

WHIDBEY ENVIRONMENTAL ACTION NETWORK,

Petitioner,

v.

ISLAND COUNTY,

Respondent,

SEATTLE PACIFIC UNIVERSITY,

Intervenor.

No. 03-2-0008

**FINAL DECISION AND
ORDER**

I. SYNOPSIS OF THE CASE

On the shores of Admiralty Inlet within magnificent view of the Olympic Mountains lies the Camp Casey Conference Center (Camp Casey). Camp Casey came into existence as a United States Army installation shortly after the turn of the last century, along with Fort Worden and Fort Flagler, to provide protection from battleships entering Admiralty Inlet and to defend the naval shipyard at Bremerton. It was used to training center for engineers and amphibious landings in World War II. In 1954 it was declared surplus.

As a result, in 1956, the northern portion of the original fort was purchased by Seattle Pacific University (SPU) for use as a non-profit conference center. Additional property was later gifted to SPU.

Camp Casey's historic buildings need repair and upgrading. SPU believes it also needs new facilities to attract a broader range of visitors, particularly older clients, and to generate more revenue to maintain Camp Casey. Currently, Camp Casey historic buildings provide group housing for visitors and staff, food service, educational facilities, recreational amenities, and

support offices. Camp Casey also includes sports fields, sports courts, a swimming pool, picnic areas, hiking trails, and a campground. The groups it serves include non-profit organizations that share SPU's mission, SPU students, faculty, and alumni, and youth sports camps. SPU proposes to add six 8,000-square-foot buildings containing townhouses and seminar space, an 8,000-square-foot chapel, up to 240 new parking spaces, and a new road. This new development will require a small sewage treatment plant. A new water source is also needed, although possible sources of water, such as the Town of Coupeville, or a desalinization plant, have been identified, not confirmed.

Under Island County's code, Camp Casey is considered an existing, nonconforming use. To accommodate Camp Casey's expansion plans, Island County has chosen to designate it a Special Review District (SD), a designation that Island County created in their code for large, unique properties that need special conditions and protections in rural areas. The dilemma for Island County and SPU is that Camp Casey is hard to fit into any of the County's zoning classifications because it is an intensive use in a rural area. Island County chose the SD classification because they feel Camp Casey is more rural than urban, meets the criteria of a SD, and will give citizens, the County, and SPU predictability about Camp Casey's future development that would not be provided by the County's development regulations for nonconforming uses that have few limitations.

The County and SPU are clearly committed to responsible planning and to the expansion of Camp Casey in a lawful and thoughtful manner. However, the procedures and tools used in the challenged ordinance are not consistent with the GMA. This decision sets forth the areas of non-compliance so that both the County and SPU may accomplish their laudable mission in alternative, GMA-compliant ways.

Whidbey Environmental Action Network (WEAN) challenges the designation of the SD because they believe (1) that the new development introduces impermissible urban growth into a rural area, (2) that Camp Casey meets the definition of Master Planned Resort (MPR) for which the County has no required policies, (3) that SD designation is inconsistent with the County's policies for SDs and critical areas, (4) that the designation does not comply with Island County's critical areas regulations, and (5) that the Designation of Non-significance (DNS) given to the proposed comprehensive plan amendment fails to comply with SEPA and did not provide the County Commissioners with enough information about potential environmental impacts to make an informed decision on this proposal.

The County responded by challenging the Petitioner's ability to raise State Environmental Policy Act (SEPA) claims regarding the comprehensive plan amendment. The County argues that the Petitioner fails the two-part standing test established by the courts and has not exhausted the County's administrative remedies. The County asked the Board to review its long-standing position that a petitioner has standing to bring SEPA challenges related to Growth Management Act (GMA) actions if the petitioner is entitled to bring a petition for review pursuant to RCW 36.70A.280(2). We have done what the County asked, and this decision contains a thorough discussion of our position. We decide that Petitioner has participatory standing to bring its SEPA claims regarding this comprehensive plan amendment based on the plain language of the statute providing that such claims may be raised by petitioners who have participated in the matter before the local jurisdiction below. RCW 36.70A.280. We also find that the County failed to provide a meaningful administrative remedy and that the Petitioner is not barred from bringing this petition based on failure to exhaust its administrative remedies.

As to the merits of this petition, we find that the scale and intensity of the new uses and the need for urban services required for the new uses that SPU proposes constitute urban growth. Urban

growth is not appropriate for an SD designation because an SD is a rural designation under the County's comprehensive plan. Therefore, the comprehensive plan amendment approving the master plan for Camp Casey does not comply with the GMA.

In response to Petitioner's assertion that Camp Casey is an MPR pursuant to RCW 36.70A.360, we find that Camp Casey has many characteristics of an MPR. However, the establishment of an MPR is within the County's discretion and would require policies in the comprehensive plan to guide their development. Because the County has no policies for MPRs and has not chosen to designate Camp Casey an MPR, it is not an MPR.

We further find that the County's DNS does not comply with SEPA, RCW 43.21C. In its threshold determination, the County found that the proposal did not create significant adverse environmental impacts. However, the record contains substantial evidence of the potential for significant adverse environmental impacts to a unique, critical area. The potential significant adverse environmental impacts require the County to prepare an environmental impact statement (EIS).

We find that the introduction of urban growth into a unique critical without adequate environmental analysis of this comprehensive plan and development regulation amendments justifies a finding of invalidity of the ordinance adopting the comprehensive plan amendment and development regulations. Without invalidity, there is a strong likelihood that the SPU projects would vest, and that would eliminate the County's ability to plan adequately for these new uses.

II. PROCEDURAL HISTORY

Island County issued a DNS and an Adoption of an Existing Environmental Document for the proposal to incorporate the Camp Casey Conference Center Master Plan and to amend the

comprehensive plan, zoning ordinance and zoning atlas to designate Camp Casey an SD on November 4, 2002. The County received numerous comments on the DNS during the 14-day required comment period. The County responded to these comments in a memo to the parties that commented on the DNS and issued a press release on December 10, 2002 that the County was retaining the DNS.

The Island County Board of County Commissioners adopted Ordinance C-92-02, PLG 015-02 that amended the County's comprehensive plan, zoning ordinance, and zoning atlas to incorporate the Camp Casey Master Plan into its comprehensive plan and designate Camp Casey as an SD on December 16, 2002. The County published a notice of adoption of Ordinance C-92-02 on December 25, 2002.

WEAN filed a Petition for Review for Ordinance C-92-02 and the November 4, 2002 DNS on February 24, 2003.

On March 6, 2003 we received a Motion to Intervene from SPU. On March 21, 2003 we issued an order allowing SPU to intervene.

We received motions from all three parties. The Petitioner filed motions for us to determine Issues 1 and 2. The County filed a motion to dismiss Issue 5. The Intervenor filed a motion to dismiss Issue 2 as a matter of law. We held a motions hearing on May 13, 2003. At the motions hearing the Intervenor argued in defense of WEAN's motion to determine on Issues 1 and 2 that the Board did not have jurisdiction in this case. The Intervenor contended that the proposal was a project permit according to RCW 36.70B.020(4) and therefore, subject to the Land Use Petition Act (LUPA), RCW 36.70C. The Board determined that the issue of whether the Board had jurisdiction would be treated as a motion. On May 29, 2003, we issued an Order denying all motions. We issued a Corrected Order on this Motion on July 2, 2003. Also, on July 2, 2003, we issued an Order and a Corrected Order, finding that the Board had jurisdiction in this case.

The Board received several motions from WEAN requesting numerous items be allowed to

supplement the record and for the Board to take official notice. We received several motions from the County and the Intervenor to supplement the record with several items and responses objecting to several of WEAN's requested items. WEAN also objected to some of the Intervenor's requested items. Orders issued on May 29, July 2, and July 11, 2003 show what was allowed to be entered, noticed, or denied. The July 11 order also granted SPU's motion to strike portions of WEAN's Hearing Brief.

The Board held a Hearing on the Merits (HOM) at the Island County Corrections Center on July 15, 2003. Mr. Steve Erickson represented the Petitioner. Mr. Joshua Choate represented the County and Mr. Tim Martin represented the Intervenor. All three Board members attended. At the HOM, the Presiding Officer allowed Items 25 and 82 to be stricken from the Index, and took official notice of Item 216.

III. BURDEN OF PROOF

As the Board reviews the challenges raised in the Petition for Review, the Board is bound to determine compliance under the "clearly erroneous" standard of review. Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless [it] determine[s] that the action by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." The County's actions were clearly erroneous if the Board is "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. Public Util. Distr. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.320(1), and the 2000 amendments thereto, the County's actions are presumed valid upon adoption. The burden is on Petitioner to demonstrate that the action taken by the County is not in compliance with the requirements of the GMA.

IV. ISSUES PRESENTED

Issue 1: Do the rezone and uses allowed by Ordinance C-92-02 fail to comply with the GMA goals and requirements for urban development and growth, RCW 36.70A.020 (1) and RCW 36.70A.110 (1)?

Issue 2: Do the rezone and uses allowed by Ordinance C-92-02 fail to comply with the GMA goals and requirements for master planned resorts, RCW 36.70A.020 (1) and RCW 36.70A.360?

Issue 3: Do the rezone and uses allowed by Ordinance C-92-02 fail to comply with the GMA goals and requirements for critical areas, RCW 36.70A.020 (9) (10), RCW 36.70A.060 (2), and RCW 36.70A.172?

Issue 4: In adopting Ordinance C-92-02, did Island County failed to comply with its comprehensive plan policies for Special Review Districts and critical areas?

Issue 5: Did the County's threshold determination of Nov. 4, 2002 comply with the SEPA, RCW 43.21 and WAC 197-11?

Issue 6: In the adoption of Ordinance C-92-02, did Island County comply with the GMA goals and requirements for public notice and participation, including RCW 36.70A.020 (11), RCW 36.70A.035, and RCW 36.70A.140?

Issue 7: If Ordinance C-92-02 is not in compliance with the goals and requirements of the GMA, does it substantially interfere with the fulfillment of the goals of the GMA so that it should be found invalid?

V. ANALYSIS AND DISCUSSION OF THE ISSUES

Issue 1: Do the rezone and uses allowed by Ordinance C-92-02 fail to comply with the GMA goals and requirements for urban development and growth, RCW 36.70A.020 (1) and RCW 36.70A.110 (1)?

Applicable Laws:

RCW 36.70A.030(14), (15), (16), (17), (19)

RCW 36.70A.020 (1), (2)

RCW 36.70A.070(5)(a), (b), (c)

RCW 36.70A.110(3), (4)

Positions of the Parties

Petitioner's Position

Petitioner contends that the scale and intensity of the new development is urban. The new

development proposed for Camp Casey includes six retreat seminar buildings of 8,000 square feet each, a chapel of 8000 square feet, and parking areas for 160 vehicles, with a possible increase to spaces for 240 vehicles.

Petitioner contends that the uses that are allowed at Camp Casey are not compatible with the following elements of rural character outlined in RCW 36.70A.030(14). They declare that Camp Casey does not fit a pattern of land use (a) in which open space, the natural land use and development predominate over the built environment; ... (d) that is compatible with the use of the land by wildlife and for fish and wildlife habitat; and ... (f) that generally do not require the extension of urban governmental services.

Petitioner contends that the expansion plan for Camp Casey will need urban services because an engineering feasibility study provided to SPU states that septic systems to meet the needs of the new development are not feasible, and, instead, a small sewage treatment plant would be provided. WEAN's Brief at 22-23. Petitioner shows that RCW 36.70A.030(19), the definition of "urban governmental services" or "urban services", includes sanitary sewer systems as urban services. Petitioner also asserts the definition of rural services, RCW 36.70A.030(16), includes sanitary sewers, except as otherwise authorized by RCW 36.70A.110. WEAN's Brief at 23-24. Petitioner concludes that, because the new development at Camp Casey will need to be served by a sanitary sewer system, defined as urban service by the GMA, and the proposal requires an urban service, then the growth is urban.

Intervenor's Position

Intervenor argues that the County knew this in 1998 when the County adopted its plan and did not designate Camp Casey as an Urban Growth Area (UGA). Therefore, development at Camp Casey does not constitute urban growth. The failure to designate Camp Casey as a UGA was not challenged. Brief on the Merits of Intervenor Respondent Seattle Pacific University (Intervenor's Brief) June 24, 2003, at 64.

The crux of the Intervenor's argument is that the uses at Camp Casey do not fit neatly into any zoning designation and the change from Rural to Special Review District will be beneficial to the County. Because the current existing uses existed prior to the adoption of Island County's

current comprehensive plan and zoning code, they qualify as existing uses under ICC 17.03 230.

Mr. Tate, Assistant Planning Director for the County, wrote in a memo why the change in the designation from Rural to Special Review District, a Master Plan and the new regulations governing existing uses would benefit the County and SPU:

Under the Rural Zone, there are no standards that outline the future uses, development, activities, repairs of existing structures and management of the property under a single ownership ... As a result, there are a wide range of possibilities for this property ranging from subdivision into five-acre parcels and residential development to selling off the various parcels and uses to different owners who have different development intentions to expansion of existing facilities with no codified limiting parameters or threshold.

Under the current code, there is limited control that the County can exercise in minimizing the degree of expansion that can be proposed and ultimately approved with respect to existing uses and structures. SPU could increase the capacity for existing structures to support a twofold increase (or more) in annual attendance with no public or legislative review ...

Intervenor's Brief at 68. Index 28, at 2-3.

Mr. Tate concludes that Camp Casey's designation as Rural provides a lack of development control and potential for piecemeal development, offers no predictability to SPU, the County, or local residents. The lack of predictability caused by Camp Casey's status as an existing use in a Rural designation inhibits SPU's ability for long-term planning, County residents' input into Camp Casey's future development, and the County's ability to consistently apply the development code and assess the cumulative impacts of the development. He points out that the advantage to SPU and the County in changing the designation from Rural to SD is that it allows the County to work with SPU through a public process to establish zoning and use standards specific to Camp Casey and gives predictability to SPU, County residents and County staff. Intervenor's Brief at 68. Index 28, at 2 and 3.

Intervenor also contends that the unique qualities of Camp Casey make it more rural than urban. Intervenor cites a letter from Camp Casey Master Plan author Rolfe Kellor, who states, "The Camp Casey Conference Center does not fit neatly into the usual visualizations of what

constitutes rural or urban development.” Mr. Kellor describes how portions of the site are undeveloped and dominated by open space, while other portions such as the military housing, appear more developed. However, he concludes that because Camp Casey depends on open space and natural resources, it could not exist in an urban area, and is basically rural in nature. Intervenor’s Brief at 70. Index 74, at 6.

Mr. Kellor explains that the basic nature and appearance of the Camp Casey Conference Center will not change with the development concepts included in the Master Plan because the new buildings will be placed in the forest and will not be visible from public areas. He advocates for SD designation because the unique characteristics of the Camp Casey Conference Center make it hard to fit into any other Island County existing zoning classification. *Ibid.*

Intervenor refers to Resolution C-07-03, Findings of Fact and Legislative Intent, to show how the Board of County Commissioners (BOCC) found the Camp Casey Conference Center to be more rural than urban, and the reason that it should be designated an SD is because its uses are uncommon or difficult to site, using much the same rationale as Mr. Kellor. BOCC explains why this does not fit into commercial, natural resource, or residential designation, and is not an urban use and has not been designated an urban growth area. The Finding states, “It was placed in the Rural Zone because the Rural zone provides for various uses in Island County which are uncommon or difficult to site”. Intervenor’s Brief at 71. Index 116.

The Intervenor also puts forth the position that the sewer service being considered for the Camp Casey Conference Center is not an urban service because it is small, privately owned and operated, located on the property on which it serves, and serves only the property on which it is located. Therefore, the sewage treatment plant proposed to serve the new development at Camp Casey does not constitute a “storm or sanitary sewer system” within the GMA’s definition of “urban governmental service”.

Discussion

The Board recognizes that the Camp Casey Conference Center is a wonderful asset for Island County and the entire state, and understands the County’s desire to help SPU keep Camp Casey a viable institution. We also are not unsympathetic to SPU’s need for funding to preserve the historic buildings at Camp Casey and to keep it functioning. While we recognize the goals of the

County and of SPU as legitimate, our role, as a result of the Petition that has been filed, is to ensure that these goals are accomplished in conformance with the goals and requirements of the GMA. What must be determined is whether the new development that is being proposed at Camp Casey is urban growth; and if it is urban growth, can it be allowed in a rural area outside of an urban growth area.

Petitioner acknowledges, and we want to make clear, that the development currently in use at Camp Casey is not the subject of this petition. As Petitioner states in WEAN's Reply Brief:

“What's done is done and cannot be undone”... At issue in this case is whether the Camp will be allowed to greatly expand its facilities, housing capacity, and supporting infrastructure, and to do this almost entirely on land that is not only undeveloped but environmentally sensitive and ecologically rare.

WEAN's Reply Brief of July 2, 2003, at 15.

The County and the Intervenor state that Camp Casey was given a Rural designation because it does not fit neatly into any zoning classification and because the Rural zone provides for various uses that are uncommon or difficult to site. The County planning department recommended changing Camp Casey's designation to SD because the SD “is intended to apply to large properties in single public or nonprofit ownership that because of unique site or use characteristics, do not fit any other zoning classification”. Intervenor's Brief at 70. Index 74, at 6.

The County Assistant Planning Director admits that if Camp Casey was not already an existing use then it would not be permitted in the County's rural zones:

The Camp Casey Conference Center ... is a use that does not fit into the range of uses that are typically permitted in other rural zoning classifications ... While some the existing uses could actually be permitted in the Rural Zone, the current zoning establishes thresholds which the Camp Casey Conference Center far exceeds.

Index 28, at 2.

While the existing uses are not subject to this petition, we will examine their scale and intensity (which are described by the County as far exceeding the thresholds established by the current

County zoning), and compare them to the proposed new structures to determine whether they are of the same scale and intensity. The current uses at Camp Casey include the following lodging facilities: 9 two-story 4,800-square-foot dormitories that can house up to 503 persons; a 7,650-foot apartment/dormitory that can house up to 50 persons; 13, 176-square-foot duplexes that can house up to 34 people; a 7,644-foot duplex that can house up to 16 persons; a 3,240-square-foot multipurpose building that can house up to ten individuals; four cabins averaging about 1,000 square feet each that can accommodate 35 persons; two mess halls (4,800 square feet and 2,700 square feet) that can together accommodate 350 persons. Camp Casey also contains the following educational facilities: two auditoriums (4,800 and 2,700 square feet) that can accommodate 350 and 130 persons; a 2,331-square-foot classroom that can accommodate 100 persons; an 11,520 square-foot building that can sleep 24 and contains meeting space; a 1,040-square-foot classroom building and a square-foot 1,040 sea lab. Recreational uses include a 6,400-square foot gymnasium; a 2,028 square-foot craft building; 13,400 square feet for two swimming pools and related buildings; and four full-sized soccer fields. Several other smaller buildings house administrative and storage functions. Most of these uses are located on the southern half of the 81.2 acres located west of Engle Road. Camp Casey Conference Center Master Plan at 9-14.

As stated in RCW 36.70A.030 (17):

“Urban growth” refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170.

RCW 36.70A.030 (17)

If the structures and uses were being proposed today, they would clearly meet this definition.

The County says that the reason that Camp Casey was given a Rural designation is because it does not fit neatly into either a Rural or Urban designation. In 1998, when the County adopted its comprehensive plan, the County could give Camp Casey a rural designation, even though it was a use of urban scale and intensity, and still be consistent with the GMA because Camp Casey was

an existing use outside areas designated as Urban Growth Areas (UGAs), and had existed at this scale and intensity long before the GMA was contemplated. It also appears that no expansion of the uses at Camp Casey were planned at the time. At that time, the County also had the benefit of the 1995 and 1998 amendments to the GMA that gave more specific guidance on how to plan in rural areas including how to provide for small-scale tourist and industrial uses, recognize existing uses and limit them to prevent sprawl, and site urban-scale recreational and resort uses that were dependent on a rural setting. The County had several choices about how to designate Camp Casey. If the County had wanted to recognize the urban nature of Camp Casey and allow it to expand, it might have considered designation pursuant RCW 36.70A.360, Master Planned Resort, or RCW 36.70A.362, Existing Master Plan Resort. It could have designated it a Limited Area of More Intense Development (LAMIRD) pursuant to RCW 36.70A.070(5)(d)(i), confined it within a logical outer boundary, and allowed it to intensify to the scale and intensity of its current uses. Or the County could do what it has: that is, to recognize Camp Casey as an existing nonconforming use, and allow it to expand to the limits of the County's zoning code.

However, new uses in a rural area may not constitute urban growth.

The County admits that current uses would exceed the County's requirements for uses in a Rural designation. However, the County finds that Camp Casey meets the definition of an SD under the County code, although the County's comprehensive plan and county code clearly show the SD as a rural designation. *See* Island County Comprehensive Plan, Table of Contents, at 3, and Rural Designations at 133. The County staff states that the reason that they recommended that Camp Casey be designated as an SD is because it does not fit the typical Rural zone but it does meet the criteria for an SD. The criteria for an SD can be applied to large properties 150 acres in size, in single public ownership or owned and/or managed by a non-profit organization, which do not readily fit in any other zoning classification because of unique site or use characteristics. The staff sees advantages to the County and SPU because the Master Plan required of a SD helps the County overcome the shortcomings in its code governing expansion of existing nonconforming uses in rural areas. The County Code provides only a few controls on expansion of these uses. The advantages the SRD and MP provide for the County, citizens, and SPU are predictability and standards for expansion. Although these are reasonable objectives, they cannot supercede the GMA goal to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. If Camp Casey's new uses and structures

constitute urban growth according RCW 36.70A.030, then the SD, a rural designation, cannot be used to allow them.

Petitioner's argument that the new uses are of urban scale and intensity is persuasive. When we examine the proposed new structures, we find six 8,000-square-foot buildings with 2000 feet of support space, fifty 350-square-foot cabins, and an 8,000-square-foot chapel. The new development will add from 160 to 240 parking spaces and a new two-lane road. These uses are of the scale and intensity of most of the existing uses at Camp Casey, uses which the County admits are of a scale and intensity that would not be allowed in the County outside of an SD. We agree with the Petitioner that the scale and intensity of these uses meets the definition of urban growth.

Petitioner also argues that because the new uses will need to be served by sewer services, the new uses are urban uses. Intervenor responds that a small sewage treatment plant is only being considered, that the new development could be served by existing septic systems, and a sewer treatment plant is a better choice for environmental reasons. The Intervenor also contends that because the sewage treatment plant would be built, owned, and operated by SPU, it is not an urban governmental service within the GMA's definition of urban services.

The record shows that a sewage treatment plant is being planned to serve the proposed uses. A December 9, 2002 letter regarding SEPA comments from Mr. Rolfe Keller to Assistant Planning Director Jeff Tate states:

Based on a preliminary engineering analysis of the feasibility of providing adequate septic systems to meet the needs of the proposed development, drain fields proposed in the forest that has been designated a Natural Heritage site are no longer being considered. Instead a small sewage treatment plant will be provided to meet Casey's expansion needs, and possibly to replace the existing septic systems.

Index 74, at 3.

The Intervenor would like us to determine that because the sewage treatment plant is small, privately owned and operated, and will serve only Camp Casey, the sewage treatment plant is not an urban service prohibited in a rural area.

To help us determine whether a privately owned service can be an urban service, we look to RCW 36.70A.110(3) and RCW 36.70A.030(19). RCW 36.70A.110 (3) says:

Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources.

RCW 36.70A.110(3)

The words, “any additional needed public facilities and services that are provided by either public or private sources” show that the public facilities and services for urban growth can be provided by private entities and still be considered urban governmental or urban services.

The RCW 36.70A.030(19) definition of “Urban governmental services” or “urban services” include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems and other public utilities associated with urban areas and normally not associated with rural areas. The Board notes that the words “historically and typically provided by cities” means that this is a general rule, and does not preclude other entities including counties, public utility districts, or private entities from providing sewer service. This also refutes SPU’s argument that because SPU will own the sewer system, this excludes their future privately owned sewer system from the definition of urban governmental or urban services.

For guidance to determine whether the size of SPU’s sewage plant eliminates it as an urban governmental or urban service, we look to what a court of appeals said about one of our cases involving Thurston County concerning size of a sewer facility:

The County contends that proposed four-inch limited capacity sewer line is not an urban public service under the GMA because it is too small to carry urban-level sewage. The County also asserts that the Board inconsistently referred to the sewer line as an “urban service” and a line whose size “virtually excludes the possibility of permitting urban development.”

AR at 95.

Contrary to the Board’s assertion, the GMA’s definition of “urban governmental service” expressly includes “storm and sanitary sewer

systems”. RCW 36.70A.030(1). This definition does not mention sewer pipe size; nor does it exclude small sewer lines. Consistent with this inclusion of sewers as urban governmental services the GMA specifically provides (r)ural services do not include storm or sanitary sewer, except as otherwise authorized by RCW 36.70A.110(4).” Under the plain language of these statutes, the County’s four-inch sewer line is an urban governmental service.

***Thurston County v. Cooper Point Ass’n.*, 108 Wn. App. 429 437 Sept. 2001.**

We apply the same logic to the size of the sewage treatment plant needed for the proposed new development at Camp Casey and find that the size of a sewage treatment plant does not prevent it from being considered an urban service. RCW 36.70A.110 (4) says:

In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

RCW 36.70A 110 (4)

The sewage treatment plant proposed for Camp Casey is not for the purposes of protecting basic public health and safety and the environment. It is for the purpose of enabling urban growth in a Rural Area, and therefore is inconsistent with RCW 36.70A.110(4).

The County’s comprehensive plan and county code clearly show the SD is a rural designation. *See* Island County Comprehensive Plan, Table of Contents at 3, and Rural Designations at 133. Intervenor acknowledges that an SD is a Rural zoning designation. Intervenor’s Brief at 126. The requirements for an SD are silent about the types and intensity of the uses MPs can allow and speaks to ownership, size, and unique qualities of the property. However, the SD is a Rural designation under the County’s comprehensive plan and should not allow uses and intensities that are not consistent with the County’s regulations for rural uses or with the GMA’s requirements. The designation of property as an SD cannot be used to justify adding to the intensity of an existing, nonconforming use, and for extending or placing urban services in a Rural Area. We find that the scale and intensity of the proposed new uses constitute urban growth pursuant to RCW 36.70A.030(17) and require “urban services” as defined by RCW 36.70A.030(19).

The Intervenor reminds us that the Island County BOCC found that the existing uses and structures, as well as those allowed by the Master Plan, constitute rural development, not urban growth. It is important for local legislative bodies to consider the GMA requirements and do their best to comply with them. However, the determinations of those local bodies concerning the nature of certain uses or intensities of development under the GMA are not determinative. When it pertains to interpreting the GMA's definitions of urban growth and rural development, this Board has said this about legislative discretion:

By expressing the definitions and the non-urban growth prohibition in such definitive terms, the legislature has removed the discretion of local governments. As noted by Petitioner, local governments do not possess the authority to change the definition of urban growth. Simply because the County Council characterized this new growth as "rural" is unavailing. It is the legislative definitions that must control in determining compliance and invalidity.

Washington Environmental Council v. Whatcom County, WWGMHB No. 94-2-0009 (Compliance Order, March 29, 1996).

We find that the proposed new uses in the Camp Casey SD meet the GMA's definition of urban growth, RCW 36.70A.030(17) and need to be served by urban services as defined by RCW 36.70A.030(19). We further find that the decision to allow new uses of urban scale and intensity and that require urban services in an area designated as Rural is clearly erroneous and is inconsistent with RCW 36.70A.020(1), (2); RCW 36.70A.110(4).

Issue 2: Do the rezone and uses allowed by Ordinance C-92-02 fail to comply with the GMA goals and requirements for master planned resorts, RCW 36.70A.020(1) and RCW 36.70A.360?

Applicable Laws

RCW 36.70A.020 (1),(2)

RCW 36.70A.360

RCW 36.70A.362

Positions of the Parties

Petitioner's Position

The Petitioner argues that the Camp Casey Conference Center meets the criteria of an MPR.

RCW 36.70A.360 defines MPRs as follows:

A master planned resort means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

RCW 36.70A.360(1)

Petitioner contends that Camp Casey is a self-contained and fully integrated planned unit development because the visitors to “the expanded Camp Casey should be able to meet their daily needs without being forced to go elsewhere”. Petitioner says this is consistent with the Eastern Washington Growth Management Hearings Board interpretation of the self-contained language that “the visitors and residences at the MPR should be able to meet their daily needs without being forced to go else where”. See *Ridge v. Kittitas County*, EWGMHB No. 96-1-0017c (4/16/96) (quoting *Barrie v. Kitsap County*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1975)).

Memorandum in Support of WEAN's Dispositive Motion of 4/23/03, at 22, as referenced by WEAN's Brief .

Petitioner contends that the expanded Camp Casey meets the definitional requirement of “self contained” because the proposed development as put forth in the Master Plan is “fully integrated planned unit development. To support his position, Petitioner cites the following appeals court definition of “Planned Unit Development” (PUD):

A generic term for a regulatory technique which allows a developer to be excused from otherwise applicable zoning regulations in exchange for submitting to detailed, tailored regulations.

Schneider Homes, Inc. v. City of Kent, 87 Wn. App. 774, 775-76, 942, P.2d 1096 (1997)

For further clarification to support contention that Camp Casey is a PUD, Petitioner cites an Eastern Washington Growth Management Hearings Board case that defines PUDs this way:

A PUD is a type of property development intended to achieve flexibility by

permitting specific modifications of the customary zoning standards as applied to a particular parcel of land.

Ridge vs. Kittitas County; EWGMHB No. 00-1-0017c, (Final Decision and Order, April 16, 1998) (quoting *Barrie v. Kitsap County*, 84 Wn.2d 579, 585, 527 P.2d 1377 (1975)); WEAN's Memorandum at 23.

Petitioner points out that Camp Casey, located on Admiralty Inlet with magnificent views of the Olympic Mountains, is in a setting of significant natural amenities.

Petitioner asserts that Camp Casey's primary focus is on destination resort facilities consisting of short-term visitor accommodations. Petitioner says Camp Casey consists of short-term visitor accommodations because the existing 670 beds and the planned future accommodations for up to 1,210, when the final phase of the MP is completed, are for overnight stays for guests with minimal accommodations for staff.

Petitioner claims that Camp Casey has a range of on-site indoor and outdoor recreational activities that vary from an indoor gymnasium, sports fields and courts to hiking trails and a beach. WEAN's Memorandum on Issues 1 and 2, at 23.

The Petitioner also asks the Board to reject the Intervenor's argument that Camp Casey cannot be an MPR because SPU is a non-profit organization and Camp Casey is only used by students, faculty, and alumni of SPU and other nonprofit organizations. Petitioner says that the GMA makes no distinction between development proposed by for-profit or non-profit organizations.

Petitioner asks the Board to find that because Camp Casey meets the definition of MPR, the Board should find that it is an MPR.

Intervenor's Position

Intervenor explains that the primary focus of Camp Casey is not on "destination resort facilities", but rather upon educational, retreat, recreational and conferencing facilities. The groups that use Camp Casey include public and private outdoor education and sports programs, churches of many denominations, sports leagues, scout troops, health and wellness groups, ethnic study groups, and SPU students, staff, and alumni. Intervenor points out that the expanded Camp Casey will not provide "destination resort facilities", but will continue and enhance the conference center's

existing functions. No new recreational uses are part of the expansion. Intervenor's Brief at 88-89.

Finally, the Intervenor argues that SD is a more appropriate designation for Camp Casey than an MPR because (1) Camp Casey is only available to non-profit organizations having 501(c) status whose purposes and activities are in harmony with SPU's mission and to SPU students, staff, faculty, and alumni and because (2) all the property in the Special Review District is owned by SPU, a non-profit organization.

Discussion

We agree with the Petitioner that when we examine the definition of MPRs, we find that there is much about Camp Casey that could fit the definition in RCW 36.70A.360 of an MPR for the following reasons:

- There is no doubt that Camp Casey is in a setting of "significant natural amenities".
- Camp Casey already includes short-term visitor accommodations, and plans to add more. Island County concedes that the scale and intensity of these accommodations are not what would be allowed under current County rural designations. It is of a scale and intensity that is more than would be considered a small-scale recreation or tourist use according RCW 36.70A.070(5)(d)(ii). It is the scale and intensity of the short-term visitor accommodations that make it most like a MPR.
- While Island County's code does not appear to include provisions for PUDs, the flexibility that the Camp Casey Master Plan provides could meet the Supreme Court's definition of PUD.
- The facilities available to visitors to Camp Casey including the soccer fields, basketball courts, beach, hiking trails, and swimming pools are recreation facilities. Even though the uses contained in Camp Casey are of a smaller scale than those in the two other MPRs proposed or approved in the state, Camp Casey contains a range of on-site indoor and outdoor recreational facilities as set forth in the statute. RCW 36.70A.360 is silent on the scale of recreation activities in MPRs.

We also agree with the Petitioner that the law is silent about the ownership of an MPR. We can

find nothing in the definition limiting ownership of an MPR or a planned unit development to a for-profit organization, nor do we find a limitation on the ability of the owner to restrict access to the facility to certain types of visitors. RCW 36.70A.360. An MPR is a land-use concept that was incorporated into the GMA in 1998 to allow for recreational uses and accommodations in areas of significant natural amenities that are of a scale and intensity greater than what would normally be allowed in Rural Areas. Because MPRs are an exception to the rule in rural areas or resource lands, they require significant planning at the conceptual stage before they can be designated. The emphasis in the statute is on planning and ensuring the provision of capital facilities and utilities does not cause urban sprawl in the vicinity of the MPR, not on ownership and types of visitors.

The Intervenor is adamant that the focus of Camp Casey is on conferences, educational activities, and retreats, as well as on recreation, which means that it is not an MPR. We do not find that SPU's primary focus for Camp Casey would necessarily eliminate it from designation as an MPR, if the County and SPU choose to do so.

However, we are not convinced that Camp Casey meets the definition of "self-contained in RCW 36.70A.360. While visitors to Camp Casey can eat, sleep, recreate, and learn at Camp Casey, visitors staying in the proposed new cabins or townhouses cannot have all their needs met at Camp Casey. They cannot buy food or gas. However, not having all the facilities to make a planned unit development totally self-contained is not a fatal flaw standing in the way of designation of Camp Casey as an "existing" MPR. The Eastern Washington Growth Management Hearings Board has said this about containment:

The GMA use of the phrase "self contained", does not require a MPR to contain everything it or the visitors need. This would be virtually impossible and would be too strict an interpretation of the language. The better interpretation would require the MPR to have sufficient services and needed places to shop for common needs to be met and avoid an adverse impact upon the neighboring urban areas. The visitors and residences at the MPR should be able to meet their daily needs without being forced to go elsewhere.

Ridge v. Kittitas County, EWGMHB No. 96-1-0017c (Order on Compliance and Validity, April 16, 1996).

An existing MPR has more flexibility when the requirement is to be a “self-contained and fully integrated planned unit development”. RCW 36.70A.362, Existing Master Planned Resort, describes the use as a “significantly self-contained integrated development that includes short-term visitor accommodations with a range of indoor and outdoor activities”. “Significantly contained” can be interpreted that not all visitor needs must be met by the existing MPR.

However we disagree with the Petitioner that because Camp Casey could meet the definition of an MPR, then it must be one. The designation of an MPR is a discretionary decision of the County. An MPR can only be authorized if, along with several other requirements, the comprehensive plan specifically identifies policies to guide the development of MPRs. Island County has no policies for MPRs. Camp Casey cannot be an MPR unless the County designates it as an MPR pursuant to County regulations applicable to the designation.

Because Island County has decided not to have policies authorizing MPRs and has not designated Camp Casey as an MPR, we find that Camp Casey is not an MPR.

Issue 5: Did the County’s threshold determination of November 4, 2002 comply with the SEPA, RCW 43.21 and WAC 197-11?

Applicable Laws and Rules

RCW 43.21C.110

RCW 43.21C.030

WAC197-11-060(3)(a)(iii)(3)

WAC197-11-060(4)(d)(4)

WAC 197-11-060(5)(d)

WAC 197-11-060(5)(e)

WAC 197-11-794(1)

WAC 197-11-228(2)(c)

WAC 197-11-330(5)

We first examine the standing issue because without standing to bring a SEPA issue, Petitioner may not allege a SEPA violation to the Board regardless of whether Petitioner has exhausted local administrative remedies.

Positions of the Parties

Respondent Island County challenges Petitioner's standing to challenge the County's DNS on two grounds: 1) that Petitioner failed to meet the two-part SEPA standing test, and 2) that Petitioner failed to exhaust local administrative remedies. *Respondent Island County's Brief on the Merits* at 3, 11, 15.

As to its first point, Respondent urges the Board to overrule its own precedent, which does not require petitioners to establish the two-prong injury in fact standing requirements for SEPA claims when petitioners have satisfactorily demonstrated that they have participatory standing. *Ibid.* at 3, 11-12. Respondent urges the Board to adopt the holding of the Central Puget Sound Growth Management Board, which requires petitioners to establish the two-prong injury in fact requirements as set out by the courts. *Ibid.* Respondent argues that SEPA has its own standing requirements, which are not overruled by the GMA. *Ibid.* at 13.

As to its second point, Respondent argues that to “obtain judicial review” of a county SEPA decision, “an aggrieved person” must exhaust county appeal procedures. *Ibid.* at 3-4.

Respondent argues that “the Western Board usurps local authority and fails to follow the legislature's intent,” if it does not impose the County’s and SEPA’s exhaustion requirements on Petitioner. *Ibid.* at 3-4. Respondent explains that the County has an appeals procedure for nonproject SEPA determinations, under which a SEPA threshold determination is a “type II” action, for which appeals must be made to avoid preclusion of further administrative and judicial review. *Ibid.* at 5-8, *referencing* ICC §16.19.040(A)(2), ICC §16.19.040(B) at Table B, ICC §16.19.200. Respondent further argues that Petitioner would automatically lose on appeal, even if it won at the Board, because the court would find that Petitioner failed to exhaust the County’s appeals process. *Ibid.* at 8. Respondent urges that public policy favors a requirement of exhaustion because it would allow the County to resolve its deficiencies at the local level without

need for further review. *Ibid.* at 9.

A. SEPA Standing under the GMA

Proper resolution of this issue requires us to examine the statutory standing requirements of the GMA; the SEPA standing requirements created by the courts; and the overall GMA statutory scheme for allowing review of planning matters traditionally not ripe for judicial review.

1. Statutory Construction

The first rule of statutory construction is to discern the statute's "plain language and ordinary meaning." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). Accordingly, "When a statute is clear and unambiguous, its meaning is to be derived from the language of the statute alone and it is not subject to judicial construction." *State v. Azpitarte*, 140 Wn.2d 138, 141, 995 P.2d 31 (2000). If the language of a statute is clear on its face, courts must give effect to its plain meaning and should assume the Legislature means exactly what it says. *State v. Chapman*, 140 Wn.2d 436, 450, 998 P.2d 282 (2000), cited with approval in *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d. 1 (2002), (construing the Land Use Petition Act). Rules of statutory construction apply to administrative rules and regulations. *Mader v. Health Care Authority*, 149 Wn.2d 458, 472, 70 P.3d 931 (2003).

In *Shoop v. Kittitas County*, 149 Wn.2d 29, 65 P.3d 1194 (April 3, 2003), the Washington Supreme Court was asked to consider whether RCW 36.01.050 was a jurisdictional statute or only a statute establishing venue rules for actions by and against counties. The statute had been amended in 1997 and the Court of Appeals had determined from the title of the legislation that, since it was titled "An act relating to the venue of actions by or against counties", it pertained to venue and was not jurisdictional. In overturning the Court of Appeals, the Supreme Court said: "Whenever possible, the meaning of a statute is to be derived from its language". *Ibid.* at 36. Unless a court finds the language ambiguous, the Court went on, "it has no authority to engage in statutory construction". *Ibid.* Thus, the language of the statute itself is key.

Upon reference to the GMA, we find that it first sets forth the Board’s jurisdiction:

A growth management hearings board shall hear and determine only those petitions alleging either:

- (a) That a state agency, county or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or
- (b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

RCW 36.70A.280(1)

Then it sets out the parties who may file a petition for review:

A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

RCW 36.70A.280(2)

The GMA confers jurisdiction upon the boards to hear petitions alleging noncompliance with the GMA, the Shoreline Management Act or SEPA “as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW.” RCW 36.70A.280(1)

[\[1\]](#)

. In the very next subsection, the four methods by which a petitioner may establish standing to bring a petition to the Board are specified: agency or local jurisdiction standing, participatory standing, governor-certified standing, and APA standing. There is no suggestion in the language of RCW 36.70A.280(1) that participatory standing as a basis for bringing a petition should not be deemed sufficient to establish standing to bring *any* claim over which the boards have jurisdiction, including SEPA claims.

Had the Legislature wanted to set different standing requirements for different types of claims, it

clearly could have done so. For instance, the GMA expressly provides that challenges to shoreline master programs (or their amendments) are subject to a different filing deadline than challenges to comprehensive plan or development regulations or amendments :

For purposes of this section, the date of publication for the adoption or amendment of a *shoreline master program* is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology.

RCW 36.70A.290(2)(c) (in pertinent part) (emphasis added).

However, no such distinction is made with respect to the claims on which parties bring their challenges to the boards. Indeed, standing to bring a claim under the APA at RCW 34.05.530, is essentially the same as standing to raise judicial review of a SEPA claim to court. *Compare Allan v. University of Washington*, 140 Wn.2d 323, 332, 997 P.2d 360 (2000) (stating that a person establishes standing under “the APA standing test only when the zone of interest and injury-in-fact prongs are satisfied”) with *Leavitt v. Jefferson County*, 74 Wn. App. 668, 678-79, 875 P.2d 681 (Div. 2, 1994) (stating that to establish standing to bring a SEPA claim, a plaintiff must be within the zone of interests protected by SEPA and must establish injury in fact). The GMA makes such standing merely one method for obtaining review. RCW 36.70A.280(2)(d). It would be incongruous for the statute to expressly list as *one* basis of four for filing a petition what was in fact the *only* basis for filing a petition.

In sum, the GMA’s standing provision read together with the GMA’s grant of jurisdiction in the same section unambiguously provides that participatory standing is sufficient to bring a SEPA petition before the boards. RCW 36.70A.280(2). Because the plain language of the statute is not ambiguous, there is no reason, and indeed no authority, to further construe the provision. The boards have been given jurisdiction to decide SEPA claims as they pertain to comprehensive plans, development regulations and their amendments, and they may hear petitions filed by any of the four listed categories of petitioners.

2. “SEPA Standing”

In spite of the clear language of the statute, we have been asked to alter the Western Board’s longstanding holding in this regard because our fellow board, the Central Puget Sound Growth

Management Hearings Board, holds otherwise. While we note that our other fellow board, the Eastern Washington Growth Management Hearings Board, accords with the Western Board, we respect the opinions of our fellow boards and consider the bases for their holding as we examine our own.

The Central Board holds that the legislature was aware that there were SEPA standing requirements for judicial review when it enacted the GMA and must be assumed to have known that those standing requirements would apply to hearings board cases as well:

The legislature is presumed to be aware of the cases that created the two-part SEPA standing test: *Leavitt v. Jefferson County*, 74 Wn. App. 668, 678, 875 P.2d 681 (1994) citing *Trepanier v. Everett*, 64 Wn. App. 380, 382-83, 824 P.2d 524, review denied, 119 Wn.2d 1012 (1992). Although these cases were decided after this section of the GMA was originally enacted in 1991, the legislature subsequently has not altered SEPA's standing provision. Furthermore, since *Leavitt* and *Trepanier* merely applied long-standing injury-in-fact analysis to SEPA, the legislature was at least presumed to be aware of that analysis in its traditional context.

Accordingly, the Board concludes that the legislature intends that petitioners raising SEPA issues to this Board, must allege an actual or threatened injury within their petitions for review

West Seattle Defense Fund (WSDF) v. City of Seattle, WWGMHB
No. 94-3-0016, (Order on Motion, January 10, 1995)

The first concern that we have with this position is that it assumes that the legislature did not address the standing requirements for bringing a SEPA claim when it created the boards and gave them jurisdiction over SEPA claims pertaining to comprehensive plans and development regulations. Clearly, the statute itself does address standing and does provide four bases upon which a petitioner can file a petition for review. This is not a case in which the Legislature failed to address an issue.

Secondly, SEPA itself does not contain a standing provision. Rather than expressly establishing

a standing requirement, SEPA notes that there are judicially imposed standing requirements: “If a person aggrieved by an agency action has the right to judicial appeal...” RCW 43.32C.075(4). The statute does not describe what is encompassed in the right to judicial appeal but defers to the pre-existing law on that point. *Settle*, The Washington State Environmental Policy Act §20(b). Therefore, we must look to the court cases that developed the standing requirements under SEPA to determine if those require the boards to decline to accept petitions from petitioners who meet the statutory requirements of the GMA for filing petitions with the boards.

The SEPA standing requirements were created by the courts *in the absence of* an express statutory grant of authority to hear appeals. They were, therefore, created as part of the *inherent powers of the court* to ascertain standing. The judicial standing doctrine is comprised of two essential prongs: prudential standing and Article III (of the United States Constitution) standing. *F.E.C. v. Akins*, 118 S.Ct. 1777, 1783-84, 524 U.S. 11, 141 L.Ed.2d 10 (1998); *see also Lujan v. Defenders of Wildlife* (“*Defenders*”), 112 S.Ct. 2130, 2142-43, 504 U.S. 555, 119 L.Ed.2d 351 (1992) (acknowledging that when the government does not follow a mandated procedure, plaintiffs are not required to establish a third prong, redressability).

The prudential standing prong requires petitioners to show that they are “arguably within the zone of interests to be protected...by the statute”. *National Credit Union Administration v. First National Bank and Trust Co.*, 118 S.Ct. 927, 935, 522 U.S. 479, 140 L. Ed. 2d 1 (1998) (quoting *Association of Data Processing Service Organizations, Inc. v. Camp*, 90 S.Ct. 827, 829-830, 397 U.S. 150, 152-153, 25 L.Ed.2d 184); *Akins*, 118 S.Ct. at 1783-84, 524 U.S. 11, 141 L. Ed. 2d 10. When the legislature explicitly grants authority to sue the government, then the courts will look no further to determine if the prudential standing prong is met. *Akins*, 118 S.Ct. at 1784, 524 U.S. 11, 141 L. Ed. 2d 10 (citing *Raines v. Byrd*, 117 S.Ct. 2312, 2318 n.3, 521 U.S. 811, 138 L. Ed. 2d 849 (1997))

The Article III prong obligates the courts to satisfy themselves that they are adjudicating an Article III case or controversy before they may proceed to the merits. The doctrine of injury in fact emanates from the “case-or-controversy requirement of Article III.” *Defenders*, 112 S.Ct. 2130, 2136, 504 U.S. 555, 119 L. Ed. 2d 351 (1992). The case or controversy requirement, in turn, serves as a mechanism to keep the governmental branches separated. In *Defenders*, the Court explained that a showing of injury in fact is required of petitioners to the courts in order to limit the power of the judiciary branch to oversee the executive branch. *Id.* at 2145, 504 U.S. 555, 119 L. Ed. 2d 351. After all, “The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170, 2 L.Ed. 60 (1803) (quoted in part in *Defenders*, 112 S.Ct. at 2145, 504 U.S. 555, 119 L. Ed. 2d 351).

Therefore, the prudential prong, or zone of interests, may be explicitly defined and expanded by the legislature, whereas the Article III prong, or injury in fact, is a judicial requirement to ensure that the courts act upon actual cases and controversies.

However, the GMA scheme for review of plans and regulations by the boards does not have the same inherent case and controversy limitations that apply to the courts because the boards are not part of the judicial branch. The courts and boards “look to the Growth Management Act, itself, to determine the authority of the [Growth Management] Board.” *Skagit Surveyors and Engineers v. Friends of Skagit County*, 135 Wn.2d 542, 558-62, 958 P.2d 962 (1998). The boards have no inherent powers and may only exercise powers conferred by statute. *Ibid.* The boards were created expressly for the purpose of providing prompt review of local governmental compliance

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with the GMA, SEPA and the Shoreline Management Act at the planning stage. Under the Planning Enabling Act, Ch. 36.70 RCW, local legislative actions were subject to judicial review

only on a petition for a constitutional *writ of certiorari*, which required petitioners to show government violation of petitioners' fundamental rights. *Leavitt v. Jefferson County*, 74 Wn. App. 668, 678, 875 P.2d 681 (Div. 2, 1994). SEPA determinations, mandated by a separate statute, were reviewed separately. *Leavitt*, 74 Wn. App. at 679, 875 P.2d 681. However, under the GMA, local legislative decisions are subject to administrative review by the boards on a petition for review. It is within this context that we must consider the applicability of case and controversy restrictions on judicial review to board determinations.

The boards are administrative agencies, part of the executive branch, having been granted quasi-judicial powers to determine facts and interpret laws. *Diehl v. Mason County*, 94 Wn. App. 645, 662-63, 972 P.2d 543 (Div. 2, 1999). Board members are appointed by the governor. RCW 36.70A.260. The boards may enter a finding of noncompliance, which can affect the amount of money that the executive branch will disburse to the noncompliant county. RCW 36.70A.330, .340, .345. The board may also declare county legislation to be invalid, a declaration authorized by a valid delegation to the boards as administrative agencies. *Diehl*, 94 Wn. App. at 662-63, 972 P.2d 543; *Skagit Surveyors*, 135 Wn.2d at 558-62, 958 P.2d 962, RCW 36.70A.302. The board remedies are thus limited to determining when a local jurisdiction is out of compliance with state planning and environmental laws such that the jurisdiction should be deprived of certain state funding and/or should be limited in their exercise of state-delegated powers.

Therefore, the constitutional doctrine of separation of powers is not implicated by the jurisdiction of the boards because Article III applies to the courts, not to administrative bodies established in the executive branch. Since the growth management boards are administrative bodies in the executive branch, there is no basis in Article III to deny the sufficiency of participatory standing to raise SEPA claims before the boards. To hold otherwise would be to superimpose a

constitutional standing requirement upon SEPA petitioners who have been granted standing by statute to appear before an administrative body. The boards have neither authority nor justification to rewrite the statute. With all due deference to the Central Board, this Board must presume that the provisions of the GMA are valid.

B. Exhaustion of Local Administrative Remedies under the GMA

Applicable Law

If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

RCW 43.21C.075(4)

Appeals

Administrative and judicial appeals of procedural and substantive determinations under SEPA shall be as set forth in Chapter 16.19 ICC.

ICC §16.14C.170

Applicability [of ICC §16.19]

The land use review processes set forth herein shall apply to actions including administrative decisions, land division, zoning variances, zoning amendments, site plan review and planned residential development approval, provided for by Titles 11, 16 and 17 ICC and the placement of property in deferred tax programs as provided for in Chapters 84.33 and 84.34 RCW.

ICC §16.19.020

Definitions

Aggrieved person: A Person is aggrieved or adversely affected within the meaning of this Chapter only when all of the following conditions are present:

A. The land Use decision has prejudiced or is likely to prejudice that Person;

- B. That Person's asserted interests are among those that the County was required to consider when it made the land Use decision; and
- C. A judgment in favor of that Person would substantially eliminate or redress the prejudice to that Person caused or likely to be caused by the land Use decision.

ICC §16.19.030 (in pertinent part)

Judicial Review

A. ...a written decision of the Hearing Examiner on an appeal of a Type II Director decision...shall...be a final County land Use decision. Failure of a Person to timely take an available appeal to a County decision maker or decision making body shall preclude any further review, including court review.

B. A Person with standing seeking further review of a final County land Use decision, within twenty-one (21) days of the issuance of the decision, must both file a petition for review in the Island County Superior Court and serve the petition on all necessary parties in conformity with the requirements of the State Land Use Petition Act, Chapter 36.70C RCW.

ICC § 16.19.200 (in pertinent part)

Analysis and Discussion

Respondent urges this Board to require petitioners to exhaust the County's local administrative remedies before hearing Petitioner's SEPA claims.

The doctrine of exhaustion requires petitioners to avail themselves of local administrative remedies before petitioners may be heard by the courts. RCW 43.21C.075(4), *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 26, 785 P.2d 447 (1990). However, a petitioner need not attempt to exhaust the remedy if the attempt would be futile. *Ibid. Estate of Friedman*, 112 Wn.2d 68, 74, 768 P.2d 462 (1989).

As this Board previously discussed in the Order on the Motions for this case, the County's SEPA

appeals procedures apply to threshold determinations for project actions, and do not contemplate threshold determinations for comprehensive plan amendments. *Whidbey Environmental Action Network v. Island County*, WWGMHB No. 03-2-0008, (Order on the Motions, May 29, 2003). Respondent states that the County's environmental policy, as stated in ICC §16.14C.020, 030, by reference to WAC 197-11-704(2), applies to nonproject SEPA actions. Respondent continues that "Threshold determinations on project and nonproject actions" are appealable under Chapter 16.19 ICC. However, in *Island County Citizens Growth Management Coalition v. Island County*, WWGMHB No. 98-2-0023c, Order on Motions to Dismiss at 3 (March 1, 1999), this Board explained that the Petitioner in that case attempted to avail itself of the County's appeals procedure, which requires a Petitioner to appeal the hearing examiner's decision to Superior Court. Petitioner was told by the court and Island County, through a stipulated dismissal, that Petitioner must first appeal the hearing examiner's decision to the Growth Management Board before bringing a claim to the Superior Court. This stipulation supports the Board's interpretation that the County's provisions apply to project SEPA determinations, not non-project SEPA determinations. Indeed, we find ourselves hard-pressed to understand the County's insistence that its appeals provisions, which the County concedes have not been changed, now include that to which the County previously insisted the provisions did not apply.

As previously explained,

[T]he County's code creates a remedy that *by its own terms* applies only to project actions. The code describes the next phase after the hearing examiner's decision as an appeal under the Land Use Petition Act, which applies to project review:

A Person with standing seeking further review of a final County land Use decision, within twenty-one (21) days of the issuance of the decision, must both file a petition for review in the Island County Superior Court and serve the petition on all necessary parties in conformity with the requirements of the State Land Use Petition Act (LUPA).

Chapter 36.70C RCW.

ICC 16.19.200 B.

It is also addressed to project actions because ICC 16.19 is entitled “Land Use Decision Review”. As the County pointed out at the hearing, this language is taken directly from the Land Use Petition Act (Ch 36.70B RCW). The type of action that the hearing examiner reviews under the Island County Code is clearly a project action under LUPA and not a non-project action such as a comprehensive plan, or development regulation which is subject to review by the growth boards.

Whidbey Environmental Action Network v. Island County, Order on the Motions, WWGMHB No. 03-2-0008, May 29, 2003.

We further conclude that, as this Board has previously found, the County does not provide a local administrative process to challenge a SEPA threshold determination for amendments to its comprehensive plan. The appeals provisions of the ICC are intended for appeals of project actions that can be further reviewed under the provisions of the Land Use Petition Act (Chapter 36.70C RCW).

In addition, the County requires any petitioner to establish the two-prong injury in fact standing requirements – a requirement that conflicts with the standing provisions applicable to SEPA challenges to plans and development regulations found in RCW 36.70A.280.

Futility applies to cases where the jurisdiction of an administrative procedure is at issue. *Spokane County v. State*, 136 Wn.2d 644, 651-53, 966 P.2d 305 (1998). In *Spokane County*, the court held that an administrative remedy did not need to be pursued when the jurisdiction of the agency administering the remedy was a subject of the dispute. *Ibid*. The court reasoned that because jurisdictional questions are ultimately decided by the court, any remedy prescribed by the agency would be futile.

Such is the situation presented by the instant case. Respondent contends that the jurisdiction of

the County's review procedure is available for petitioners to challenge SEPA threshold determinations for comprehensive plan amendments. Respondent's Brief on the Merits at 3. In the next breath, Respondent contends that the person responsible for administering the County's review procedure would not have jurisdiction to hear Petitioner's challenge, because Petitioner cannot establish an injury in fact in order to establish standing as required by ICC §16.19.190(B). *Ibid.*

On the one hand, if Petitioner's challenge were heard by the hearing examiner, the County could (as Respondent stated at the Hearing on the Merits that it would) challenge Petitioner's standing, which is a challenge to the jurisdiction of the hearing examiner to hear Petitioner's claim. On the other hand, if Petitioner's challenge were denied by the hearing examiner, Petitioner would have to bring its challenge to the Board to be heard under the "participatory standing" provisions of the GMA. Either way, the issue would be presented to the Board in exactly the same manner as it has been in this case. The County's appeals provisions, in conjunction with the County's conceded position on standing, amount to an exercise in futility for Petitioners wishing to challenge SEPA actions on comprehensive plan amendments.

Conclusion

We are persuaded that the County does not have an available administrative review process for challenges to SEPA threshold determinations for comprehensive plan amendments. Further, any attempt to pursue an administrative remedy at the County would be futile because the jurisdiction of the hearing examiner to hear SEPA threshold determinations for comprehensive plan amendments is subject to a different standing requirement than is provided by statute for appeals to the boards. RCW 36.70A.280.

Now that we have determined that Petitioner has standing to raise SEPA claims pertaining to this comprehensive plan amendment, we will examine the issue of whether the County's threshold

determination of November 4, 2002 complies with SEPA, RCW 43.21 and WAC 197-11.

Position of the Parties – SEPA Determination

Petitioner's Position

The Petitioner alleges that the County made the following procedural errors in issuing a DNS for the designation of Camp Casey as an SD and development regulations to regulate this designation:

- The County did not disclose that it is conducting phased review of the project when it issued the DNS and only did so one month after the DNS had been issued.
- The County used an improper standard in evaluating the projects impacts. Instead of evaluating the short-term, long-term, indirect and direct impacts, the County considered undocumented alternative scenarios.
- The County did not disclose information that it had in its possession of a catastrophic forest blowdown that had occurred on the property where the SD is designated.
- The County failed to review different policy decisions, particularly decisions that would serve as precedent.
- The County improperly relied on phased review. Phased review is not appropriate in this instance because it makes it difficult to review the cumulative impacts, divides a larger system in exempted fragments (storm water impacts, certain sewage treatment plants, and possible desalinization plants are categorically exempt).

The Petitioner also charges that there are substantive impacts caused by the proposed new uses that make issuance of a DNS inconsistent with RCW 43.21. These substantive impacts would result from the scale and intensity of the project, such as forest clearing, wind exposure, and traffic.

Other reasons that the Petitioner gives for the inadequacy of the DNS are the following: (1) the Washington Department of Fish and Wildlife, an agency with expertise, voiced concern that the proposed amendment and Master Plan would have significant environmental impacts, particularly habitat fragmentation, (2) the Master Plan is detailed and specific enough for a more detailed environmental review, and (3) the “mini review” that the County did in response to comments on the DNS generally postponed review to the permit stage.

The Petitioner also believes that the sale of SPU's property needs environmental review because of the impacts caused by the development from the proposed GMA action.

Intervenor's Position

The Intervenor points out that the both SEPA and the rulings by the courts support the County's decision to issue a DNS for the following reasons:

- The County was not balancing inverse impacts with beneficial impacts of alternatives, but was considering various alternatives, which is not prohibited by SEPA.
- Phased review is allowed by SEPA. The Intervenor says that this is a rezone and nonproject rezones do not need environmental impact statements if the local government retains authority to evaluate the project at the permit stage.
- The DNS issued by the County needs to be given substantial weight by the Board.

The Intervenor protests that the sale of SPU's property is not in the SD, is not a decision reviewable by SEPA, that it is not functionally related to the proposed action, and that the development will have no impact on endangered plants on that property.

Discussion

First, we will examine the arguments that the County made substantive errors in issuing the DNS for C-92-02. In doing so, we take seriously the direction given by RCW 43.21.090 that decisions on environmental determinations of local governments must be given substantial weight, as we do that the burden of proof is on the Petitioner for SEPA challenges brought pursuant to RCW 36.70A. 280.

We note that agencies with expertise were concerned that uses allowed for in the MP had significant environmental impacts. The Washington Department of Fish and Wildlife made this comment on the DNS:

[t]he designation of this site is as a critical area also obligates the County to protect the biological functions and values of this forest, and these proposals do not appear to meet this standard.

A Determination of Non-significance (DNS) has been issued for this proposed Comprehensive Plan amendment. However, the proposed development at the site in question demonstrates that significant environmental impacts will likely result from adoption of this GMA amendment. These impacts include fragmentation of the forest habitat, damage to root systems, and future tree removal due to “hazard tree” rules. Fragmentation is a primary factor degrading forest habitats in Washington...

However, the removal of so many surrounding trees under 42 inches in diameter, along with the introduction of many buildings and extensive human disturbances, would seriously diminish the functions and values of this habitat for fish and wildlife.

Index 64, at 1-2.

The National Parks Service (NPS) has a similar comment:

This letter comes to you with the acknowledgement that the County is, in conjunction with the NPS, a partner in managing Ebey’s Landing National Historic Preserve, a unit of the National Park System.

However, there is potential for the increased traffic along Engle Road accessing the new and proposed development at Casey Conference Center to have an adverse impact on a visitor’s experience to the Reserve and the farming operations to the north and east of the proposal (farming equipment operators have a difficult time operating through the Reserve)...

Page 16 of the proposal denotes data from the DNR natural heritage program was reviewed and did not indicate the presence of any endangered, threatened, or rare plant species. NPS recommends that a field survey be conducted by an experienced botanist to confirm this data, which may be out of date or incorrect at this time. ... An increase in the amount of shrub and lawn area is proposed (2.4 acres) – this does not make for quality habitat and is not sustainable design. Also, the addition of 2.4 acres of hard-surfaced roads and parking areas may adversely effect (sic) aquifer recharge.

Index 61 at 1, 2.

Many citizens provided similar comments to the County on their DNS, along with the concern that the County and SPU had not identified a source for additional water supply that an expanded Camp Casey would need. The County provided a detailed response to these comments and generally commented that a more complete environmental review would take place as projects detailed in the MP applied for development permits. The County reasoned that comprehensive environmental review required more detailed plans than SPU had outlined in its MP and these detailed plans were too costly to ask SPU to provide for a non-project action. Intervenor also contends that Petitioner refers to the non-project action as a development proposal, which would need more extensive environmental review than a non-project proposal does and that rezones do not need EISs. The County also contends that impacts of the rezone are not significant because the use is going from a moderately intensive use to a more intensive use.

The Board has found that this is not a development proposal. *See Whidbey Island Environmental Network v. Island County*, WWGMHB No. 03-2-0008 (Corrected Order: Re: Jurisdictional Matter, July 2, 2003). The impacts that must be considered for this non-project action are the impacts that are allowed by virtue of the change in designation itself. While project level impacts may properly be deferred to the permitting stage, the County must evaluate the impacts allowed under the changed designation at the time of that non-project action.

Our inquiry, thus, must be whether the County properly determined that the potential impacts from this designation change are not significant or can be mitigated. In examining the comments provided by SPU to the County in response to comments on the DNS concerning the proposed uses and their impacts, we find mitigating measures, but no discussion on how the habitat of the Heritage Forest functions, the species for which the Heritage Forest provides habitat, and how the mitigating measures will address these impacts. Index 74.

In our discussion on Issue 1, we found that the proposed uses in the Heritage Forest constitute urban uses according to RCW 36.70A.030 (17). The Heritage Forest where the development is proposed is an unlogged forest with native trees at least 100 years old that is a critical area according to ICC 17.02.C.1.(j). We disagree with the County that change is not significantly incremental and that rezones do not require EISs. This is not just a project rezone. The change introduces into a large unique critical area urban level uses that require urban services. The record shows that impacts of allowing urban level uses will potentially cause significant impacts to the forest habitat in terms of habitat fragmentation, storm drainage, and habitat degradation. This includes impacts of a small sewage treatment plant and possible desalinization plant.

While we agree with the Intervenor that the sale of SPU's adjacent property is not subject to review by SEPA, the off-site impacts of the proposed new uses need to be evaluated to see if they do in fact affect the endangered plants on this adjacent property.

The introduction of urban level uses into a large, unique critical area requires a more complete environmental review at the non-project level to allow decision makers to more thoroughly evaluate the implications of this change.

While WAC 197-11-908(2) cautions local governments not to require an environmental impact statement just because a proposal is in a critical area, we find that the record demonstrates that the potential adverse impacts on the environment from this action are significant. The introduction of urban uses into a large, unique critical area, will potentially cause significant adverse environmental impacts. The environmental checklist and the DNS lack evaluation of mitigating measures. For these reasons, we find that the DNS issued for C-92-02 does not comply with RCW 43.21 and the decision to issue it is clearly erroneous.

We will consider the Petitioner's argument that that the DNS is flawed on procedural grounds

because the County engaged in phased review. Petitioner argues that the County improperly engaged in phased review because certain projects such as desalinization plants, storm drainage improvements, and small sewage treatment plants that require an eight-inch pipe or less that will result from this proposal are categorically exempt and will not receive SEPA review. The County replies that certain phases of the project such as the sewer treatment plant, if it required a pipe of eight inches or less, and desalinization plants are not ripe for review:

As with any of the other Special Review Districts rezones and Master Plans that have been adopted or are being considered, elements as water service, fire flow, septic/sewer, building design, etc are not finalized until more development plans are presented to the County. There are many reasons for this approach which include the significant costs to pay for water shares, engineer any of the water system upgrades fire flow, prepare architectural plans for buildings, engineer, fire flow design, storm water facilities, etc., without even knowing that the rezone might be approved. If the rezone is then denied, the applicant has expended tremendous resources for nothing. The SEPA rules recognize these practicalities and allow projects to be phased accordingly.

Index 80, at 10.

The County and the Intervenor argue that this is a non-project action and narrower reviews will take place at permitting which is allowed by SEPA. *See* WAC 197-11-060(5). The SEPA Handbook prepared by the Department of Ecology at 56 points out, “The procedural requirements of SEPA review are basically the same as a project proposal. Environmental analysis starts as early in the process as possible. When there is sufficient information to analyze the probably environmental impacts of the proposal.” Index 212. We agree with the Petitioner that the GMA action envisioned in Ordinance C-92-02 is sufficiently detailed in the Master Plan to allow for a more generalized review of the cumulative impacts of this proposal, including facilities that that most likely would be exempt according to WAC 197-11-800 (24)(b). Because the Master Plan envisions several phases of Camp Casey’s expansion and various projects such as cabins, townhouses, a new road, a chapel/conference facilities, additional parking facilities, a sewage treatment plant, and possibly a desalinization plant, each of these projects would receive separate environmental review at permitting; and some might possibly not receive review if categorically

exempt. The cumulative impacts on the Heritage Forest and surrounding area would never be assessed if not evaluated at the plan (non-project) stage. We find that deferring environmental review of the uses established by this non-project action to the permitting stage is an improper use of phasing that would divide a larger system into exempted fragments and avoid discussion of cumulative impacts. Phased review is permissible but it is not appropriate if it would “merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts” according to WAC 197-11-060(5)(d)(ii). Furthermore, a phased approach may not be used to simply delay SEPA analysis until permitting decisions. *Butler v. Lewis County*, WWGMHB No. 99-2-0027c (Final Decision and Order, June 30, 2000).

The Petitioner also shows that SPU’s answers on the on the environmental checklist’s nonproject section show that the SPU compared the beneficial and adverse impacts of proposals. While we agree that WAC 197-11-330(5) advises against this approach and this discussion is more appropriate for a discussion in an environmental impact statement, this is not the major flaw hindering the County’s analysis. *See* WAC 197-11-330(4) and WAC 197-11-440(6). The County also admits that it did not announce in its environmental document that it was going to use phased review. While this is a procedural error, it is not egregious. **We find that the County’s decision to use phased environmental review will not allow for the evaluation of the cumulative impacts of the projects that are very likely to result from the adoption of Ordinance C-92-02 and it is therefore clearly erroneous.**

Issue 3: Do the rezone and uses allowed by Ordinance C-92-02 fail to comply with the GMA goals and requirements for critical areas, RCW 36.70A.020 (9) (10), RCW 36.70A.060 (2), and RCW 36.70A.172?

In our discussion of Issue 5 above, we reach the conclusion that the DNS for the proposed comprehensive plan and development regulation amendment did not provide the Island County Commissioners with adequate environmental information and it is not appropriate to defer all environmental review to the permitting stage. Therefore, we will not reach the issue of whether the rezone and uses fail to comply with GMA goals and requirements for critical areas.

Issue 4: In adopting Ordinance C-92-02, did Island County failed to comply with its comprehensive plan policies for Special Review Districts and critical areas?

Because we have found that the use of an SD is not appropriate for urban level uses and does not comply with the GMA, we do not reach the issue of whether Ordinance C-92-02 complies with the Island County comprehensive plan policies. Because the DNS issued for proposed ordinance C-92-02 failed to evaluate the potentially significant impacts that the uses established by C-92-02, it is not necessary to reach the issue of whether the adoption of C-92-02 failed to comply with Island County's policies for critical areas.

Issue 6: In adopting Ordinance C-92-02, did Island County comply with the GMA goals and requirements for public notice and participation, including RCW 36.70A.020 (11), RCW 36.70A.035, and RCW 36.70A.140?

Petitioner abandons this issue. Therefore, the Board will not consider it.

Issue 7: If Ordinance C-92-02 is not in compliance with the goals and requirements of the GMA, does it substantially interfere with the fulfillment of the goals of the GMA so that it should be found invalid?

Positions of the Parties

Petitioner argues that the proposed new uses allowed by Ordinance C-92-02 are urban growth in a rural area, require urban services, and are out of scale for a rural area. The Petitioner says that this substantially interferes with RCW 36.70A.020(1), the goal of the GMA that encourages urban growth to be located in urban areas where services can be economically and efficiently provided. Petitioner also argues that the proposed new uses are located in an environmentally sensitive area, do not protect open space, and degrade and destroy a precious and irreplaceable natural heritage. The Petitioner worries that if invalidity is found, a single permit could vest that would destroy the area. Petitioner asks for complete invalidity of the Master Plan.

Intervenor states that C-2-92 complies with the GMA, and therefore no finding of invalidity is necessary.

Analysis and Discussion

We found in our analysis of Issue 1 that the proposed new uses established by Ordinance C-92-02 and described in the Master Plan do constitute urban growth according to RCW 36.70A.030(17) and require urban services as defined by RCW 36.70A.030(19). In our analysis of Issue 5 we found that Petitioner had standing to challenge the environmental determination for these amendments and did not exhaust local remedies because to attempt to do that would be futile. We also found that the DNS issued for the comprehensive plan and zoning regulation amendment did not comply with RCW 43.21C.

While the GMA does not prohibit the uses that are envisioned by the Master Plan, it does prohibit them in a rural designation, which an SRD is under the County comprehensive plan. These uses are only permissible in a rural area if they fall within a statutory exception

We are concerned that the County made this decision without adequate information about the significant and cumulative impacts that these proposed new uses would cause. We share Petitioner's concern that, without a finding of invalidity, the proposed new uses could vest, possibly in a single permit, that would prevent the County and SPU from doing the proper planning and acquire the needed information that the scale and intensity of the proposed new uses demand before making their decision regarding the proposal.

Therefore, we find that Ordinance C-92-02 allowing the proposed new uses in Camp Casey substantially interferes with the goals and requirements of the GMA for the following reasons:

- 1) The introduction of the scale and intensity of these uses into a unique, extensive critical area has occurred without adequate planning and environmental information about the significant and cumulative impacts likely to be caused by these new uses and the effectiveness of mitigation measures;**
- 2) The challenged comprehensive plan amendment allows urban growth that occur in**

a rural area without complying with the requirements for a master planned resort (future or existing) which would allow such growth under clearly defined policies;

3) The projects advanced by Intervenor could vest before the County is able to comply with this decision, thereby making all planning efforts of the County ineffective; and

4) The proposed new uses that Ordinance C-92-02 establishes substantially interfere with RCW 36.70A.020(1) and RCW 36.70A.020(10) and are invalid.

VI. FINDINGS OF FACT

1. Island County is a county located west of the crest of the Cascade Mountains that is required to plan under RCW 36.70A.040.
2. Petitioner is an organization that, through its members and representatives, submitted written and oral comments to the Island County Planning Department and Board of County Commissioners on all matters raised in the petition for review.
3. Island County issued an adoption of a Determination of Non-significance (DNS) and Adoption of an Existing Environmental Document for the proposed amendment to Island County's comprehensive plan and zoning ordinance, including the Camp Casey Conference Center Master Plan, on November 4, 2002.
4. The County received numerous comments on the November 4, 2002 DNS during the 14-day comment period that raised concerns that the proposed uses in the Camp Casey Master Plan and zoning amendment would cause significant direct, indirect, and cumulative impacts.
5. The County responded to these concerns in a memo to the parties that commented during the comment period and announced on December 10, 2002 that it was retaining the DNS for the proposed comprehensive plan and zoning amendments.
6. The Island County Board of Commissioners adopted Ordinance C-92-02, PLG 015-02 that amends Island County's Comprehensive Plan and Zoning Atlas, including the Camp Casey Conference Center Master Plan, to establish the Camp Casey Conference Center as a Special Review District on December 16, 2002.
7. Island County published notice of adoption of Ordinance C-92-02 on December 25, 2002.
8. The Camp Casey Conference Center is owned by SPU.
9. SPU's stated objective for expanding Camp Casey is to increase funding to make Camp

Casey self-supporting and generate funds for renovating and preserving the existing historic buildings at Camp Casey.

10. Camp Casey has been in existence in its current form since the turn of the last century.
11. Camp Casey Conference Center is an existing, nonconforming use in a rural area.
12. Ordinance C-92-02 designates the 270 acres that includes the existing conference center, the Heritage Forest, and Crockett Lake as a Special Review District (SD).
13. SDs are included the Rural Chapter of the Island County Code.
14. Ordinance C-92-02 adopts a Master Plan for the Casey Conference Center that allows for six buildings of 8,000 square feet with 48 new townhouses, 50 new cabins, an 8000-square-foot chapel/conference facility, a new road, and up to 240 new parking places.
15. A small sewage treatment plant is needed to serve the expanded Camp Casey.
16. The sewage treatment plant proposed by SPU is not for the purpose of solving a health and safety problem, but for serving the new development proposed at Camp Casey.
17. These uses would not be allowed under the County's zoning prior to the passage of Ordinance C-92-02.
18. Areas that meet the DNR criteria for Natural Heritage sites are designated critical areas according to the Island County Code ICC 17.02 C.1.j.
19. The area in which this new development is planned is called the Heritage Forest, and meets the Department of Natural Resources (DNR) criteria to be designated a Natural Heritage site.
20. Island County has no policies in its plan for designating a Master Planned Resort or an Existing Master Planned Resort.
21. Numerous citizens and agencies with expertise, including the Washington Department of Fish and Wildlife and the National Parks Service (NPS), identified potential significant on-site and off-site impacts that the development of the proposed new uses at Camp Casey would cause, including habitat fragmentation and degradation, storm drainage impacts, forest blowdown, and traffic impacts.
22. Citizens and the NPS commented that significant traffic impacts might occur from the development.
23. There are probable significant adverse environmental impacts from the change in designation of the area encompassing Camp Casey from rural non-conforming use to SD. The DNS defers analysis of the majority of potential adverse environmental impacts of development

of the proposed uses in the Heritage Forest to the permitting stage.

24. Island County did not announce it was using phased review in the DNS that was published on November 4, 2002.

VII. CONCLUSIONS OF LAW

1. This Board has jurisdiction over this Petition for Review.
2. Petitioner has standing to file the Petition for Review, including its claims of SEPA violations, based on its oral and written participation before the County in the matters raised in the Petition for Review.
3. The new uses proposed in Camp Casey Conference Center's Master Plan constitute urban growth pursuant to RCW 36.70A.030(17).
4. New urban growth is not allowed outside of urban growth areas unless it is confined to an MPR and then it must be a recreational or resort use pursuant to RCW 36.70A.360 or .362.
5. Infill development and development with urban services within LAMIRDs is not urban growth.
6. RCW 36.70A.110(4) prohibits urban services outside of an Urban Growth Area (UGA), unless the services are needed to solve a health and safety problem.
7. Urban services are allowed to serve Master Planned Resorts (MPRs) or Existing Master Planned Resorts pursuant the RCW 36.70A.360, .362.
8. Urban services that are sized appropriately or are existing can serve LAMIRDs according to RCW 36.70A.070(5)(d).
9. Camp Casey is not a LAMIRD with existing urban services or designated as an MPR.
10. Because the sewage treatment plant proposed by SPU for Camp Casey is small, privately owned, and will only serve Camp Casey, does not eliminate it from the RCW 36.70A.030(19) definition of urban services.
11. The Petitioner is not required to exhaust local remedies for challenging the DNS for these amendments because the process for doing so would be futile.
12. SPU's proposed comprehensive plan and development regulation amendment are non-project actions that include a Master Plan for Camp Casey and that are well enough defined to allow for a comprehensive environmental evaluation appropriate for a non-project action.
13. In evaluating the impacts of the proposed uses, SPU balanced the beneficial and adverse impacts of the proposed new uses, instead of evaluating the impacts of the proposed use that is not consistent with WAC 197-11-330(5).

14. Numerous citizens and agencies with expertise, including the Washington Department of Fish and Wildlife and the National Parks Service (NPS), identified potential significant on-site and off-site impacts that the development of the proposed new uses at Camp Casey would cause, including habitat fragmentation and degradation, storm drainage impacts, forest blowdown, and traffic impacts.
15. By deferring the environmental review of the new uses allowed now by C-92-02 and described in the Camp Casey Master Plan, the County did not allow for the cumulative significant environmental impacts and projects that would be categorically exempt from the SEPA process, which is not consistent with WAC 197-11-443(5)(d)(ii).
16. The DNS issued for C-92-02 does not comply with RCW 41.21C. The DNS issued for C-92-02 lacked adequate environmental information for decision making on Ordinance C-92-02 and causes C-92-02 to substantially interfere with RCW 36.70A.020 (10).
17. The introduction of urban uses into a rural area that require urban services substantially interferes with RCW 36.70A.020(1) and therefore, C-92-02 is invalid.
18. The introduction of the scale and intensity of these uses into a unique, extensive critical area has occurred without adequate planning and environmental information about the significant and cumulative impacts likely to be caused by these new uses and the effectiveness of mitigation measure.
19. The challenged comprehensive plan amendment allows urban growth to occur in a rural area without complying with the requirements for a master planned resort (future or existing) which would allow such growth under clearly defined policies.
20. The projects advanced by Intervenor could vest before the County is able to comply with this decision, thereby making all planning efforts of the County ineffective.
21. Ordinance C-92-02 substantially interferes with RCW 36.70A.020(1) and (10) because the introduction of the scale and intensity of these uses into a unique extensive critical area has occurred without adequate planning and environmental information about the significant and cumulative impacts likely to be caused by the new uses and the evaluation of the effectiveness of mitigation measures and are invalid.

ORDER ON REMAND

This matter is hereby REMANDED to Island County to bring the comprehensive plan amendment and development regulation amendment established through the adoption of Ordinance C-92-02 into compliance with RCW 36.70A and RCW 43.21C within 180 days of the

date of this Order.

Island County shall submit a report on compliance on this matter to this Board and to Petitioner in this case by December 31 , 2003.

A compliance hearing is hereby set for May 19, 2004 at a specific time and location to be set by subsequent order. Any party wishing to contest the County's compliance with this Board's order must submit written objection and reasons to the Board no later than March 15, 2004. The County's response to any written objections shall be due no later than March 29, 2004. 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 25th day of August 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbow, Board Member

Nan Henriksen, Board Member

Margery Hite, Board Member

Gadbow, Concurring:

I concur in all aspects of the majority opinion. I am writing separately to address a set of concerns voiced by the County and the Intervenor that are not strictly stated in the issue

statements. Both the County and SPU have shied away from the use of the Master Planned Resort (MPR) concept because of the fear that this would open the door to the kind of “resorts” on Whidbey Island that are inconsistent with the mission of SPU and contrary to the vision of the County. In answer to their implied question “Can a master planned resort under RCW 36.70A.360 or RCW 36.70A.362 be limited as the Special Review District is limited under the Island County Code?” I would answer, “Yes,” for the following reasons:

In our discussion of Issue 2, we found that, because of the scale and intensity of the new buildings and the need for an urban service, sewer, to serve the new development, these new structures constitute urban growth in a rural area. Urban growth is not permissible in a rural area under the GMA, with very limited exceptions. One of these exceptions appears in the provisions regarding master planned resorts. RCW 36.70A.360; RCW 36.70A.362. In 1998, the GMA was amended to include RCW 36.70A.360 and RCW 36.70A.362 to allow for the kind of uses that exist and are planned at Camp Casey. If a county chooses to adopt an MPR designation, these provisions require it to include policies guiding the development of uses, together with plans for capital facilities, utilities, and services can only be sized to meet the needs of the MPR. Agreements can be made with cities or other utility providers if they services that they receive are assumed by the MPR. The county must also ensure that the resort plans are consistent with the county’s critical areas ordinances, and that they fully consider and mitigate on-site and off-site impacts. Further, the County must make findings as part of the approval process that the land is better suited, and has more long-term importance, as an MPR, than for commercial timber harvesting or agricultural production, if located on agricultural or forest resource land of long-term commercial significance (this is not the case for Camp Casey, whose expansion is planned for a critical area). Also, the county must preclude urban or suburban development in the vicinity of the MPR, unless it is in a designated UGA.

Urban growth is not permissible in a rural area under the GMA, with very limited exceptions. One of these exceptions appears in the provisions regarding master planned resorts. RCW 36.70A.360; RCW 36.70A.362. In 1998, the GMA was amended to include RCW 36.70A.360 and RCW 36.70A.362 to allow for the kind of uses that exist and are planned at Camp Casey. In response to our questions at the Hearing on the Merits, SPU made it clear that the university had concerns what the designation of their property under RCW 36.70A.360 or .362 would mean. In

response to the concept of an MPR, SPU has voiced its concerns that it not be forced to change the nature of Camp Casey, by allowing resort activities and unrestricted public access. However, if SPU examines the definition provided of Existing Master Planned Resort, some of their concerns might be alleviated. According to RCW 36.70A.062 the definition is:

... an existing master planned resort means a resort in existence on July 1, 1990, and developed, in whole or in part, as a significantly self-contained and integrated development that includes short-term visitor accommodations associated with a range of indoor and outdoor recreational facilities within the property boundaries in a setting of significant natural amenities. An existing resort may include other permanent residential uses, conference facilities, and commercial activities supporting the resort, but only if these other uses are integrated into and consistent with the on-site recreational nature of the resort.

RCW 36.70A.062

We raise this possibility because it is clear that both the County and SPU are committed to responsible planning and wish to accomplish expansion of Camp Casey in a lawful and thoughtful manner. In response to the concept of an MPR, SPU has voiced its concerns that it not be forced to change the nature of Camp Casey, by allowing resort activities and unrestricted public access. However, “Master Planned Resort” and “Existing Master Planned Resort” are land use constructs within which the County may impose its own restrictions, such as are now found in the Special Review District (SD) designation. The provisions for MPRs were established to allow for the planning of recreational uses in Rural or Resource Areas at an urban intensity and scale provided planning is done for capital facilities, utilities and services, protection of critical areas, and on-site and off-site impacts are mitigated at the designation stage. These provisions were not created to force counties to accept luxury vacation spas or anything in the way of recreational centers. They are intended to provide flexibility to counties in allowing large-scale recreational uses that, with appropriate planning, would be appropriate in a rural area.

It would appear that the MPR designation for an existing Master Planned Resort, under County policies that reflect the County choices already set forth in the SD designation, might be an appropriate vehicle for SPU’s proposal and at the same time address the concerns of Petitioner. (Many of the concerns that the Petitioner raises in regard to critical area protection, provision of water and sewer, and mitigation of on-and-off-site impacts might be able to be resolved through the planning requirements for an existing or new MPR.)

If a county chooses to adopt an MPR designation, these provisions require it to include policies guiding the development of uses, together with plans for capital facilities, utilities, and services that must be sized to only meet the needs of the MPR. Agreements can be made with cities or other utility providers if the services that they receive are assumed by the MPR. The County must also ensure that the resort plans are consistent with the County's critical areas ordinances, and that they fully consider and mitigate on-site and off-site impacts. Further, the County must make findings as part of the approval process that the land is better suited, and has more long-term importance, as an MPR, than for commercial timber harvesting or agricultural production, if located on agricultural or forest resource land of long-term commercial significance. (This is not the case for Camp Casey, whose expansion is planned for a critical area). Also, the County must preclude urban or suburban development in the vicinity of the MPR, unless it is in a designated UGA. However, there is nothing in the statute to preclude a County from creating *more* or *greater* restrictions within the category of an MPR. I see no impediment to those restrictions including a limitation on ownership of the "resort" to a single, non-profit owner and to educational and recreational activities consistent with a retreat center.

I raise this possibility because it is clear that both the County and SPU are committed to responsible planning and wish to accomplish expansion of Camp Casey in a lawful and thoughtful manner. I believe that the GMA offers a mechanism for the County and SPU to achieve their aims through either the master planned resort provisions of RCW 36.70A.360 or the existing Master Planned Resort provisions of RCW 36.70A.362.

Holly Gadbow, Board Member

[\[1\]](#)

RCW 36.70A.280(1): "A growth management hearings board shall hear and determine only those petitions alleging either: (a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or

amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; ...”

[\[2\]](#)

“All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.” RCW 36.70A.290(2)