

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

ABENROTH, et. al.,	)	
	)	No. 97-2-0060c
Petitioners,	)	
	)	ORDER RE:
vs.	)	ESB 6094
	)	
SKAGIT COUNTY,	)	
	)	
Respondent,	)	
	)	
TOM and SHEILA BUGGIA, et. al.,	)	
	)	
Intervenors.	)	
	)	

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On May 19, 1997, Skagit County adopted Ordinance #16550, its comprehensive plan (CP). On May 29, 1997, Ordinance #16559 adopted Skagit County's interim implementing development regulations (DRs). The first petition challenging the CP and DRs was filed June 24, 1997. The last was filed August 4, 1997. On August 26, 1997, an order of consolidation was entered. ESB 6094 became effective July 27, 1997.

We raised, *sua sponte* the following issue for dispositive motion at the motions hearing on September 30, 1997:

"What, if any, provisions of ESB 6094 apply to the action of the County and/or this case?"

Written briefing was received from petitioners Friends of Skagit County (Friends) and Association of Skagit County Land Owners (ASCL), respondent Skagit County, and intervenors Buggia and TB Enterprises (Buggia).

ASCL complained that issuing a decision at this juncture would constitute an advisory opinion. We disagree. Under the factual situation here, the applicability of ESB 6094 is a fundamental decision that needs to be made. Such applicability is a legal decision. Deciding that issue as a

dispositive motion will assist the parties during the briefing for the hearing on the merits.

Friends, Buggia, and the County all agreed that the "procedural" parts of ESB 6094 dealing with Growth Management Hearings Boards (GMHBs) would apply to our decision in this case. We agree. This determination is consistent with our holding concerning remedial/procedural amendments to the Growth Management Act (GMA, Act) established by the Regulatory Reform Act in 1995. *Olympic Environmental Council v. Jefferson County*, #94-2-0017. We hold that Sections 2, 11, 12, 14, 16, 20, and 21 apply to our decision in this case.

The more contentious aspect of this case concerns the remaining portions of ESB 6094 which amend the Act. Friends referred to these sections as "substantive" and contended that none would apply to this case. Buggia and the County suggested that many of the amendments were "clarifying" in effect and merely reiterated prior legislative intent.

We decide this case upon a reading of Section 53 of ESB 6094 which states as follows:

Except as otherwise specifically provided in section 22 of this act, sections 1 through 21, chapter ..., Laws of 1997 (sections 1 through 21 of this act) *are prospective in effect* and shall not affect the validity of actions taken or decisions made before the effective date of this section. (italics supplied)

The language of Section 53 is clear that ESB 6094 cannot be used as a basis to find noncompliance where a local government took action or made a decision prior to July 27, 1997. The more difficult issue is whether any non-procedural sections can be relied upon for a finding of compliance.

We recently noted in *Whatcom Environmental Council v. Whatcom County*, #94-2-0009 (Order dated July 29, 1997) that many of "substantive" changes in ESB 6094 were clarifications of perceived, if not actual, ambiguities and occasional misreading of GMHB decisions. Interpretation of ambiguous statutes to find legislative intent can involve subsequent legislative history. *Overton v. Washington State Economic Assistance Authority*, 96 Wn.2d 552 (1981). Insofar as the parties can point to clarification of legislative intent through these "substantive"

amendments, we agree with the CPSGMHB statement in *Bremerton v. Kitsap County*, #95-3-0039c (Order dated September 8, 1997) that those provisions that demonstrate legislative intent are "useful and instructive" for our decision.

So ORDERED this 8th day of October, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen  
Board Member

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William H. Nielsen  
Board Member