

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

FRIENDS OF SKAGIT COUNTY, et al., )  
 ) No. 00-2-0048c  
 Petitioners, ) (Critical Area  
 ) Issues)  
 v. )  
 ) FINAL DECISION  
 SKAGIT COUNTY, ) AND ORDER  
 )  
 Respondent, )  
 and )  
 )  
 CAROL EHLERS, et al., )  
 )  
 Intervenors )  
 )

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On August 21, 2000, we received a petition for review (PFR) from Friends of Skagit County (FOSC) (Case #00-2-0036). On September 25, 2000, we received a PFR from the Swinomish Indian Tribal Community (Tribe) (Case #00-2-0045). On September 25, 2000, we received a PFR from FOSC (Case #00-2-0048). All petitions challenged Ordinance #17938, specifically critical areas issues. On October 4, 2000, a consolidation order of the above cases was entered.

On September 29, 2000, a prehearing conference was held at the Skagit County Administration Building, 700 South 2<sup>nd</sup> Street, Mount Vernon, Washington.

A motions hearing was held on October 23, 2000, at 10:00 a.m. at the Skagit County Administration Building, Hearing Room C. Intervention was granted to Carol Ehlers, FOSC, and Skagit River Resort and Donald Clark on October 26, 2000. On November 28, 2000, intervention was granted to Culbertson Marine Construction, Inc., Andrew B. Culbertson and Kamiyo L. Culbertson.

The hearing on the merits (HOM) was held on December 21, 2000, at the Skagit County Administration Building, Hearing Room C.

Pursuant to RCW 36.70A.320(1) Ordinance #17938 is presumed valid upon adoption. The burden is on Petitioners to demonstrate that the action taken by Skagit County is not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), a Board “shall find compliance unless it determines that the action by [Skagit County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order 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).

We have already dealt with the Tribe’s critical areas issues in the final decision and order (FDO) for Case #00-2-0049. Therefore, those issues will not be rediscussed in this FDO. Although FOOSC raised many issues in its PFR, it abandoned all the issues except those relating to geologically hazardous areas (GHAs) provisions of the Uniform Development Code.

FOOSC charged that Skagit County has not adequately designated and protected GHAs, claiming that SCC 14.24:

- 1) Fails to actually designate GHAs with sufficient clarity to avoid multiple interpretations in violation of CPP 7.4.
- 2) Fails to set adequate standards or benchmarks for staff, engineers, or other persons to use to guide activity or permit decisions within or adjacent to GHAs.
- 3) Fails to use best available science (BAS) to require adequate buffering to prevent encroachment by incompatible uses into areas that should be protected as GHAs in violation of CPP 8.1.
- 4) Fails to adequately implement CPP 6.3 which requires surface water run off to be handled in a manner “which protects against the destruction of private property.”

FOOSC’s major challenge related to existing uses. FOOSC charged that Skagit County has failed to reasonably regulate existing uses in a manner such that existing “development does not cause or exacerbate natural processes that endanger lives, property, infrastructure, and resources on or off-site.” CP Policy 13A-5.2. FOOSC stated that although SCC 14.24.060 does regulate existing uses,

it is not a clear regulation. It requires County permission if functions and values of critical areas are impaired, but there is no definition of what activities might adversely impact or impair functions and values of GHAs. It is also unclear how provisions will work for existing uses. There are no definitions of GHAs only indicators for them. FOSC concluded that the County should be found in noncompliance with RCW 36.70A.040(3) and .172 because it has not developed a program to reasonably regulate existing uses to protect GHAs.

The County responded in part:

- 1) In support of its challenge to the GHA provisions, FOSC does not cite from the record other than to its own comment letter. In many cases, FOSC basically says, “The County has to do this because we said it had to in our comment letter,” without citation of authority. Its statements and arguments are conclusory and quite limited in scope.
- 2) CP Policy 13A-5.2(d) does not specifically say that the County must regulate existing GHA development.
- 3) The critical area ordinance (CAO) requirements for regulating existing development are no different than the CAO in 1996, merely more detailed. What has been changed has required additional protections. FOSC did not raise these GHA concerns as an issue in Case #96-2-0205c. It therefore may not now make that challenge.
- 4) FOSC’s one sentence “discussion” of most of the issues raised does not constitute adequate briefing of them. The Board should find that FOSC has not met its burden on these issues.
- 5) The County has adopted the Stormwater Management Manual for the Puget Sound Basin, produced by the Department of Ecology (DOE), to deal with runoff. That manual is based on BAS.
- 6) All of the suggestions in DOE Publication 95-107 (a compilation of Best Management Practices (BMPs) relating to development on sloped areas) are reflected, although not verbatim, in SCC 14.24.430 with respect to GHA mitigation standards.
- 7) Because of the unique status of GHAs on each property, SCC 14.24.430 intentionally does not provide specific components but relies on the expertise of the professional engineer or geologist to incorporate new standards and/or BMPs utilizing current accepted engineering practices.
- 8) The GHA indicators that FOSC is complaining about as too vague are taken from the

Department of Community Trade and Economic Development (CTED) WAC 365-190-080 (4).

9) “FOSC’s conclusory allegations that the County ignores BMPs is unsupported by the record and reflects FOSC’s failure to make any effort at honestly evaluating the County’s regulations. FOSC makes up what it thinks the County should say, and then asserts that as if it were law.”

10) FOSC raised many concerns for the first time in its oral argument at the HOM. Therefore those arguments must not be considered by the Board.

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**Board Discussion and Conclusion**

We have not considered FOSC’s arguments that were first raised at the HOM. We also have not considered Intervenor Ehler’s issues, because they were either abandoned by FOSC or never raised by FOSC in its petitions for review. We hope the Technical Advisory Committee reviewing the GHA Ordinance will seriously consider Intervenor Ehler’s concerns.

**Regarding FOSC’s GHA concerns, although the GMA provisions could be more clear, FOSC has not met its burden to convince us that those provisions fail to comply with the Act.**

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 6<sup>th</sup> day of February, 2001

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen  
Board Member

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William H. Nielsen  
Board Member