguments relied upon information that was not available to the local government decision-makers at the time the decision was made. We have routinely disallowed such supplemental evidence because GMA requires us to base our decision on "the record," except in rare occurrences. The unfairness to local governments of having subsequent supplemental evidence admitted is merely the opposite side of the coin when local governments want to use this additional evidence to support their

decisions. We will not vary our general rule of not admitting such evidence simply because the County is the one requesting it.

We note further that the CPPs provide for a "market factor" of 1.5 directed to the population projections. This was not challenged as an issue by any of the petitioners. Normally, market factors are in the range of 25% and are applied to the land after a proper capacity analysis has been completed. Our failure to address this issue should not be construed by the County as compliance. As noted above, a CPP that is not in compliance with the GMA may not be used as a justification for a decision.

Pared to its essentials the establishment of an IUGA under RCW 36.70A.110 depends on 3 factors: the demand, established from OFM population projections; the current supply; and the cost of supplying public facilities (infrastructure) and services. The County established IUGAs contiguous to the cities of Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksak and Sumas. It also established IUGAs in unincorporated portions of the County in areas non-contiguous to any city. It divided its IUGA analysis into the three categories of industrial, commercial and residential. We review each of the three categories of IUGAs with regard to the issues of demand, supply and cost.

Industrial

A wide variety of figures estimating future demand for industrial lands in Whatcom County was presented by this record. Ex. 67 (DEIS) stated that only 350 acres of industrial land would be needed by the year 2010. Ex. 61 (Hebert Research Study, August 1995) provided three different methodologies to predict additional needed industrial land for the year 2010 which ranged between 1,300 acres to 2,400 acres.

During its argument the County asserted that based upon historical zoning patterns, a factor of 2.3 needed to be applied to the existing zoned land to determine an adequate demand analysis. There was nothing in this record to support that assertion. The assertion was also based upon the unsubstantiated premise that existing zoning for industrial land complied with the GMA.

There is nothing in this record, including the findings attached to the Ordinance which reconcile

the differences in the projected demand of industrial land between the 350 acres and 2,400 acres. As petitioner *WFD* pointed out, Ex. 61 was also based upon erroneous population projection assumptions. The demand factor analysis for industrial land does not comply with GMA.

More definitive information was available to determine the next analytical factor of supply. Ex. 80 (Industrial Lands Inventory, August 30, 1995), incorporated into Ordinance finding #27, stated that over 10,000 acres of industrially zoned land existed in the unincorporated portions of Whatcom County. 8,109 of those areas were located within the new non-contiguous unincorporated industrial IUGAs. An additional 5,000 acres of industrially zoned land was located within the individual cities and their IUGAs. Thus, the IUGA designations for both cities and the unincorporated county areas constituted a total of 13,109 acres. Even under the most generous forecast of demand in Ex. 61 (2,400 acres) there exists a supply in Whatcom County of greater than 450%. Such an excess supply as a basis for IUGAs does not comply with the Act.

The final analytical factor for IUGA siting is the cost associated with public facilities and services. This is the portion of the analysis that brings into consideration RCW 36.70A.110(3). Known by its shorthand term as the "tiering" aspect of IUGA locations, the statute provides that urban growth "should be" located first in areas characterized by existing urban growth with existing public facilities and services. Only after an examination and consideration of that area should a local government then examine the second area, i.e., one that is already characterized by urban growth that will later be served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of these first two locations should a local government place urban growth in the "remaining portions of the urban growth areas." The reason for this tiering provision is quite obvious. The further public facilities and services are required to extend from the core area, the more expensive they become. This is particularly true when such expansion includes leap-frogging over areas that are more cost effective for urban development. Public facilities and services are defined in RCW 36.70A.030(12)(13) to include streets, roads, water systems, storm and sanitary sewer systems, parks, recreational facilities, schools, fire protection, law enforcement, public health, education, recreation, etc. A much greater analysis of the cost of public facilities and services than merely sewer and water is required.

Ordinance finding #27 noted that only 99 acres of the 10,385 currently zoned industrial properties were served by water, sewer and all-weather roads. This record is completely devoid of any information or analysis of the cost of extension of public facilities and services to the 8,109 acres of industrially zoned unincorporated IUGAs. Some of the city adopted CPs included some cost analysis, but in the total context of the IUGAs designated here, that information was wholly insufficient.

Additional issues were raised about the light-impact industrial IUGA designation in the Custer area. Petitioner *C.U.S.T.E.R.* challenged the County's State Environmental Policy Act (SEPA) compliance and public participation compliance. According to Ordinance finding #31 the IUGA was designated because of a light-impact industrial zone change adopted in March 1995 for the area. That zoning amendment encompassed SEPA review and extensive public participation. The County specifically relied upon the previous zoning amendment SEPA review as its SEPA compliance for the IUGA designation. No threshold determination as required by WAC 197-11-310 was done for the Custer IUGA.

Earlier a supplemental EIS was prepared when other urban growth areas changed or were added. Neither the original EIS, nor the supplemental, included review of an IUGA designation at the Custer location.

The failure of the County to prepare a threshold determination is particularly fatal when coupled with the subsequent overturning of the rezone SEPA analysis by Whatcom County Superior Court. This failure to comply with SEPA appears very similar to the one noted in *North Cascades Audubon Society v. Whatcom County* WWGMHB #94-2-0001. We expect that when Whatcom County approaches its reexamination of IUGAs or its CP urban growth areas, if the Custer area is to be included that SEPA compliance will occur.

Likewise the problem with the public participation requirements of the GMA should also be rectified during reconsideration or comprehensive plan designations if urban growth in the Custer area is to be considered. The Ordinance was acknowledged by the County to be a response not to our earlier finding of non-compliance, but rather our December 14, 1995, Order holding that jurisdiction existed to invalidate existing zoning codes. Consequently a very limited public

participation and hearing time frame was adopted. On January 8, 1996, the planning commission forwarded a recommendation to the County Council which was based upon the draft comprehensive plan. The Council held its one and only public hearing on January 23, 1996. The planning commission recommendation did not include identification of the Custer IUGA. It became an item during a work session the day of January 23, 1996, for the first time. Although the Custer designation may have met the minimum legal requirements found in RCW 36.70A.100, it did not comply with the GMA requirements of effective public participation. *Port Townsend; Friends of Skagit County v. Skagit County* WWGMHB #95-2-0075. The action also failed to comply with CPP #A-3 that: "Citizens shall be notified in a timely manner of opportunities to have input in key decision points in the planning process."

Commercial

The only reference in the record regarding commercial land demand projection is contained in Ex. 61. Even assuming the methodology of the study was correct (a determination we do not now make), the conclusion of the study was that a total demand of 1,180 acres of commercial land existed for the entire Whatcom County area, including cities.

Beginning at pg. 7 of the County brief, the existing commercially zoned acreage within unincorporated IUGAs (those not associated with or contiguous to cities) included 486 acres scattered throughout the County (Ordinance finding #24), 480 acres in the Birch Bay IUGA (Ordinance finding #18), 20 acres in the Sudden Valley IUGA (Ordinance finding #19) and 316 acres in the Point Roberts IUGA (Ordinance finding #21) for a total of 1302 acres. Ex. 61, upon which the County so heavily relied stated that of the 2,830 commercially zoned acres throughout the County some 2,066 were contained within city limits. The study stated that the commercial acreage data was compiled "by Whatcom County's planning department". It is clear that Whatcom County had not even determined what commercial acreage was in existence at the time the IUGAs were established. This flaw is exacerbated by the acknowledgment at pg. 7 of the County brief that there was absolutely no information ever presented to the County Council regarding "how much of this acreage is developed". Thus there is insufficient analysis of the available supply of commercial land.

At whatever figures the County may have relied upon to determine demand, there exists almost

twice as much commercial land within contiguous city IUGAs as needed. The non-contiguous additional 1,300 acres, as the County brief characterizes them, are "small and scattered". There is a total failure to analyze why there is a need to expand any of these "small and scattered" unincorporated non-contiguous commercial areas.

Perhaps the most striking example of the lack of compliance for commercial IUGAs is found in Ex. 44, a compilation of the "Guide Meridian" land use and traffic study. The "Guide" is a major arterial connecting the Canadian border through Lynden with Bellingham, Bellis Fair Mall and I-5. Ex. 44 stated that only 26.3% of the existing commercially zoned land along the Guide was actually in commercial use. While there was only 3.1% of the Guide corridor zoned General Manufacturing, 11.9% of that zoned area was currently in agricultural use. Overall while only 54% of the Guide corridor was zoned agriculture, almost 60% was currently in agricultural use.

As was the case with the industrial IUGA designations there was absolutely no cost analysis prepared, presented to or considered by the County Council in determining whether these commercial IUGAs were appropriately located. None of the commercial IUGA designations either contiguous to the cities or in the unincorporated non-contiguous areas comply with the GMA because of the lack of information and analysis of supply and demand and/or cost.

The industrial and commercial IUGAs are also inconsistent with many other CPPs. For example CPP #B-1 directed that "Whatcom County shall primarily become a government of rural areas in land use matters directed towards agriculture, forestry and other natural resources." CPP #B-5 provided in part:

> "…existing, unincorporated areas which include urban residential, industrial, or commercial development, such as, but not limited to, Cherry Point, Maple Falls, Sudden Valley, and Glacier, *may in-fill subject to adequate services*." (emphasis supplied)

CPP #F-7 provided that as part of a broad based economy, "productive timber, agriculture and fisheries industries should be maintained in a sustainable manner."

An indication of what appear to be the driving considerations in Whatcom County's over-designation of IUGA's for industrial and commercial areas are found in Ordinance findings #32 and #42. Finding #32 stated in part that the Council considered it necessary in the long term to

create "additional industrial zoning to enhance the tax base of rural school districts." Given the existing oversized industrial designations, it is unimaginable that additional industrial designations could ever comply with the GMA. We remind Whatcom County of the statement made in *Port Townsend* at pg. 20 about the revenue issue:

> "…However, the Growth Management Act signals the end of land use planning solely for revenue purposes and the tax revenue issue must be addressed in a different forum…"

The Legislature has clearly determined that revenue is no longer the driving force nor even an appropriate criterion upon which to make land use planning decisions. CPP #I-1 provides that the County is encouraged to adopt impact fee ordinances "to ensure that new growth pays its fare share of the costs of capital facilities," including schools. The County has not adopted any impact fees to assist "rural school districts".

The second driving force is found in Ordinance finding #42 and relates to "private property rights" issues. The finding first states that citizens of Whatcom County did not support "downzoning". Even accepting the veracity of that conclusion, that fact alone does not justify a refusal to comply with the Act. We note that the County's reluctance to "downzone" is not equated with any reluctance to "upzone". While it is certainly appropriate to consider these property rights issues, they cannot be elevated to the level adopted by the County of disregarding all other goals and requirements of the Act. Whatcom County is not unique in having citizens complain of a change in planning required by the Act. Such complaints do not absolve the County of its responsibilities under the GMA.

<u>Residential</u>

The IUGAs contiguous to cities were all based upon calculations under the new OFM projections and for the year 2015. Consequently they suffer the same lack of compliance with the GMA and with the CPPs as noted in the industrial section above. The record further demonstrated unequivicalably that the residential IUGAs contiguous to cities do not comply with the GMA because they include too much area and include areas that are inappropriate for IUGA designations. Additionally they include no provisions for infilling as required by the CPPs and by GMA.

Initially, Ordinance finding #17 stated that some 9,279 acres of property were contained within

the residential IUGAs throughout the County. Ordinance finding #38 noted that of this amount approximately 1,759 acres involved lands presently zoned for agriculture and an additional 120 acres involved mineral resource lands. As will be shown below, particularly in the Sumas IUGA, the IUGA designations also included floodplain areas.

In *Port Townsend* we noted that the legislative scheme for growth management planning involved first a designation and then conservation/protection of resource lands and critical areas. Only after this has been accomplished does the Legislature direct that IUGAs be established. We concluded in *Port Townsend* that a local government would have a difficult hurdle to overcome if the legislative sequence was not followed. Whatcom County does not have a resource lands ordinance nor a critical area ordinance that complies with the GMA. In fact, parts of the critical area ordinance was found to substantially interfere with the goals of the Act. Given that Whatcom County has included resource and critical area land in the IUGA designations without even acknowledging their appropriateness for conservation/protection, the County certainly has not shown a valid reason why the IUGAs came first. Therefore, the out of sequence action does not comply with the GMA.

Petitioner *WFD* contended that the failure to have a compliant critical areas ordinance equated with the inability of the County to adopt any IUGAs outside existing municipal limits "as a matter of law". We disagree. Nonetheless a foundational compliant critical area and resource land ordinance is necessary under the evidence shown in this record before expansion of "interim" urban growth areas can be considered.

The IUGAs also did not follow the precepts of CPP #B-12 which states that "existing cities should absorb additional density before establishing or enlarging of urban growth areas which may have impacts on rural, critical area, and resource lands." None of the IUGAs has a single policy or DR regarding infilling (absorbing additional density). At the most generous view of the evidence in favor of Whatcom County, at year 2010 the IUGAs will end up with densities only slightly greater than exist today. This lack of intensification, independently of the CPPs, fails to comply with the Act.

As egregious examples of the lack of compliance with GMA we look first towards the Blaine

IUGA. We recognize that Blaine has some unique circumstances. First is its adjacency to the U. S./Canadian Border. Second the municipal boundaries of the Semiahmoo area are unconnected except through water with the main Blaine municipal limits. Nonetheless, the County established what can only be described as an incredibly oversized IUGA for Blaine and rationalized that decision on two grounds. First there needed to be a landward connection of the "main" Blaine city limits with the Semiahmoo area and second Blaine desired to have its aquifer located within the IUGA in order to better protect it.

Without comment about the adequacy of the County's protection of this critical aquifer recharge area under an invalid critical areas ordinance, the analysis for including it within the Blaine IUGA falls on its own merits. Both the County and Blaine agreed that until the area was annexed it would in any event continue within County jurisdiction for GMA planning purposes. While the County alleged that there was an interlocal agreement being prepared (apparently not even in sufficient draft form to be considered by the County Council) nothing about the establishment of an interlocal agreement for protection of this aquifer recharge area should depend upon its inclusion in an IUGA.

It is also clear from this record that more than sufficient acreage exists within municipal limits well beyond the year 2010 planning period to absorb the population suballocation for Blaine. The record established that much more area exists within the existing Blaine city limits than could ever be reasonably needed for long range population projections, much less those on an interim basis. A recent annexation provided more than ample area. The annexation itself is somewhat surprising given that the ordinance upon which it was based was found to fail to comply with the Act in 1994, and the annexation took place in 1996.

The land connecting of Blaine with Semiahmoo analysis also fails to comply. Both the County and Blaine acknowledged that none of that area would ever expect to be urbanized over the next 20 years. The GMA does not allow designation of areas for "urban growth", especially on a "interim" basis, where no urban growth is expected within the planning period. As with the industrial and commercial IUGAs there was nothing in the record that the County Council relied upon to analyze what the inclusion of these unnecessary additional areas would cost in the way of urban facilities and services.

Another egregious example of the failure to comply with the Act is found in the Sumas IUGA. Once again, surprisingly, after a finding of IUGA non-compliance, the City of Sumas was allowed to annex some 70 acres of land in 1995. The record demonstrates that the newly annexed area is able to accommodate all of the projected population growth through year 2010. Nonetheless, the County added some 242 residential acres to the IUGA which would cause decrease in density from 1990 through 2010. The County argued that such a decrease was explained because only 41 of the 242 additional acres were "developable". This rather astonishing placement of 200 acres of non-urban area within an IUGA is certainly not in compliance with the Act. Much of the area appears to be part of the 1,759 acres presently zoned for agriculture shown by Ordinance finding #38 and Ex. 66. Ordinance finding #9 stated that the area is thought to be inappropriately designated as floodplain by the City of Sumas, but that completion and adoption of a flood study for the area would be required prior to inclusion in the "final" urban growth boundary. Under these conditions there is no rationale for inclusion of the area within an "interim" urban growth boundary.

Another egregious example of the IUGA lack of analysis is demonstrated by the "Geneva" area of the Bellingham IUGA. The record demonstrated that water resources and watershed impacts in the Geneva area had reached critical deficiencies. The City acknowledged the same by directing that a "study" should be undertaken. Nonetheless the area was designated for urban growth through an "interim" growth area ordinance. The designation disregarded CPP #B-11 that requires designations of "urban growth areas in a way that *minimizes* impacts on agriculture land, forestry, mineral resources, watersheds, water resources and critical areas."

This failing is also one that applies to the Sudden Valley IUGA and its existing and potential impacts on Lake Whatcom. The simple fact that portions of the Sudden Valley area are already vested does not justify the expansion of urban growth where it is not appropriate or needed, especially on an interim basis.

All of the County non-contiguous residential IUGAs are located in areas which are clearly not adequately served with public facilities and services. Much of the acreage does not even involve residential "urban" growth. Nothing in this record indicates that any analysis of the cost of

providing public facilities and services to these areas was even considered. The County's argument that the areas would not be allowed to develop to greater than one dwelling unit for five acres until service by water and sewer was available, misses the point entirely. "Urban" growth areas are those which are already urbanized or adjacent to already urbanized areas and which have adequate public facilities and services in place or planned. These scattered residential areas which have serious public facility and services deficiencies are not allowed by the Act to be developed at urban levels especially in the "interim" until those deficiencies have been resolved, funding has been established and a need to include expansion of them for future population is shown. None of that analysis is contained in this record.

Invalidity

The often scattered, inadequately served, non-contiguous, industrial, commercial and residential IUGAs in Whatcom County substantially interfere with the goals of the Act particularly goals 1, 2, 8 and 10. The reasons for that substantial interference have been set forth herein and in the attached Findings of Fact and Conclusions of Law which are incorporated by reference. The IUGAs which are contiguous to Blaine and Sumas and the Geneva portion of the Bellingham IUGA substantially interfere with those same goals and are invalid. These IUGAs are based upon a totally flawed analysis of need, questionable analysis of supply and no analysis of cost. Because the substandard analysis is based upon proposed or draft comprehensive plan sections, it is questionable whether adoption of similar locations as final or comprehensive plan urban growth areas without further information and analysis would remove the invalidity or comply with the Act.

ORDER

Ordinances #96-004 and #96-006 do not comply with the Growth Management Act. The IUGAs for industrial, commercial and residential urban development that are not contiguous to any city are found to be invalid under the test set forth in RCW 36.70A.300(2)(a). The IUGA locations outside of the current municipal boundaries of the City of Blaine and of the City of Sumas are also found to substantially interfere with the goals of the Act and are therefore invalid. The "Geneva" portion of the Bellingham IUGA also substantially interferes with the goals of the Act and is declared to be invalid.

This is a Final Order for purposes of appeal.

DATED this 12th day of September, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
William H. Nielsen
Board Member

_____
Les Eldridge
Board Member

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Nan A. Henriksen
Board Member

FINDINGS OF FACT

Appendix I

1. Whatcom County adopted identical Ordinances #96-004 and 96-006 on January 23, 1996. The Ordinances will be referred to in the singular hereafter.

2. The Ordinance was based upon a total lack of information concerning cost of public facilities and services for the non-contiguous county IUGAs.

3. The non-contiguous county IUGAs for industrial areas were not based upon any reasonable analysis of demand and/or current supply. The designations are locationally inappropriate. Most of the non-contiguous industrial IUGA designations are not served by adequate public facilities and services.

4. The commercial non-contiguous IUGAs were not supported by analysis as to demand, supply and/or costs of public facilities and services.

5. The Blaine IUGA outside of municipal limits is oversized. Allocated population projections can easily be accommodated within the existing municipal boundary. The IUGA includes areas that are not going to have urban development during the planning period. The inclusion of the critical aquifer IUGA is not supported by GMA rationale.

6. The Sumas IUGA outside of municipal limits includes areas that are agricultural resource lands and critical areas. They also include approximately 90% non-developable areas because of location within a floodplain. Allocated population projections can easily be accommodated within municipal boundary. There is no analysis of the cost of public facilities and service for the IUGA area.

7. The Geneva area of the Bellingham IUGA has significant deficiencies in water resources. There is no demonstrative analysis concerning a need for an IUGA in this area, nor recognition of the costs of solving the water deficiencies.

8. The above noted IUGAs constitute sprawl; are not in locations adequately or efficiently served with public facilities or services; and interfere with the conservation of resource lands and the protection of critical areas, and enhancement of the environment and water resources.

CONCLUSIONS OF LAW

1. The non-contiguous IUGAs in their entirety, the IUGAs outside the existing municipal boundaries of Blaine and Sumas and the IUGA for the Geneva area of the Bellingham IUGA are invalid under RCW 36.70A.300(2)(a).