



Pursuant to RCW 36.70A.320(1), Ordinance #1168 is presumed valid upon adoption. The burden is on petitioner to demonstrate that the action taken by Lewis County was not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Under RCW 36.70A.320(3), a Board “shall find compliance unless it determines that the action by [Lewis County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For us to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Our review of this record leads us to conclude that ECA has not carried its burden of showing that the County has failed to comply with the goals and requirements of the Act regarding public participation. ECA’s complaint that different drafts were submitted at different times, involves the type of participation and response that local governments should engage in within the iterative process contemplated by the GMA. ECA’s complaint that notice was given at the “last minute” is not supported by the record. This record demonstrated that ECA had the opportunity to let the PC and BOCC know its position on the surface mining regulations issues and took full advantage of those chances.

ECA also complained in its brief that a “corrected map” setting forth the mineral resource designations still had not been made available to the public. That issue was addressed in *Butler, et al., v. Lewis County*, #99-2-0027c. We found the County had not complied with the GMA with regard to that issue and specifically reserved ultimate determination concerning mapping of designated mineral resource lands to that case. Nothing in this order should be construed as implicitly approving the mapping designations. The issue will be resolved at the compliance hearing in the *Butler* case.

Petitioner also complained that the provisions of the ordinance requiring notification of blasting times to areas only 500 feet from the mine, and the lack of adequate set-backs violated Goal 6 (property rights) of the GMA. The County pointed out that Ordinance #1168 provided for maximum noise levels, air quality standards, set-backs, road usages, and the authority for the

hearing examiner in a special use proceeding to impose additional conditions. The County asserted compliance with the GMA under the terms of the ordinance.

Regarding the scope of Goal 6 in the context of this case, we said in *Achen, et al., v. Clark County*, #95-2-0067c:

“We conclude then that ...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.”

ECA has not sustained its burden of proof to show that Lewis County was clearly erroneous in adopting Ordinance #1168 with regard to Goal 6. Some of the concerns expressed by ECA related to its members' lack of faith in the hearing examiner system and a reluctance to incur the expense of court action. These concerns are simply beyond the scope of the authority granted to a Growth Management Hearings Board by the Legislature in the GMA. Regardless of how sympathetic we might be to the frustrations endured by members of ECA, resolution of those issues are beyond our authority.

### **ORDER**

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We find that Lewis County has complied with the GMA in adopting Ordinance #1168.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted, attached as Appendix I and incorporated herein by reference.

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

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 20<sup>th</sup> day of July, 2000

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen  
Board Member

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Les Eldridge  
Board Member

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Nan A. Henriksen  
Board Member

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**Findings of Fact**

**APPENDIX I**

1. The initial draft of Ordinance #1168 was presented to the PC on November 30, 1999. ECA members were given copies.
2. A notice was published December 1, 1999, for a PC meeting held December 14, 1999. At that meeting, ECA presented oral and written testimony concerning provisions of Ordinance #1168.
3. A PC workshop held January 4, 2000, and involved public comment, some of which was provided by ECA. Changes to the original draft and a recommendation to adopt were forwarded to the BOCC.

4. On January 12, 2000, a notice was published for a BOCC meeting to be held January 24, 2000. ECA participated in the hearing. The hearing was continued to February 14, 2000. ECA provided additional comments prior to the February 14, 2000, meeting.
5. Ordinance #1168 was adopted on February 14, 2000, after a workshop between the BOCC and staff.
6. ECA has failed to sustain its burden of proving that the actions of the County violated the public participation goals and requirements of the Act.
7. ECA has failed to sustain its burden of proving that adoption of Ordinance #1168 violated Goal 6 of the Act.