

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

ABENROTH, et al.,)	
)	No. 97-2-0060c
Petitioners,)	
)	FINAL DECISION
vs.)	AND ORDER
)	
SKAGIT COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
TOM and SHEILA BUGGIA, et al.,)	
)	
Intervenors.)	
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We congratulate the Board of County Commissioners (BOCC), Planning Commission (PC), staff, and citizens of Skagit County for the hard work they put into a well done comprehensive plan (CP). Although we find noncompliance and invalidity on a few issues, we commend the County for making tough choices that have generally achieved compliance with the Growth Management Act (GMA, Act) on the majority of issues.

PROCEDURAL HISTORY

On June 24, 1997, we received a petition for review from Friends of Skagit County (FOSC); on July 29, 1997, from Marianne Manville-Ailles and Mack Johnson; on July 31, 1997, from Irene Dahl Cameron, Mark E. Danielson and Patti Cromarty, Stanley and Helen Walters, and Morris and Charlene Robinson; on August 1, 1997, from Jim and Deeta Drov Dahl, Ken and Laura Howard, Norman C. and Lottie M. Hornbeck, Harriet and Dorwin Smith, Karyn R.R. Livingston and R. Wilson, Alan and Brenda Thomas, and Mary Fotland; on August 2, 1997, from Larry Dent; on August 4, 1997, from Robert and Marion Sjoboen, Dean and Rosalie Schanzenbach, Wylie Incorporated, George and Marian Klein, Dean S. and Rebecca S. Goodell, Shirley Fox,

John L. and Dolores A. Abenroth, Montee and Bonnie Walters, Mr. and Mrs. Swett, Mr. and Mrs. Hamilton, Anthony Raab, Carl and Barbara Matthiesen, Stan and Julie Olson, William P., Janice and Jason Schmidt, W.M. and Joanne Lennox, and Friends of Skagit County.

All the above petitions asked us to review the adoption of Skagit County's CP, Ordinance 16550. Some also asked us to review Ordinance 16559, interim ordinance to implement the CP.

An order consolidating the petitions was issued on August 26, 1997.

We received motions to intervene from: Fluke Capital Management, L.P., (FCM) on August 13, 1997; City of Anacortes on September 3, 1997; Tom and Sheila Buggia and TB Enterprises (Buggia) on September 5, 1997; City of Sedro-Woolley on September 9, 1997; Towns of Concrete and Hamilton on September 10, 1997; Peggy Rundgren and Gunnar and Judith Pederson, Moses Trust, Henry and Ruth Adamitz, Chester and Martha Allshouse, Michael F. Bell, Robert J. Brown, John and Donna M. Butler, Pat Cummings, Mary and Norm Coker, Larry and Geraldine Earnst, Sandra DuVarney, Buraleen Esary, Robert L. Ensley, Norris Estvold, Estvold Family LTD Partnership and Dorris T. Estvold, Steve Estvold, Iva Ewing, Ruth Fellows, Mary A. Fotland, Dorothy Geoghegan, William and Gilda Gorr, Dave and Mary Hambright, Mae A. Greathouse, Jay V. Harris, Dennis and Patricia Hamilton, Einar Heyntsen, Donald R. Helgeson, Dwight and Hattie Hillier, Melvin Heyntsen, Durwin and Cherlyn Hurley, Jill Holdal, John Hunter, Jeff and Deborah Ingman, Keith Johnson, Richard B. Johnson, Clarence B. Jones, Eugene and Myrtle Landers, William E. Lewis, Hope Martin, Randy M. Martin, Tim and Molly McCalib, Hollis N. Merchant, Gary L. Minor, David Mischke, Earl R. Morgan, Gregory and Betti Necas, Theodore J. Palmer, Daniel and Rebecca Peck, Gunner Pedersen, Chaneey W. Pitman, George H. Pitman, Ken Portis, Nancy and Bob Price, Greg Pulley, Allen E. Richards, Dean and Rosalie Schanzenbach, Erwin L. Schnider, Georgia Schopf, Richard and Dorothy Shelley, Marvin and Alice Shaultz, Lorna Shuler, Brett L. Smith, Thomas H. Solberg, Charles T. Spink, William H. Stiles, Jr., Robert O. Taylor, Charles H. Trafton, Roy and Ethel Vahlbusch, Colleen Van Buren, Gilbert L. Walden, David Welts, Kenneth Wolcoski, and Michael R. Perry, on September 15, 1997; Harold Knudsen Farms and Ida McKenna, John Sandell, Lowell and Beverly Joy, Sidney and Wilma Jenkins, Lawrence Bates and Robert Colborn, Lee L. McIntee, Gary Dickman, Randy Rockafellow, and the Association of Skagit County Land Owners

Petitioners' Group on September 16, 1997.

Intervention status was granted to Fluke Capital Management, Tom and Sheila Buggia and TB Enterprises, City of Anacortes, City of Sedro-Woolley, Town of Concrete, Town of Hamilton, William Stiles, Jr., Peggy Rundgren and Gunnar and Judith Pederson by Order dated October 16, 1997. All others were granted *amicus curiae* status.

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Stipulations requesting an extension of time for issuing a final decision for specific issues were submitted by FOOSC and Skagit County on October 27, 1997; George and Marian Klein and Skagit County on October 28, 1997; Wylie Incorporated and Skagit County on October 29, 1997. All three orders were granted.

A hearing on the merits was held November 12 – 14, 1997, at the Skagit County Administration Building in Mount Vernon, Washington. Rulings were entered on the following motions:

1. The County's October 6, 1997, Motion for Allowing Additional Evidence - Granted.
2. Towns' November 3, 1997, Motion to Supplement the Record – Official notice taken of Towns' CPs and CWSPs. Granted as to letters from Fleek.
3. County's November 4, 1997, Motion to Strike Intervenor Perry's Response Brief – Granted as pertains to site-specific information.
4. County's November 7, 1997, Motion to Strike Portions of Anacortes Response to FOOSC's Opening Brief and City's Reply Brief to County's Response Brief – Denied striking. Granted County until November 26, 1997, to file surrebuttal.
5. Buggia's November 10, 1997, Motion to Strike FOOSC's Reply Brief or Allow Opportunity to Submit Surrebutal Brief to FOOSC's Reply Brief – Denied Striking. Granted until November 26, 1997, to file surrebutal.

We further granted all parties until November 26, 1997, to file surrebuttals to FOOSC's reply

brief. We only considered comments in the surrebuttals that were in direct response to new information introduced for the first time in FOSC's reply brief.

STANDARD OF REVIEW/BURDEN OF PROOF

Skagit County's CP is presumed valid upon adoption. By Order dated October 8, 1997, we determined that the procedural aspects of ESB 6094 applied to this case. Therefore, we will find Skagit County's CP and interim ordinance to implement the CP in compliance with the requirements of the GMA unless a Petitioner or Intervenor demonstrates that Skagit County's actions are clearly erroneous in view of the entire record and in light of the goals and requirements of the GMA.

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Our December 2, 1997, Compliance Order in *Clark County Natural Resources Council v. Clark County*, #96-2-0017 established the application of the clearly erroneous standard when we said:

“Those cases, and many others, also recognized that ‘due deference must be given to the specialized knowledge and expertise of the agency’ and that the ‘policy contained in the authorizing statute’ (*Hayes* at 286), was an integral part of determining whether a ‘mistake’ has been made. These concepts parallel directly the deference language of RCW 36.70A.3201 and the policy language contained in the last sentence of RCW 36.70A.320(3).

Thus, in this and future cases, after reviewing the entire record submitted by the parties in light of the policies, goals, and requirements of the GMA, we will always find the state agency or local government in compliance with the Act unless and until the person or entity challenging the action has persuaded us to a point where we form a definite and firm conviction that a mistake has been made. In the former preponderance test we merely needed to be convinced that the agency or local government misinterpreted or misapplied the Act. By contrast, under the new standard we must really be convinced. Just where that point lands on the continuum between more likely than not and absolute certainty cannot be more precisely defined. It will necessarily have to be resolved on a case-by-case basis. The clearly erroneous standard will apply in all situations except those dealing with invalidity or the shoreline element.

ISSUES

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The issues in this case are numerous, complex and intertwined. For that reason, we will discuss the areas of major concern by topic rather than by specific issues.

Process Issues

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Public Participation Requirements

Petitioners represented by the same counsel and informally known as Association of Skagit County Landowners (ASCL), as well as other petitioners, raised several concerns about Skagit County's public participation compliance including:

- The County should have sent property owners letters informing them of proposed changes to their designation and zoning prior to taking action.
- The County should have done more to make property owners aware of what was going on.
- Those property owners who sent public comment letters expressing concern about their properties' proposed designations were handled in an arbitrary and inadequate manner because the:
 - County dealt with some letters prior to adoption of the CP and left others until after adoption.
 - County failed to explain why they were dealing with some and not with others.
 - County failed to send letters to those property owners explaining the basis for the screening process and why their concerns would not be dealt with until after adoption of the CP.
- The County released the final draft of the CP on April 3, 1997, and held the Planning Commission (PC) public hearing on April 15, 1997. This provided insufficient time for citizens to respond.
- Very late in the process the County changed the rural resource minimum lot size from 20 acres to 40 acres, providing inadequate opportunity for public response.

The County responded that nothing in the Act requires a local government to send individual letters to property owners notifying them of proposed changes to their designations. Even though petitioners would have liked the County to have done more notification, the burden of showing

noncompliance had not been met.

The County vehemently denied Petitioners' claims that their comment letters were handled in an arbitrary or inadequate manner. County records showed that:

- The PC held an initial public hearing on December 2, 1996, on the final draft of the CP.
- The County received two volumes of written comments during the written public comment period for that hearing.
- On February 13, 1997, staff sent the PC a memo outlining their recommendation for handling the letters.
- Staff grouped the letters into three categories - requests which:
 - (a) On their face did not appear to meet criteria, deal with later.
 - (b) Error in map or application of criteria, to be addressed immediately.
 - (c) Needed further analysis of the PC.
- The PC conducted 19 study sessions between January 6, 1997, and March 20, 1997 on the CP.
- During those study sessions the PC dealt with letters in categories (b) and (c) and decided to deal with the letters in group (a) after adoption of the CP. During those study sessions staff asked PC members to review the letters in group (a) and bring forward any that they felt might have been miscategorized by staff. The result, the County asserted, was a fair handling of all letters of concern given the severe time constraints under which they were working.

The County pointed out that only minimal changes were made between the CP draft considered by the PC in December and the final draft made available to the public on April 3, 1997.

Therefore, the 12 days provided for public review before the April 15, 1997, PC hearing was adequate. In response to our April 9, 1997 Order in #95-2-0075, the County did change the rural resource minimum parcel size from 20 acres to 40 acres but the provisions for 4 lots per 40 acres if the Conservation and Reserve Development (CaRD) Ordinance is used resulted in no change in density. The County further pointed out that the additional hearing the PC held on April 15, 1997, was not legally required.

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Board Discussion

The GMA requires provision for early and continuous public participation. It does not, however, require a particular methodology. This record shows that the County utilized many methods to inform and involve citizens including individual letters early in the process. Petitioners have failed to show a violation of the GMA under the clearly erroneous standard simply from the failure to directly mail notices to affected property owners during the latter part of the process.

We also find compliance with the public participation requirements of the Act in the manner the County dealt with public comment letters expressing concern about their properties' proposed designations. The staff's division of letters into three categories and the PC and BOCC handling of the three in different ways is adequate. Although handling all the letters before adoption of the CP and sending personal response letters to the senders might have been preferred, the actions taken were within the County's discretion.

After review of the very extensive public process utilized by Skagit County in the adoption of its CP, we do not have a definite and firm conviction that Skagit County made a mistake in its public participation process. We find Skagit County in compliance with the public participation requirements of the Act.

SEPA Compliance

Petitioners ASCL complained that there was no opportunity for comment on the Final Supplemental Environmental Impact Statement (FSEIS) which was released on May 2, 1997, 17 days after the last public hearing held on the draft CP. ASCL contended:

“...the FSEIS contained no fewer than 19 memoranda from County staff to the planning commission providing greater detailed analysis on a variety of key subjects. The policy underpinning of SEPA is that the public is afforded an early opportunity to learn about and react to an assessment of the environmental impacts of a proposal. While no comment period is required following issuance of an FEIS or FSEIS under SEPA, issuance of the document becomes nothing more than pure form if it is not made available to the public in advance of the last public hearing on the proposal.”

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Board Discussion

The changes made after the November 1996 Draft Supplemental Environmental Impact

Statement were not significant enough to require new SEPA review. A comment period and additional hearing are not required following issuance of an FSEIS. We therefore find Skagit County in compliance as regards to its SEPA process.

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Urban Issues

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Urban Growth Areas (UGAs)

FOISC made the following assertions:

- The Big Lake and Bayview (Bayview) UGAs are noncontiguous UGAs and include land without existing urban growth. Additionally, nothing in the record demonstrates provision for transference of a local governance as required by RCW 36.70A.110(4). Such UGAs are therefore subject to the greatest scrutiny regarding capacity and the provisions of urban services. One concern is that inadequate services will be provided and local residents, without transference of governance to them, will have no power to ensure the services are adequate. Therefore, the “greater scrutiny” should assure that a full range of adequate urban services will be provided in the independent UGAs.
- The Big Lake and Bayview UGAs do not have a needs analysis sufficient to justify them as UGAs. Alternatives were not evaluated. There has not been an adequate cost study to address provisions of various identified urban governmental services. For Big Lake, the County provided no analysis regarding provision of urban services for storm sewers, parks within the UGA, for police protection, street lighting, street sweeping, solid waste or library services. For Bayview, there is no analysis regarding provision of urban services for parks within the UGA, for police protection, street lighting, street sweeping, solid waste or library services.
- It is erroneous for the County to assume that there will be no residential development in the Big Lake and Bayview critical areas because CP Policy 1.10 requires development at a minimum of 4 units per acre inside UGAs and the Critical Areas Ordinance (CAO) (SCC 14.06.150(2)) allows density transfers to achieve this required minimum density. Where there are existing lots in the Big Lake UGA, the CAO (SCC 14.06.110) allows a home to be built under its reasonable-use exception.
- The County’s reliance on weak or flawed analysis has led to several unnecessarily

large UGAs. Left unchallenged, those UGAs would result in low-density sprawl, wasted land, and excessive costs to provide required infrastructure.

- The UGA of Big Lake is approximately twice as large as necessary. FOSC marked existing houses and vacant lots on a map of the Big Lake UGA. That analysis showed that the County only needed 456 acres to accommodate the assigned population. The County designated 860 acres. For the above reasons and many others, the Big Lake UGA should be found invalid.
- The UGA of Bayview is more than twice as large as necessary. Only 1,800 acres is needed and 4,093 acres were included in the UGA. Over 2,000 acres were defined by the County as not usable. If that is the case, the unusable acres should not have been included in an UGA. Two thousand, two hundred acres are not characterized by urban growth, are not provided with urban services and meet the criteria for resource lands of long-term commercial significance, i.e., characterized by prime soils, 20 acre or larger parcels and in a resource taxation program. Including such areas in an UGA without protection to prevent inappropriate urban (or sprawling) development is clearly erroneous and should be disallowed. The Bayview UGA should be found invalid.
- The unincorporated UGA of Anacortes contains approximately four times more vacant developable industrial land than allocated by Countywide Planning Policy (CPP) 1.1. The major disputed error in the County's analysis of the March Point section of the UGA is the assertion that all acreage owned by Shell and Texaco must be deducted from the total UGA acreage. It is in error to deduct over 1,100 acres of developable land simply due to its ownership. Because of the excessive over-capacity of undeveloped commercial/industrial (C/I) land, and the lack of greenbelts and open space, the Anacortes UGA should be found invalid for substantial interference with goals RCW 36.70A.020(1),(2),(3),(9), and (10).
- The unincorporated UGA of Sedro-Woolley is not needed to accommodate the growth assigned by CPP 1.1. Sedro-Woolley has used an erroneous analysis to show a need for 1,869 acres outside its city limits. This will allow the City to convert rural land into sprawling suburban densities that predominate within its city limits. The adopted UGA should be found invalid and the UGA set at the city limits.
- The unincorporated UGA of Hamilton is not needed to accommodate the growth assigned by CPP 1.1. The only identified need for 20-year growth in Hamilton is for 26

additional dwelling units (DU) or approximately 10 acres of land. Ex. 1091 at 1120 shows that the Hamilton incorporated area includes over 300 acres of undeveloped land that is outside the floodplain as well as about 140 acres in the unincorporated UGA. The addition of 140 acres is a serious error and inconsistent with RCW 36.70A.110. The adopted Hamilton UGA should be found invalid and the UGA should be set at the City limits.

- The unincorporated UGA of Mount Vernon is much too large. The County has committed two major errors in adopting an excessively large unincorporated UGA for Mount Vernon. The 4,145-acre area is more than twice as large as required and large areas of agricultural lands that are not protected against inappropriate development are included. One thousand, two hundred thirty-seven acres of “agricultural/sensitive” areas were included in the unincorporated UGA. The UGA must be reconfigured to exclude such lands or the County and City must establish appropriate protection of these lands from inappropriate development.

The second major error results from the City’s erroneous use of duplicative factors to calculate city infill capacity, resulting in excessive reduction of infill capacity and large unnecessary increases in the unincorporated UGA. These two major errors led to adoption of an UGA approximately 2,800 acres larger than required and should be invalidated.

Petitioners Stan and Julie Olson specifically challenged the inclusion of the Rundgren/Pederson property in the Mount Vernon UGA. They stated that this inclusion was clearly erroneous and substantially interferes with the goals of the Act for several reasons. Among those reasons were:

- This property is designated Natural Resource Agricultural land with excellent soils. Britt Slough Road plus Britt Slough currently form a wide natural boundary between residential and agricultural uses.
- The property is in the floodplain.
- Although the adjoining property to the west, owned by Alf Christensen Seed Company (ALFCO), is in the city limits, it is an anomaly. The land is used exclusively for agricultural research. This research facility would be threatened if the Rundgren property were changed to

residential from agriculture. If the Britt Slough Road is not reinstated as the natural boundary, this area will no longer be a viable, long-term agricultural area as it will encourage ALFCO to change their direction and commitment to agricultural practices.

- Mount Vernon did not want the property in its UGA.
- The County PC recommended that as long as ALFCO remained agricultural, no other land west of Britt Slough Road should be included in the UGA. If that changes in the future, the area would be up for review for additions to the UGA.
- By a split vote, the BOCC chose to disregard the Britt Slough Road as a natural boundary to protect and preserve prime agricultural resource lands and included prime resource lands inside the City's UGA. This flies in the face of GMA and findings of fact by the County PC and the City; both of which consistently recognized the importance of this natural boundary to preserve the active farming practices in this area.
- The Britt Slough Road is the last natural boundary in this area and encroachment past it clearly sends a detrimental message to its adjoining farmers.
- This split decision by the BOCC to force unwanted and unneeded resource lands into Mount Vernon's UGA was the only such instance in any of the votes concerning cities' UGAs.

Petitioner Raab also contested the size of the UGAs. Raab contended that a lack of careful analysis of environmental constraints, i.e., floodplains and other critical areas (CAs), within UGAs caused an undersizing of UGAs. He asked us for a remand requiring the County to either designate larger UGAs or move the UGAs from the floodplain to high ground.

The County responded:

- UGAs in General:
"RCW 36.70A.110(4) says '[in] general cities are the units of local government most appropriate to provide urban governmental services.' This statement doesn't require the absolute actions suggested by FOSC's argument. Indeed, if the Hearings Board decisions FOSC cites support FOSC's assertion regarding transformation of local governance, those decisions would have simply prohibited all non-municipal UGAs. Instead the Boards carefully scrutinized the non-municipal UGAs that were before them in those cases." Skagit County brief Part 1 p. 32.

At the hearing on the merits, the County introduced the relevant capital facilities plans (CFP) for the non-municipal UGAs, together with a reference to the Countywide CFP to respond to FOOSC's assertion that inadequate analysis had been done. It further referenced extensive analysis and planning done by the Port of Skagit County for its portion of the Bayview UGA. FOOSC presented no evidence that these analyses were inadequate. FOOSC did not meet its burden of proof and its arguments should be rejected. The adequacy of capital facilities planning for urban services is the subject of a pending settlement procedure. See Order dated October 28, 1997. The County could not just do simple mathematical calculations to set UGAs. It is the County's responsibility to consider local conditions, e.g., CAs, major landowners, etc. when determining size of UGAs. The County came very close to its 80 percent urban – 20 percent non-urban target for growth with its designation of UGAs. The choices were well within the range of acceptable options allowed by the Act.

- **Big Lake:**

The record demonstrates why the County discounted the capacity for environmental constraints. Exs. 421 and 450. FOOSC's response that the County should or will ignore those critical areas and allow development within those constrained areas is mere conjecture. FOOSC's examples of existing (pre-critical areas ordinance) houses that are in mapped sensitive areas is not evidence that the County should or would allow similar small lot developments to occur on such steep slopes or wetlands in the future, since additional critical areas protections have now been adopted.

FOOSC's assumption that a house can be built on every existing lot in Big Lake is incorrect because it ignores lot aggregation requirements and the minimum lot size requirements of SCC 14.04.090(5). As currently designated this UGA may actually be too small.

- **Bayview Ridge:**

The County has demonstrated, from the record, why large areas were assumed not available for development in this UGA due to critical areas constraints and airport operations constraints. Exs. 321, 407, 431 and 450, show the mapped critical areas and the airport operations master plan and open space. FOOSC did not present evidence that these were not critical areas or are not airport operations open space. FOOSC has not met its burden to prove

that these discounts were not appropriate. None of these lands were designated natural resource lands (NRL) by Skagit County.

- Anacortes:

The City of Anacortes joined the County in answering FOOSC's objections. The mapping of greenbelts has been stipulated for settlement. The unincorporated part of the UGA is made up of three major areas: (a) North March Point, (b) Fidalgo Bay Tidelands, and (c) South March Point.

(a) North March Point - Shell and Texaco have spent decades accumulating 1,800 acres for a variety of reasons including buffering, storage, and long-term expansion capabilities. This land is integral to their core business and is not available for others. It should not have to be classified as open space. It is critically important to the economy of the entire region that these companies retain flexibility over their land.

(b) Fidalgo Bay Tidelands - Inclusion in the City UGA protects tidelands and provides an important connection between critical areas and a waterfront trail.

(c) South March Point - Inclusion provides 400 acres of C/I land under the CP. Ex. 333 shows that the interlocal agreement between Anacortes and Skagit County requires concurrency for development. The two governments worked three years to reach this agreement to ensure that development will be phased and efficiently provided with urban levels of services.

- Sedro-Woolley:

The City of Sedro-Woolley joined the County in answering FOOSC's assertions. Ex. 428 shows that Sedro-Woolley's analysis is not erroneous. The model as a whole has validity (right total population). TAZs that were assigned too little population were balanced by those with too many.

A Board must look at the whole process, not just the mathematical process. The initial interim urban growth area (IUGA) was 12.5 square miles. The City made tough choices and reduced its proposed UGA to only 5.5 square miles. The unincorporated UGA includes areas that are already developed and difficult to densify. The low-density SF2 zones are encumbered by steep slopes and ravines. Duplexes are now allowed almost everywhere to accommodate

growth and increase density. FOSC's assertions that the existing City limits can accommodate 20 years growth is based on gross density assumptions without allowing any discount for market or infrastructure. FOSC's calculations are not supported by the record and FOSC's allegations of error should be dismissed.

- **Hamilton:**

The Town of Hamilton joined the County in answering FOSC's objections. The Town has a unique UGA situation. While it may have capacity to accommodate its projected 20-year population within the existing city limits, the evidence in the record demonstrates that the existing city limits are essentially all encumbered with development constraints. The existing developed Town is located within the floodway and therefore is not appropriate for development. The portion of the existing Town limits that is not contained in the floodway is not appropriate for development because it sits on Hamilton's aquifer and cannot be served with urban services.

The reasons supporting the UGA are set forth in the Town's 1994 CP. The recurring theme of that plan is the necessity of moving the Town's population out of the floodway. The area open to new development must be large enough and of sufficiently diverse ownership to permit orderly development opportunities to occur in a competitive market.

- **Mount Vernon:**

The County contends that FOSC ignores the details in the record regarding the size of the Mount Vernon UGA. For example, portions of the UGA along the Skagit River are restricted for open space and recreational uses. The City's explanation of their UGA capacity analysis is contained in Exs. 410, 421, 429, and Ex. 549, App. D at p. 18-19. The only change from that UGA analysis in the final UGA adopted by the County is the property known as the "Rundgren/Pederson property." The County went through an extensive explanation of why the discount factors used by Mount Vernon were not duplicative. The County had carefully considered Mount Vernon's analysis and proposed UGA and determined it looked reasonable except for the omission of the Rundgren/Pederson property. The County should be given deference on that decision.

Answering the challenge to the Rundgren/Pederson property being included, the County responded that, given the record below, the decision could have gone either way and was not clearly erroneous. Neither ALFCO nor Mount Vernon would commit to retaining the ALFCO property in long-term agricultural use. The Olson's argument that prime agricultural lands may not be placed in an UGA is not true. GMA merely prohibits placing prime agricultural lands in the UGA where they are intended to remain in long-term agricultural production. Because the Rundgren property is surrounded on three sides by either current Mount Vernon city limits or UGA, it is not likely that the property will remain in long-term agricultural production and therefore is not "commercially significant."

Intervenors Rundgren and Pederson supported the County's response by supplying a large amount of background information from the record. They also presented the following major points:

- This property is a peninsula surrounded by city limits and city UGA on three sides.
- The BOCC established a straight south line for the southwest corner of the UGA.
- This boundary creates a more logical service area for the future of the City.
- The close proximity of urban uses has blighted the agricultural potential of their properties.
- The BOCC decision to include the Rundgren property was supported by the record.

Board Discussion

- UGAs in General:

We have previously stated that we will closely scrutinize nonmunicipal UGAs. The GMA directs that growth will first be channeled to municipalities and those areas already characterized by urban growth before assigning new urban population to unincorporated areas not already characterized by urban growth.

RCW 36.70A.110(1) states:

An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW

The County's analysis does not appear to address city infill capacities before assigning urban residential growth and establishing unincorporated UGAs. FOSC presented figures to the County in December 1995 showing that, using the cities own infill capacity numbers, cities have the capacity to contain all but 700 people of the projected 20-year urban population growth. It appears that the County can not show a need for large unincorporated residential UGAs. We agree with FOSC that the record is devoid of any cost analysis comparison of creating large unincorporated residential UGAs at Bayview and Big Lake versus accommodating that residential growth in already large municipal UGAs. Both non-municipal UGAs contain considerable undeveloped land. The CP does not include existing or projected densities for these noncontiguous UGAs. It also does not show how these UGA designations meet the criteria for designation. We will keep these factors in mind when we review the Bayview and Big Lake UGAs.

The size of all the UGAs appears to be more than sufficient. We have stated previously that at the CP phase we would give greater deference to local governments as to the size of UGAs, particularly industrial UGAs. However, if local governments wish to delineate large UGAs they must have measures in place to ensure development is truly urban and efficiently phased. In the case of oversized industrial UGAs, conversion to other uses must be precluded to ensure the long-term preservation of industrial land. These oversized UGAs must not be allowed to enable sprawling, business-as-usual densities and usages.

The land speaks first. Natural resource lands must be designated first and avoided when setting UGAs. We always scrutinize the size of an UGA much more closely if it includes designated natural resource lands.

- Big Lake UGA:

Over 900 small lots ring Big Lake. The presence of public sewer and water to this area appears to have driven the establishment of this residential community as an UGA. The plan does not show how this designation meets the criteria for an UGA designation. This "noncontiguous" UGA is virtually contiguous with the Mount Vernon UGA.

RCW 36.70A.310(1) states:

The Legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas.

The Central Puget Sound Growth Management Hearings Board has held that a long-term purpose of CPPs is the transference of governance of areas of urban growth to municipalities. (See *Vashon-Maury et al., v. King County*, #95-3-0008, *City of Poulsbo et al. v. Kitsap County*, #92-3-0009, *City of Snoqualmie v. King County*, #92-3-0004). With the GMA's strong preference for urban areas being served by and incorporated into municipalities, it is inappropriate to establish a non-municipal UGA in such close proximity to a municipal UGA with no plan for transference of governance. New growth should be directed to the Mount Vernon UGA which has more than sufficient land to accommodate the projected population just blocks away. We remind the County that compliance with a CPP, assigning population to noncontiguous UGAs prior to any homework showing a need for such allocation, may not be used as an excuse for failure to comply with the requirements of the GMA.

- Bayview Ridge UGA:

The Port of Skagit County's master planned portion of the UGA is in compliance with the Act. The Port's analysis show that its land is well planned for, will be efficiently served, and will provide for industrial uses compatible with the airport.

As currently configured and with the current record, the remainder of the Bayview UGA does not comply with the Act.

If the County wishes to include the additional C/I area not owned by the Port, strong provisions must be in place to preclude conversion to residential sprawl and ensure development at urban standards.

As to the residential portions of the Bayview UGA, the County has not shown a need for such a large unincorporated residential UGA. The County has drawn the City UGAs large enough to accommodate virtually all of the urban residential needs for the next 20 years. Although

pockets of residential development exist, considerable undeveloped land is included within the UGA.

Even if the County were able to show a justification for the need for additional urban residential land in the County, we are concerned about the siting of incompatible uses adjacent to the Skagit Regional Airport. RCW 36.70A.510 requires the County to adopt land use policies and development regulations (DRs) that preclude incompatible land uses adjacent to airports. The land use map for the Bayview UGA places a residential designation under the overlay for the main runway. Further, the map includes no overlay for the second runway which is currently in use.

As we stated in our September 20, 1995, Final Order in *Achen et al. v. Clark County*, #95-2-0067, the county has the responsibility to preclude development that conflicts with airport operations. Designation of a large residential component within an airport UGA does not comply with RCW 36.70A.510.

- Anacortes:

We agree with FOOSC's assessment in its November 7, 1997, reply brief:

“Friends agrees with the City of Anacortes that its adopted UGA boundary is logical for planning purposes and appropriate for future industrial expansion.”

As regards to the North March Point area, we do not agree with FOOSC's position in the same brief:

“.....The disputed issue, and error, in the County and Anacortes analysis of the March Point UGA is the unsupported assertion (SCRB-1 at 35 and ARB at 4) that all acreage owned by the Shell and Texaco refineries must be deducted from the total UGA acreage rather than deducting only the 643 developed acres within lands owned by the refineries, General Chemical and Technal. It is an error to deduct over 1,100 acres of developable land simply due to its ownership.”

Ex. 473 includes letters from Texaco and Shell confirming local governments' assessment that none of their property is available for development by anyone else. They have spent years amassing this property for buffering, storage, and their own very long-term future

needs. Given that information, it was within the allowed discretion of Anacortes and the County to deduct these companies' total acreage from lands available for development in the next 20 years.

FOSC has not met its burden of leading us to a conviction that an erroneous decision has been made by the County in its designation of North March Point.

FOSC has also failed to meet its burden as to the Fidalgo Bay Tidelands.

As to the South March Point area, we agree with FOSC's concern that Skagit County not be given continued opportunity to promote uncoordinated strip commercial growth along SR 20. We will take the County at its word that the interlocal agreement between Anacortes and the County will be enforced to require concurrency and preclude such development. Although we prefer a stronger form of phrasing, we defer to the County's decision on the South March Point section of the UGA.

We find Anacortes's UGA to be in compliance with the Act.

- Sedro-Woolley:

We commend the City and County for their hard choices in reducing the UGA from 12.5 square miles to 5.5 square miles. We can understand the City's frustration of having its UGA contested by a group that only participated minimally in its long, difficult process. The City's needs analyses are quite convoluted and difficult to follow but we are not convinced by FOSC's argument that the model was totally invalid and/or intentionally misleading. We share FOSC's concerns about the low densities projected for this UGA. We understand that much of the land included in the UGA is already developed at sub-urban densities. Although Sedro-Woolley's UGA may be larger than absolutely necessary, in general, we find the Sedro-Woolley UGA in compliance with the Act. However, the inclusion of two large undeveloped areas do not appear to be needed or adequately supported by the record and therefore do not comply with the Act. These are the large open space/agricultural area in the floodway to the south of the City and the Northern State property.

Under GMA, land is to be included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development, it should be left out of an UGA. In order to achieve compliance the County must either remove those properties from the UGA or show the need to include them in light of the requirements of the Act.

- **Hamilton:**

Although we sympathize with the situation in which the Town of Hamilton finds itself, we are unable to find its UGA in compliance with the Act. GMA does not allow the addition of undeveloped land to a municipality's UGA when the:

- Current city limits are grossly oversized for population assigned,
- The Town has no plan in place to move current residents out of the floodplain, and
- The Town cannot show that it will be able to provide urban services to the additional area.

- **Mount Vernon:**

We find the UGA of Mount Vernon to be in compliance with the Act with two exceptions. These exceptions deal with the inclusion of large tracts of prime agricultural lands in the UGA. The first is an area recommended by Mount Vernon to be included. This is a very large parcel known as the Salem Lutheran Church property. This land has prime alluvial soils and is in current agricultural usage. The record does not justify the need to convert this land to urban densities. If it is to remain agricultural/open space, it cannot be included in the UGA unless the City has enacted a program authorizing transfer or purchase of development rights. RCW 36.70A.060(4). Mount Vernon has not enacted such a program.

The second is property that the BOCC added to the Mount Vernon UGA – the Pederson/Rundgren property. For the following reasons, we find that the inclusion of this property was clearly erroneous:

- The current usage of the great majority of lands west of Britt Slough Road is agriculture.
- The property was designated Natural Resource Agriculture by the County. One of GMA's top priorities is the conservation of such lands.
- Britt Slough Road plus Britt Slough currently form a wide natural boundary between

residential and agricultural uses.

- The property is in the floodplain.
- This conversion would conflict with other agricultural uses west of Britt Slough Road and endanger their viability.
- Mount Vernon and the Skagit County PC both recognized the importance of this natural boundary to preserve the active farming practices in the area and recommended against any such encroachment.

Phasing of Growth and Interim Uses in the UGAs

FOSC made the following assertions about development allowed within UGAs prior to urban service availability:

- CP Policy 2.2.2 and DR Section 10 allow development patterns of 1 dwelling unit per acre anywhere inside the unincorporated portions of UGAs if urban services are not readily available. Although the CP speaks of ¼ acre lots, there is no requirement for housing placement so that ¼ acre lots can later be developed. This may well lead to creation of neighborhoods of one-acre lots whose owners have no desire for urban services or infill.
- CP Policy 2.2.2 and DR Section 10 allow development patterns of 1 dwelling unit per 5 acres anywhere inside the unincorporated portions of UGAs if urban services are not readily available.
- The County has no phasing plan for urban residential growth inside the UGAs.
- The County has failed to implement the CP at 4-7 and RCW 36.70A.110(3) by failing to phase urban commercial and industrial growth inside the UGA and by allowing new commercial and industrial land uses without urban services. Such growth is not to be allowed by the County because it “may foreclose significant future planning alternatives pertaining to urban densities and the efficient provision of services” as described in CP at 4-7.

The County responded that it did not feel it should, or could, prohibit all development or use in the UGA until services are provided, since in some cases, those services may not be available until the later part of the 20-year planning cycle. In the meantime, the County has allowed two options for residential development in the UGA:

1. The owner may develop at a density of one dwelling unit per 5 acres, provided the owner provides covenants agreeing to and reserving the balance of the land for future urban development when urban services are provided.
2. The owner may plat the property to the ultimate urban densities, including providing for all of the urban standards for streets and utilities and then to “use” a part of those platted lots (up to a density of 1 dwelling unit per acre) in combination with septic and well in the interim until the urban services are connected to the plat improvements. At that time, the well and septic would be abandoned and the rest of the already platted lots developed. In the case of city UGAs, the future city standards would govern.

In its response brief the County concluded:

“FOSC mischaracterized how these alternatives would work to argue they are inconsistent with GMA. In both cases, obstacles to future urban growth are avoided by either extracting agreements to develop at urban densities and serve the area (in the first option) or by platting the urban standard lots at the outset (in the second option). In both cases, the entire area would connect to urban services when available. There is nothing in the policies or the interim regulation that suggests that they would not.”

As to FOSC’s lack of phasing concerns the County stated:

“FOSC asserts, without any argument or citation to the record, that the County has not done so. FOSC’s unsubstantiated assertion should be denied for failing to meet the required burden of proof.

In fact, the County’s CP does discuss phasing of urban growth in several places. See, e.g., Ex. 549, p. 11-35; Policy 3.4, pp. 7-6 through 7-10; Ex. 549, App D, Finding 1:20.”

The County further stated that it had complied with WAC 365-195-070(5) requiring availability of service concurrent with development. The CFP addresses scheduling of improvements. Further pp. 7-6 through 7-11 of the CP deal specifically with coordinated development within UGAs. For example, Objective 3 states:

“Within the designated urban growth areas the County shall coordinate with the

respective cities or entities delivering, or who are anticipated to deliver, urban public facilities and services to insure that growth and development are timed, phased, and consistent with the provision of adequate urban local facilities and services.”

The County further stated that, upon signing of interlocal agreements with the cities, commercial uses within city UGAs must develop to city standards with urban services. The interlocal agreement with Anacortes is already in place to make this happen. Those with other cities are being worked on.

Board Discussion

In general, we are not convinced that the County has made a mistake as to phasing of growth and interim uses in the UGAs. However, as pertains to new urban commercial and industrial land uses within the UGA without services, the County has not met the phasing requirements of RCW 36.70A.110(3), CP at 4-7 and Objectives 3 and 4 at 7-9 of the CP. Interlocal agreements with cities, ensuring that growth and development of commercial and industrial uses are timed, phased, and efficiently provided with services, must be in place and enforceable before compliance can be found.

Rural Issues

Urban Service Outside UGAs

FOSC makes the following claims regarding water and sewer service outside UGAs:

- CPP 1.8 prohibits growth outside the UGA from connecting to urban sewer and water services. Urban sewer and water services, include at a minimum, systems connected to systems that serve urban growth areas. A limited exception to this prohibition is allowed for serving rural areas where existing buildings have failed systems.
- RCW 36.70A.110(4) provides that it is not appropriate to extend or expand the use of urban sewer and water services outside the UGA except under the same limited exemption specified in CPP 1.8
- It is a violation of RCW 36.70A.110(4) to connect rural growth to urban system transmission lines outside the UGA unless the conditions of the limited exception are satisfied.
- The County has included policies in the CP including 6.1.3 at 4-33, 4.13 at 4-31, 9.3 at 10-

10, and CP Part II at 10-12, and in the DR in Section 9 that are not consistent with RCW 36.70A.110(4) and CPP 1.8, and which allow rural growth to connect to urban systems without meeting the limited exception of CPP 1.8.

FOSC concluded that we should therefore find the County out of compliance with RCW 36.70A.040, .070, and .210(1), in that sections of the CP and DR are not consistent with RCW 36.70A.110(4) and CPP 1.8. Further, we should not find compliance until the County prohibits building and subdivision permits outside the UGA from using urban governmental water and sewer systems, including systems connected to systems serving UGAs, except under the limited exception for existing buildings with failed systems.

The County, ASCL, Amicus Thomas Solberg, and Intervenors Willam Stiles, Jr., Tom and Sheila Buggia, Anthony Raab, and Towns of Concrete and Hamilton, all presented reasons why FOSC's position on this issue was incorrect. To back up their positions they presented the following arguments and evidence from the record below:

- Expert testimony that water line sizing is a “function of hydraulics” not a function of an arbitrary “urban” or “rural” definition.
- Ecosystem benefits arise from water line extension to rural uses including reduction of water demands from lakes and streams benefiting the natural environment and fishing habitat.
- These are not urban lines just because they are supplied by providers who also provide urban levels of water service inside UGAs.
- Under GMA, the presence of a water line is no longer the driver of urban growth in rural areas. Control of urban growth is achieved by effective comprehensive planning and DRs, not by limiting water service or water line size.
- Neither RCW 36.70A.110 nor CPP 1.8 prohibit use of existing systems if serving rural activity.
- Activities will have to be consistent with the CP and DRs.
- Under Ordinance 16559, special purpose districts must adhere to the CP. The County will not approve a permit if extension is for urban services outside the UGA.
- The Concrete and Hamilton water systems have excess capacity and a water service area in the rural area.

- Towns have the legal authority to serve water under WAC 35-92-010. This authority was not modified by the GMA.
- Distinction as to source of water is meaningless.
- The Department of Health (DOH) now requires 8” lines which necessitates a larger number of customers to make a system economically feasible.
- If water services can be provided so as not to encourage urban growth, it is appropriate under GMA.
- There are health benefits over digging a multitude of wells and septic tanks.
- FOOSC have read more into the Act and CPP 1.8 than those enactments actually require.
- FOOSC have made many conclusionary statements with little evidence in the record to back them up.

Much of the responses are summed up in the Towns of Concrete and Hamilton response brief on p. 16:

“In summary, the size restriction proposed by Friends of Skagit County, based on the assumption that the Hamilton water system is “urban,” is inconsistent with the definition of urban systems as “surface water” fed systems. However, this distinction is without merit, as RCW 36.70A.110 permits the water service outside of UGAs if services can be provided in a manner which protects health (such as the provision of clean water), promotes the environment (conserves water resources), and does not promote urban growth (provides services in areas subject to appropriate zoning controls). Under Department of Health regulations, distinctions between urban and rural water services have become meaningless, for all practical purposes. Water services, like electricity, should be provided to rural residents by the appropriate service provider as determined by the CWSP, in areas subject to zoning and development controls which will prohibit urban development.”

Anacortes reminded us and the County that the CWSP must be updated to be consistent with the CP and CPP 1.8. As it now stands, the CWSP allows more than is allowed under the CP, CPP 1.8 or the Act. Anacortes further declared that the County should use SEPA to control PUDs and other special purpose districts. The County responded that Section 9 of Ordinance 16559 deals with those concerns while the CWSP is being updated.

Board Discussion

The CP states at 10-11:

“All growth outside the urban growth boundary shall be rural in nature as defined in the Rural Element, not requiring urban government services except in those limited circumstances shown to be necessary to the satisfaction of both the County and the affected city (with regard to water the City of Anacortes is the only municipal water purveyor) to protect basic public health, safety, and the environment, and when such services are financially supportable at rural densities and do not permit urban development.”

Much of the argument on this issue revolves around a difference of opinion between FOOSC and other parties on the phrase “...not requiring urban government services.” We are not persuaded by FOOSC’s arguments that any service supplied by a provider who also provides an urban level of service to others is, *ipso facto*, an urban government service. FOOSC’s demand that a provider must be either an urban service provider or a rural service provider, and cannot be both, seems inefficient and beyond the requirements of the Act. Current DOH requirements of water purveyors may well preclude much of FOOSC’s demanded approach.

We share FOOSC’s and Anacortes’ concerns that the availability of water lines in the rural area coupled with less than rigorous enforcement of the policies of the CP and requirements of Section 9 of Ordinance 16559 could facilitate future suburban sprawl in rural areas. Land use designations and regulations must preclude such sprawl. The update of the CWSP to consistency with the limitations of CPP 1.8, the CP, and Ordinance 16559 will also alleviate some of these concerns.

In light of the increased deference directed by the Legislature, policies and requirements of the CP and Section 9 of Ordinance 16559, and assurances of strict anti-sprawl land use regulations and rigorous enforcement by the County, we do not have a definite and firm conviction that Skagit County made a mistake in its provisions for services outside UGAs.

Commercial/Industrial (C/I) Development Outside the UGA

In its opening brief, FOOSC stated:

“Exhibit 546 at 93-96 along with Exhibit 1199 allow an analysis of the flaws in the County’s Plan for allowing commercial and

industrial development outside the UGA. The major flaw in the manner in which the County has handled commercial and industrial development outside the UGA is that this development is allowed in all designations, at all locations outside the UGA, in both rural and natural resource lands by a simple zoning change. This is a violation of RCW 36.70A.070(1) which requires the CP to show the “general location and extent of the uses of land” for “commerce (and) industry.” Because rezones to commercial and industrial uses can now occur anywhere outside the UGA, and are now occurring, the Board needs to find commercial and industrial zoning invalid outside the UGA. This is in substantial interference with RCW 36.70A.020(1)(2)(5) and (8).

Another flaw is the fact that there is no limit on the amount of commercial and industrial zoning that the County will permit outside the UGAs. In CPP 1.1, the County decided to assign all of the C/I development that was projected by the 1995 OEDP (CP, Part IV(A)) into the UGAs and none outside the UGAs. But there are more than a 1000 acres of undeveloped C/I and M zoning outside the UGAs that the County retained in the DR. See Exhibits 546 and 1199.”

FOSC went on to list other perceived flaws:

- The CP allows NRL support services in the Rural Area only by special use permit (CP, Part I, Policy 4.1 at 4-31) but the DRs allow such uses by right (Section 7(1)).
- CP policy 6.1 at 4-33 and DR Section 7(1) allow rural uses that are incompatible with resource land conservation in resource lands. They are also not consistent with CP policies 2.3, 5.4, 5.6, 8.1, 8.5, and 10.7 which call for the protection of NRLs.
- The County must show a need for C/I outside UGAs.
- The County simply maintained all of its existing C/I and M zoning when it adopted the CP and DRs without evaluating if existing uses were compatible with the designation categories and without evaluating whether the lands were developed or vacant or appropriate for continuing C/I zoning under the GMA, CPPs, and CP.
- Extensive strip commercial development continues to be allowed as highway commercial

along Memorial Highway east of Mount Vernon and Highway 20 between Burlington and Sedro-Woolley even though forbidden by CP 3.2.

- CP Policy 3.1 at 4-30 states:
“New rural commercial should be located within Rural Villages to avoid incompatible land uses and the proliferation of commercial businesses throughout the rural area. Such use may be located in other rural areas if it can be demonstrated that the use is located beyond the service area of a Rural Village. New rural commercial uses should be limited to those typically located in and intended to serve the rural community.”

However, the County allows freeway commercial at four rural county I-5 interchanges that are within the service area of an UGA or Rural Village. An example is the Alger freeway commercial which is less than one mile from the Alger Rural Village. The Alger freeway site violates the above policy; it is not in a Rural Village, it is not beyond the service area of a Rural Village, and it is not intended to serve the rural community.

- The allowed freeway commercial is an inappropriate rural use because it is intended to serve commuters on the freeway and not the local rural community. Therefore no additional freeway commercial should be allowed in the rural area and all existing development should become a non-conforming use.
- CP, Part I, Policy 6.2 at 4-33 specifically allows freeway commercial use that is in conflict with the visual and functional compatibility criteria required for the rural area. Freeway commercial is an urban use and should not be allowed in the rural area by RCW 36.70A.110 (1).
- It is a major violation of RCW 36.70A.070(5) that rezones can occur anywhere outside the UGA to commercial and manufacturing uses when there is already a violation of CPP 1.1 because of the excessive amount of undeveloped commercial and manufacturing land outside the UGA. This is a substantial interference with RCW 36.70A.020(1), (2), (3), (5), and (8) and the existing commercial industrial and manufacturing zoning outside the UGA should be found invalid.
- The County originally limited the size of neighborhood business to 3,000 square feet. Later, in response to input from only one person and in contradiction to its own previous survey, the County increased the maximum to 4,500 square feet.
- CP, Part II, Policy 2.1 at 4-35 allows nonconforming uses outside the UGA to expand their

preexisting uses to their property boundaries. This issue was briefed in WWGMHB #95-2-0065 and the Board determined that Section 7(2) of the DR that implements this policy substantially interferes with the fulfillment of RCW 36.70A.020(1) and (2). If Section 7(2) is invalid, certainly the policy which it implements must be out of compliance with the Act. The subsequent passage of ESB 6094 by the Legislature should not change this decision. Expansion allowed in ESB 6094 was limited to uses in 1990, not 1996. The criteria required by ESB 6094 were not followed by the County. That section of ESB 6094 was a rebalancing, not a clarification of previous intent.

The County responded that all FOSC's accusations ignore the fact that the commercial uses the County allows outside of UGAs are restricted under Section 7 of the County's interim regulations, Ordinance 16559, as well as the CP policies for commercial uses. Exhibit 548, Section 7; Exhibit 549, pp. 4-29 through 4-34. Given the limitations that the County has placed on commercial and industrial uses outside of UGAs, FOSC's claims of non-compliance must be rejected.

The County further stated that the County is in the process of reviewing and revising its DRs. In the meantime, it has restricted the permitted commercial uses outside of UGAs in Section 7(1) of the Implementing Regulation:

For property located outside the UGA on land zoned M, HOC, C-LI or NB prior to September 11, 1996, proposed new uses and proposed changes of use shall be limited to those permitted or special uses allowed in the Neighborhood Business Zone, SCC 14.04.065 as amended by Ordinance No. 16470 and to those permitted or special uses allowed in the Ag-NRL, the RRc-NRL, the SF-NRL and the IF-NRL districts, SCC 14.40.107, 14.04.112, 14.04.122 and 14.04.125. The total square footage of any and all building(s) on a single parcel that are not uses permitted outright or by special use permit in the Ag-NRL, the RRc-NRL, the SF-NRL and the IF-NRL districts, SCC 14.04.107, 14.04.112, 14.04.122 and 14.04.125, shall not exceed the 3,000 square foot limitation of SCC 14.04.065, provided that storage or other uses that are accessory to the NB permitted use and do not exceed 50% of the square footage of the permitted use shall also be permitted. (Exhibit 548, § 7).

The County contended:

“This provision addresses all properties with existing zoning that could allow commercial or industrial uses. Under this ordinance, those properties are now limited to either natural resource related commercial or industrial uses (those uses that are permitted in the NRL zones) or to small, neighborhood business uses. *Id.* These restrictions on commercial and industrial uses outside of UGAs are consistent with this Board’s interpretations of GMA:

The County needs to provide language in the commercial/industrial (C/I) section allowing only commercial development in response to local neighborhood needs and industrial designations for uses related to resource lands.

Friends of Skagit County v. Skagit County, WWGMHB #95-2-0065 (Second Order Re: Modifying or Rescinding Invalidity and Finding of Continued Noncompliance, 8/28/96) at 2039. The CP policies are in accord. Ex. 549, pp. 4-29 through 4-34.

Indeed, ESB 6094 has now clarified that small scale commercial uses can be allowed in rural areas even when they do not primarily serve rural communities. RCW 36.70A.070(5)(d)(iii) (allowing in rural area “new development of ...isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.”) This section of ESB 6094 was expressly intended to clarify existing intent. LUSC Annual Report, pp. 17 and 18. The County’s allowance of restricted commercial uses outside of UGAs is consistent with GMA.”

As regards to the potential for rezones to C/I designations outside UGAs the County responded:

“However, under GMA, the County’s Plan and the County’s current zoning code, any rezone Skagit County undertakes in the future must be consistent with GMA and Skagit County’s new GMA Comprehensive Plan. RCW 36.70A.130(1) (“Any amendment or revision to a comprehensive land use plan shall conform to this chapter, and any changes to development regulations shall be consistent with and implement the comprehensive plan”); Ex. 549 at pp. 4-29. (“In the future, new commercial and industrial development proposals if consistent with the comprehensive plan will only require a rezone and not a comprehensive plan amendment”); SCC § 14.01.053(6)(a):

All or any part of an official control or any amendment...thereto shall be granted only if the applicant demonstrates that the proposal is consistent with the community vision statements, goals, objectives, and policy directives of

the Comprehensive Plan, and that the proposal preserves the integrity of the Comprehensive Plan and assures its systematic execution.

Very simply, all of the rezones with which FOSC is concerned could only be approved if they comply with the Comprehensive Plan restrictions on commercial and industrial uses outside of UGAs and are therefore permissible under GMA.

To the extent FOSC is asking the Board to conclude that the County will improperly rezone property outside of UGAs to commercial and industrial zoning, FOSC's "presumption of bad faith" by Skagit County is legally indefensible. As the Central Puget Sound Growth Management Hearings Board noted in *Pilchuck v. Snohomish County*, CPSGMHB #95-3-0047 (Final Decision and Order, 12/6/95, Pilchuck at 1434 (see, supra, § E.1). This Board should likewise reject FOSC's presumption that Skagit County's future rezones will be undertaken in bad faith."

The County further responded that:

- The plan is consistent with CPP 1.1. FOSC continues to equate C/I growth with urban growth. Neighborhood business and resource related uses are not urban and the GMA and CPP 1.1 permit the County to allow these uses outside of UGAs.
- The County's permitting of resource-related uses in rural lands is consistent with the GMA. The only use expressly incompatible with rural lands under GMA is "urban" development. Resource-based uses do not constitute urban growth and are therefore not prohibited in rural areas by the GMA. In enacting ESB 6094, the Legislature clarified its intention that resource uses be permitted in rural areas: "The rural element shall permit rural development, forestry and agriculture in rural areas." RCW 36.70A.070(5) (b). Further, the only natural resource uses that are not required to obtain a special use permit before locating on rural lands are uses that are permitted outright in natural resource zones. The only real industrial resource use permitted outright in the resource zones is a sawmill. The Central Board held that sawmills are permissible in rural areas, *Vashon-Maury v. King County*, CPSGMHB #95-3-0008.
- As regards to FOSC concerns about future Strip Commercial, Freeway Commercial, or Highway Commercial development, those uses are now limited to neighborhood business and resource-related uses. Those uses are allowed outside of UGAs under GMA. The fact that some parcels allowing neighborhood business or resource-related

uses are adjacent to other such parcels, or adjacent to a freeway, do not render those permitted uses contrary to GMA.

- Highway-Oriented Commercial (HOC) serves the needs of a major transportation corridor (I-5), is limited to the four locations designated in the CP, and would require a CP amendment to add more. HOCs are restricted to 1,000 feet from the center of the interchange and uses are greatly restricted so as not to conflict with GMA.
- FOSC makes the unsubstantiated statement that all four HOCs are within a Rural Village service area with no factual showing of that.
- As to FOSC's argument that existing commercial development outside of UGAs, must become a nonconforming use because they constitute urban growth, the plain meaning of "urban growth" excludes continuation of an existing use.
- The County has now insured that new commercial and industrial uses outside of UGAs will not constitute urban growth by requiring that such uses either not be urban (i.e., limiting them to neighborhood business and resource related activities) or not be growth (i.e., limiting other uses to existing uses).
- The County's allowance of expansion of existing uses is permissible under GMA. The BOCC felt that this would be a reasonable accommodation to the business owners. Such extension is limited to an expansion of existing use. In addition, no extension of public sewer or public water is permitted to serve any expansion of these existing uses. In its recent amendments to GMA, the Legislature made clear that expansion of existing nonresidential (i.e., commercial and industrial) uses in rural areas is permissible under GMA:

...The rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents.

RCW 36.70A.070(5)(d). Land Use Study Commission (LUSC) at p. 71-18 noted that these amendments were a clarification of previous intent. This Board should lift the

previous finding of invalidity and find compliance.

- As to FOOSC's issue with the amount of square footage allowed for neighborhood businesses in rural areas, the County determined that the original survey conducted to arrive at the 3,000 square foot limitation did not include area for storage and accessory uses. The County limited those accessory uses to 50% of the retail space to insure that such uses would be consistent with existing rural character. Accessory uses are rural uses. FOOSC has failed to carry its burden of demonstrating that allowing such limited accessory uses is inconsistent with the record support for that size or does not comply with the GMA.
- The County did consider existing C/I zoning and determined that it was appropriate to retain this zoning.
- Nothing in the GMA requires a C/I needs analysis for the rural areas.
- Any other charges relating to C/I outside UGAs were not supported by sufficient detail or argument by FOOSC to allow the County to respond and therefore should be dismissed.

Intervenors Tom and Sheila Buggia and TB Enterprises (Buggia) supported the County's actions with regard to HOC with the following points:

- Skagit County has addressed the needs of the traveling public on the I-5 corridor by designating four HOC districts and limiting them to within 1,000 feet of the I-5 interchange and Neighborhood Business use and size limitations.
- CP Policy 6.1.4 at p. 4-33 states:
"Performance standards and mitigation measures shall be developed in order to govern the intensity, siting, and designs of any proposed facility...and assure the protection of the rural character of the area."
- The location, use, and size limitations in the HOC district are the types of performance standards and mitigation measures required by the land use element of the CP.
- The HOC district is a reasoned and responsible method of protecting the rural area while meeting the commercial needs of the traveling public.
- The HOC designation and the zoning restrictions prevent strip development

prohibited by Land Use Policy 3.2. The 1,000 foot limit alone prevents such strip development.

- FOSC's entire argument is based on the assertion that commercial=urban, which is not true.
- The limited HOC allowed at the Alger interchange is not incompatible with rural character along the freeway. Rural character might be quite different along a remote country road.
- Along the I-5 corridor there are external commercial demands that need to be met in such a way that the rural character of Rural Villages and other rural areas is not threatened. The HOC district, with its location and size restrictions, actually protects the rural character of a Rural Village such as Alger.

Petitioner Raab also responded to FOSC's challenge to the allowed size of Neighborhood Business. He contended that:

- The limitations adopted by the County are actually too restrictive.
- The key is consistency with rural character, not size.
- The study used by the County to determine size, was of rural grocery stores. Other types of rural stores might need more space.
- Design is much more important than size in assuring compatibility.
- The County's overly restrictive requirements for Neighborhood Business is stifling economic growth in areas that need it most.

Board Discussion

The January 6, 1997, staff memo to the PC at p. 3 states:

“The Land Use Element at 4-18 includes policies for “grandfathering” nonconforming commercial and industrial uses. The Planning Commission should discuss how to recognize existing land uses vs. whether to continue all existing commercial/industrial zoning in the rural areas. GMA probably does anticipate the need to rezone some areas to meet the new statutory requirements.” (emphasis added)

At that point, staff seemed to recognize the need to determine the appropriateness of retaining previous C/I zoning in the new CP. However, the adopted CP at 4-29 states:

“In general, it is expected that existing commercial and industrial zones outside the UGA will retain commercial and/or industrial zoning, but with the rural and resource related restrictions described in these policies. In the future, new commercial and industrial development proposals if consistent with the comprehensive plan will only require a rezone and not a comprehensive plan map amendment.”

Not only did the County fail to rezone areas which were no longer needed or appropriate given the mandates of the GMA and CPPs, but also made it possible to create additional new C/I zones in the rural area with no CP amendment required.

CP Policy 3.1 at 4-30 states:

“New rural commercial should be located within rural villages to avoid incompatible land uses and the proliferation of commercial businesses throughout the rural areas. Such uses may be located in other rural areas if it can be demonstrated that the use is located beyond the service area of a rural village, such as on an island that does not contain a rural village or an incorporated area. New rural commercial uses should be limited to those typically located in and intended to serve the rural community.”

However, the CP at 4-29 appears to encourage new C/I development outside UGAs by enabling them to be created by a simple rezone rather than a CP amendment. Further, the wording of Policy 3.1 at 4-30 uses the term should, not shall and contains no criteria that would limit the use of the exception.

Intervenor Buggia stated the need for the restriction of C/I outside UGAs and rural villages very well:

“Those limitations are necessary to prevent the expansionist tendency inherent in all commercial uses. By their nature, commercial uses will seek to respond to commercial demands. The limitation on the service area for rural commercial uses and restricting their location to the rural village are necessary limitations to ensure that the rural commercial uses are limited in size and scope. These limitations are designed to limit commercial sprawl in the rural area, thereby protecting the rural character of the rural areas of Skagit County.”

Under GMA, once the CP and implementing DRs are adopted, they direct where growth will be allowed, giving some level of predictability and consistency to property owners.

Rather than being left to the whim of changing elected officials and staff, a full CP amendment process is required for designation changes. What a blow it would be for rural residential land owners, who have gone through the anguish of having their properties downzoned to maintain rural character, to next have C/I approved next to them with a simple zone change – no CP amendment required.

Even with the changes in ESB 6094, the County must contain or otherwise control rural development and reduce the inappropriate conversion of undeveloped land into sprawling low-density development. More intensive development is limited to existing areas or uses. There should not be any new patterns of sprawl beyond existing development. This includes commercial/industrial as well as residential uses.

Nor can the County simply readopt all previous C/I zoning outside UGAs with no analysis of the need for, the cost of, or the appropriateness of the location of, those zones. Although the County claims that nothing in the GMA requires a C/I needs analysis for rural areas, the underlying theme of the Act is that a local government must determine what exists, what is needed, and what it will cost to achieve what is needed, before adopting a CP. How else can the goal of encouraging development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner and the goal of reducing the inappropriate conversion of undeveloped land into sprawling development be achieved?

The County already has large areas of C/I designated in the municipal and Bayview UGAs plus several rural villages. It must determine what other, if any, rural C/I needs exist and what specific, limited areas would be most appropriate to meet those needs in order to assure that the inappropriate conversion of undeveloped land will not be allowed to occur.

As we have consistently maintained in previous cases in this and other counties, and as staff pointed out in January of 1996, the County may determine how to recognize existing land uses, however, existing zoning cannot be a sole criterion for retention of C/I zoning under GMA.

The County did specifically designate four HOC locations in the CP and required that any

additional locations seek a CP amendment. This specific location designation and requirement for a CP amendment for additional HOC designations is a step in the right direction. We are unable, however, to find in the record any showing of need for the services of these four locations that are not already supplied by many locations along I-5 within UGAs. We therefore can not find compliance at this time.

We have previously commended the County for its work on its Neighborhood Business District requirements. Under this record, we do not have a definite and firm conviction that Skagit County made a mistake by allowing up to 1,500 square feet of auxiliary uses to be attached to neighborhood businesses.

Our July 14, 1997, Order Rescinding Invalidity in *Friends of Skagit County v. Skagit County*, #95-2-0065 at p. 9 stated:

“Section 7(2) allows expansion to the legal parcel limits of any lawfully-existing commercial or industrial use on the date of the ordinance. In contrast, the intent section of SCC 14.04.270 allows continuance of the established legal use of the land at the time of adoption of a regulation, permitting these ‘nonconformities’ to continue ‘until they are removed.’ ‘It does not, however, ‘encourage their survival.’ SCC 14.04.270(1) and Ordinance 16559 7(2) are inconsistent. Additionally, Section 7(2) allows expansion which is not limited to neighborhood business or resource-based businesses. As such, it allows urban growth in rural areas and substantially interferes with RCW 36.70A.020(1) and (2).”

The County has not corrected the inconsistency pointed out in the above decision. Also, Ex. 1210, which the County used to justify the allowance of expansion of nonconforming existing businesses is, incomplete. When it was presented to the PC, members were quick to point out the incompleteness of the list; as was FOOSC during this case. The extent of the impact of this allowance is not known due to the incomplete information on all businesses that would fall under this provision and the amount of property that would be affected. Some of these structures/uses may be so nonconforming with GMA’s goals that they should not be allowed to expand. Section 7(2) does not provide sufficient definition to ferret these out and prohibit their expansion.

The County has taken no corrective action in this matter since our July 14, 1997, order. We are therefore unable to lift our previous finding of invalidity.

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Rural Intermediate (RI) and Rural Village (RV)

FOSC claimed that the majority of assigned rural development capacity could be accommodated by existing lots in the RI and RV zones according to the County's own numbers. They therefore asked us to find allowance for any additional residential subdivision within The RV and RI zones noncompliant with the Act. FOSC did not contest the new commercial development provided for in the RV zone nor the delineation of the RI and RV boundaries.

The County countered that it had made very hard choices and had drawn the lines tightly around preexisting pockets of higher density in the rural area. Minimal infill would be allowed within these preexisting areas. The County pointed out that the LUSC's annual report showed that the allowance for this approach in ESB 6094 was simply a clarification of the intent of the previous Act and therefore an available option for the County previous to the effective date of ESB 6094.

The County stated that its allowance for limited infill was not driven by or justified by capacity need, but was based on acknowledgement of pre-existing development patterns and provided for a variety of rural densities. The County asserted that even with the allowed infill the average lot size within these areas changed very little. The County provided exhibits from the record (i.e. 429 and 369) which provided maps and analyses for these areas supporting its statements. When we expressed a concern about the ordinance's provisions for a process to possibly designate additional RI areas, the County responded that any additional RI designation would require a CP amendment and would therefore be subject to a petition for review.

Board Discussion

After careful consideration of the record it appears that the County has made tough choices in drawing the lines tightly around these preexisting built-out areas and only allows limited infill. Under these specific facts, and in light of increased deference directed by RCW 36.70A.3201, we do not have a definite and firm conviction that Skagit County made a mistake in those areas. Petitioners have not met their burden.

Variety of Rural Densities

ASCL claimed that the County had violated RCW 36.70A.070 by limiting the variety of densities permitted in the rural areas to two.

The County responded:

- The CP provides for no less than four types of rural density.
- The County's planning process and the record explain how the County arrived at the variety it has included in the CP.
- ASCL has not met its burden of demonstrating why a different variety is either required by GMA or supported by the record, nor shown that the County's variety is not in compliance with GMA.

Board Discussion

Under the clearly erroneous standard, Petitioners ASCL have failed to meet their burden of demonstrating that the County has failed to comply with the Act in selecting the variety of rural densities allowed.

Mining Activity in the Rural Area

FOSC claimed that:

- CP Policy 2.5 at 5-25 allows new commercial mines in the rural designation on lands that are not capable of being designated MRL because mining is incompatible with surrounding rural uses.
- CP Policy 2.6 at 5-25 only requires that new mines that are not in MRL designations meet policies unrelated to MRL designation, which do not include policies requiring compatibility with rural character.
- RCW 36.70A.070(5) requires uses allowed in the rural area to be compatible with rural character.
- The goal of the rural element, CP at 6-2, requires rural character and lifestyles to be retained by allowing rural uses which are compatible and in harmony with the rural community values.

- The first two objectives of the rural element, CP at 6-3 to 6-4 require protection and conservation of rural character.
- The County in CP Policy 6.6 at 4-22 recognizes the incompatibility between rural housing and commercial mining by requiring rural densities within ¼ mile of designated MRLs to be not greater than 1 unit per 10 acres.

The County responded:

- GMA does not require the County to restrict or prohibit mining activity outside of designated mineral resource zones.
- While RCW 36.70A.070 does state that rural lands cannot contain designated mineral lands of long-term commercial significance, it does not prohibit mining activity that may not have long-term commercial significance.
- Since GMA only defines “urban growth” as sufficiently intense to “...be incompatible with the primary use of such land for the ...extraction of mineral resources,” it follows that rural lands and mineral extraction can occur, under some circumstances, in the same areas.
- WAC 365-195-330(2)(d)(ii) suggests adoption of policies for the preservation of the rural character of such lands that “include continuation of...excavation of mineral resources on lands not designated as possessing long-term commercial significance for such uses.”
- FOOSC is incorrect in asserting that Policy 2.6 allows an operation that was denied because of recognized incompatibility with the surrounding rural character to simply ignore that incompatibility and go forward.
- Any mining operation, including one that is not on a designated MRA land must obtain a mining operation permit and must “comply with the policies set forth in the mineral element,” which include addressing impact and compatibility issues.

Board Discussion

FOOSC’s assertions are not backed by the record and the goals and requirements of GMA. The County is in compliance with the Act as to mining activity allowed in the rural area.

Resource Lands

Conservation and Reserve Developments (CaRDs)

The land use techniques referred to as CaRD policies are described in Chapter 4 pp. 4-35 through 4-40 of the land use element of the CP. Several of FOSC's objections to these CaRD policies are the subject of a stipulation for possible settlement and extension of the date for a final order.

However, two major complaints need to be addressed now:

- Whether the concept of a CaRD can be used at all in natural resource designations.
- Whether the County's policy regarding the possibility of 4 dwelling units per 40 acres in the Rural Resource designation complies with GMA.

1. CaRDs in Resource Lands

FOSC argued that the use of CaRD development in any NRL designation would create suburban-sized lots and encourage residents to object to normal NRL operations that are generally incompatible with residential use. They further argued that under goal 8 of the GMA, the intrusion of these suburban-sized lots is an incompatible use that must be discouraged. They also claimed that suburban residential use in NRL-designated lands is in conflict with CPP 5.10, 5.11, 8.1, 8.5, and 8.8.

The County responded that FOSC was asking us to rule, essentially as a matter of law, that cluster developments such as CaRDs should be prohibited in any natural resource category. It reminded us that nothing in the GMA requires such an absolute. In fact, RCW 36.70A.090 has always encouraged innovative techniques such as cluster developments, without prohibition on use in resource zones. The County further stated at p. 44 of its response brief part 1:

“...ESB 6094 has specifically recognized the use of cluster development and the 1 acre development right lot concept used in Skagit County on Agricultural lands. ESB 6094, § 23, now codified at RCW 36.70A.177. Laws of 1997, Chapter 429, § 23. Since ESB 6094 did not in any way ‘reduce’ the need to protect agricultural lands or other resource lands, this provision should be interpreted to reflect an understanding that cluster development and resource lands could coexist, even before the effective date of ESB 6094.”

The County went on to say:

“FOOSC has not demonstrated that allowing a CaRD development in the natural resource lands is clearly erroneous. In fact, the record demonstrates that a similar concept has been used historically in the agricultural areas of the County for years.... Simply put, the devil is in the details. Since no CaRD development can be permitted until that detailed ordinance is adopted, the Board should not accept FOOSC’s invitation to rule, as a matter of law, that CaRD developments may not be permitted in any resource category. Any challenges to the details could then be the subject of a future appeal of that regulation.”

Board Discussion

We agree with the County that the Legislature has clarified the allowance for cluster development in agricultural lands as long as the long-term viability of those lands is not threatened by conflicting uses. The key will be writing a CaRD ordinance which sufficiently protects the long-term resource usage of these lands. Upon adoption, the CaRD ordinance will be subject to a petition for review.

FOOSC have failed to meet their burden of showing that CaRD development in resource lands, regardless of limitation, is prohibited by the Act.

2. 4 Dwelling Units per 40 acre CaRD in the Rural Resource Designation

This question arose out of the natural resource lands case, *Friends of Skagit County v. Skagit County*, #95-2-0075, where the County originally “sorted” all Rural Resource lands into 40-acre minimum parcels, but then allowed the creation of 20-acre lots from that 40-acre sort. We ruled that the record supported either the 20-acre or the 40-acre size, but, if the County was going to “sort” to 40-acre parcels, it should not allow future subdivision to 20 acres (Compliance Order Regarding a Finding of Partial Compliance (NRL) April 9, 1997, or at 2369). In response, the County reconsidered the arguments supporting 20 and 40-acre parcel size and elected to maintain the 40-acre sort. The County further concluded that with an appropriately designed CaRD development, it would not interfere with long-term resource use of that 40- acre parcel to allow for the potential for 4 dwelling units in a CaRD development in exchange for long-term covenants and protections of the balance of the property for resource us. We specifically

reserved compliance review of this provision until this appeal (Order dated July 14, 1997).

FOSC argued:

- The County has determined that 40 acres is the minimum size for designation of Rural Resource lands.
- The 40-acre minimum was based on disturbance to NRL operations caused, in part, by neighbors at greater densities.
- The current allowed development in Rural Resource lands is 1 unit per 40 acres.
- An increase in residential density in the Rural Resource lands would encourage an incompatible residential use that is required to be discouraged by GMA Goal 8 when the County carries out its obligation under RCW 36.70A.060 to assure the conservation of resource lands.
- Increasing residential density in the Rural Resource designation is in conflict with CPP 5.10, 5.11, 8.1, 8.5, and 8.8.

The County and other parties responded:

- The 4 dwelling units will not be allowed to be spread over the 40-acre parcel.
- Four homes carefully positioned in a small corner of a 40-acre parcel in exchange for the long-term covenanted conservation of the balance of the parcel for resource production carries out the intent of Goal 8, RCW 36.70A.060, and the CPPs to assure the conservation of resource lands.
- The 20-acre obstacles noted by the County in its original designation criteria do not apply to a 36-acre tract with 4 small lots in one corner or along a frontage road.
- The allowance for some subdivision of land under very strict restrictions provides farmers some financial relief and will allow them to hold on to the majority of their land and remain in agriculture.

Board Discussion

Given the Legislature's strong emphasis on deference to local decision-makers and their local

conditions and under this record, we do not find that Skagit County failed to comply with the Act when it provided for the possibility for 4 dwelling units per 40 acres. As of now, the minimum lot size remains at 40 acres until the County passes a CaRD DR which ensures that the resultant development does not constitute inappropriate growth, does not threaten the viability of the remaining farmland, and only removes a small percentage of the land from ongoing long-term agricultural usage.

CP Map Inconsistency with Rural Resource Designation Criteria

FOSC made the following claims:

- Specific 40-acre parcels in 18 sections were identified that appear to meet the designation criteria for Rural Resource-NRL in CP policies 5.1. and 5.2.
- CP policy 5.3 is an “inclusionary criterion” which may not be used to exclude parcels that meet the requirements of CP policies 5.1 and 5.2.
- The internal consistency requirement of RCW 36.70A.070 is violated if parcels which meet the designation criteria are not designated.

The County offered the following responses:

- Rural resource lands were designated months earlier with adoption of its NRL ordinance and not changed by the CP process. Therefore, FOSC’s appeal is untimely.
- One paragraph in a brief providing no site-specific analysis was far from that required for FOSC to meet their burden of proof.
- The criteria used were both exclusionary and inclusionary and not nearly as simplistic as FOSC portray.

Board Discussion

Since the County did readopt its NRL designations in the CP process, FOSC’s complaints may be timely, but are unsupported by the record.

CP Policy 5.4 at 4-20 states:

“Similarly, parcels that meet the criteria described in 5.1 – 5.3 above may be excluded to provide logical boundaries to the Rural Resource lands designation to avoid conflict with existing land uses.”

FOSC has provided us no analysis which would lead us to a conviction that the County made a mistake in designating these properties. We therefore find the County in compliance as regards to these contested parcels.

Vendovi Island

FOSC also contested the Rural Reserve designation of Vendovi Island owned by Fluke Capital Management (FCM). FOSC contended that Vendovi Island meets the criteria for Industrial Forest Land and so, by the internal consistency requirement of RCW 36.70A.070, must be designated Industrial Forest.

FOSC provided the following information and arguments to support this position:

- Vendovi Island is primarily made up of two tax parcels of 2.31 acres and 162.69 acres.
- 85 percent of the Island is soil type 156 and the remainder is soil type 90.
- Both soils are suitable for Douglas Fir.
- Vendovi Island is 165 acres with PFLG soil 5.
- Prior to June 1997, the zoning was Forestry.
- The property meets the Policy 4.1.2 criteria for IF designation for the following reasons:
 - (a) average parcel size is at least 40 acres,
 - (b) majority of the area is PFLG soil 5,
 - (c) majority of the area includes “lands which are primarily devoted to and used for growing and harvesting timber,” and,
 - (d) the owner designated the land as Forest and was receiving special tax benefits under the current use classification.

- Policy 4.2 at 4-16 states:

Then, those lands located in blocks of contiguous parcels approximately 160 acres and larger shall be retained in Industrial Forest designation. (emphasis added)

- Therefore, the designation criteria allow no discretion when qualifying blocks of land are “approximately 160 acres and larger.”
- It also meets Policy 4.3 because it is in the current use classification and has limited public services.
- Policy 4.4 allows designation of additional parcels to provide logical boundaries. This criterion should have been used to designate the remainder of the island as IF.
- It, therefore, must be designated IF by the internal consistency requirement of RCW 36.70A.070.

The County responded:

“Friends of Skagit County’s (FOOSC) argument that Vendovi Island should have been designated as IF-NRL ignores all the site-specific evidence in the record relating to Vedovi Island, and most incredibly, ignores the most obvious fact that distinguishes it from other IF lands - that it is an ISLAND. The strong factual record indicates why the County designated Vendovi Island as Rural Reserve.”

The County presented the following facts and arguments:

- The County objects procedurally to FOOSC’s challenge to the FCM property in this proceeding as untimely. The FCM property, although initially proposed in 1993 as Forestry NRL, has been proposed since June of 1994 as Rural. It was proposed as Rural throughout 1995 and 1996 and was designated as Rural in the September 11, 1996, NRL map with the adoption of the NRL Ordinance (No. 16291). If FOOSC wished to challenge the designation of Vendovi, that was the time to do so. The IF criteria have not changed since September of 1996. FOOSC has cited nothing new in the record regarding this property since then.
- In October 1993, FCM submitted information, including a report by a professional forester, showing that Vendovi Island should not be designated as IF because it did not meet the long-term commercial significance requirement for NRL under GMA.
- Natural Resource Policy 4.7 states that “the County shall designate and map long-term commercially significant forest resource lands as Industrial Forest and

Secondary Forest.

- The Vendovi Island property does not meet this test for several reasons not applicable to most IF land:
 - (a) It is not accessible by road, making harvesting and transportation expensive, if not impossible.
 - (b) One-quarter of the land is subject to Shoreline Management Act jurisdiction, which restricts timber harvest.
 - (c) Over half the island contains either no trees or timber stands of such poor quality that they cannot be harvested.
 - (d) Log storage and booming would be difficult on the shore.
 - (e) The Island is an excellent bald eagle habitat.
- FCM followed up this information with a petition to change the proposed designation from Forestry to Rural in January 1994.
- On June 30, 1994, the Planning Department sent FCM a letter indicating that the Department would recommend that the request be granted.
- The property remained in a proposed Rural designation from that point forward through the CP process.
- The County's notes at that time reflect that Vendovi was removed from Forestry to Rural because it did not meet the criteria for SF (as there was not IF to buffer) and it did not meet the minimum acreage for IF (which was then 640 acres).
- Vendovi Island remained Rural throughout the designation process of NRL in 1995-96.
- Further, on April 4, 1996, FCM sent the County a letter showing why the property did not meet the NRL criteria in WAC 365-190-060. Evidence presented showed that in two small logging operations in 1988 and 1990 there was a net loss of \$13.67 per 1,000 board feet, showing the lack of commercial viability of the land as IF.
- The Vendovi Island property was commercially logged only once, and that was in the 1920s.
- A January 20, 1997, staff memo to the BOCC specifically addressed concerns that the FCM property did not meet rural development policies. That memo reflects the need to view the CP policies with some flexibility, recognizing

particularly “special circumstances” of an island.

- It is these “special circumstances” which make the FCM property inappropriate for IF even if it meets the 160-acre IF parcel size.
- It is not “long-term commercially significant forest resource lands” under CP Natural Resource Policy 4.7.
- Although there is evidence in the record on both sides of this issue, designating the FCM property as RRv is not clearly erroneous.

Intervenor FCM backed the County’s arguments with further detail and evidence from the record.

FCM stated on p. 5 of its response brief:

“Friends’ burden is to show 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 Act. *Id.* The legislature amended the GMA in 1997 to increase the burden of proof on a petitioner. In adopting these amendments, the legislature stated that it intended ‘that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard’ previously employed by the boards. Ch. 429, Laws of 1997 § 2. Friends of Skagit County have failed to meet this increased burden with respect to the designation of Vendovi Island.”

Board Discussion

We agree with FCM. There is significant evidence in the record on both sides of this issue. FOSC have not met their burden of showing that the County’s RRv designation of Vendovi Island is clearly erroneous in view of the entire record and in light of the goals and requirements of the Act.

General Issues

Compliance with the Affordable Housing Goal

Various Petitioners contested the County’s compliance with the Affordable Housing Goal.

Petitioner Raab estimated that the County had downzoned 50 percent of the rural lands which, he stated, would result in less affordable housing. He asserted that the County must utilize the land more efficiently to keep prices down. He further claimed that the County's land capacity analyses both inside and outside the UGAs overestimated buildable lands and therefore underestimated needed land for development. ASCL stated that it did not believe a rural land capacity analysis is required by GMA, but since the County decided to do one it must be done right. ASCL asserted that the sample studied was only 10 percent and there was nothing in the record to show how the 10 percent was chosen or if it was truly representative.

The County responded that:

- It had made an adequate land capacity analysis in rural areas.
- Ex. 369 at p.6-10 shows sections assessed were scattered throughout the County.
- It is the Petitioners' burden to show why the 10 sections chosen were not adequate and they had failed to do so.
- The CP contains a Housing Element, Chapter 8, that identifies the affordable housing issue and includes policies and strategies to try to minimize housing costs.
- The County has established minimum densities in the UGAs, in part to facilitate affordable housing.
- The County included a market factor in the land capacity analysis it completed for its UGAs to minimize the effects that a limited land supply would have on housing prices. The concerns raised by Petitioner Raab were, in fact, raised and evaluated by the County during its review. However, the County did not believe that the "assertions" and "fears" of outrageous land prices with the proposed land use densities were sufficiently substantiated with evidence in the record to be able to justify use of a market factor well in excess of what the guidelines suggest is appropriate.
- Petitioners have not cited any additional evidence from the record that substantiates their assertions.
- Petitioners have failed to carry their burden of showing that the Skagit County

CP violates the Affordable Housing Goal.

Board Discussion

After careful review of the record and in light of the increased deference in RCW 36.70A.3201, we conclude that Petitioners have not met their burden in demonstrating that the County has violated the Affordable Housing Goal.

Compliance with the Economic Development Goal

Petitioner Raab made many assertions about how the County had failed to comply with the Economic Development Goal. Some of those assertions were:

- The UGAs are too small due to an underestimation of nonbuildable lands, especially lands in floodplains.
- Extreme buffers required by the County's CAO have resulted in unfair forfeiture of land and a curtailment of the agriculture and forestry industries in particular and rural businesses in general.
- The Neighborhood Business restrictions and limitations on location of rural business stifles economic growth in areas that need it most.

The County responded:

- The County's CP includes an economic development chapter containing policies and strategies for encouraging economic development.
- The County has established urban growth areas with land sufficient to accommodate the projected growth for commercial and industrial activities.
- The County, through its commercial policies in the land use element of the CP, has continued to allow commercial and industrial activity outside UGAs that is appropriate and necessary to serve the rural community and the natural resource industries.
- The concerns about the effect of the County's CAO is not before the Board at this time.
- The record does not support Petitioner's assertion that the County has not

accommodated economic development activity in the County.

Board Conclusion

Petitioners have not met their burden of proof in demonstrating that the County has violated the Economic Development Goal of the GMA.

Failure to Use OFM Numbers

Several petitioners accused the County of violating the Act by not using the required OFM projection. Petitioner Cameron at p. 9 of her opening brief stressed the impact of this in the creation of a Rural Reserve land use designation:

“Skagit County misapplied population forecasts to property in the rural reserve designation. By using the substituted population forecasts of EES instead of the statutorily required forecasts of OFM, the County established a policy that limited the number of residential building permits in the Rural Reserve designation to 1 dwelling per 10 acre minimum.”

The County responded at page 2 of brief 1:

“....The 1995 OFM range of population projections for the County were used. Ironically, even though the County was chastised for using its own independent projections in the earlier IUGA matter, the 1995 OFM projections came remarkably close to the projections the County had been relying on previously.”

Board Discussion

We are unpersuaded by Petitioners’ arguments. The population projection the County used was actually higher than the original OFM estimate. Therefore, the population allocation for the rural area was greater than it would have been had the County used that original OFM allocation. Since petitioners were trying to get higher density designations, we are perplexed by their arguments.

Petitioners have failed to meet their burden of showing that the population projection used by the County did not comply with the Act.

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Legal Lots of Record

Regarding the FOSC and ASCL challenges, the County stated at p. 48 of brief 1:

“Both FOSC and ASCL challenge the County’s lot aggregation or ‘legal lots of record’ provisions. As noted above, the County believes ASCL has abandoned their challenge by failing to argue with any specificity the nature of their objection, except to say the provision ‘lacks clarity.’

The County agrees with FOSC’s note that the CP definition of ‘legal lot of record’ is incorrect and inconsistent with the definitions contained in Skagit County Code. That drafting error can and will be corrected. The County has no intent of circumventing the current lot aggregation requirements found in Ordinance 16559 as evidenced by the fact that Ordinance 16559 did not contain the same definition change challenged in the CP.”

We remand the definition of “legal lot of record” to the County for correction and consistency with the Skagit County Code.

Compliance with Goal 6 - Private Property Rights

Virtually every individual petitioner who challenged his/her CP designation, as well as general Petitioner Raab relied upon Goal 6 as one of the bases for Skagit County’s alleged noncompliance. The major concerns raised included:

- The County failed to adopt any kind of formal review process as required by RCW 36.70A.020(6) and .370 to protect private property rights and assure that proposed regulatory actions do not result in an unconstitutional taking of private property.
- The County did not even consider property rights when designating people’s property.
- The County made property designations subjectively rather than on clear, objective criteria.
- The County cannot show how criteria were applied to individual properties.
- The designations were inconsistent.
- The County’s planning process was arbitrary, capricious, fundamentally unfair, and unduly oppressive when applying land use designation criteria to petitioners’ properties.

- The County failed to properly consider property rights since there are only three signs of consideration in the record:
 1. A County Commissioner's hand-written note,
 2. A memo from Prosecuting Attorney saying simple downzoning is not a taking.
 3. The introduction to the CP states that it respects private property.
- Burdens should be born by all, not by a few. The County's designations have had severe economic impact on some citizens.
- Remand to the County for it to ask the property rights questions that should have been asked before.

The County responded:

- The record reflects that the County adequately complied with the GMA requirements regarding property rights issues.
- Staff memo to BOCC in September of 1996 stated:

“The County is in the process of preparing fiscal analysis and an SEIS for the new draft Comp. Plan. That material is assessing the overall County-wide economic impacts of the proposed land use designations, including resource lands. It does not, and probably cannot, address individual property value changes. Obviously, some properties may increase in value and others may decrease. Neither GMA nor SEPA require individual property economics analysis when adopting County-wide plans. The BOCC can consider these public concerns as part of their policy-making process.” Ex. 1082, p. 2.
- A January 31, 1997, staff memo to PC (Ex. 416) stated:

“One clarification of the property rights goal is also probably appropriate to frame the Planning Commission discussion. The goal prohibits unconstitutional takings. A simple downzoning probably does not rise to an unconstitutional taking, as long as the property owner is left with some reasonable economically viable use of his or her property. The property rights goal secondly protects against arbitrary or discriminatory actions. Any land use changes or impacts should be based on

evidence in the record and on sound reasoning, and should treat similarly situated properties similarly to meet this second part of the property rights goal. You should look to the evidence in the record to support your planning choices.”

- Petitioners have shown no authority from GMA or anywhere else that requires “any kind of formal review process.”
- ASCL’s reference to RCW 36.70A.370 not only does not impose any specific requirements on local governments for establishing a formal review process, but subsection (4) thereof specifically protects local governments from cause of action by private parties to require compliance with that statute.
- The County did consider property rights when making the difficult choices GMA required it to make in adopting its CP.
- Fulfilling the GMA goals of reducing sprawl and complying with OFM population forecasts inevitably resulted in the County having to make difficult choices which resulted in some people’s properties having fewer development rights than under prior zoning. Any concern petitioners have in that regard should be addressed to the Legislature and not to Skagit County.
- The County did not act in an arbitrary and discriminatory way when designating the petitioners’ properties.
- If errors were made, Section 11 of Ordinance 16559 provides for property owners to appeal without cost the designation of their property if they believe their property does not meet the criteria for the land use designation assigned.

Board Discussion

RCW 36.70A.020(6) states:

Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

In *Achen et al. v. Clark County*, #95-2-0067, we discussed the meaning of that goal:

“Actually, Goal 6 contains two separate and distinct goals; (1) takings and (2) protection from arbitrary and discriminatory actions. We have previously held in *Mahr v. Thurston County (Mahr)*, #94-2-0007 (Dispositive Order dated August 7, 1994) that our jurisdiction granted under the Act does not include resolution of

violation of the U.S. and/or Washington State Constitution. *See also Gudschmidt vs. Mercer Island*, CPSGMHB #92-3-0006. Rather the ‘takings’ prong of Goal 6 is to be reviewed to determine if adequate consideration of that prong has been given by the decision makers....

The second prong of Goal 6 relates to protection of ‘property rights of landowners’ from ‘arbitrary and discriminatory action’...Since neither ‘property rights of landowners’ nor ‘arbitrary and discriminatory actions’ are defined in the Act we must discern legislative intent to reach a general definition that can apply throughout this and future cases.

In attempting to define ‘arbitrary and discriminatory’ actions, we note first that the Legislature has used the conjunctive (and) rather than the disjunctive (or) form. This indicates a legislative intent that the protection is to be from actions which are together ‘arbitrary and discriminatory’. The term arbitrary connotes actions that are ill-conceived, unreasoned, or ill-considered. The term discriminatory involves actions that single out a particular person or class of persons for different treatment without a rational basis upon which to make the segregation.

The term ‘property rights of landowners’ could not have been intended by the Legislature to mean any of the penumbra of ‘rights’ thought to exist by some, if not many, landowners in today’s society. Such unrecognized ‘rights’ as the right to divide portions of land for inheritance or financing, or ‘rights’ involving local government never having the ability to change zoning, or ‘rights’ to subdivide and develop land for maximum personal financial gain regardless of the cost to the general populace, are not included in the definition in this prong of Goal 6. Rather, the ‘rights’ intended by the Legislature could only have been those which are legally recognized, e.g., statutory, constitutional, and/or by court decision.

We conclude then that this prong of Goal 6 involves a requirement of protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action.”

As to the “takings prong” of Goal 6, the record in this case discloses that adequate consideration was given to this prong during the decision-making process. It was discussed in staff reports to the PC and BOCC, by the PC and BOCC and in the CP.

Although discussion of the effect of possible decisions on the property rights of land owners may not have been as thorough as we or petitioners would have liked, none of the

petitioners alleging violation of this prong have sustained their burden of proof to show that Skagit County had an obligation under the Act to go beyond what was done.

The second prong, protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action, was also met by the County. It may have been better if the County had informed each person whose request for a different designation was placed in the (a) category (to be considered later), how the County interpreted its criteria and why the property did not meet those criteria. However, the County did provide those property owners and others who felt the criteria had been misapplied to their property with the opportunity to have their designations more carefully reviewed, at no charge, after passage of the CP. Further, in the few cases before us where it appeared that the County might have misapplied its criteria, the County readily offered to have those remanded for its review and correction.

As the County stated, it had to make many tough choices and downzone many, many parcels in the rural and NRL areas in order to achieve compliance with the Act. Overall, the County's approach, although painful, was reasonable and consistent in application.

Under the clearly erroneous standard, we find that the County complied with Goal 6 of the Act in the adoption of its CP.

Petitioners' Claims Regarding Individual Properties

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The County emphasized the deference required of individual designations in Brief 3 at p. 7: "The scope of review given to individual CP map designations in the overall context of a County's adoption of a CP must be highly deferential. Otherwise, the County would be required to undertake specific evaluations of each individual property on a county-wide basis. This is obviously impossible from the standpoint of staffing, time and available, limited financial resources."

We received no briefing or oral argument from Petitioners Mark E. Danielson and Patti Cromarty, Larry Dent, Jim and Deeta Drov Dahl, Mary Fotland, and Stanley Walters. Since these Petitioners failed to advise us and the County of the legal and factual bases of their

claims, they therefore have failed to meet their burden.

The County stated at pp. 7 and 8 of Brief 3:

“Following a review of the County’s brief, the County believes the Board will be struck with how consistent the County’s designations of the specific properties identified in this appeal were with the designation criteria, particularly for the rural properties (Group 1). The County concedes one error: one 9-acre parcel owned by Petitioner Goodell designated RRc should have been designated RRv because it does not meet the RRc criteria. In addition, there are two other “close cases” when the County does not contest the Petitioners’ requests: (1) one 40-acre parcel (out of six parcels total) of Petitioners Lennox was designated IF and the County does not object to its being designated SF, and (2) Matthisen’s property may be considered for redesignation from RRc to SF as they request. The Board may remand these matters to the County for further review.”

We remand the above-referenced properties to the County for further review.

As to the other contested parcels, the County stated at p. 8 of Brief 3:

“Most striking is that the vast majority of individual challenges raised by the Petitioners are without merit. The record reflects that the County accurately designated the properties based on the designation criteria. Many of the arguments in the Petitioners’ briefs do not address the criteria. It is obvious that many of the Petitioners are frustrated that they do not have the same development rights under the CP that they had under prior zoning laws and they are turning to this Board for relief. The County has adopted a CP based on the requirements of state law. This Board has clearly stated that the redesignation of properties under a GMA comprehensive plan is not “business as usual” and that prior zoning designations are not a basis for a determination of what designation a property would get under GMA. City of Port Townsend v. Jefferson County, 94-2-0006 (CPC 565 at 572). Although these property owners may be unhappy, the County’s designations of their properties are in compliance with GMA, are not clearly erroneous, and must be upheld.”

We will discuss the individual petitions in two categories:

1. Properties given an NRL designation.
2. Properties given a rural designation.

We have dealt with many of the concerns of these petitioners in previous sections of this decision. We have carefully reviewed all of the maps and supporting material provided to us by the Petitioners and the County. Due to the length of this decision and the number of individual property challenges, we will only highlight the points made by the parties. The brevity of discussion must not be interpreted as a lack of concern for the financial and emotional anguish these Petitioners are suffering.

As the County has pointed out, the Legislature made it clear in ESB 6094 that we were to give more deference to local governments. Given the broad discretion directed by the Legislature, we find that the County has done a good job of designating properties to comply with the Act. Overall, their approach appears to have been reasonable and consistent in application.

1. NRL Properties

The County made the following general statement about individual NRL property petitions:

“...owners of individual NRL properties focus in on certain NRL designation criteria and argue that particular criteria, or portions of those criteria, are not met for a given property and the property must fall out of that designation. This argument ignores two factors: First, not all criteria have to be met for a property to be included in a particular category. Second, the Petitioners ignore the “inclusionary” policies within each NRL designation criteria which mandate that parcels be included in NRL lands for other reasons, e.g., to provide logical boundaries, or to avoid “islands” or “peninsulas” of conflicting uses between non-NRL lands and NRL lands [see, SF Policy 4.9, IF Policy 4.4, A Policy 3.4, RRc Policy 5.4 (Appendix A)]. Consistent with this theme, some owners of small properties designated A claim they should have received a designation of RRv because their properties don’t meet the five-acre minimum lot size for A (Policy 3.1). This argument is meritless because there are literally thousands of parcels less than five acres in the area designated as A. If each of these parcels received a RRv designation, the CP map would contain thousands of little “measles” spots. This is obviously an impossible situation, one to be avoided under GMA as it would perpetuate conflicting uses between NRL lands and non-NRL lands.....

The County’s designation criteria for NRL have not changed since the adoption of its NRL Ordinance (No. 16291) in September, 1996. [Exhibit 1087 (CD)] (Compare Exhibit 1087 with designation criteria in the CP (Exhibit 549 (CD), Appendix A

hereto). The time to challenge those criteria was in the fall of 1996. No challenge was filed. The Petitioners cannot take issue with those criteria at this late date as more than 60 days has elapsed since the publication of the NRL Ordinance (Exhibit 1084), RCW 36.70A.290(2)(b). [Similarly, this is the wrong forum for ASCL's complaints about the critical areas (Brief at p. 8). Any concerns in that regard should have been raised in a timely fashion following the May 13, 1996 adoption of the Critical Areas Ordinance No. 16156 (Exhibit 893, not included).]

GMA's requirement that NRL have "long-term significance for the commercial production" of agricultural products and timber resources [RCW 36.70A.170(1)(a)-(b)] are manifested in the designation criteria for A, IF, SF, and RRc, which will be discussed in turn below. In addition to the specific designation criteria, the County has also adopted an "inclusionary" test for each NRL classification (IF, SF, A and RRc) which will also be discussed below. That test is consistent with GMA guidelines. WAC 365-190-040(2)(h) provides that "development in and adjacent to agricultural and forest lands of long-term commercial significance shall assure the continued management of these lands for their long-term commercial uses." Similarly, WAC 365-190-020 provides that counties "should allow existing and ongoing resource management operations, that have long-term commercial significance, to continue." It is incompatible with these guidelines to allow islands or peninsulas of non-resource uses in the middle of NRLs. It is the furtherance of these GMA guidelines that forged the "inclusionary" tests in the CP."

(a) Industrial Forest – NRL (IF)

The designation criteria for IF are set forth in Policies 4.1 – 4.6 of the Land Use Element of the CP. The primary characteristic of IF designation criteria is that "the majority of the area contains land where the average parcel size is 40 or larger acres" and the majority of the area either contains PFLG soils 1-5 or includes "lands which are primarily timber" (Policy 4.1). Lands meeting these criteria and located in blocks of contiguous parcels approximately 160 acres and larger are retained in IF designation (Policy 4.2). Parcels still remaining are further evaluated for inclusion or exclusion depending on whether they are in open space taxation or have limited public services and facilities (Policy 4.3.). Parcels which may not meet the criteria in Policies 4.1 or 4.2 may be included to provide logical boundaries to IF lands and to avoid "islands" or "peninsulas" of conflicting non-resource lands in the midst of resource lands (Policy 4.4). The minimum parcel size in IF is 80 acres (Policy 4.6).

W.M. and Joanne Lennox

Petitioner Challenge

William and Joanne Lennox own five contiguous parcels of approximately 40 acres and one parcel of one acre. Prior to adoption of the CP, all six parcels were designated as Forest District, 1 DU/20 acres. The Lennoxes invested in significant improvements serving each of the lots. The County redesignated the Lennoxes' property as IF. Lennoxes contend that their property does not meet the designation criteria for IF classification. The northwesterly parcel does not meet Policy 4.1. None of the property meets Policy 4.2 (contiguous parcels approximately 160 acres or larger) when the northwesterly parcel is removed. Even if that piece is included, the property does not qualify because it is not contiguously owned by a single owner of record. Lots are owned separately by W.M. and Joanne Lennox.

County Response

The County has already agreed to a remand of the northwesterly parcel. As to the other parcels, these lots meet the criteria in Policy 4.2. Lennoxes' argument that the parcels are not contiguously owned by a single owner of record is irrelevant. There is nothing in either GMA or the County's IF designation that requires lands to be in 160-acre block of contiguous ownership to qualify as IF. Further, the Lennoxes have made no showing that these remaining four parcels meet the SF criteria.

Board Conclusion

As we stated previously, we remand the designation of the northwesterly parcel to the County for redesignation as SF. As to the remaining parcels, we sympathize with the Lennoxes' frustrating circumstance. However, petitioners have failed to show that the County failed to comply with the Act in this IF designation.

William P., Janice, and Jason Schmidt

Petitioner Challenge

The Schmidts own three contiguous parcels: one 19.11 acre lot, one 19.12 acre lot, and one

78.34 acre lot. The property was previously zoned Forest District, at 1 DU/20 acres. The property does not meet the designation criteria for IF classification. It does not meet Policy 4.2 requiring blocks of contiguous parcels of 160 acres or larger nor does it meet Policy 4.4 because it does not provide a logical boundary for NRL.

County Response

There is no GMA or IF criterion that property must be in 160-acre blocks of contiguous ownership to be eligible for IF. The property is the “poster child” for the IF inclusionary Policy 4.4. It is totally surrounded by IF-designated land. The nearest non-IF land (SF) is approximately one-half mile away. Keeping the Schmidt property in IF preserves the logical IF boundary.

Board Conclusion

Petitioners have failed to meet their burden of showing that the County failed to comply with the Act in designating their property IF.

(b) Rural Resource – NRL (RRc)

The designation criteria for RRc are set forth in Policies 5.1 through 5.5 of the Land Use Element of the CP. The primary RRc criteria are that the lands do not meet the criteria for IF, SF, or A-NRL, are approximately 40 acres in size or greater, and contain either “Prime Upland Farmland Soils” (Policy 5.1.1) or PFLG 1-3 soils (Policy 5.1.2). It should also be located in a 160-acre block of contiguous RRc lands (Policy 5.2). This policy also allows lots of at least 40 acres to be designated as RRc if they are contiguous to other NRL. Parcels remaining after consideration of Policies 5.1 and 5.2 are then reviewed for participation in an open space tax program (Policy 5.3.1), current or within the past ten years agriculture or forestry use (Policy 5.3.2) and limited availability of public services (Policy 5.3.3). Parcels not meeting Policies 5.1 through 5.3 may be included under an inclusionary policy (Policy 5.4).

Carl and Barbara Matthiesen

The County has agreed to a remand of this property for consideration of a SF designation.

We therefore remand without further discussion.

Dean and Rebecca Goodell

Petitioner Challenge

The Goodells own two contiguous parcels designated RRc. Parcel one is 9.7 acres and abuts Helmick Road. Parcel two is 40 acres located immediately to the south of parcel one. These parcels were previously zoned Rural District, at a density of 1 DU/5 acres. The current RRc designation lowered the allowed density to 1 DU/40 acres. Parcel one does not satisfy the 40-acre screening criterion of Policy 5.1. Parcel two does not meet the soils type criterion of Policy 5.1. It also does not meet the criteria of Policy 5.3 or 5.4. These parcels should have been designated Rural Reserve (RRv).

County Response

The County agrees to a remand of the 9-acre parcel since it does not meet the RRc criteria. Exhibit 1067 shows that the 40-acre parcel does meet the PFLG 1-3 criterion. It also meets all the other RRc criteria at the present time. If that situation changes and the subdivision application on the property to the south of them is approved, the County will recommend redesignating the 40-acre parcel as RRv. If the 160-acre core is destroyed, the 40-acre Goodell parcel would no longer meet Policy 5.2 and would fall into RRv.

Board Conclusion

The 9-acre parcel is remanded for consideration of a RRv designation. The Petitioners have not met their burden of showing that the County failed to comply with the Act in the designation of their 40-acre parcel.

Morris and Charlene Robinson

Petitioner Challenge

Robinsons own three contiguous parcels of 9.54, 9.44, and 10 acres. These properties were previously zoned Agricultural Reserve (AR), 1 DU/20 acres. The property does not meet the designation criteria for RRc classification. It does not satisfy the 40-acre screening

criterion of Policy 5.1. It also does not meet Policy 5.3 criteria requiring further evaluation for only those parcels satisfying the first two criteria. The property should have been designated RRv.

County Response

All three parcels are located in an area with a Mineral Resource Overlay. Under GMA, property designated as long-term commercially significant mineral resource may not be designated as rural lands. RCW 36.70A.070(5). The Robinsons have failed to challenge the Mineral Resource Overlay designation. The property is completely surrounded by RRc lands. Most of the property is in PFLG 1-3 soils. The property is picked up in RRc in the inclusionary criteria of Policy 5.4 to avoid an island of non-resource RRv in a sea of RRc land. The property meets RRc designation criteria and is properly designated.

Board Conclusion

Petitioners have failed to meet their burden of showing that the County failed to comply with the Act in the RRc designation of this property.

Robert and Marion Sjoben

Petitioner Challenge

The Sjoboens have two parcels designated RRc in the CP. They are 39.34 acres and 40 acres respectively. Parcel one was previously zoned Residential Reserve District, 1 DU/1 acre, for the upper two-thirds and Agricultural Reserve, 1 DU/20 acres, for the lower one-third. Parcel four was zoned Residential Reserve District at 1 DU/1 acre. At least one of these parcels does not meet the soils type screening criterion of Policy 5.1. The property does not satisfy the Policy 5.3 criteria which are only considered after fulfilling the criteria of Policies 5.1 and 5.2.

County Response

The properties meet the criteria for RRc designation. The parcels are approximately 40 acres and contain PFLG soils 1-3. In addition, they are under open space designation. They also meet Policy 5.2 because they are adjacent to property designated Agriculture-

NRL. Even in they did not meet Policies 5.1 – 5.3, they would still have been included in RRc lands under Policy 5.4 to avoid an “island” or “peninsula” of non-NRL lands in the middle of NRL lands.

Board Conclusion

Petitioners have not met the burden of convincing us that a mistake was made in designating these parcels RRc.

(c) Agriculture – NRL (A)

The designation for A are set forth in Policies 3.1 – 3.5 of the Land Use Element of the CP. The criteria are that the parcel be at least five acres in size and contain “prime farmland soils” as identified in Policy 3.1. In addition, a majority of the land must fall within the 100-year floodplain (Policy 3.2) and be further evaluated under the six criteria in Policy 3.3 (paraphrased as follows):

- 3.3.1 A majority of the area is in open space agricultural taxation;
- 3.3.2 The land is in current agricultural use or has been within the previous ten years;
- 3.3.3 Existing land uses are primarily agricultural;
- 3.3.4 The area includes special purpose districts (such as diking and drainage districts) oriented to enhancing agricultural production;
- 3.3.5 The majority of adjacent lands are in agricultural use;
- 3.3.6 The majority of the area demonstrates a pattern of landowner capital investment in agricultural operation improvements.

As with other NRL designations, Policy 3.4 is an “inclusionary” criterion to provide logical boundaries and to pick up parcels in A to avoid “islands” or “peninsulas” of conflicting non-NRL uses in the midst of resource lands.

Robert and Marion Sjoboen

Petitioner Challenge

The Sjoboens own one 28-acre parcel previously zoned Agricultural Reserve District, 1

DU/20 acres that was designated A in the CP. The Sjoboens provided no briefing as to why this parcel should not have been designated A.

County Response

The County stated that this parcel meets the designation criteria for A because it: (1) is over 5 acres in size and contains alluvial soils, (2) is in the floodplain and floodway, (3) is in open space taxation, and (4) is in current agricultural use.

Board Conclusion

Petitioners have not met their burden of showing that the County failed to comply with the Act in designating this parcel Agricultural-NRL.

John and Delores Abenroth

Petitioner Challenge

The Abenroths own one .92 acre parcel on the east side of Green Road. The County has incorrectly designated this parcel as agricultural lands. It does not satisfy the 5-acre parcel screening criterion of Policy 3.1. It is not a logical boundary to agricultural lands, nor would it create an island if designated RV like the property across Green Road.

County Response

The County responded that even though the property is under 5 acres it still qualifies for an A designation. The property is in the floodplain and abuts land in agricultural use to the north, east, and south. The “inclusionary” criteria of Policy 3.4 picks this up as A because Green Road is a logical boundary between A to the east and RRv to the west. This prevents further expansion of non-NRL uses in the midst of A-NRL lands. If the Abenroths received a designation of RRv, it would be the only parcel east of Green Road in the group of parcels in that location with a RRv designation, and would indeed be a “peninsula” of conflicting non-NRL use in the midst of resource lands in violation of Policy 3.4.

Board Conclusion

Given the increased deference counties have been granted by the Legislature, petitioners

have not met their burden of showing that the County failed to comply with the Act in designating this parcel Agricultural-NRL.

Dean and Rosalie Schazenbach

Petitioner Challenge

Schanzenbachs own a 4.99-acre parcel on Cook Road. This property was previously zoned rural residential. This lot is narrow and very deep. Three years ago they wished to build their dream retirement home far back on the lot but the County required them to build within 200 feet of the road. Just two months after final inspection of the new home they were notified that Cook Road was going to be widened substantially. They now wish to cut their lot in half, sell the home too close to the road, and build a more peaceful home in the back half. This property is not used for agriculture. There are 14 small lots in Glenwood Acres nearby and 21 other lots of 5 acres or less. Health and safety are key and they feel neither in their current situation. The area has sewage and road safety problems. They are seeking a RRv designation.

County Response

This property is approximately 5 acres in size and meets A designation criteria for soil type. It falls within the “inclusionary” criteria of Policy 3.4, which requires lands to be included within A designation to avoid “islands” or “peninsulas” of non-resource lands in the midst of resource lands. It would be a classic case of creating a “measles” map if the Schanzenbach’s property were made an island of RRv in a sea of A-NRL. Petitioners have discussed none of the relevant designation criteria or policies in the CP. They have failed to carry their burden of showing the County’s decision is clearly erroneous.

Board Conclusion

We feel great compassion and sadness for the Schanzenbachs and their unfortunate situation. However, the sought after relief of a RRv designation would not solve their problem. Density in the RRv designation is 1/DU per 10 acres. Further, they have not met their burden of showing that the County failed to comply with the Act in designating their property Agriculture-NRL.

2. Rural Properties

Properties are designated Rural Reserve (RRv) where they do not meet the designation criteria for NRL or Rural Intermediate (RI) and are not located within an UGA or a Rural Village (RV). Density for RRv is 1 DU/10 acres or 1 DU/5 acres with a CaRD land division.

The designation criteria for RI are contained in Policy 7.8.2 of the Land Use Element of the CP. Policy 7.8.2 states that the RI designation applies to rural areas where existing and/or surrounding parcel density is predominately greater than or equal to 1 DU/2.5 acres. Its purpose is to recognize existing, more intense development patterns. The allowed minimum lot size allowed in RI is 1 DU/2.5 acres. After an analysis process the County identified and designated eleven such areas. Policy 7.8.2 also provides that additional areas may be considered for RI designation only through future subarea planning. We decided earlier in this decision that, since the provision only applies to limited existing patterns as of 1990, it appears that the County has already designated all areas that would comply under the Act's limitations.

The designation criteria for RV are contained in Policies 7.9 – 7.13 of the Land Use Element of the CP. Density for RV is 1 DU/1 acre with public water and an approved on-site septic system and 1 DU/2.5 acres with private water and approved on-site septic system. RV is limited to an area tightly drawn around an existing rural village to acknowledge existing development patterns.

Irene Dahl Cameron

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Petitioner Challenge

Irene Dahl Cameron owns four parcels totaling 34.83 acres fronting on Campbell Lake Road. This property was designated RRv but should have been designated RI. The County's CP designation is inconsistent with the CPP framework "because the County did not preserve what were current land use regulations in the CPP and apply them to the CP, in violation of RCW 36.70A." Petitioner further argued issues relating to private property

rights, failure to use OFM numbers, and oppressive density restrictions on RRv lands.

County Response

Policy 7.8.2 criteria for RI are not met because the surrounding properties bordering the Cameron property average 5.83 acres in size. The County did consider property rights in these designations. GMA recognized that there would be downzoning of properties. That was inevitable to carry out such GMA goals as preventing sprawl and encouraging development in urban areas. Cameron's continued reliance on past zoning for her claims that she is entitled to RI designation is not consistent with this Board's determination that reliance on pre-existing zoning is not consistent with GMA requirements. *Friends of Skagit County v. Skagit County* (Order Granting Dispositive Motion, 5/26/95, CPC 925 – 926). The property meets RRv designation criteria and is properly designated.

Board Conclusion

We have discussed property rights, population projection, and other general issues previously in this decision. Petitioners have not met their burden of showing that the County failed to comply with the Act in designating these parcels RRv.

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Shirley Fox

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Petitioner Challenge

Shirley Fox owns and lives on an 8.3-acre parcel on Trafton Lake. She wishes a RI designation. She can not afford to keep all the land and needs to sell a 5-acre piece and keep the rest where her home is located. Her property has gone from allowed density of 1 DU/2.5 acres to 1 DU/5 acres and is now 1 DU/10 acres under the CP. Her property is within one hundred feet of many tiny lots.

County Response

The property does not abut an existing RI designated area. A RI designation is not justified because the four parcels surrounding the Fox property average 20.38 acres per parcel. Petitioner's brief contains no analysis of the relevant designation criteria for RI or how she believes they have been met. Rather, her brief comments on historical zoning patterns in

the area and laments that her property was downzoned in the CP, thereby thwarting her future development plans. The property meets RRv designation criteria and is properly designated.

Board Conclusion

Although we were saddened by Ms. Fox's situation, she has not met her burden of showing that the County failed to comply with the Act in designating her property RRv.

Norman and Lottie Hornbeck

Petitioner Challenge

The Hornbecks own three lots sized .9 acres, 2.2 acres, and 11.26 acres. These parcels were designated RRv but should have been RI. RI applies either where there is an existing 2.5-acre lot or where the surrounding area has a 1 DU/2.5 acre density. Therefore, the first two parcels should automatically be RI. Further, the property is across the Skagit River from a large RI area. This proximity to RI satisfies the predominant density of 1 DU/2.5 acre requirement. Thus, these parcels should have been considered for RI designation.

County Response

These parcels do not meet the criteria for RI under Policy 7.8.2. Petitioners are simply wrong in asserting that any existing lot smaller than 2.5 acres is somehow automatically eligible for RI designation. None of the parcels is adjacent to an existing RI designated area. The parcel density of the surrounding properties is 8.65 acres. Also, designating this property as RI would create a spot zone. The Hornbeck's contention that the RI-designated property across the Skagit River constitutes "surrounding" property is contrary to logic. There was no error in designating this property as RRv.

Board Conclusion

Petitioners have not met their burden of showing that the County failed to comply with the Act in designating their property RRv.

Mack Johnson

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Petitioner Challenge

Mr. Johnson owns a 4.68-acre parcel on Pinelli Road between Hamilton and Birdsvievw. This property was designated RRv but should have been RV. His previous zoning would have allowed him to divide his property into four lots. Since the CP adoption with RRv designation he cannot divide his property which has created a major financial hardship.

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County Response

This parcel does not meet the criteria for RI designation. It does not abut any RI-designated land. The average parcel density of the six adjacent parcels is 10.11 acres. Johnson’s brief, although contending that a RV designation is correct, does not address the designation criteria of either RI or RV. Rather, he laments the downsizing of his property which frustrates his future plans. This is not adequate grounds for finding the County’s decision out of compliance with GMA. The property meets RRv designation criteria and is properly designated.

Board Conclusion

Petitioner has not met his burden of showing that the County failed to comply with the Act in designating his property RRv.

Dorwin and Harriet Smith

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Petitioner Challenge

The Smiths own three parcels. Parcel one is 1 acre, parcel two is 9.4 acres and parcel three is 46.89 acres. Parcel three abuts Union Square Road and Fredrickson Road. The property is only one tax parcel removed from State Highway 9. Prior to CP adoption, the property was zoned Residential District, at 3,400 square feet with public water, or 12,500 square feet with approval of on site septic. It was designated RRv but should have been designated either RV or RI. The property is approximately one mile from Sedro-Woolley and the area contains several 2.5-acre lots. Because the property is close to the Sedro-Woolley UGA and is surrounded by many 2.5-acre parcels, it satisfies the RI surrounding parcel density requirement.

County Response

There are no RV-designated areas near the Smith property. Under the designation criteria, the RV designation is based on existing development patterns and historical communities, providing infill in those areas. The Smith's 50-acre parcel is far too large for a RV designation and is not in a RV area. There are not RI designated areas near their properties. They do not qualify for a RI designation. The surrounding properties average 11.95 acres. The Smiths are frustrated at the downzoning of their property in the CP. However, under the criteria, the RRv designation is proper.

Board Conclusion

We can certainly understand the Smith's frustration from such a major downzone. However, they have not met their burden of showing that the County failed to comply with the Act in designating their property RRv.

Allen and Brenda Thomas

Petitioner Challenge

The Thomases own a 40-acre parcel which abuts Bridgewater Road. Previous to CP adoption it was designated Residential Reserve District, at 1 DU/2.5 acres. The property was incorrectly designated RRv, at 1 DU/10 acres. It should have been designated RV or RI. Down Bridgewater Road there are several 2.5-acre parcels lining the road. Further, southeast of their property at the crossroads of Mosier and Grip Road, lie many more 2.5-acre parcels. To the east of the property is the Burlington Northern Railroad which removes the property from its western surrounding area. The property's close proximity to 2.5-acre parcel areas satisfies the CP's requirement of a surrounding parcel density of 1 DU/2.5 acres.

County Response

The Thomases have not shown that their property is located in an area that meets the

criteria for a RV designation under Policy 7.9. The property is completely surrounded by RRv-designated property. It is not eligible for RV. The property also does not meet criteria for RI. It is nowhere near any adjacent RI area. The surrounding (adjacent) properties average 14.54 acres. The property meets the RRv designation criteria and is properly designated.

Board Conclusion

Petitioners have not met their burden of showing that the County failed to comply with the Act in designating their property RRv.

William P., Janice, and Jason Schmidt

Petitioner Challenge

The Schmidts own two parcels of 2.5 and 15.5 acres. Prior to the adoption of the CP the property was zoned Rural Intermediate 1 DU/2.5 acres. With the adoption of the CP it was designated RRv at 1 DU/10 acres. The County should have designated it RI. The 2.5-acre lot satisfies the requirement for existing parcels of 2.5 acres or less. The property is located a little over one mile from the Cape Horn RI across the Skagit River.

County Response

The Schmidts have failed to show that their property meets the RI criteria. The property does not abut any existing RI designated area. The surrounding properties average 25.8 acres, less than one-tenth of the required density for RI.

Board Conclusion

Petitioners have not met their burden of showing that the County failed to comply with the Act in designating their property RRv.

Miscellaneous Issues

We are not currently deciding any of the many issues subject to a stipulation for postponed

decision. Given the length of this decision we have decided not to discuss some other issues and sub-issues raised by Petitioners. We find that Petitioners, under the clearly erroneous standard, failed to meet their burden of proof regarding those issues.

Invalidity

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We received requests from Petitioners for declarations of invalidity on many of the issues raised in this case. After careful consideration of all those requests, we only declare invalid the most egregious of the noncompliant provisions whose continued invalidity most threaten the County's future ability to achieve compliance with the Act. Therefore, only the following designations and sections of the CP and associated DRs are found to be in substantial interference with the goals of the Act.

1. The Bayview UGA outside the Port of Skagit County's property.
2. The Pederson/Rundgren property in the Mount Vernon UGA.
3. All C/I zones outside the UGAs and Rural Village and any rezone to C/I and the maps that implement these zones.
4. CP Policy 2.1 at 4-35 and DR Section 7(2).

ORDER

The following designations and provisions 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 22, 1998**):

1. The Big Lake UGA.
2. The Bayview UGA except for the Port of Skagit County's property.
3. Two portions of the Sedro-Woolley UGA:

- a. The large open space/agricultural area in the floodway to the south of the City.
- b. The Northern State property.
4. All land in the Hamilton UGA outside its corporate limits.
5. Two portions of the Mount Vernon UGA:
 - a. The Salem Lutheran Church property.
 - b. The Pederson/Rundgren property.
6. The allowance of rural business in NRL designations.
7. The retention of all pre-GMA zoning for C/I uses outside UGAs and Rural Villages.
8. The provision for new “floating” C/I development by way of a simple rezone. The provision contains no specific criteria to provide predictability of future land use and preclude inappropriate conversion.
9. CP Policy 2.1 at 4-35 and DR Section 7(2) to the extent they allow new urban growth outside the UGA and are inconsistent with SCC.14.04.270(1).
10. The CP definition of “legal lot of record.”

Also remanded for noncompliant deficiencies are:

11. The lack of enforceable interlocal agreements or other DRs to implement the CP at 4-7, Objective 3 and 4 at 7-9 and RCW 36.70A.110(3) for all UGAs except the Anacortes UGA.
12. Lack of designation of specific lands outside UGAs which are appropriate for C/I and in compliance with the GMA, CPPs, and policies in the CP.

The County agreed to the remand of three properties for reconsideration of designation:

1. One 9-acre parcel owned by Petitioner Goodell.
2. One 40-acre parcel owned by Petitioners Lennox.
3. The Matthiesen property.

In addition to noncompliance, the following designations and sections of the CP and associated DRs are found to be in substantial interference with the goals of the Act:

1. The Bayview UGA outside the Port of Skagit County’s property.
2. The Pederson/Rundgren property in the Mount Vernon UGA.

3. All C/I zones outside the UGAs and Rural Village and any rezone to C/I and the maps that implement these zones.
4. CP Policy 2.1 at 4-35 and DR Section 7(2).

Findings of Fact pursuant to RCW 36.70A.270(6) and RCW 36.70A.302(1)(b) are adopted and appended as Appendix I. Conclusions of Law pursuant to RCW 36.70A.302(1)(b) are adopted and appended as Appendix II.

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.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

Les Eldridge
Board Member

William H. Nielsen
Board Member

APPENDIX I

Findings of Fact Pursuant to RCW 36.70A.270(6) and .302 (1)(b)

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Public Participation

- The Act does not require a local government to send individual letters to property owners notifying them of proposed changes to their designations.
- This record shows that the County utilized many methods to inform and involve citizens including individual letters early in the process.

UGAs

- The County's analysis does not address city infill capacities before assigning urban residential growth and establishing unincorporated UGAs.
- FOSC presented figures to the County in December 1995 showing that, using the cities' own infill capacity numbers, cities have the capacity to contain all but 700 people of the projected 20-year urban population growth.
- The record is devoid of any cost analysis comparison of creating large unincorporated UGAs at Bayview Ridge and Big Lake versus accommodating that residential growth in already-large municipal UGAs.
- Both nonmunicipal UGAs contain considerable undeveloped land.
- The CP does not include existing or projected densities for these nonmunicipal UGAs.
- Neither the CP nor this record show how these UGA designations meet the criteria for designation.
- The Big Lake UGA is virtually contiguous with the Mount Vernon UGA with no plan for transference of governance.
- The Port of Skagit County's master plan and analyses show that its land in the Bayview UGA is well planned for, will be efficiently served, and will provide for industrial uses compatible with the airport.
- RCW 36.70A.510 requires the County to adopt land use policies and development regulations that preclude incompatible land use adjacent to Skagit Regional Airport. The land use map for Bayview Ridge places residential designation under the overlay for the main runway. Further, the map includes no overlay for the second runway.

- The Anacortes UGA boundary appears logical for planning purposes and appropriate for future industrial expansion.
- None of the Texaco and Shell property is available for purchase and development by anyone else.
- The Sedro-Woolley UGA includes two large undeveloped areas that are not required for the assigned population projection and not adequately supported by the record. These are the large open space/agricultural area in the floodway to the south of the City and the Northern State property.
- As to the Hamilton UGA:
 - Current city limits are grossly oversized for the population assigned,
 - The Town has no plan in place to move current residents out of the floodplain, and
 - The Town cannot show that it will be able to provide urban services to the additional area.
- The Mount Vernon UGA includes a very large parcel of prime alluvial soils that are in current agricultural usage known as the “Salem Lutheran Church” property. The record does not justify the need to convert this land to urban densities. Mount Vernon has not enacted a transfer of development rights program under RCW 36.70A.060(4).
- The County added the Pederson/Rundgren property to the Mount Vernon UGA despite the following facts:
 - One of GMA’s top priorities is the conservation of resource lands.
 - The current usage of the great majority of lands west of Britt Slough Road is agriculture.
 - The property was designated Natural Resource Agriculture by the County.
 - Britt Slough Road plus Britt Slough currently form a wide natural boundary between residential and agricultural uses.
 - The property is in the floodplain.
 - This conversion would conflict with other agricultural uses west of Britt Slough Road and endanger their viability.
 - Mount Vernon and the Skagit County PC recommended against any encroachment to this natural boundary to preserve active farming practices.

- The CP at 4-7 states that inside UGAs C/I growth without urban services is not to be allowed because it “may foreclose significant future planning alternatives pertaining to urban densities and the efficient provision of services.” DRs and interlocal agreements are not in place to implement this provision.

Commercial/Industrial Development Outside UGAs

- It appears that the County provides for the allowance of rural businesses in NRL designations. CPPs 2.3, 5.4, 8.1, 8.5, and 10.7 do not allow rural businesses in NRL zones.
- GMA allows permitting of resource-related uses in rural lands.
- The County has retained all pre-GMA zoning for C/I uses outside the UGA without a determination as to whether allowing C/I use on individual parcels complies with the GMA, CPPs, and policies in the CP.
- *Friends of Skagit County v. Skagit County*, #95-2-0075 Final Decision and Order stated that to use pre-existing zoning, the County “should include specific ways in which the pre-existing ordinances conserve natural resource lands and meet the requirements of the Act.”
- Not only did the County fail to rezone areas which were no longer needed or appropriate given the mandates of the GMA and CPPs, but also made it possible to create additional new C/I zones in the rural area with no CP amendment required.
- The County already has large areas of C/I designated in the municipal and Bayview Ridge UGAs plus several rural villages. The County has not yet determined if any other rural or freeway C/I needs exist and what specific limited areas would be most appropriate to meet those needs in order to assure that the inappropriate conversion of undeveloped land will not be allowed to occur.
- The County has taken no corrective action to bring Section 7(2) into consistency with SCC 14.04.270 and into compliance with the Act.

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Rural Intermediate (RI) and Rural Village (RV)

- The record demonstrates that the County has drawn the lines tightly around

preexisting built-out areas and only allows limited infill.

Variety of Rural Densities

- The CP provides for no less than four types of rural density.
- The record explains how the County arrived at the variety it included in the CP.

CaRDs in Resource Lands

- The GMA does not absolutely prohibit cluster developments such as CaRDs in natural resource designations.

Compliance with Affordable Housing Goal

- The CP contains a Housing Element, Chapter 8, that identifies the affordable housing issue and includes policies and strategies to try to minimize housing costs.
- The County has established minimum densities in the UGAs, in part to facilitate affordable housing.
- The County included a market factor in the land capacity analysis it completed for its UGAs to minimize the effects that a limited land supply would have on housing prices.

Compliance with the Economic Development Goal

- The CP includes an economic development chapter containing policies and strategies for encouraging economic development.
- The County has established UGAs and rural villages with land more than sufficient to accommodate the projected growth for commercial and industrial activities.

Failure to Use OFM Numbers

- The population projection the County used was actually higher than the original OFM estimate. Therefore, the population allocation for the rural area was greater than it would have been had the County used that original OFM allocation.

Legal Lot of Record

- The CP definition of “legal lot of record” is incorrect and inconsistent with the

definition contained in Skagit County Code.

Compliance with Private Property Rights, Goal 6

- The record reflects that the County adequately complied with the GMA requirements regarding property rights issues.
- Fulfilling the GMA goals of reducing sprawl and complying with OFM population forecasts requires counties to make difficult choices which may result in some people's properties having fewer development rights than under prior zoning.
- The record in this case discloses that adequate consideration was given to the "takings prong" of Goal 6 during the decision-making process.
- The second "prong", protection of a legally-recognized right of a landowner from being singled out for unreasoned and ill-conceived action, was also met in the record.
- The County provided property owners who felt the criteria had been misapplied to their property with the opportunity to have their designations more carefully reviewed, at no charge, after passage of the CP.

Petitioners' Claims Regarding their Individual Properties

- We received no briefing or oral argument from Petitioners Mark E. Danielson and Patti Cromarty, Larry Dent, Jim and Deeta Drov Dahl, Mary Fotland, and Stanley Walters.
- Overall, the record reflects that the County accurately designated the properties based on the designation criteria.
- Many of the arguments in the Petitioners' briefs do not address the designation criteria.
- Petitioners are understandably frustrated that they do not have the same development rights under the CP that they had under prior zoning laws. However, the County appears to have designated their properties consistent with the criteria and in compliance with the Act.
- The County agrees to the remand of three properties for further consideration:
 1. One 9-acre parcel owned by Petitioner Goddell,
 2. One 40-acre parcel owned by Petitioners Lennox, and
 3. The Mattiesen property.

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APPENDIX II

Conclusions of Law Pursuant to 36.70A.302(1)(b)

1. The Bayview Ridge UGA outside the Port's property substantially interferes with Goals 1, 2, and 8 of the Act and is declared invalid.

2. The inclusion of the Pederson/Rundgren property in the Mount Vernon UGA substantially interferes with Goals 1, 2 and 8 of the Act and is declared invalid.

3. Land zoned for commercial or industrial development outside UGAs is not consistent with the GMA, CPPs, or CP and allows inappropriate and ill-planned growth outside UGAs. Therefore, all C/I zones outside the UGAs and rural villages substantially interfere with the fulfillment of Goals 1, 2, 5, and 8 of the Act and are declared invalid including rezones and the maps that implement these zones.

4. CP Policy 2.1 at 4-35 and DR Section 7(2) allow urban growth outside the UGA in conflict with RCW 36.70A.110(1) and remain in substantial interference with the fulfillment of Goals 1, 2, and 5 and are declared invalid.