

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

CITY OF ANACORTES, et al.,)	
)	No. 00-2-0049c
Petitioners,)	(C/I Development
)	Issues)
v.)	
)	FINAL DECISION
SKAGIT COUNTY,)	AND ORDER
)	
Respondent,)	
)	
and)	
)	
JOSH WILSON PROPERTIES, et al.,)	
)	
Intervenors.)	
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On August 15, 2000, we received a petition for review (PFR) from the City of Anacortes (Case #00-2-0035). On August 21, 2000, we received a PFR from Friends of Skagit County (FOSC) (Case #00-2-0037). On September 11, 2000, we received a PFR from William and Betty Stiles (Case #00-2-0040). On September 14, 2000, we received another PFR from the City of Anacortes (Case #00-2-0041). On September 18, 2000, we received a PFR from the City of Mount Vernon (Case #00-2-0042). On September 20, 2000, we received a third PFR from the City of Anacortes (Case #00-2-0044). 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 an additional PFR from FOSC and Gerald Steel (FOSC) (Case #00-2-0049).

All PFRs challenged Ordinance #17938, specifically commercial/industrial (C/I) development issues. On October 4, 2000, a consolidation order of the above cases was entered.

Intervention was granted to Bouslog Investments, LLC; ALFCO, Inc.; Affiliated Health Services; Josh Wilson Properties; John & Twyla Brink; Claude and Mary Nell Blackburn; Al & Elizabeth Schlemmer; Brian and Kathy Wolfe; Norm and James Nelson, Norma Knutzen and Betty Hopkins; Dalhstedt Family Properties, LLC and Norman and Patricia Dahlstedt; Skagit County

Fire District No. 11; Twin Bridge Marine Park LLC; James Swett; James and Nancy Duffy; G & D Wallace, Inc., and Jack and Elizabeth Wallace; Crown Pacific Limited Partnership; Skagit County Public Hospital District 2; Culbertson Marine Construction; Carol Ehlers; FOOSC; Rich Land LLC; Skagit River Resort, LLC and Donald R. Clark; and Upper Skagit Indian Tribe.

On December 19, 2000, a hearing on the merits was held at the Skagit County Administration Building in Mount Vernon, Washington.

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).

Since over 70 separate issues were raised by Petitioners in this consolidated case, we will discuss the issues by topic rather than by separate issue numbers. Further, issues have been raised and briefed that will not be discussed in this decision. **We find that, except as to the categories of issues set forth in the remainder of this order, Petitioners have failed to sustain their burden of showing that Skagit County has failed to comply with the Act.**

We compliment County staff, consultants, Planning Commission (PC) and Board of County Commissioners (BOCC) for the excellent job they have done creating a thorough record leading up to adoption of Ordinance #17938. Even though we have found noncompliance in some areas, the quality of the record is exemplary.

Before discussing the challenges to specific rural C/I designations we will discuss some of the basic contentions that underpin those decisions.

One of Petitioners' greatest concerns is centered around the County's implementation of the first two GMA planning goals. These are restated at p. 4-1 of the land use element of the County's comprehensive plan (CP):

“The development of this chapter was guided in particular by the following GMA Planning Goals:

- Encourage urban development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner
- Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development...”

In order to comply with the Act, the County must implement this intent. The CP and development regulations (DRs) must reflect this clear statement that new growth will be encouraged within the urban growth areas (UGAs). With the County's decision to add new C/I allocation in the rural areas and amend its CP to add tough Boundary Review Board (BRB) annexation requirements for lands inside municipal UGAs, we find no such incentive. This underlying flaw will be discussed under several of the topics below. We reiterate that within municipal UGAs annexation must be appropriately planned and must occur.

Allowed Rural Commercial/Industrial under 36.70A.070(5)(d)

FOSC contended:

- (1) After the 1997 amendments (ESB 6094) all new rural C/I designations must conform to the requirements of .070(5)(d).
- (2) The purpose of adding (5)(d) was to fully lay out the parameters of rural C/I.
- (3) After ESB 6094 the County cannot use .070(5)(a) and (b) or .030(15) to justify the designation of C/I that does not conform to the parameters laid out in (5)(d). Not even rural neighborhood businesses or resource-related businesses can be designated if they do not conform to (5)(d).
- (4) Neighborhood commercial must now cluster with existing C/I and no new isolated neighborhood businesses are allowed.

- (5) Natural resource-related C/I must conform to (5)(d)(i) or (iii) or the major industrial development provisions of 36.70A.365.
- (6) Under (5)(d)(i) new Rural C/I must serve neighborhood needs and must be clustered with other such uses that existed in 1990. Merely claiming that a sewer line ran by in 1990 does not constitute “in existence.”
- (7) Under (5)(d)(iii) new rural C/I must be isolated and small-scale so as not to create a pattern of low-density sprawl and must not be designed to serve local needs.

The County countered that:

- (1) (5)(d) added to the rural options, and (a)(b)(c) still allow rural uses not specifically handled in (5)(d).
- (2) (5)(d) is not as constraining and rigid as FOSC asserts.
- (3) .070(5)(d) is not to be considered in isolation. .070(5)(b) and .030(14) and (15) mandate inclusion of less intense C/I uses in the rural element.
- (4) .070(5)(d)(iii), in context of (5)(b), allows as a limited exception, some uses that do not principally serve the local area, in addition to those traditional rural C/I uses, allowed under subsection (5)(b), that do principally serve the local area.
- (5) .070(5)(d)(ii) and (d)(iii) expressly authorize new development of C/I uses in small-scale recreation and tourism and isolated cottage industries and small-scale businesses.
- (6) Rural resource uses are not limited to existing uses. GMA requires a variety of uses in the rural area including resource-related businesses.
- (7) C/I uses in Skagit County have been greatly restricted from pre-GMA both as to intensity and size.
- (8) C/I has always been part of Skagit County’s rural character.
- (9) The great majority of designated C/I areas have existing C/I uses.
- (10) The County’s detailed findings and extensive record fully support the limited and tightly constrained rural C/I provisions.
- (11) The record reflects why properties comply with the provisions of .070(5).
- (12) The “built environment” is broader than buildings.

(13) The County has made choices within the discretion afforded to the County by the Act.

Board Discussion

RCW 36.70A.070(5) states:

“Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;
- (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), 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:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(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. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing areas or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets, and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;...”

Recently we have had extensive hearings in Skagit, Mason, and Lewis Counties relating, in whole or in part, to compliance with RCW 36.70A.070(5). The following is an analytical framework setting forth the standards established by the Legislature for the rural element of the CP and/or DRs. We will hereinafter refer to RCW 36.70A.070(5) simply as (5) along with appropriate subsections as (a), (b), (c), (d), and (e). We will refer to the definitions in RCW 36.70A.030 solely by their subsection number.

In analyzing (5) we start with the definitions established by the Legislature.

“(15) “Rural development” refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development *can* consist of a *variety* of *uses* and *residential densities*, including clustered residential development, at levels that are consistent with the preservation of *rural character* and the *requirements* of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas. (Emphasis supplied).

We note that (5)(b) *requires* a variety of densities and uses rather than *allows* them. Some essential standards are shown by this definition.

(1) No UGA nor designated resource land (RL) is to be included as part of the rural element. Additionally, agriculture or forest activities conducted in rural areas are not considered to be a part of rural development.

(2) Development in the rural area can allow a variety of uses and residential densities including clusters. However, such uses and densities must be only at levels that are:

- a. consistent with rural character (as defined in (14)) preservation; AND
- b. consistent with the requirements of (5).

“(14) “Rural character” refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, natural landscape, and vegetation predominate over the built environment;
- (b) That foster *traditional* rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide *visual landscapes* that are *traditionally* found in rural

areas and communities;

(d) That are *compatible* with the *use* of the land by wildlife and for fish and wildlife habitat;

(e) That *reduce* the inappropriate conversion of undeveloped land into *sprawling, low-density development*;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the *protection* of natural surface water flows and ground water and surface water recharge and discharge areas.”

(Emphasis supplied).

Several characteristics and standards are set forth in this definition. The patterns of land use and development ultimately developed by a County in its CP must involve certain characteristics.

(1) The natural environment must *predominate* over the built or manmade environment (See WAC 197-11-718).

(2) Traditional rural lifestyles including *rural-based* economies and opportunities are to be fostered.

(3) Visual landscapes, those *traditionally* found in rural areas, must be provided.

(4) The patterns of land use and development must be *compatible* with the use of the land by wildlife and *compatible* for fish and wildlife habitat.

(5) Sprawling, low-density development must be *reduced*.

(6) Generally the extension of urban governmental services are prohibited.

(7) The land use patterns must be consistent with the *protection* of surface water flows and ground water and surface water recharge and discharge areas.

“(16) “Rural governmental services” or “rural services” include those public services and public facilities *historically* and *typically* delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with *rural development* and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).”

(Emphasis supplied).

Certain characteristics are shown in this definition.

(1) Storm and sanitary services are prohibited, except to alleviate an existing health or environmental hazard.

(2) This definition and the definition of urban services found in (19) both include domestic water systems, fire and police protection, and transportation and public transit services. The distinguishing characteristic is that rural services must be “historically and typically delivered at an intensity usually found in rural areas.” Urban services are those that are provided “at an intensity historically and typically provided in cities,....”

The Legislation often uses the terms “historical” and “traditional” to define the essence of rural. As noted later such terms are intended to encompass more than what was present in the rural areas of a county before GMA.

Subject to the definitions, the Legislature requires counties to include a rural element in the CP outside of UGAs and R/Ls. The Legislature recognized in (5)(a) that local circumstances are an important consideration “in establishing patterns of rural densities and uses.” This provision is consistent with the wide discretion allowed to local governments under the GMA. RCW 36.70A.3201.

However, that discretion was not intended by the Legislature to be unbridled. RCW 36.70A.3201 involves discretion that is “consistent” with the goals and requirements of the Act. (5)(a) requires a county (through a written record) to “harmonize the goals” and “meet the requirements” of the GMA. The language of (14), (15), and (16), emphasize that the patterns of uses and densities must be those which are “historical” and “typical” to rural areas. The Legislature did not say that whatever existed in a particular county on June 30, 1990, automatically became the existing rural character of that county. The Legislature has clearly said that the rural element must have parameters involving generalized historical and traditional “lifestyles” and “visual compatibility,” as well as the predominance of the natural environment, compatibility with wildlife and fish, protection of waters and the reduction of “sprawling, low-density development.”

(5)(b) requires that the rural element include rural development (15), forestry and agriculture in rural areas. A variety of “rural densities, uses, essential public facilities and rural governmental services” must be provided. To achieve such “a variety of rural densities and uses” clustering and other “innovative” techniques may be included. Those innovative techniques, however, must involve “appropriate rural densities and uses” that are *not* characterized by urban growth (17) **and**

that are “consistent with rural character” (14).

Additionally, (5)(c) includes other requirements that must be included in the rural element “that apply to rural development [15] and protect rural character [14]” of the area” established by a county. In the rural element a county must:

- (i) contain or otherwise control rural development,
- (ii) assure visual compatibility with the “surrounding rural area,”
- (iii) reduce sprawling low-density development,
- (iv) protect critical areas and surface water and ground water resources, and
- (v) protect against conflicts with RLs.

The requirements of (c)(iv) and (v) require that a county review its current policies and regulations to determine if they are sufficient to comply with subsections (c)(iv) and (v). If existing policies and regulations do not meet these requirements then a county has the duty to adopt new ones. If existing policies and regulations in place at the time of adoption of the rural element are adequate, no new ones are necessary.

To summarize, a county may allow and shall provide a variety of *rural uses and rural densities* that are consistent with the definition of rural character (14) and also comply with the requirements of (5)(a), (b), and (c). UGAs and RL designations are excluded, as are agricultural or farming activities in the rural areas (15). A variety of rural uses and rural densities, essential public facilities, and rural services are both allowed and required (15), (5)(b). Rural services must be “historically and typically” at an intensity not found in urban areas but found in rural areas. Traditional rural lifestyles, including rural-based economies are to be fostered. The natural environment is to predominate and rural visual landscape compatibility must be assured. Protection of critical areas and natural water flows and recharge and discharge areas, as well as compatibility of the uses and densities with wildlife and their habitat is required. Clusters and other innovative techniques may be allowed but must “accommodate appropriate rural densities and uses not characterized by urban growth” and be consistent with rural character (14). Rural uses and densities must be contained or otherwise controlled and must reduce existing sprawling low-density development in the rural area.

We turn then to the provisions of (5)(d) entitled “limited areas of more intensive rural development” (LAMIRD). It is clear that such areas are not “rural growth” because of the intensification element. Under the definition in (17) such areas are not urban growth.

Three different types of LAMIRDS are allowed under (d)(i), (ii), and (iii). The first sentence of (d) which subjects the LAMIRD to the “requirements of this subsection” means that except as noted in (d)(i) all the provisions of (5)(a), (b), and (c) apply to LAMIRDS. There are also additional specific requirements in subsection (5)(d) that apply to the three types of LAMIRDS.

The provisions of (c)(ii) (visual compatibility) and (iii) (reduce low-density development) do not apply to those LAMIRDS designated under (d)(i). This section does not allow increased low-density development, but merely removes the reduction requirement. The logical outer boundary (LOB) provisions of (d)(iv) apply only to LAMIRDS designated under (d)(i). The Legislature clearly stated that (d)(iv) provisions apply to (d)(i) LAMIRDS. LAMIRDS designated under (d)(ii) or (iii) are defined and bounded by “lots” and thus LOB requirements are irrelevant.

(d)(ii) and (iii) both allow “new development” and “intensification of development.” (d)(i) LAMIRDS do not allow “new development” except as it may be part of “infill, development, or redevelopment.”

(d)(i) LAMIRDS consist of certain “existing areas” defined in (d)(v). The allowed uses and areas include commercial, industrial, residential or mixed-use areas “whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.” An “industrial area” is not required to be principally designed to serve the “existing and projected rural population.” Thus, all other (d)(i) LAMIRDS (commercial, residential, or mixed-use) must be principally designed to serve the “existing and projected rural population.” In designating and establishing LAMIRDS under (d)(i) a county must “minimize and contain” ((d)(iv)) the existing area or existing use. Prohibitions against including lands within the LOB that allow a “new pattern of low-density sprawl” for the existing area or existing use must be adopted ((d)(iv)).

In establishing the LOB for an “existing area” (but not for existing uses) under (d)(iv) a county is required to “clearly” identify and contain the LOB. That identification and containment must be “delineated predominately by the built environment,” but may include “limited” undeveloped lands. WAC 197-11-718 provides some guidance as to a proper definition of “built environment.” Nonetheless, we recognize that the reasons for including the term “built environment” in SEPA and in GMA are not necessarily co-extensive. We conclude that legislative intent, as determined from reading all parts the GMA with particular emphasis on (5)(d), means the “built environment” only includes those facilities which are “manmade,” whether they are above or below ground. To comply with the restrictions found in (d), particularly (d)(v), the area included within the LOB must have manmade structures in place (built) on July 1, 1990.

(d) (i) LAMIRDs, being neither rural nor urban, that allow existing areas or existing uses, must always be “limited” i.e., minimized and contained.

The provisions of (d)(v) (existing area or existing use as of July 1, 1990) apply to all LAMIRDs whether designed under (d)(i), (ii), or (iii). Thus, for any “intensification” allowed under (d)(ii) or (d)(iii) the designated use or area must have been in existence on July 1, 1990 (or later date under the provisions of (5)(B) or (C)). This restriction does not apply to “new development” authorized under (d)(ii) or (d)(iii). Anytime the phrase “existing” is used to define an area or use, the provisions of (v) (7-1-90) modify that phrase.

Once the existing area has been clearly identified and contained, a county must then, in drawing the LOB, address (A) the need to preserve “existing” (7-1-90) natural neighborhoods and communities, (B) physical boundaries, (C) prevent abnormally irregular boundaries and, (D) ensure that the public facilities and public services necessary to serve the LOB do not “permit low-density sprawl.”

Under (d)(ii) small-scale recreation or small-scale tourist LAMIRDs are authorized. Commercial facilities to serve those LAMIRDs are allowed. The intensification or creation of small-scale recreational or small-scale tourists uses must rely on a rural location and setting. Such LAMIRDs cannot include new residential development. The uses need not be principally designed to serve the “existing and projected rural population.” “Public services and public

facilities” (12)(13) must be limited to those “necessary to serve” only the LAMIRD. Such public services and public facilities must be provided “in a manner that does not permit low-density sprawl.”

The LAMIRDs allowed under (d)(iii) authorize intensification or creation of “isolated cottage industries and isolated small-scale businesses.” Again, these need not be principally designed to serve the “existing and projected rural population” and non-residential uses. They must provide job opportunities for rural residents. Public services and public facilities have the same constraints as those provided under (d)(ii).

The allowance of small-scale recreational and small-scale tourist uses, isolated cottage industries and isolated small-scale businesses are also subject to the provisions of (5)(a), (b), and (c), as well as the definitions contained in (14) and (15).

Finally, in designating its LAMIRDs a county must always be aware of the prohibition contained in (5)(e):

“This subsection shall not be interpreted to permit in the rural area a major industrial development or a master plan resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.”

The definition of a master-planned resort is found in .360 and the definition of a major industrial development is found in .365(1).

Rural C/I Designations

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Skagit County has adopted eight different types of rural C/I CP and zoning designations: Rural Village Commercial (RVC); Rural Center (RC); Rural Freeway Service (RFS); Small-Scale Recreation and Tourism (SRT); Cottage Industry/Small-Scale Business (CSB); Rural Business (RB); Natural Resource Industrial (NRI); and Rural Marine Industry (RMI).

The most persuasive Petitioner challenges were to the RMI, RFS and CSB designations.

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Rural Freeway Service (RFS)

In its recorded motion and supplemental findings of fact, dated June 14, 2000, Ex. 366, Skagit County set forth its rationale for the RFS designation:

- “157. RFS areas are to provide for small-scale commercial uses at certain I-5 freeway interchanges outside of UGAs to serve local rural populations and the traveling public with necessary goods and services. RFS areas serve existing needs, and projected future needs, for rural freeway-oriented goods and services, as demonstrated by existing development at those interchanges, and projections for additional rural commercial service needs in unincorporated Skagit County through the year 2015. They are intended to help meet these needs within existing clusters of commercial development, rather than allowing a more dispersed pattern of low-density rural commercial sprawl. These isolated small-scale businesses primarily serve the traveling public, rather than support the needs of the local rural population, reflecting the intent of RCW 36.70A.070(5)(d)(iii).
158. RFS development is limited to development that can be supported by services typically delivered at rural levels of service, unless additional services historically are already available at these locations. These services may include domestic water, septic systems, and transportation facilities. Site conditions such as topography, soils, existing vegetation, critical areas, frequently flooded areas, proximity to agricultural natural resource lands, vehicular traffic sight lines and capacity for water, fire protection and septic systems are required to be appropriate to support RFS development without adverse impacts to adjacent sites, agricultural practices, the natural environment, or water resources, including sole source aquifers. New development (including infill, development, redevelopment, or intensification of development) at RFS areas is subject to development regulations and design guidelines intended to maintain the rural character of the area, and to minimize impacts to rural residential areas, resource lands, critical areas, and other sensitive natural features of the environment. These development regulations include standards addressing potable water, buffers, screening, lighting, noise drainage, traffic impacts, lot coverage, land use intensities, and non-urban levels of service in an effort to maintain the existing character of the rural area in which the commercial use is proposed.
159. RFS areas are designated at I-5 interchanges where there is existing freeway-oriented development located generally within 1,000 feet of the interchange. The I-5 interchanges meeting this requirement are the following: SR 534 (Conway), Cook Road, Bow Hill Road, and Lake Samish Road (Alger). The November 8, 1999, transmittal memo, which has been incorporated by reference into findings, addresses these areas in significantly greater detail on pages 10-23 than the summary findings below.
160. Because of the presence of commercial development as of July 1, 1990, at the

Conway RFS area, this is an existing area “of more intensive rural development” that is clearly identifiable and contained and where there is a logical boundary delineated predominantly by the built environment per RCW 36.70A.070(5)(d)(i) and (iv). Commercial development within this “limited area of more intensive rural development” may include infill, development, or redevelopment of the area within a logical outer boundary established under Policies 4A-12.11 and 4A-12.12. Because the west side of this interchange is immediately adjacent to the Conway rural village, the Planning Commission does not recommend any additional RFS at this location, beyond the existing designation. The Conway Rural Village Subarea Plan should address rural commercial needs.

161. The commercial situations at the Bow Hill, Alger, and Cook Road interchanges are considerably more complex than the pre/post July 1, 1990 option presented by the GMA. Various parcels or quadrants at these interchanges have one or more of the following characteristics: commercial structures or activities in existence prior to July 1, 1990; other aspects of the built environment in existence prior to July 1, 1990 (e.g. infrastructure installation or commitments); existing freeway-oriented commercial activity that was legally approved and constructed after July 1 1990; permits for commercial activity that were legally issued after July 1, 1990 but that have not yet been constructed; substantial post-1990 legally permitted site improvements preparing the property for commercial activity; and post-1990 vested development rights that have not yet been exercised. Based on detailed analysis of the histories of these properties, and as further described in the SEPA addendum to the Comprehensive Plan, the County designates the following quadrants of these freeway interchanges as RFS:
- a. Bow Hill: the parcel in the northwest quadrant that contains an existing fish market; the 11.86 acre parcel in the southeast quadrant that is the subject of Binding Site Plan No. PL 98-001, with the condition that the remainder of the approximately 70 acres of property under the same ownership is permanently restricted to limited-use open space; and the approximately 10 acres in the southwest quadrant that has existing urban sewer service (pre-1990) and water service.
 - b. Alger: the 4 parcels located in the southeast quadrant of the interchange totaling approximately 5 acres, including the parcel containing an existing gas station/mini-mart, the adjacent parcel to the east on which there is a permitted but currently unbuilt commercial sales operation, and 2 approximately .5 acre parcels to the south, which have been legally filled and graded for commercial development, all four of which parcels are served or are prepared to be served by water, sewer, and power, and are bounded by elements of the built or natural environment which create logical boundaries to any future commercial sprawl.
 - c. Cook Road: That portion of the northeast quadrant of the interchange, totaling

approximately 9 acres, that contains an existing gas station/mini-mart as well as a vacant parcel, which is surrounded by logical boundaries consisting of built or natural environment, including a drainage swale to the north, I-5 and Old Highway 99 to the west and east, and Cook Road to the south, and which have paid sewer commitments dating back to the late 1970s; and, that portion of the southeast quadrant of the interchange between I-5 and Highway 99 consisting of four parcels totaling approximately 6 acres. The northern-most parcel in this southeast quadrant has a pre-1990 history of service station use, the 2 northern-most parcels have existing service stations, all four parcels are served by public sewer and public water and have paid sewer agreements dating back to the late 1970s, and the quadrant as a whole is surrounded on all sides by pre-1990 aspects of the built environment, including Cook Road to the north, I-5 to the west, Old Highway 99 to the east, and the convergence of I-5 and Old Highway 99 to the south. The northerly drainage swale is located roughly in the same location of the north boundary of the prior C/I zoning; in addition, it is an obvious boundary since the Rural Reserve area south of the swale would be difficult to access, and to the north, there is no other logical boundary until the railroad tracks, further to the north. This is a recorded limitation preventing swale crossings.

162. Rural character is inherently preserved by the nature of this zone. RFS uses will be clustered with other small-scale commercial uses. The scale of the uses will also be consistent with existing RFS uses. The allowed uses are also consistent with the types of uses currently found in RFS areas. Scale of RFS uses and the allowed uses themselves are discussed in detail within the RFS section of the UDC findings.”

Amongst FOSC challenges were:

- (1) The County used .070(5)(d)(i) to justify this designation but misinterpreted the built environment and logical outer boundary requirements. The County failed to consider existing uses as of 1990, not just areas that existed.
- (2) RFS businesses do not primarily serve the rural population and therefore are not allowed under (5)(d)(i).
- (3) Where there is only a single isolated use, the C/I designation must not go beyond that parcel boundary. To get a LAMIRD under (5)(d)(i), there must have been a pattern of existing use in 1990.
- (4) Those isolated uses actually existing in 1990 could be designated RB under (5)(d)(iii), but these would have to be kept small and isolated and not principally designed

to serve locals.

(5) The County did not show a need for additional rural C/I in the RFS designation as required in the *Abenroth* decision. Even if you accept the Overall Economic Development Plan (OEDP) analysis, it showed only a small commercial need. The County inappropriately lumped that together with the industrial need to show C/I need. These must be kept separate.

(6) As to individual designations:

- a. Cook Road – no existing C/I as of 1990. The County even added additional acreage to its 1999 designation. This substantially interferes with Goals 1 and 2 of the Act.
- b. Bow Hill – the seed of existing use is in a wholesale/retail fish business. Three areas were added that are not even contiguous, one is a quarter-mile away. The added 10- and 12-acre parcels are vacant. A vested permit is no justification for an RFS designation. The parcels added after the 1999 designation should be found invalid.
- c. Alger – no commercial use as of 1990. There was a log dump there but that is a natural resource industry not freeway service. The Bouslog property should be returned to an RB designation because it does not meet the criteria for RFS.
- d. Conway – This isolated use did exist in 1990, but should be designated RB. The building is 3,000 square feet on a 1.3-acre lot. Thus, much more expansion would be allowed under RFS than under an RB designation.

(7) Based on proper analysis, the only two parcels that could become RFS are the parcels with existing businesses at the Bow and Alger interchanges. Because one of these parcels is ½ mile from a rural village and the other is 4 ½ miles from Burlington, there is no established need for RFS designation on those two parcels.

Amongst the County responses were:

- (1) The RFS designation was only used in four locations. The Starbird interchange was eliminated and the Conway interchange added.
- (2) The Court of Appeals has said that the GMA does not mandate a needs analysis to justify rural development provisions.

- (3) The record makes an ample showing of need.
- (4) The County has created an exhaustive record on this issue, (Ex. #0158) (11/8/99 staff memo). This exhibit provided detailed analysis of the zoning history, built environment, logical outer boundaries and unique local circumstances for each RMS designation.
- (5) GMA does not require that “built environment” be limited to buildings. “Built environment” is not defined in the GMA, but in the State Environmental Policy Act (SEPA) it includes public services and utilities and transportation.

Intervenor Bouslog supported the County’s position and added that of the 22 quadrants in unincorporated Skagit County at freeway interchanges only a small portion have been designated RFS. The Bouslog property has already been limited from the original allowed uses and should be designated RFS.

Intervenor Upper Skagit Indian Tribe, which owns a 10-acre parcel at the Southwest corner of the Bow Hill interchange, also supported the County and added:

- (1) “Existing” does not need to include building. An exhibit from the late 70’s shows infrastructure on this site. .5(d)(v) speaks of area or uses.
- (2) Many documents in the record establish that the site was developed prior to 1990 and has been the subject of substantial infrastructure investments since that time.
- (3) The documents also establish that the Tribe owns, has already developed, and has been planning since the late 70s to consolidate and develop its substantial land holdings at the Bow Hill interchange.
- (4) This is a unique local circumstance because the casino and other Tribal lands are not shown on the RFS map.

Board Discussion and Conclusion

We acknowledge that the County has created an exhaustive record on this issue. Even with an extensive record, the County must comply with .070(5)(d). As we stated earlier, in establishing the logical outer boundary for an “existing area” under (d)(iv), the County is required to clearly identify and contain the LOB. That identification and containment must be “delineated

predominately by the built environment” but may include “limited” undeveloped lands.

We concluded that the “built environment” includes those facilities which are manmade, whether they are above or below ground. Further, to comply with the restrictions of (d), particularly (d) (v), the area included within the LOB must have had manmade structures in place (built) on July 1, 1990. In designating and establishing LAMIRDs under (d)(i), the County must “minimize and contain” the existing area or existing use. Also in accordance with (d)(iv) the County must not allow a “new pattern of low-density sprawl.”

In order to comply with the Act, the County must promptly review the challenged RFS designations and eliminate all those areas which do not comply with the above interpretation of .070(5)(d).

Petitioner Stiles Challenge to RFS Boundary

Petitioner Stiles challenged the County’s use of a drainage swale as the northern boundary of the Cook Road RFS. This swale cuts across the southeast corner of petitioner Stiles’ property, putting part in the RFS and retaining most the property in Rural Reserve. Stiles gave several reasons why the drainage swale was an inappropriate choice. Further, the record shows that when the PC recommended this boundary, one of its members claimed that the PC was not really considering the most logical outer boundary. Stiles contended that the logical boundary should actually be the railroad tracks, thereby including all their property in the Cook Road RFS.

In response the County cited the CPSGMHB March 29, 2000, decision in *Burrow v. Kitsap County* (Burrow). In that decision the Board noted that RCW 36.70A.070(5)(d)(v) does not mandate that a County use any one particular feature in setting a logical outer boundary. The County concluded:

“While the County perhaps could have used the railroad tracks for the boundary, as suggested by petitioners, GMA does not mandate that particular choice. *Id.* While petitioners note that the statute does not specifically list swales as a boundary type, their argument that a swale is not a physical feature or a land form is unpersuasive.

The County supported its boundary decision in the record. November 8, 1999, Planning and Permit Center Memorandum (Ex. 0158) at 20-21, Ordinance No. 17938, Att. A, Finding 161 (c). As discussed there, the swale roughly corresponds to the commercial zoning boundary in place in July 1990. Stiles have not shown that the County decision is clearly erroneous.”

We agree with the *Burrow* finding and the County’s argument. While the County might have made a different choice, Stiles has not shown that the County decision was clearly erroneous.

Rural Marine Industrial (RMI)

The Rural Marine Industrial designation permits the following uses:

“Fabrication, maintenance, repair, storage, and outfitting of marine-related equipment, vessels, and structures; retail sales and rental of marine-related and water-dependent products; loading and off-loading of products between land and water, water-storage of vessels and upland storage of vehicles associated recreation and tourist related boating activities; testing of marine and aquatic products and vessels; and activities for sea-plane storage, moorage, testing, repair, fabrication, loading, and off-loading.”
Ordinance 17938, § 4A – 15.8.

The Cities of Anacortes and Mount Vernon (Cities), the Tribe, and FOOSC all raised a multitude of issues regarding the RMI designation. The Cities claimed that the only thing rural about the RMI zone is the name, because intense, heavy marine industry is allowed under this designation and zone. This is inherently urban style development requiring urban level public facilities and services, such as sewer and storm sewer, yet it is proposed for rural Skagit County.

The Cities quoted a letter to the County from the State Department of Community, Trade and Economic Development (CTED) and charged that the County had ignored those comments:

“5) there are a number of references in the rural policies for designation of...Rural Marine Industrial based upon vested rights. The County should be very cautious in including vested rights as a criterion for designating these areas. The provisions of designating limited areas of more intense rural development require that these areas be delineated predominantly by the built environment. This means that designation is based upon existing development, which is generally defined to include structures or a certain level of improvements but not solely a vested permit. The development may legally occur because the owner has vested under previous regulations, but designations for future development should be based on patterns of actual development existing on July 1, 1990. Undeveloped lands may be designated where development of these lands constitutes infill within a logical boundary that has been drawn around existing development.

6) You have created a new designation for Rural Marine Industrial in the rural area. Objective 15 in the plan amendments states that these designations serve the County's rural population. We reiterate the concern above regarding using vested rights as a criterion, or regulatory activity, for designation. These are not based upon existing development. Also, these designations do not appear to be consistent with your SMP. We understand that the environmental designation for Twin Bridge Marine Park, the Ace Rock property, and the Culbertson Marine Construction property is Rural Shoreline Area. **The Shoreline Master Program Element** of your comprehensive plan states: "The Rural Shoreline Area is a shoreline area typified by low overall structure density and low to moderate intensity of uses. The primary uses in this designation include activities related to agriculture, residential development, outdoor recreation, and forestry operations." As stated above in our comments on updating your SMP, the internal consistency requirements in RCW 36.70A.070 require **consistency** between the Land Use Element and the Shoreline Master Program Element.

CTED Letter, December 17, 1999. (Exhibit 0191) (extracts)."

The Cities pointed out that 12 acres of agriculturally-zoned property were added to the RMI designation with no analysis and the ordinance provides for additional RMI designation in the future. Further, in this designation, the County used vested rights as the built environment (even after the above warning from CTED). As to the Culbertson site, the Cities challenged the designation of an RMI (LAMIRD) adjacent to Anacortes's UGA without evaluation of suitability of allowed urban style development, need for urban services, or inclusion in Anacortes's UGA.

The tribe raised many RMI challenges including :

- (1) The Tribe has standing to challenge the County's SEPA process.
- (2) Since the County did not undertake even the first step of the SEPA process on proposed RMI designation and zones, there was no SEPA process to participate in and no County SEPA decision requiring deference by the Board.
- (3) Skagit County has created a first-time zoning designation that specifically allows industrial uses in sensitive rural marine environments.
- (4) RMI is inconsistent with several Countywide Planning Policies (CPPs) and

CP policies relating to protection of environment, natural resource lands (NRLs), critical areas (CAs) and aquatic resources.

(5) A challenged development regulation is reviewed to determine “whether [it] achieve[s] the legislature’s intended result: consistency with the planning goals of the Act.” *Assoc. of Rural Residents v. Kitsap County*, CPSGMHB, 93-3-0010. A petitioner prevails on its claim that a development regulation is not in compliance with a planning goal, and consequently the Act itself, when it identifies and explains how the development regulation in question thwarts, or is not consistent with, the particular GMA planning policy. *Rabie, et al., v City of Burien*, CPSGMHB, 98-3-0005c. The Tribe has met this burden by, on the record, providing the County with numerous scientific studies and noting the dire consequences to the marine environment and protected shellfish resources from toxins which necessarily accompany allowed industrial activity.

(6) CTED, Anacortes and the Tribe pointed out on the record that the RMI designation and allowed uses conflict with the CPPs, Shoreline Master Plan (SMP), GMA goals and Shoreline Management Act (SMA) goals now incorporated in the GMA goals.

(7) The record shows that the Culbertson RMI alone contains two wetlands, hydric soils and a Type 3 stream.

(8) The RMI designation allows a wide range of uses by definition inconsistent with the SMA, SMP, and required critical area protection, and then says the industry must comply with all of these required environmental protections. This makes no sense.

(9) Even though a great increase of intensity and breadth of uses is allowed in the new RMI designation that were not allowed under these properties’ previous RB designation, no State Environmental Policy Act (SEPA) analysis was done on either the new RMI designation or the specific properties assigned this new designation. A mention in an addendum is not adequate. At p. 9 of its opening brief, the tribe stated:

“SEPA was enacted to ensure that local governments consider environmental information in their decision-making. In the course of the County planning process which lead to these Comprehensive Plan amendments, Skagit County conducted no environmental analysis whatsoever of the impacts from the uses

permitted by the Rural Marine Industrial designation. No threshold determination of the scope or extent of those impacts was completed. No determination of significance or non-significance was ever issued. No list of alternatives to lessen any potential impacts of the Rural Marine Industrial designation was presented to the public for analysis and comment. No strategies for mitigating the effects of this designation were ever presented.”

(10) Past SEPA documents could not have addressed environmental impacts of a designation and zone developed five years later.

(11) The evidence in the record indicates that the only historical industrial use of the Culbertson property has been intermittent log storage and transfer.

FOSC also charged that even though the County claimed to have followed the provisions of 36.70A.070(5)(d)(i), the majority of the area designated RMI was not part of the built environment as of 1990 and did not meet the logical outer boundary requirements of that subsection.

In their reply briefs, the Tribe and the Cities withdrew their request for a finding of invalidity on the RMI designations.

Some of the County’s key arguments supporting its RMI designation included:

- (1) All four areas designated RMI have a long-standing history of marine C/I development.
 - a. The Culbertson Marine property has been used for log-storage, loading and transport since the early 1900’s.
 - b. The Ace Rock Property had a barge dock and unloading facility.
 - c. The Twin Bridge Marine property was graded, filled and used for equipment and materials’ storage prior to 1990. In 1998 an artificial moorage facility was completed. The site has permits for a marine dredging and construction business.
 - d. The Rozema Boat Works property has been the location of a boat manufacturing business since the 1950’s.
- (2) Given this history the County’s decision to permit such uses to continue and redevelop within limited existing areas is logical.
- (3) The RMI designation is an appropriate application of RCW 36.70A.070(5)(b),

(5)(d)(i)and(iv)- – LAMIRDs. Every one of the four RMI designations is “an existing area....that was in existence....on July 1, 1990, as required by RCW 36.70A.070(5)(d)(v).

(4) Marine related C/I facilities are an important historic part of the County’s rural environment and economy.

(5) The ability to establish such uses in new areas is significantly limited by the SMA. It makes more sense and creates less burden on the environment to continue using existing facilities than to force uses to relocate to new areas.

(6) While the RMI code provisions note the possibility of some additional re-zoning to RMI, the CP policies strictly reflect the requirements of RCW 36.70A.070 (5)(d)(v), by limiting the designation to recognition of existing facilities.

(7) The County has also complied with RCW 36.70A.070(5)(d)(iv) by limiting the existing areas to logical outer boundaries.

(8) The four RMI areas contained a variety of C/I uses related to their marine location. Those general use types are permissible in the RMI designation whether or not the particular business entity or precise use existed on July 1, 1990. The C/I uses permitted in the RMI areas are tightly limited to water dependent uses of the types that historically existed in the RMI areas.

(9) The CP policies forbid the use of public storm and sanitary sewers in the RMI zone except in limited circumstances necessary to protect basic public health. Lot coverage allowed is much less intense than that allowed by the pre-GMA CLI and M Zones.

(10) The RMI designation and zoning is not a critical area ordinance. Compliance with other chapters of the code is required.

(11) RMI policies and regulations require all new RMI development to be consistent with the SMA, SMP, CA Ordinance, Drainage Ordinance, resource protection provisions and any other relevant requirements. If critical areas or other environmental protections preclude development otherwise allowed under the RMI designation, then that development will not occur. However, the time to raise such a challenge is when there is a particular proposal.

(12) The Tribe does not have standing to challenge the County’s SEPA decision.

(13) The County was not required to do additional SEPA analysis since there are no

new probable substantive negative impacts compared to uses allowed by pre-GMA designations. Also these uses were in existence and within the range of alternatives considered in the original CP FEIS.

(14) As to the addition of the 12 acres to the Twin Bridge Marine RMI, that land was designated RB in the 1999 process. Staff recommended that it be left RB but the PC chose to include it in the RMI designation.

(15) The County acknowledged existing use without opening the door to abuse.

Intervenor Twin Bridge Marine supported the County's arguments and added that none of the Petitioners specifically challenged the RMI designation of their site.

Intervenor Culbertson also supported the County's arguments and emphasized that RMI uses are conditional uses, not outright uses. It added that its site first had marine industrial use in 1908. The site contains a dock, log storage, and a road. Noncompliance should not be found simply because the Culbertson property has critical areas on it. The record shows that of its 31 acres, 15 acres are developable. Culbertson should be allowed to continue its current use.

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Board Discussion and Conclusion on RMI

The Tribe filed a dispositive motion early in this appeal process asking us to decide, on a limited record, whether the County's failure to perform any analysis of the probable environmental impacts of a new CP and zoning designation (RMI) to fragile marine environments, violates SEPA requirements and therefore must be vacated.

Skagit County contested the Tribe's standing to challenge SEPA compliance. The County and Intervenor Culbertson and Twin Bridge asked us not to make a decision on a limited record. We agreed to postpone a decision until we had an opportunity to study the entire record.

We find that the Tribe's two comment letters give it standing to challenge the County's SEPA compliance. We have now studied the entire record and agree with Petitioners that additional environmental review and analysis for the new RMI designation and the appropriateness of its application to specific sites is required for SEPA compliance.

We cannot accept the County's argument that since there was some existing industrial use on the RMI designated properties when the original EIS was done (and therefore had to have been included in one of the alternatives considered), no additional SEPA analysis is required. If that were the case, additional SEPA analysis would not be needed for most (if not all) amendments to the CP allowing return to pre-GMA business as usual.

The County's argument, that there can be no probable significant adverse environmental impacts because RMI is more restrictive than its old CLI and M Zones, also fails. The appropriate comparison under SEPA is between uses allowed under current zoning (RB) and uses allowed under the proposed new RMI zone. It is obvious that the intensity and breadth of allowed uses and allowed expansion of existing facilities and uses in RMI are much greater than the very limited expansion allowed under the RB zone. The same is true of site specific application to the Culbertson Marine property.

The County and supporting Intervenors also contended that there was no specific evidence admitted to this record that RMI allowed uses cause any specific environmental impact. The RMI designation allows a wide range of uses that, by definition, are inconsistent with the SMA, SMP and required GMA critical area protections. To make this designation (without even a threshold determination) and also require that any proposal within this designation must comply with all of the above requirements is setting up an exercise in futility and frustration for future project proponents and opponents. **This inherent conflict fails GMA consistency and CA protection goals and requirements.**

Any portions of RMI designations relying on vested rights as being considered "built environment" also fail to comply with (5)(d)(i). In addition, the 12 acres of NRL added without analysis to the Twin Bridge Marine RMI do not comply with the Act.

As to the Culbertson site, designation of a C/I LAMIRD adjacent to Anacortes's UGA without evaluation of suitability of allowed urban style development, need for urban services, or inclusion in Anacortes's UGA, fails to comply with the Act. If any urban C/I uses are allowed, the Culbertson property should be included in the Anacortes UGA and

served with urban services.

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Cottage Industry/Small-Scale Business (CSB)

In its recorded motion and supplemental findings of fact, dated June 14, 2000 (Ex. 366), Skagit County set forth its rationale for the CSB designation:

- “189. The CSB designation is intended to provide for small-scale commercial or industrial activities involving the provision of services or fabrication of production of goods, primarily for clients and markets outside of the immediate rural area. The CSB designation may be applied to existing or new businesses.
190. The CSB designation is consistent with the GMA’s allowance for 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 non-residential uses, but do provide job opportunities for rural residents.” (RCW 36.70A.070 (5)(d)(iii)).
191. One purpose for the CSB designation is to provide locations for home-based businesses that are providing job opportunities for rural residents but have outgrown their residential locations. Permitted uses within the CSB designation include those permitted under the Home-Based Business special use, provided that the primary markets and customers are outside of the immediate rural areas. However, the scale of activities within a CSB designation is typically greater than can be accommodated through a Home-Based Business.
192. Nothing in these policies is intended to create a presumption that the property on which a Home-Based Business is located should be re-designated to CSB if that business outgrows its home-based status. There is no automatic progression from Home-Based Business to CSB. Decisions about whether to designate a property as CSB shall be based entirely on the public interest tests identified in designation Policies 4A-18.7 through 4A-18.15, not on the needs of an individual property owner.
193. A CSB may have up to 20 full-time equivalent (FTE) employees, meaning an employee that visits the business site more than two times per week, including solely for purposes of vehicle transfer. The Planning Commission finds that this is an

appropriate limitation on employees which will allow for business growth while ensuring businesses do not grow to a size that is too large for the rural area. The Planning Commission finds that some previously designated C-LI priorities outside the UGAs have employee figures comparable to this limitation and, therefore, this size limit is consistent with existing Skagit County rural character.

194. Extensive Comprehensive Plan policies ensure that CSB uses are consistent and compatible with the rural area, do not impact sensitive and resource areas, and utilize rural vs. urban services.

195. Rural character is inherently preserved by the nature of this zone. The prioritization for siting new rural commercial will limit locations for these CSB uses. The scale of the uses will also be consistent with existing CSB uses. Scale of CSB uses are discussed in detail within the CSB section of the UDC findings.”

Among FOSC’s challenges to the CSB designation were:

- (1) Inadequate setbacks (20-35 feet);
- (2) Insufficient limits to size and intensity of use;
- (3) Unsightly outside storage;
- (4) Inadequate rural character protection;
- (5) Not isolated – some right next to other C/I designation;
- (6) No requirement to show why not feasible to locate and operate in UGA or rural village; and
- (7) Should either be eliminated or much more tightly drawn.

The County responded in part:

- (1) The County expressly found that, given the minor size and scale of CSB activities, and the CP policies prohibiting strip development, minimum spacing requirement as proposed by FOSC is unnecessary.
- (2) GMA does not contain any minimum distance requirement.
- (3) The subsections of 36.70A.070(5)(d) including (5)(d)(iii) authorize C/I development of “lots” not just of individual uses. Indeed, this subsection expressly allows “intensification of development on lots.” Therefore, the Legislature did not limit development to “an isolated lot” as FOSC asserts. Nothing in the GMA requires only one business at a location.

- (4) FOSC acknowledges the County's general policy, CP Policy 4A-911, to avoid new isolated businesses. However, it ignores the many detailed policies for designating new CSB use that any new application will have to comply with.
- (5) FOSC makes no showing that any existing CSB use or designation adversely impacts rural character.
- (6) CP Policies 14A-18.15 permit only those new designations that are shown to protect critical areas and resource lands and to not adversely affect surrounding uses.

Intervenor Swett supported the County's CSB designation, pointing out that only seven existing businesses in the entire County are designated CSB. These businesses are isolated, small-scale, create jobs for people in the rural area, and reflect Skagit County's rural character. Mr. Swett has operated his business for many years. He just wants to be able to operate his business, have some redevelopment potential and certainty about his business's future.

Board Discussion and Conclusions

The County has documented well the reasons for its choices regarding the CSB designation. FOSC challenged many of the uses allowed in this and other rural C/I designations. The County answered that its record reflects why those allowed uses fit the designations and has carefully shown its work in its detailed findings. The County further countered that it should be given credit for regulating these uses and requiring special use permits for many of them. The County further emphasized that it has assessed its rural character and taken action to preserve it.

Even though we might prefer some of the use and size limitations suggested by FOSC, it was within the County's discretion to make the choices it made. The same is true regarding FOSC's concern about the spacing of uses required to be "isolated." **FOSC has not met its burden of showing the County was clearly erroneous in its choices regarding the CSB designation.**

Home Based Business 2 (HBB2)

Among FOSC challenges to this rural C/I use were:

- (1) Unlike the rural C/I designations above, HBB2 only requires a special use permit – no CP amendment required.
- (2) HBB2 allows larger scale than HBB1. For example, HBB2 commercial uses can have five or more family members plus three full-time employees.
- (3) There is no limit to the type of business that may be operated under a HBB2 special use permit.
- (4) There is no practical limit to the amount of traffic that can come to the site.
- (5) Allowing HBB2 in resource lands constitutes unallowed conversion of natural resource lands.
- (6) The County has not provided a GMA basis for HBB2.
- (7) Allowing these uses by special use permit in all rural residential and resource zones substantially interferes with Goals 1, 2, and 8.

The County responded in part:

- (1) FOSC’s conclusion that HBB2 is noncompliant rests on a fundamental misunderstanding of the regulations.
- (2) SCC 14.16.900(3)(e)(ii) states that a HBB2 special use permit can be issued only if the use is “clearly incidental and secondary to the use of the property for dwelling purposes.”
- (3) SCC 14.16.900(3)(e)(iv) prohibits any “exterior indication of the home occupation or variation from the residential character of the property” except for a single 4-foot square sign.
- (4) SCC 14.16.900(3)(e)(v) & (vi) prohibit levels of traffic and parking (as well as other impacts) beyond what is normal to a residential area.
- (5) The burden or proof is on the applicant for a HBB2 special use permit to prove that all these criteria, as well as numerous additional criteria applicable to all special uses, are met before a permit may be granted.
- (6) When a business grows beyond the criteria and any additional conditions imposed by the hearing examiner, it must relocate to another zoning classification.
- (7) All these regulations ensure that none of the scenarios FOSC cites as noncompliant can occur.

(8) The County found based on the record that these criteria, which are those currently adopted for home occupations, work well and do not result in obvious commercial operations.

(9) HBB2, as defined in the regulations, is not “more intensive rural development” since it cannot be any more intense than the allowed residential use it is accessory to. Thus it need not be categorized under RCW 36.70A.170(5)(d). Rather, HBB2 is a variety of rural use authorized under RCW 36.70A.170(5)(b).

(10) The County has provided a substantial record supporting its decision.

(11) FOSC’s conversion of NRL challenge is wrong and without merit.

Board Decision

Once again, even though we might prefer tightened requirements for this designation, FOSC has not convinced us that the County was clearly erroneous in the choices it made regarding HBB2.

Framework Agreement and CPP Amendments

The Cities claimed that the County had amended the CPPs without complying with the 1992 Framework Agreement established in Skagit County pursuant to RCW 36.70A.210. The Cities further claimed that the framework process was not too cumbersome to work in 1992 and 1996 and could have worked again if the County had returned to the negotiation table rather than short circuiting the required process and unilaterally amending the CPPs.

The County responded that it doubted that the Framework Agreement was still in effect. Even if it were, the County’s actions were consistent with the Agreement.

On October 28, 1999, the Skagit County Council of Governments (SCOG) voted to put out for public comment three proposed CPP amendments. Subsequently, as a result of comments from the public and PC deliberations, the County adopted revisions to those amendments. On June 15, 2000, the CPP Committee voted 8-6 in favor of the County’s proposed CPP amendments.

Therefore, the Cities’ refusal to ratify the CPP committee’s decision violated the Agreement.

The Cities replied that the record was clear that the members of the CPP Committee clarified before voting that the June 15, 2001 vote was only to recommend to all the local governments

that they ratify the County modified amendments.

Board Discussion and Conclusion

In previous Skagit County decisions, we have found noncompliance for the County's failure to follow its agreed-upon procedures for CPP amendments. We restate that position in this decision.

Pursuant to RCW 36.70A.210 Skagit County and the incorporated cities and towns established a Framework Agreement in 1992. The Framework Agreement states in part:

“C. Responsibility for Preparing Policy Draft...will, when ratified and adopted, contain the signatures of the legislative authority of each of the participants in this agreement...

F. **Citizen Participation**...Each member entity shall provide for public review of the draft policies after they have been **referred** by the County-Wide Policies Committee to each jurisdiction **for review** and ratification...

I. Ratification of Final Document...

The final draft of the completed county-wide policies document will be **referred** by the County-Wide Policies Committee to the County and **each City for public review and ratification**...Ratification will be demonstrated by passage of a resolution of the Board of County Commissioners and of each City Council.”

Exhibit 10 (emphasis added).

Thus, the parties to the Framework Agreement established a process by which the CPPs would be developed by the parties' representatives and then referred to all their legislative bodies for review and ratification. In doing this, local governments in Skagit County set the highest of standards for approval of CPPs. Local governments in some other Counties have set less difficult standards, i.e. 75% of the local governments or local governments representing 70% of the total population of the County. Local governments in Skagit County could have set a lower standard, but that is not the choice they made. Rather, they set up a framework in which the CPP committee would recommend policy choices and those would have to be ratified by all municipalities (after notice and public process) in order for the recommendation to take effect. It is very unlikely that incorporated cities and towns would have agreed to a framework that would in effect have made the required municipal public process a mere rubber stamp and useless act. If they had, it may have constituted an unlawful delegation of power.

Further, the record shows that the motion that passed the CPP Committee only passed after it was made clear, and committee members accepted, that the Committee did not have the authority to adopt the 2000 CPP Amendments but was only making a recommendation to its members.

There is no evidence in the record that the Framework Agreement has been terminated. In fact, the record shows that all the parties (including the County) proceeded with the understanding that it was still in effect.

We agree with Intervenor Ehlers' statement:

“If the Growth Hearings Board were to require that there be no alteration possible to policies drafted by a small group of 14 individuals (however important), then Goal 11 of the GMA would indeed be eliminated-that involvement of citizens in the planning process and the coordination between communities and jurisdictions to reconcile conflicts.”

That is our point also. The County does have the right to alter the recommended CPP amendments. However, according to the Framework Agreement, the municipalities, on behalf of their citizens, also have the right to refuse to ratify alterations to the 2000 CPP amendments made by the County legislative body. If that happens, the amendments must be renegotiated and returned to all municipal and County legislative bodies for meaningful public comment and (hopefully) ratification.

As we have stated in previous decisions, the Act cannot function without close cooperation between the regional County government and the municipal governments within it.

The County's unilaterally-adopted amendments to the CPP fail to comply with the Act. If the County wishes to amend its CPPs, it must return to the CPP Committee negotiation table and work out with its municipal members mutually agreeable amendments and allocation of C/I lands outside municipal UGAs. All committee members must adhere to the Framework Agreement and proper SEPA procedures must be followed. We remind all committee members that it is noncompliant with the GMA for the CPPs to conflict with the GMA goals. Further, amending the CPPs may not be used as a justification to fail to comply with the Act in a CP.

The Rural C/I which was specifically designated and mapped during the 1999-2000 process will not be affected by this CPP Amendment decision, since they are not dependent on proposed C/I allocation. Rather, the County has acknowledged preexisting uses under the provisions of (5)(d) (added to the Act after Skagit County adopted its original CP) as well as truly rural designations referred to in (5)(a) and (b). This decision should also not adversely impact the Bayview Ridge Subarea planning process. The County has not asked for a finding of compliance on Bayview. We will address that issue when the subarea plan is completed.

County C/I Needs Analysis and Resulting Shift of C/I Allocations

FOSC refuted the County's claim that no rural C/I needs analysis is required by the Act. *CCNRC v. Clark County* 94 Wn.App. 670 (1999) holds that a rural population cap was not necessary. The Court did not say that no rural analysis is necessary to justify additional rural C/I allocation. Additionally, the case was decided before the 1997 amendments and .070(5) now contains many references to a "projected" rural population. Further, FOSC pointed out that Skagit County's own CP requires such an analysis at 2-5 and 2-9.

Petitioners also claimed that the County's OEDP C/I needs analysis was fatally flawed. FOSC provided its own needs analysis and claimed that the LAMIRDS designated in the 1999 process could more than accommodate any additional need. Further, the OEDP analysis showed only a small commercial need. The County's combining of this small amount of commercial need with the larger industrial need exacerbated the previous analytical flaws. FOSC lastly claimed that the County's shift of hundreds of acres of C/I allocation from urban to rural is so egregious that it should be found to substantially interfere with Goals 1 and 2 of the Act.

The County responded that the only part of the OEDP study that has been challenged was the 569 acres of public/institutional (P/I) being considered for the first time. The original OEDP did not include that vital employer and its potential use of C/I inventory. The record refutes the FOSC analysis as extremely unrealistic and flawed.

The County has drastically decreased the size and intensity of C/I lands outside UGAs from its pre-GMA provisions. The County should be given credit for that.

The Cities replied:

“It is undeniably the case that when 10 times more land is allocated for public-institutional use than is even conceivably necessary, and then this figure is doubled to allow for rural densities, that a clear mistake has been made that encourages sprawl, discourages urban development, and accordingly, violates the GMA.”

Petitioners further concluded that transfer of C/I allocation from UGAs to outside UGAs is contrary to GMA goals, CPPs, and the County’s own CP. The result is the opposite of the GMA’s intended result of encouraging new development in urban areas and reducing sprawl.

-
Board Discussion

CCNRC does not support the County’s claims that no rural analysis was necessary to justify an allocation for new C/I development (outside properly drawn LAMIRDs) in the rural area.

Further, the County’s own CP requires such analysis.

As to the County’s needs analysis, the record reflects the following logic stream in the challenged 2000 OEDP update:

(1) The original OEDP did not include land for future P/I uses in the urban area. It was determined that 569 acres of P/I should have been included. It was further assumed that new P/I uses in urban areas would generally locate on sites with C/I zoning. Therefore, there would be 569 more C/I acres needed in urban areas.

(2) The Study also noted a shift from projected commercial to industrial which increased the need for C/I land, since industrial employment requires more land per worker than commercial.

(3) The 1996 version of CPP 1.1 did not allocate any C/I land to the rural area. But since the 1997 County CP called for C/I in non-urban areas and hundreds of acres of C/I

development actually existed within the non-urban area, it was concluded that non-urban C/I is a vital component of the rural character of Skagit County. Given this, the OEDP consultant determined the existing ratio of employment between urban and rural areas and used that ratio to project anticipated growth in employment in urban and rural areas through 2015. Using that information, part of the previously urban allocation was reallocated to non-urban areas to recognize this preexisting ratio.

(4) When reallocated from urban to non-urban the acreage was increased because current rural employment density ratios are significantly lower than in urban areas and would therefore require more land.

(5) Through the above process 584 acres of new C/I was allocated to non-urban areas. In addition, 571 acres of existing C/I uses were designated. Of this 571 acres it was determined that 174 acres could accommodate new development. Therefore, that 174 acres was subtracted from the projected need of 584 acres leaving 410 acres of entirely new undesignated rural C/I to be selected and designated between now and 2015.

This process and resultant shift of urban C/I allocation to non-urban fail to comply with the Act. It is ironic that a County, which has determined that 80% of future population will locate in urban areas, has returned to pre-GMA urban/rural C/I ratios to project future C/I need. It is further ironic and noncompliant that during the process additional land was added due to the projected shift in trends from commercial to industrial, and then the resulting small commercial and large industrial non-urban need were combined into total C/I need, allowing the nondesignated acreage to be eaten up with rural commercial in the future.

In addition, p. 14 of the February 3, 2000 Addendum claimed that this reallocation of urban to non-urban does not significantly change the general location of these uses north to south or east to west in the County. This contradicts the County's argument that non-assigned C/I is needed because residents far away from UGAs and existing non-urban C/I areas will need to be, and should be, provided with services in the future.

Skagit County must make no further CP amendments adding to rural C/I, beyond that already specifically designated, until it implements its CP amendment process discussed in Chapter 2 of the 1997 CP. This must include implementing the Monitoring Plan

Effectiveness and the Growth Management Indicators provisions of 1997 CP 2-11 through 2-13.

We find that the County's C/I needs analysis and resultant shift of urban C/I allocation to non-urban substantially interferes with Goals 1 and 2 of the Act. We declare invalid the 410 acres of allotted rural C/I that have not been specifically designated through Ordinance #17938. Since we have made that determination, we need not discuss the question of whether the County can allocate rural C/I without fully planning for the location of that C/I growth. RCW 36.70A.290(1).

ORDER

In order to comply with the Act the County must take the following actions by the deadlines specified:

- (1) Within 180 days, CP and DRs must be consistent with the clear statement in CP at 4-1 that new growth will be encouraged within the UGAs and inappropriate conversion of undeveloped land will be reduced.
- (2) Review the challenged RFS designations and eliminate all those areas which do not comply with the interpretation of .070(5)(d) included in this FDO. If compliance is not achieved within 90 days, we will consider Petitioners' request for invalidity.
- (3) Within 30 days, repeal all RMI designations and return those sites to their previous designations. Conduct a full SEPA analysis and public participation process before reinstating a RMI designation. Also conduct SEPA analysis to determine the appropriateness of the RMI designation for the proposed sites. As to the Culbertson site, analysis must include the appropriateness of including the site in the Anacortes UGA. If compliance is not achieved within 30 days, FOOSC's request for invalidity will be considered.
- (4) Within 30 days, repeal the 2000 amendments to the CPPs. If the County wishes to amend its CPPs, it must return to the CPP Committee negotiation table and work out with its municipal members mutually agreeable amendments. The process must

conform to the 1992 Framework Agreement and proper SEPA procedures must be followed.

(5) We declare invalid the 410 acres of allotted rural C/I that have not been specifically designated through Ordinance #17938. Skagit County must make no further CP amendments adding to rural C/I, beyond that already specifically designated, until it implements its CP amendment process discussed in Chapter 2 of the 1997 CP. This must include implementing the Monitoring Plan effectiveness and the Growth Management Indicators provision of 1997 CP 2-11 through 2-13.

(6) Any findings of noncompliance in previous sections of the FDO are incorporated by reference.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted and attached as Appendix I and incorporated herein by reference. Findings of Fact and Conclusions of Law pursuant to RCW 36.70A.302(1)(b) are adopted and attached as Appendix II 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 6th day of February 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Appendix I

Findings of Fact pursuant to RCW 36.70A.270(6)

1. The County's decision to add new C/I allocation in the rural areas and amend its CP to add tough BRB annexation requirements for lands inside municipal UGAs are not consistent with the CP p. 4-1 which states:

“The development of this chapter was guided in particular by the following GMA Planning Goals:

- Encourage urban development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner
- Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development...”

2. RCW 36.70A.030(15) states:

“(15) “Rural development” refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development *can* consist of a *variety of uses* and *residential densities*, including clustered residential development, at levels that are consistent with the preservation of *rural character* and the *requirements* of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas. (Emphasis supplied).

3. RCW 36.70A.030(14) states:

“(14) “Rural character” refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, natural landscape, and vegetation predominate over the built environment;
- (b) That foster *traditional* rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

- (c) That provide *visual landscapes* that are *traditionally* found in rural areas and communities;
- (d) That are *compatible* with the *use* of the land by wildlife and for fish and wildlife habitat;
- (e) That *reduce* the inappropriate conversion of undeveloped land into *sprawling, low-density development*;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the *protection* of natural surface water flows and ground water and surface water recharge and discharge areas.” (Emphasis supplied).

4. The County used .070(5)(d)(i) to justify the RFS designation but misinterpreted the built environment and logical outer boundary requirements.
5. Under RCW 36.70A.070(5)(d)(iv), in establishing the logical outer boundary for an “existing area,” the County is required to clearly identify and contain the logical outer boundary. That identification and containment must be “delineated predominately by the built environment” but may include “limited” undeveloped lands.
6. The “built environment includes those facilities which are manmade whether they are above or below the ground. Further, to comply with the restrictions (5)(d), particularly (5)(d)(v), the area included within the LOB must have had manmade structures or facilities in place (built) on July 1, 1990.
7. CTED, Anacortes, and the Tribe pointed out on the record that the RMI designation and its allowed uses conflict with the CPPs, SMP, GMA goals and SMA goals now incorporated in the GMA goals.
8. The record shows that the Culbertson RMI site alone contains two wetlands, hydric soils and a Type 3 stream.
9. The Tribe submitted two letters that establish its standing to challenge the County’s SEPA decision.
10. Even though a great increase of intensity and breadth of uses is allowed in the new RMI designation that were not allowed under these properties’ previous RB designation, no State Environmental Policy Act (SEPA) analysis was done on either the new RMI designation or the specific properties assigned this new designation.

11. Past SEPA documents could not have addressed environmental impacts of a designation and zone developed five years later.

12. The evidence in the record indicates that the only historical industrial use of the Culbertson property has been intermittent log storage and transfer.

13. Pursuant to RCW 36.70A.210 Skagit County and the incorporated cities and towns established a Framework Agreement in 1992. The Framework Agreement states in part:

“C. Responsibility for Preparing Policy Draft...will, when ratified and adopted, contain the signatures of the legislative authority of each of the participants in this agreement...

G. **Citizen Participation**...Each member entity shall provide for public review of the draft policies after they have been **referred** by the County-Wide Policies Committee to each jurisdiction **for review** and ratification...

J. Ratification of Final Document...

The final draft of the completed county-wide policies document will be **referred** by the County-Wide Policies Committee to the County and **each City for public review and ratification**...Ratification will be demonstrated by passage of a resolution of the Board of County Commissioners and of each City Council.”

Exhibit 10 (emphasis added).

14. The parties to the Framework Agreement established a process by which the CPPs would be developed by the parties’ representatives and then referred to all their legislative bodies for review and ratification. In doing this, local governments in Skagit County set the highest of standards for approval of CPPs.

15. The record shows that the motion that passed the CPP Committee only passed after it was made clear, and committee members accepted, that the Committee did not have the authority to adopt the 2000 CPP Amendments but was only making a recommendation to its members.

16. There is no evidence in the record that the Framework Agreement has been terminated. In fact, the record shows that all the parties (including the County) proceeded with the understanding that it was still in effect.

17. As to the County’s needs analysis, the record reflects the following logic stream in the challenged 2000 OEDP update:

(1) The original OEDP did not include land for future public/institutional uses in the

urban area. It was determined that 569 acres of P/I should have been included. It was further assumed that new P/I uses in urban areas would generally locate on sites with C/I zoning. Therefore, there would be 569 more C/I acres needed in urban areas.

(2) The Study also noted a shift from projected commercial to industrial which increased the need for C/I land, since industrial employment requires more land per worker than commercial.

(3) The 1996 version of CPP 1.1 did not allocate any C/I land to the rural area. But since the 1997 County CP called for C/I in non-urban areas and hundreds of acres of C/I development actually existed within the non-urban area, it was concluded that non-urban C/I is a vital component of the rural character of Skagit County. Given this, the OEDP consultant determined the existing ratio of employment between urban and rural areas and used that ratio to project anticipated growth in employment in urban and rural areas through 2015. Using that information, part of the previously urban allocation was reallocated to non-urban areas to recognize this preexisting ratio.

(4) When reallocated from urban to non-urban the acreage was increased because current rural employment density ratios are significantly lower than in urban areas and would therefore require more land.

(5) Through the above process 584 acres of new C/I was allocated to non-urban areas. In addition, 571 acres of existing C/I uses were designated. Of this 571 acres it was determined that 174 acres could accommodate new development. Therefore, that 174 acres was subtracted from the projected need of 584 acres leaving 410 acres of entirely new undesignated rural C/I to be selected and designated between now and 2015.

18. Even though the County has determined that 80% of its future population will locate in urban areas, the record shows that it returned to pre-GMA urban/rural C/I ratios to project future rural C/I need.

Appendix II

Findings of Fact pursuant to RCW 36.70A.302(1)(b)

1. As to the County's needs analysis, the record reflects the following logic

stream in the challenged 2000 OEDP update:

(1) The original OEDP did not include land for future public/institutional uses in the urban area. It was determined that 569 acres of P/I should have been included. It was further assumed that new P/I uses in urban areas would generally locate on sites with C/I zoning. Therefore, there would be 569 more C/I acres needed in urban areas.

(2) The Study also noted a shift from projected commercial to industrial which increased the need for C/I land, since industrial employment requires more land per worker than commercial.

(3) The 1996 version of CPP 1.1 did not allocate any C/I land to the rural area. But since the 1997 County CP called for C/I in non-urban areas and hundreds of acres of C/I development actually existed within the non-urban area, it was concluded that non-urban C/I is a vital component of the rural character of Skagit County. Given this, the OEDP consultant determined the existing ratio of employment between urban and rural areas and used that ratio to project anticipated growth in employment in urban and rural areas through 2015. Using that information, part of the previously urban allocation was reallocated to non-urban areas to recognize this preexisting ratio.

(4) When reallocated from urban to non-urban the acreage was increased because current rural employment density ratios are significantly lower than in urban areas and would therefore require more land.

(5) Through the above process 584 acres of new C/I was allocated to non-urban areas. In addition, 571 acres of existing C/I uses were designated. Of this 571 acres it was determined that 174 acres could accommodate new development. Therefore, that 174 acres was subtracted from the projected need of 584 acres leaving 410 acres of entirely new undesignated rural C/I to be selected and designated between now and 2015.

2. Even though the County has determined that 80% of its future population will locate in urban areas, the record shows that it returned to pre-GMA urban/rural C/I ratios to project future rural C/I need.

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

Skagit County's C/I needs analysis and resultant shift of urban C/I allocation to non-urban substantially interferes with Goals 1 and 2 of the Act.