

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

HOWARD A. PELLETT and CAROL L. PELLETT, )	)	No. 96-2-0036
Petitioners, )	)	
vs. )	)	FINAL DECISION
	)	AND ORDER
SKAGIT COUNTY, )	)	
Respondent, )	)	
and )	)	
) )	)	
WINSTON and ELAINE ANDERSON, )	)	
Intervenors. )	)	
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**introduction**

On December 23, 1996, the Western Washington Growth Management Hearings Board (Board) received a petition for review from Howard A. and Carol L. Pellett. The petition alleged that Skagit County failed to comply with Chapter 43.21C RCW (SEPA) and Chapter 36.70A RCW (GMA) when it adopted Ordinance 16331. Petitioners allege that the County violated SEPA because it did not perform a threshold determination prior to adoption of Ordinance 16331. Petitioners further allege that the County violated GMA because it did not submit a draft of Ordinance 16331 to the Department of Community, Trade and Economic Development (CTED) prior to adoption. Winston and Elaine Anderson intervened on behalf of Skagit County.

Ordinance 16331, adopted on October 23, 1996, is the latest ordinance related to the County's natural resource lands. Ordinance 16331 amended Ordinance 16291, adopted on September 17, 1996. Ordinance 16291 amended Ordinance 16287, adopted on September 11, 1996. Ordinance 16287 was adopted in response to the Board's Order in *Friends of Skagit County v. Skagit County*, WWGMHB Case No. 95-2-0075 (January 22, 1996).

## **procedural history**

A Prehearing Conference was held on January 30, 1997. The Hearing on the Merits was held on May 2, 1997, at the Skagit County Administration Building. Presiding Officer Nan Henriksen and Board Member Les Eldridge were present. Board Member William Nielsen did not participate in this decision. Petitioners were represented by David Bricklin. The County was represented by John Moffat, Chief Civil Deputy. Intervenors were represented by Jonathan Sitkin. The court reporter was Julie Mills.

At the Hearing on the Merits, the Presiding Officer ruled on Skagit County's Motion for Order Allowing Additional Evidence into the Record. The Board took official notice of proposed exhibits 142 (Resolution 16286), 143 (Resolution 16369), 144 (Resolution 16370), and 145 (*Pellett v. Skagit County*, Whatcom County Superior Court Cause Number 96-2-02277-9 (Land Use Petition – Anderson Rezone)). The Board admitted proposed exhibit 146 (transcript of September 17, 1996, Skagit County Board of Commissioners public meeting).

## **discussion and conclusions**

### **ISSUE 1: Whether Skagit County's adoption of Ordinance No. 16331 was in compliance with Chapter 43.21C RCW (SEPA).**

Ordinance 16331 amended Section 1 of Ordinance 16291 as follows:

[Ordinance 16291] Natural Resource Lands Map. The Natural Resource Lands map attached to this Ordinance as Attachment B is hereby adopted as an amendment to the Official Zoning Map for Skagit County. The lands on Attachment B designated as Agriculture, Rural Resource, Industrial Forest, Secondary Forest and Mineral Resource Overlay are hereby designated as such pursuant to RCW 36.70A.060 and .170. Those lands shown on Attachment B as "Non-Resource" shall retain their existing zoning designation at least until completion of the County's GMA planning process.

[Ordinance 16331] Natural Resource Lands Map. The Natural Resource Lands map attached to this Ordinance as Attachment B [to Ordinance 16291] is hereby adopted as an amendment to the Official Zoning Map for Skagit County. The lands on

Attachment B designated as Agriculture, Rural Resource, Industrial Forest, Secondary Forest and Mineral Resource Overlay are hereby designated as such pursuant to RCW 36.70A.060 and .170. Those lands shown on Attachment B as “Non-Resource” are not changed from their existing zoning designation by adoption of this Ordinance [16291].

(Emphasis added to show amended language.)

If the new language substantively amended Ordinance 16291, then the County was required to make a SEPA threshold determination before it adopted Ordinance 16331. *See* WAC 197-11-310 (1) *and* RCW 43.21C.030(2)(c). On the other hand, if the new language did not substantively amend Ordinance 16291, and Ordinance 16331 was only a procedural action, then the County’s action is categorically exempt and no SEPA threshold determination was required. WAC 197-11-800(20). Ordinance 16331 is a procedural action if it contains “no substantive standards respecting use or modification of the environment.” WAC 197-11-800(20). In other words, a SEPA threshold determination was not necessary if Ordinance 16331 did not change the meaning of Ordinance 16291.

Petitioners argue that Section 1 of Ordinance 16291 unambiguously imposed a prohibition on rezones and that Ordinance 16331 amended Section 1 to remove this prohibition. Such an amendment clearly would be substantive and subject to a SEPA threshold determination. The County and Intervenors argue that Section 1’s language is ambiguous and could be interpreted as creating a new zoning classification of Non-Resource lands and as prohibiting the County from considering rezone requests which would not otherwise be precluded by law. Neither of these interpretations were intended by the County. *See* Ex. 139 (Ordinance 16331), at 1. The County argues that Ordinance 16331 merely clarified the intent of Ordinance 16291 and its adoption did not substantively alter Ordinance 16291.

“Ambiguity exists if reasonable persons can find different meanings in a statute, document, etc.” Black’s Law Dictionary 52 (6<sup>th</sup> ed. 1991). One reasonable interpretation is that Section 1’s original language prohibits all rezones “at least until completion of the County’s GMA planning process.” However, a prohibition on rezones is not the only possible interpretation. Also reasonable is an interpretation that Section 1’s original language ensures that lands which had natural resource type zoning classifications, but which were located outside of Natural-Resource designated lands, would retain their existing zoning classification. Section 1’s original language can also be reasonably

interpreted as creating a new zoning classification, “Non-Resource” lands. Section 1’s original language is ambiguous.

Because Section 1’s original language is ambiguous, legislative intent must be ascertained and given effect. *Anderson v. Seattle*, 78 Wn.2d 201, 202 (1970). If the County intended Section 1 to prohibit rezones, then Ordinance 16331 substantively amended Ordinance 16291. The Board is “not at liberty to speculate on legislative intent when the legislature itself has subsequently placed its own construction on prior enactments. *Anderson*, at 203. Here, the County’s “subsequent construction” by the adoption of Ordinance 16331 was taken five weeks after the adoption of Ordinance 16291 by the same individuals who took the original legislative action. Such quick action by those Commissioners who adopted the original ordinance supports the County’s claim that Ordinance 16331 was adopted to correct an ambiguity in Ordinance 16291.

The County’s intent is also revealed in transcripts of the Board of County Commissioners’ meetings regarding the adoption of Ordinance 16331. At the October 8, 1996 meeting, staff advised the Commissioners that the proposed new language would “clarify what zones we were worried concerned about that we wanted to keep and not do anything with until we’re done with the process.” Commissioner Hart responded “that was [our] intent all along because we had some Ag Reserve and what have you that would have been without zoning.” Ex. 134, at 3. At the October 23, 1996 hearing, Commissioner Hart stated “As I understand it, when we passed [Ordinance 16291], what we were saying there was some ag land and some . . . forest lands that were not included in the new resource lands and those lands were going to remain in their present zoning . . . until their rezone.” Ex. 137, at 2. At that hearing, Commissioner Hart moved to approve Ordinance 16331 as “keeping with the intent we had at the time we passed the Natural Resource Ordinance and it does directly reflect our intent in that ordinance.” Ex. 137, at 4.

Ordinance 16331 is titled “CLARIFYING AND CORRECTING SECTION 1 OF ORDINANCE NO. 16291 RELATING TO NATURAL RESOURCE LANDS.” The WHEREAS clauses of Ordinance 16331 explicitly speak to the intent of Ordinance 16291:

WHEREAS, it was the intent of Section 1 of Ordinance No. 16291 that the Ordinance, by referring to certain lands as “Non-Resource” lands in the map . . . not be creating a new, independent zoning classification of “Non-Resource” lands; and

WHEREAS, the last sentence of Section 1 of Ordinance 16291 had the unintended

effect of barring consideration by Skagit County of rezone requests to zoning classifications which would not otherwise be precluded by law; . . . .

Ex. 139, at 1.

Petitioners argue that language of previous ordinances shows that the County's intent was to prohibit rezones. Ordinances 16075 and 16211 contained language that clearly prohibited some, but not all, rezones. Section 2 of Ordinance 16211 provides:

As of the date of this ordinance and until the County completes adoption of its new comprehensive plan and development regulations as required by the Growth Management Act Skagit County will not accept or process applications for rezones or Comprehensive Plan amendments to [certain listed zones].

Ex. 142, at 6 (emphasis added). The above language demonstrates the County's ability to articulate a prohibition on rezones. The County did not articulate such a prohibition on rezones in Ordinance 16291.

The Board agrees with the County that Ordinance 16331 clarifies the intent of Ordinance 16291. Consequently, the amendments adopted in Ordinance 16331 are procedural, not substantive, and no SEPA threshold determination is necessary.

### **Conclusion – Issue 1**

Ordinance 16331 clarified ambiguous language in Ordinance 16291; Ordinance 16331 did not substantively amend Ordinance 16291. The County's action in adopting Ordinance 16331 was a procedural action, categorically exempt from SEPA's threshold determination requirement. The County did not violate SEPA.

### **ISSUE 2: Whether Skagit County's adoption of Ordinance No. 16331 was in compliance with RCW 36.70A.106(3).**

RCW 36.70A.106(3) provides in part:

Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall

be submitted to [CTED at least sixty days prior to final adoption].

CTED interprets this provision “as inapplicable to interim regulations for natural resource lands and critical areas, and to regulations or amendments which are merely procedural or ministerial.” WAC 365-195-820 (emphasis added).

As discussed above, Ordinance 16331 was merely a procedural amendment. Under CTED’s construction of .106(3), the County was not required to submit the ordinance to CTED prior to adoption. The Board agrees. Ordinance 16331 did not substantively change Ordinance 16291. RCW 36.70A.106(3) did not require the County to submit Ordinance 16331 to CTED prior to its adoption.

### **Conclusion – Issue 2**

Ordinance 16331 made a procedural amendment to Ordinance 16291. Ordinance 16331 did not substantively amend Ordinance 16291. RCW 36.70A.106(3) did not require the County to submit Ordinance 16331 to CTED prior to its adoption.

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### **conclusion**

When the County adopted Ordinance 16291, it contained ambiguous language that could be construed contrary to the County’s intent. To remove this ambiguity and give effect to its intent, the County adopted Ordinance 16331, amending the language of Ordinance 16291. This amendment was merely procedural and did not substantively change Ordinance 16291. Such amendments are categorically exempt from SEPA’s threshold determination requirement and are not subject to GMA’s requirement to submit proposals to CTED prior to adoption. The County has not violated Chapter 43.21C RCW or RCW 36.70A.106(3).

### **ORDER**

The County did not violate Chapter 43.21C RCW or RCW 36.70A.106(3) when it adopted Ordinance 16331.

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

So ORDERED this 2nd day of June, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS  
BOARD

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Nan A. Henriksen  
Board Member

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Les Eldridge  
Board Member

**appendix**

**Findings of Fact**

1. Skagit County adopted Ordinance 16287 in response to the Board's Order in *Friends of Skagit County v. Skagit County*, WWGMHB Case No. 95-2-0075 (January 22, 1996). The County amended Ordinance 16287 when it adopted Ordinance 16291. The County adopted Ordinance 16331 to correct and clarify ambiguous language in Section 1 of Ordinance 16291.
2. The language adopted by Ordinance 16331 does not change the meaning of Ordinance 16291; the amended language more clearly states the County's intent that the zoning classification of those lands located outside of Natural-Resource Lands would not be affected by the adoption of Ordinance 16291.
3. Ordinance 16331 is a procedural amendment to Ordinance 16291.

From the foregoing findings of fact we make the following:

### **Conclusions of Law**

1. The County's action in adopting Ordinance 16331 was a procedural action, categorically exempt from SEPA's threshold determination requirement. The County did not violate SEPA.
2. Ordinance 16331 was merely a procedural amendment. RCW 36.70A.106(3) did not require the County to submit Ordinance 16331 to CTED prior to its adoption.