

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

SHERILYN C. WELLS, et al.,)	
)	No. 97-2-
0030c	Petitioners,)
	vs.) FINAL DECISION
) AND ORDER
WHATCOM COUNTY,)	
)	
	Respondent,)
)
	and)
)
MICHAEL and JEAN FREESTONE, et al.,)	
)	
	Intervenors.)
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I. INTRODUCTION

These proceedings include review of portions of Whatcom County’s comprehensive plan (CP) and development regulations (DRs) that are under a determination of invalidity and of provisions of the CP and DRs that are not under invalidity. For those portions under invalidity, the County has the burden of demonstrating that the amended provisions will no longer substantially interfere with the fulfillment of the goals of the Growth Management Act (GMA, Act). RCW 36.70A.320(4) (1997). If the County meets this burden, the amendments are presumed valid and the burden becomes Petitioners’ to show the County’s action is not in compliance with the requirements of the Act. RCW 36.70A.320(1)-(2). The Board “shall find compliance unless it determines that the [County’s] action is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” RCW 36.70A.320(3). For the Board to find the County’s action clearly erroneous, Petitioners must “persuade us to a point where we form a definite and firm conviction that a mistake has been made.” *Clark County Natural Resources Council v. Clark County*, WWGMHB #96-2-0017, Compliance Order (Dec. 2, 1997), at 5.

II. SYNOPSIS OF THE ORDER

Whatcom County has made substantial progress toward compliance with the GMA in its adoption of a CP. We found compliance and we rescinded invalidity in a number of areas. We expect that the County will exercise continued energy in addressing those portions of the plan that remain under invalidity or in which we found noncompliance.

Regarding urban growth areas, we did not rescind invalidity for the Geneva Area of the Bellingham Urban Growth Area (UGA). Invalidity was also continued for the aquifer recharge area and the Drayton Harbor area of the Blaine UGA but the remainder, including the road right-of-way, was found to be compliant and not substantially interfering with the GMA. We found the Sumas UGA as well as those for Ferndale, Lynden, Nooksack, and Everson complied with the Act. We continued invalidity for the long-term planning area (LTPA) of the Birch Bay UGA but rescinded invalidity and found compliant the short-term planning area (STPA). We found the Custer UGA no longer substantially interferes with the Act and is in compliance. We found the Cherry Point UGA in compliance with the Act.

Regarding rural areas, with the exception of Point Roberts and Deming, which we found compliant and no longer substantially interfering with the goals of the Act, we did not rescind earlier findings of invalidity. We continued invalidity regarding DRs.

In regard to natural resources, we found the agricultural land section in compliance with the exception of the overlay provisions. Forest lands and mineral lands we found to be in compliance.

Public participation efforts of the County we found to be in compliance.

Petitioners failed to meet their burden of proof regarding all other issues.

III. PROCEDURAL HISTORY

On May 27, 1997, pursuant to 36.70A RCW and by its own declaration, partially in response to findings of invalidity entered in Cases #94-2-0009 and #96-2-0008, Whatcom County adopted a CP and associated DRs. The respective histories of those cases are found in the March 29, 1996, Third

Compliance Order, Case #94-2-009 (rural areas), the September 12, 1996, Final Order in Case #96-2-0008 (IUGAs), and in the Order Re: Invalidity in both these cases entered July 25, 1997.

On October 29, 1997, a motions hearing was held in this case at the Department of Corrections, Olympia, Washington. On November 5, 1997, an order was entered regarding those motions to intervene, join cases, and dismiss certain parties. On December 10-11, 1997, a hearing on the merits was held at the Whatcom County Courthouse, Bellingham, Washington. Rulings were entered on motions to reconsider rulings on additions and supplements to the record and on motions to strike briefs. Petitioner Wells' motion regarding additions to the record concerning Birch Bay was granted and materials assigned Index #26-001. City of Blaine's motion regarding the Silverman background papers was granted and materials assigned Index #15-034. Whatcom Water District #10's motion regarding the final environmental impact statement was granted and the materials assigned Index #15-033. All other motions were denied or deferred.

Present for the Board were members Les Eldridge (presiding) and Nan Henriksen; and Andrew S. Lane, Hearings Examiner. Daniel Gibson, Chief Civil Deputy Prosecuting Attorney and Alexander Mackie represented Whatcom County. Also present were Kurt Denke representing petitioners Lee and Barbara Denke; Sherilyn Wells, *pro se*; David Bricklin representing Whatcom Resource Watch; Intervenors Michael and Jean Freestone; Samuel Plauché and Amy Kosterlitz representing Trillium Corporation and Semiahmoo Company; Melody McCutcheon representing the City of Blaine; Robert Carmichael representing Birch Bay Water and Sewer District; Lesa Starkenburg-Kroontje representing Whatcom Sand and Gravel Association; Robert Tull representing Sudden Valley Community Association; Curtis Smelser representing Jim and Ruth Trull; and Dawn Sturwold representing the City of Bellingham.

On January 14, 1997, Petitioner Denke filed a Withdrawal of Issue and Request for Relief of Petitioners Lee and Barbara Denke. Consequently, we will not address the issue raised by this Petitioner.

IV. UGAs

Background

In Case #96-2-0008, the Board invalidated all of the County's interim urban growth areas (IUGAs) not contiguous to municipal boundaries; the IUGAs outside the municipal boundaries of Blaine and Sumas; and the IUGA for the Geneva area of the Bellingham IUGA. *C.U.S.T.E.R. Association v. Whatcom County*, WWGMHB #96-2-0008, Final Decision and Order (FDO) (September 12, 1996), at 21. The County subsequently adopted final UGAs and the Board removed its determination of invalidity for the Cherry Point non-contiguous UGA and the UGA outside the municipal boundaries of Sumas. *C.U.S.T.E.R. Association v. Whatcom County*, WWGMHB #96-2-0008, Order Re: Invalidity (July 25, 1997).

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Bellingham (Geneva)

The Board determined the Geneva area of the Bellingham IUGA was invalid because “water resources and watershed impacts . . . had reached critical deficiencies” and no analysis had been conducted to support its designation for urban growth. Case #96-2-0008 FDO, at 19. The Board continued invalidity in July 1997, stating: “Nothing has changed since our prior order with regard to the critical deficiency for water resource and watershed impacts in that area.” Order Re: Invalidity, at 10. There has not yet been analysis to support urban designation for this area of the Lake Whatcom watershed. The County argues that Bellingham “has now provided a detailed land needs analysis and findings.” Whatcom County's Response Brief, at 115. However, nothing in Bellingham's findings reveals any analysis that justifies inclusion of this area of the watershed in the UGA as a means of addressing the “critical deficiency for water resource and watershed impacts.”

Bellingham and the County concluded the City was better able to protect the watershed from existing and future development in Geneva. Bellingham stated: “Inclusion of the area within the UGA allows the City to influence, and potentially regulate development consistent with its policies and adopted land use controls, and to devote City resources to mitigate impacts of existing and future development.” City of Bellingham's Response Brief, at 2. Until an interlocal agreement or annexation is in place that would ensure the regulation of development and expenditure of resources to mitigate the impacts of that development, no additional protection would be available if included in the UGA and unmitigated urban development could be allowed to continue. The record does not reveal why the County is unable to protect the watershed if it is not designated for

urban growth.

It appears to us that nothing has changed since our prior orders regarding invalidity. The County has not demonstrated that the Geneva UGA no longer substantially interferes with the goals of the GMA. Therefore, invalidity continues for the Geneva UGA.

Blaine

The Blaine UGA is the same size as the Blaine IUGA previously determined invalid. One difference between the UGA and the IUGA is the short-term restrictions placed on development in certain parts of the UGA. The unincorporated portion of this UGA consists of STPAs and LTPAs. The STPAs are intended to accommodate ten years of growth; the LTPAs are intended to be developed at urban densities after the STPAs have been developed. In their briefs and at the hearing on the merits, Blaine and the County offered to remove the LTPAs from the Blaine UGA if the Board found these areas continue to substantially interfere with the goals of the Act.

The Board found the Blaine IUGA invalid because it was “incredibly oversized.” Case #96-2-0008 FDO, at 17. In its July 25, 1997 Order Re: Invalidity, the Board was specifically troubled by those portions of the IUGA now contained in the LTPAs – the aquifer recharge area and the area south of Drayton Harbor. The record supports the Board’s continued concern over the inclusion of the LTPAs within the Blaine UGA. The justification for including the aquifer recharge area within the UGA is to provide greater protection for the watershed. However, “protection of critical areas is a function of RCW 36.70A.060 and .170, not [the UGA provisions of] .110.” Order Re: Invalidity, at 10. The justification for including the Drayton Harbor area within the UGA was a concern about proper transportation planning, not anticipation of urban growth. However, “[i]f there is a necessity for a ‘land bridge’ between these two areas [of the City] it certainly must be much more tightly drawn than the one here.” *Id.*

The County has not shown that the Blaine UGA, as a whole, no longer substantially interferes with the fulfillment of the goals of the Act. However, the record and argument of the County, City, and intervenors enable the Board to specifically identify those portions of the UGA that create substantial interference with the goals of the GMA. The aquifer recharge area and the Drayton Harbor area of the Blaine UGA, excluding the road right-of-way connecting the two portions of the

city of Blaine, remain invalid; the remainder of the Blaine UGA, including the road right-of-way, is not invalid and complies with the GMA.

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Sumas

The Board has previously rescinded invalidity for the Sumas UGA, finding it no longer substantially interferes with the goals of the GMA. Order Re: Invalidity, at 6. Thus, the question is whether the Sumas UGA complies with the Act.

Petitioners' sole argument is "[t]he slight downsizing of this UGA coupled with the minor (16 percent) increase in County population that results from extending the Plan from the year 2010 to 2015 . . . cannot come close to justifying the substantial area proposed." Opening Brief of Whatcom Resource Watch (WRW), at 22-23. The Board finds WRW's argument does not meet its burden of definitely and firmly convincing this Board that the County made a mistake when it adopted the Sumas UGA. Therefore, the Sumas UGA complies with the Act.

Ferndale, Lynden, Nooksack, and Everson

Only Petitioner Wells objected to the UGAs of Ferndale, Lynden, Nooksack, and Everson. Wells argued the UGAs were too large because Lynden used a 50 percent market factor; Ferndale's densities are below 4 dwelling units per acre; and the Nooksack/Everson UGA includes a floodplain. None of Wells' arguments are sufficient to definitely and firmly convince the Board that the County made a mistake in adopting these UGAs. Therefore, these UGAs comply with the Act.

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Birch Bay

The Birch Bay IUGA was among the non-contiguous IUGAs invalidated because it was not adequately served with public facilities and services; urban growth did not exist within much of the

area; and the record was void of any analysis of the cost of providing public facilities and services to this area. The present incarnation of the Birch Bay UGA consists of a STPA and a LTPA. Development in the LTPA can occur only when public services can be provided and will generally occur in the last half of the 20-year planning horizon.

The STPA consists of lands predominantly developed and provided with urban services. *See* Birch Bay Water and Sewer District Exs. 17-733 and 17-734. In contrast, the LTPA consists of neither existing development nor public facilities and services. Although the record shows the water and sewer district has planned for servicing all of its district (which includes the LTPA), urban services do not now exist in the LTPA.

Nothing has changed within the LTPA to warrant lifting invalidity. As to the LTPA portion of the Birch Bay UGA, the County has failed to show it no longer substantially interferes with the goals of the Act. The determination of invalidity continues for that portion of the Birch Bay UGA denominated as LTPA.

As to the STPA portion of this UGA, the Board is satisfied that there are adequate services in place so that there is no longer substantial interference; invalidity is lifted for that portion of the Birch Bay UGA denominated as STPA. The question is whether this portion of the UGA complies with the Act.

Petitioners' primary argument is lack of water. However, there is insufficient evidence in the record to support this argument. The Board is not persuaded that the County made a mistake when it designated as UGA that portion of the Birch Bay UGA denominated as STPA. Therefore, the STPA portion of the Birch Bay UGA complies with the Act.

Custer

The Board's Order Re: Invalidity noted the County made significant improvements in the Custer "provisional" UGA over the IUGA, including requiring a "master plan process" and limiting the UGA to intermodal and transportation services with accessory and supporting uses. However, "notably absent [was] an analysis of need, supply, and public facilities and service costs associated with this designation." Order Re: Invalidity, at 8. Petitioner WRW relies on this lack of analysis

to support its argument for non-compliance and invalidity.

Existing infrastructure is substantial and the requirement for master plan approval ensures sufficient funding for necessary new infrastructure. The record shows that the Custer UGA is served by substantial existing infrastructure, including a freeway interchange, all weather roads, rail spurs, and rail switching facilities. Also, development of this UGA is conditioned on approval of a master plan which, among other things, identifies utilities needs and requirements. The Board is satisfied the Custer UGA no longer substantially interferes with the GMA, and Petitioners have not definitely and firmly convinced the Board that the County made a mistake when it adopted the Custer provisional UGA. Therefore, the Custer UGA complies with the Act.

Cherry Point

As with the Sumas UGA, the Board has previously rescinded invalidity for the Cherry Point UGA, finding it no longer substantially interferes with the goals of the GMA. Order Re: Invalidity, at 6. Thus, the question is whether the Cherry Point UGA complies with the Act.

In its Order Re: Invalidity, the Board stated:

“Additional analysis was done on the Cherry Point industrial area for its establishment as a noncontiguous UGA. A more persuasive and complete analysis of the heavy industrial needs and available supply for the planning period was shown in this record. Adopted DRs for Cherry Point limit the area to heavy industrial large users and necessary accessory or supporting uses. Costs of utilities and other infrastructure are to be borne by the development rather than by the public at large.”

Id. at 5-6. In light of the additional analysis regarding the Cherry Point UGA and the industrial lands needs of the County, Petitioners have not shown the County was clearly erroneous when it adopted the Cherry Point UGA. Petitioner Wells raises environmental concerns, but fails to provide specific evidence to support her claims of violation of the GMA. Petitioner WRW questions the validity of the analysis of the Cherry Point industrial area, arguing that the resulting industrial UGA is too large. The Board is not persuaded by Petitioners. Neither Petitioner has definitely and firmly convinced this Board that the County made a mistake when it adopted the

Cherry Point UGA. Therefore, the Cherry Point UGA complies with the Act.

V. RURAL

The 1997 amendments to the GMA (ESB 6094) give us considerable guidance in reviewing the challenges to the rural elements of the CP. These elements include small towns, crossroads commercial, resort and recreational subdivisions, suburban enclaves, and transportation corridors, and “rural incentive zones” in zoning districts R2A, RR1, RR2, RR3, and urban-zoned districts (Ex. JE-21).

Regarding the rural element of comprehensive plans, the GMA states:

A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development.... Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. RCW 36.70A.070(5)(d)(iv).

During the hearing, we posed the question to the County as to what measures, benchmarks, or thresholds were used to clearly identify existing areas and determine logical boundaries as called for in .070(5)(d)(iv). The County responded that those identifications and determinations were carried out on a case-by-case basis. In examining the R2A, RR1, RR2, and RR3 patterns of development for such zones and the accompanying maps in Ex. JE-21, it is difficult to determine where a logical boundary might fall or where the minimization and containment occur in these zones. For example, under R2A zoning, Academy Road has 455 acres or 90 percent of the zone still subject to division in an area bounded in part by rural forest and R5A zones. Approximately 10 percent of the lots now divided appear to occupy areas in the west and northwest areas of the zone. A line could be drawn which would allow infill in undivided areas of the zone in that western area but leave approximately 80 percent of those 455 acres in a less dense, more rural zone. The record does not provide reasons for failure to exclude undivided acreage from the more intense zone, nor is a logical boundary discernable. This instance is typical of the 30+ areas (“suburban enclaves,” “additional areas,” “small towns,” “resorts”) listed in this exhibit.

In the zoning classifications noted above, there are more than 6,000 acres which have yet to be divided. From a review of each area, we conclude that a majority of the acreage has yet to be subdivided. Logical boundaries are not readily apparent from this record. The County needs to show much more clearly that its work to minimize and contain existing areas of more intensive rural development has been carried out before we can be convinced that substantial interference has been removed in these rural areas.

Petitioner WRW argued the amount of proposed rural lands previously invalidated by the Board (24,000 acres) went well beyond any limited areas of more intensive rural development than could ever be justified under ESB 6094, codified as Section .070(5)(d)(iv). WRW further noted that “there is no analysis offered that shows how the County trimmed each area to more intensive rural development to areas necessary for ‘infill of existing patterns.’” From this record we found it difficult to determine how or whether the trimming to which WRW refers was accomplished. The County appears to have accommodated preexisting zoning, not actual uses. In limited, more intensely developed areas, the County may determine how to recognize those existing land uses. However, existing zoning cannot be a sole criterion for designating rural lands for more intense development. The Act requires the County to demonstrate that substantial interference has been eliminated before we can lift a determination of invalidity.

The County’s presentation regarding crossroads commercial referenced identification, location, limitation to the area of existing development, and small additional areas for growth and infilling. We could find nothing in the record to demonstrate how that limitation was accomplished in light of our finding in Case #96-2-0008 that “the areas in question go well beyond infill of existing patterns and localized services.” Referral in the County brief to the CP and to Notebook 4 (the section on crossroads commercial, and small town mapping) yielded only maps showing a variety of wetlands, slopes, and zoning boundaries, together with some delineation of zoning but no information on the percentage of land still to be divided or potential areas of growth within the commercial crossroads area.

The same lack of clarity in measures taken within the gateway industrial and guide meridian elements of the new “transportation corridor” category precludes our determination of what actions have been taken to remove the substantial interference with the goals of the Act found in preceding

cases.

The rural incentive zones' stated purpose is to "reduce potential densities in the 'not urban but not rural' zones." The rural incentive zones are applied to the categories of suburban enclaves, additional areas, small towns, and resorts, but not to all of the individual areas in those categories. Throughout those categories, however, we find it a remarkable coincidence that the County's efforts to meet the requirements of ESB 6094 and remove substantial interference with the goals of the Act have resulted, in virtually every discernable case, in maintaining the status quo.

We are able to identify two exceptions to these conclusions. The County's argument regarding Point Roberts as a resort area seem to us persuasive in that the area is clearly delineated with finite boundaries (Puget Sound on three sides, the international border on the fourth side) which are unlikely to change. In reviewing the map (Ex. JE-21) of the small town of Deming, it was obvious to us that the boundaries in Deming's case are logical and that substantial interference with the Act is not present.

With those two exceptions, absent a clearly presented analysis of steps taken to remove substantial interference and provide the logical boundaries and limitation of more intense use called for in the Act, we are unable to rescind the earlier findings of invalidity regarding rural areas.

VI. ZONING

The Board previously found invalid: the PUD provisions (WCC 20.85); the clustering and bonus density provisions of the RR, RR-I, R, and RC districts; the allowance for more intense densities where public water and/or public sewer are available; the multifamily provisions in the GC district (WCC 20.62.065); the densities in the RC district (WCC 20.64.051, .052, and .060); and the GC (WCC 20.62), RC (WCC 20.64), GI (WCC 20.65), LII (WCC 20.66), GM (WCC 20.67), and HII (WCC 20.68) districts in their entirety, except as to the siting of essential public facilities. *Whatcom Environmental Council v. Whatcom County*, WWGMHB #94-2-0009, Third Compliance Order (March 29, 1996).

Of these invalid DRs, only the PUD and bonus density provisions were substantively amended. In July 1997, we rescinded the determination of invalidity as to the PUD provisions (except for the Blaine UGA outside of municipal boundaries and the Geneva portion of the Bellingham UGA)

because the County has limited application of the PUDs to UGAs. Thus, the PUD provisions are presumed valid. Petitioners have presented no argument that the current PUD ordinance does not comply with the Act. The PUD provisions are not clearly erroneous and, therefore, comply with the Act.

The bonus density provisions have been eliminated. This is a step in the right direction. However, as we stated in the Third Compliance Order, the clustering provisions combined with the County's zoning results in urban densities in rural areas. Elimination of the bonus density provisions helps, but does not save the DRs. The County did not substantively amend any of the other invalid DR provisions. The County has not shown that its DRs no longer substantially interfere with the fulfillment of the goals of the GMA. Therefore, the finding of invalidity on the DRs continues.

VII. NATURAL RESOURCES

Maintenance and enhancement of natural resource industries are among the goals of the GMA. RCW 36.70A.020(8). To achieve this goal, the Act requires counties and cities to designate:

- (a) Agricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products;
- (b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber; [and]
- (c) Mineral resource lands that are not already characterized by urban growth and that have long-term significance for the extraction of minerals.

RCW 36.70A.170(1). In addition, counties and cities must adopt DRs to conserve agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. RCW 36.70A.060(1).

Agricultural Lands

The County designated approximately 100,000 acres as agricultural lands. This designation consists of 88,000 acres in the Agricultural Zone. The County assumes ten percent of this acreage

will be lost to “environmental constraints” and “necessary urban encroachment,” leaving approximately 80,000 acres available for long-term conservation. Another 28,000 acres available for long-term conservation is included in the Agricultural Protection Overlay Zone, which applies to certain rural zoned lands. Residential development is permitted in the overlay zone, but DRs emphasizing protection of open space for agricultural production restrict how development can occur.

Petitioner Wells argues there is between 118,136 and 139,680 acres of agricultural land in Whatcom County. Based on this range of acreage, Wells asserts the County is not conserving sufficient land for agriculture. However, Wells does not explain how the acreage she identifies correlates to agricultural lands of long-term significance within the meaning of the GMA.

Petitioner Wells argues that the overlay zone does not conserve agricultural lands in the “long-term,” where CP Policy 8A-1 asserts a “long-term” planning horizon of 250 years. Altering the overlay zone will require amendment to the County’s CP and DRs. Petitioner Wells also argues that the development densities allowed in the overlay zone far exceed the densities allowed in the Agricultural Zone. “Permitted densities should be significantly reduced if the overlay zone is to achieve a long-term conservation outcome similar to Agricultural zoning.” Petitioner Well’s Brief, at 10. The County asserted that it did not create the overlay zone to provide identical protection provided by the Agricultural Zone; the two zones act in concert to conserve the County’s agricultural lands of long-term significance.

In order to comply with the provision of RCW 36.70A.020(8), the County must require those using the overlay development provisions to reserve the balance of land for long-term agricultural use rather than the current provisions which constitute a holding pattern for future sprawl. It must ensure that resultant development does not constitute inappropriate growth nor threaten the long-term commercial viability of remaining farmland, and only removes a small percentage of the land from ongoing long-term agricultural usage. The overlay provisions are clearly erroneous and do not comply with the Act.

Aside from the overlay provisions, Petitioners have not definitely and firmly convinced the Board the County made a mistake in adopting the agricultural provisions of its CP or DRs. Except for the overlay provisions, the agricultural lands provisions comply with the Act.

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Forest Lands

The County has designated 223,613 acres as forest lands. These lands are divided into two categories: Rural Forestry (generally, lots between 20 and 40 acres) and Commercial Forestry (lots larger than 40 acres). New residential development is not allowed in Commercial Forestry lands. New residential development is allowed in Rural Forestry lands at 1 unit per 20 acres, and clustering is permitted.

The sole complaint about the County's forest lands is Petitioner Wells' assertion that residential uses should be discouraged on forest lands. Petitioner Wells offers several conclusory statements, but does not explain how the very limited residential development allowed by the County fails to conserve forest lands of long-term significance. Petitioners have not definitely and firmly convinced the Board the County made a mistake in adopting the forest lands provisions of its CP or DRs. Therefore, the forest lands provisions comply with the Act.

Mineral Lands

The County designated 4,046 acres as mineral resource lands. To select these lands for designation, the County utilized general criteria applicable to all lands, and specific criteria for designated agricultural and forest lands. Of this more than 4,000 acres of mineral resource lands, 294 acres are within agricultural-zoned lands and 924 acres are within forest lands. In other words, out of approximately 88,000 acres of agricultural-zoned land, 294 acres are also designated as mineral resource lands; and out of over 223,000 acres of forest lands, 924 acres are also designated mineral resource lands.

Petitioners' argument that the GMA gives priority to designation of agricultural lands and forest lands is without merit. In support of their argument, Petitioners rely on the natural resource goal,

RCW 36.70A.020(8). This goal requires the County to “[m]aintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries.” The mining industry is not excluded by the language of .020(8); mining is among the natural resource-based industries the County must maintain and enhance. Even if agriculture and forestry had a superior position relative to mining, there is no evidence in the record that the overlap of mineral resource lands onto less than one percent of agricultural lands and less than one percent of forest lands in any way violates the GMA.

Similarly, there is no evidence in the record that the County’s mineral lands designations create prohibited impacts on residential uses. Although existing mining activity should be conserved by mineral lands designation, it will not necessarily be enhanced. As the County stated, mineral lands designation is not a right to mine. CP Policy 8P-4 provides:

Allow mining within designated MRLs through zoning and a discretionary and administrative permit process, requiring:

1. on-site environmental review, with county as lead agency, and
2. application of appropriate site specific conditions, and
3. notification to neighboring property owners within 1,000 feet to insure opportunity for written input and/or appeal, and
4. access to de novo review by the Hearing Examiner if administrative approval or denial is appealed.

The record does not support Petitioners’ arguments that residential uses will be impermissibly impacted by mineral lands designation. Project-specific review will provide the opportunity for residents likely to be affected by a mining proposal to voice their concerns to the County.

Petitioners have failed to definitely and firmly convince the Board that the County made a mistake in adopting and applying the mineral lands designation criteria. Therefore, the mineral lands provisions comply with the Act.

VIII. PUBLIC PARTICIPATION

The Board finds no flaw with the County's public participation efforts. Petitioner Wells argued that the County's process did not comply with the GMA because the County did not *listen* to all the citizens who participated. A more accurate characterization is that the County did not *agree* with positions urged by some of the citizens who participated. The County complied with the Act's public participation requirements.

IX. WATER

With regard to water resource problems and watershed impacts, the Board shares the concerns of the Petitioners and Washington Department of Ecology. Ecology commented that the CP "understates the uncertainty regarding future water supplies for certain uses in certain locations" Ex. 51 (March 18, 1997 letter from Ecology to Whatcom County) attached to Petitioner Wells' Brief. The CP recognizes that availability of potable water "will almost certainly be a limiting factor to development in some areas of the county." Nevertheless, the CP was written with the "working assumption...that there will be adequate water supply." CP 1-13. Although the CP's language with regard to water resources is not clearly erroneous, we agree with Ecology that a more detailed discussion and acknowledgement of how realistic the CP's assumptions may be would provide the County and its citizens a more forthright vision of the future.

X. ALL OTHER ISSUES

Issues not included in the above discussion were considered by the Board. We found that Petitioners failed to meet their burden of proof regarding these issues.

ORDER

The following sections of the CP are found to no longer substantially interfere with the fulfillment of the goals of the Act and their previous findings of invalidity are rescinded:

1. The Blaine UGA, excluding the aquifer recharge area and the Drayton Harbor area,
2. The STPA of the Birch Bay UGA,
3. The Custer UGA,
4. Point Roberts,
5. The Small Town of Deming.

The following sections of the CP and associated DRs are found to be noncompliant and are remanded to the County to be brought into compliance within 180 days of the date of this order **(July 15, 1998)**:

1. The Agricultural Protection Overlay Zone (Category III CP Findings Ex. JE-2) and WCC 20.38.

The following sections previously found invalid are found to be in continued substantial interference with the goals of the Act and are remanded to the County to be brought into compliance within 180 days **(July 15, 1998)**:

1. Geneva portion of the Bellingham UGA,
2. Aquifer recharge area and the Drayton Harbor area of the Blaine UGA,
3. LTPA portion of the Birch Bay UGA,
4. Previously invalidated rural areas (including provisions in the DRs and the rural element of the CP) with the exception of the Small Town of Deming and Point Roberts,
5. Sections of the Whatcom County Code as noted in Section VI of this order.

We specifically readopt the findings and conclusions regarding invalidity found in the March 29, 1996, and September 12, 1996, orders in these cases.

Findings of Fact pursuant to RCW 36.70A.270(6) and Conclusions of Law are adopted and appended as Appendix I.

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

Pursuant to WAC 242-02-830(2), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 16th day of January, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

APPENDIX I

Findings of Fact and Conclusions of Law

Findings of Fact

1. We specifically readopt the findings and conclusions regarding invalidity found in the March 29, 1996, and September 12, 1996 orders in these cases to the extent they do not conflict with the findings and conclusions contained in this order.
2. On May 27, 1997, Whatcom County adopted a comprehensive plan and associated development regulations. The deadline provided for by the GMA for adoption of the comprehensive plan was July 1, 1994. The deadline provided for by the GMA for adoption of development regulations was January 1, 1995.

3. By Order dated July 25, 1997, we lifted our determination of invalidity for the UGAs of Cherry Point and Sumas, the PUD ordinance (except as to its application to those areas of the Blaine UGA outside municipal boundaries and the Geneva portion of the Bellingham UGA). Remaining areas of invalidity were continued.
4. The bonus density provisions of Title 20 WCC have been repealed by the County.
5. The Agricultural Protection Overlay Zone does not conserve agricultural lands for long-term agricultural uses.
6. Zoning districts R2A, RR1, RR2, and RR3 include more than 6,000 acres which have not been divided. Logical boundaries of development are not readily apparent.
7. The rural element of the CP allows urban growth outside of UGA boundaries.

Conclusions of Law

1. The following sections of the CP no longer substantially interfere with the fulfillment of the goals of the GMA:

The Blaine UGA, excluding the aquifer recharge area and the Drayton Harbor area;

The STPA of the Birch Bay UGA;

The Custer UGA;

Point Roberts;

The Small Town of Deming.

2. The Agricultural Protection Overlay Zone does not comply with the requirements of the GMA.

3. The following sections previously found invalid are found to be in continued substantial interference with the fulfillment of the goals of the GMA:

The Geneva portion of the Bellingham UGA;

The Aquifer recharge area and the Drayton Harbor area of the Blaine UGA;

The LTPA portion of the Birch Bay UGA;

Previously invalidated rural areas (including provision in the DRs and the rural element of the CP) with the exception of the Small Town of Deming and Point Roberts;

Sections of the Whatcom County Code as noted in Section VI of this order.