BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ACHEN, et. al., Petitioners, vs. CLARK COUNTY, et. al., Respondents, and CLARK COUNTY SCHOOL DISTRICTS, et. al., Intervenors.	)	No. 95-2-0067 FINAL DECISION AND ORDER

And so begins the tome.

During the last stages of the most recent ice age, some 12,000 to 14,000 years ago, the most significant catastrophic geological event in the history of the planet left its mark on eastern Washington and on Clark County. The Lake Missoula - Columbia River catastrophic flood events of that time deposited sand, gravel, and silt over the floor of Clark County, raising it to an elevation of 350 feet. During those events, millions of gallons of water flowed at 60 m.p.h. or more throughout eastern Washington to the mouth of the Columbia River. Flooding occurred from as far south as Eugene to an area north of Clark County. Volumes of water, one-half the size of Lake Michigan, would empty in a period of two days and wreak havoc throughout and around the course of the Columbia. While these catastrophic flood events, first discovered by Jay Harlan Bretz in the 1920's, affected eastern Washington to a greater degree, the geological impact to Clark County was significant and remains today.

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Forty-one miles of the imposing Columbia River form the western and southern boundaries of Clark County. Its northern boundary follows the course of the Lewis River. The foothills of the Cascades form the only non-river boundary to the east. Approximately 110 miles inland from the Pacific Ocean, at the confluence of the Willamette and Columbia rivers, lies the urban core of the Portland metropolitan area. The southern cities of Clark County adjoining the Columbia River form a quadrant of that metropolitan area, and are greatly influenced by it in terms of economic, transportation, and cultural factors. That metropolitan area constitutes the largest economic and population center on the west coast between San Francisco and Seattle. With a land area of 627 square miles, Clark County ranks 35th in the State, but as of 1990, ranked fifth in terms of population. As of 1990, only 30% of the population lived within the incorporated cities of Clark County (Ex. 77).

Not unlike the Missoula floods, an unprecedented volume of petitions began arriving at our office on February 28, 1995. Eighty-five different petitioners filed 61 separate petitions that challenged Clark County's comprehensive plan (CP) and development regulations (DRs) adopted December 29, 1994. Some of the petitions also challenged the comprehensive plans and development regulations adopted by the cities of Vancouver, Camas, Battle Ground and Ridgefield, which plans were adopted shortly before or after the action of Clark County. During the entire 3-year growth management planning process, all the cities and Clark County had worked together with the goal of achieving consistent CPs and DRs that would be adopted within the same general time frame.

Subsequent to the formal adoption of Clark County's comprehensive plan and development regulations, staff noted the presence of scrivener errors in the printed documents. Subsequently, a public hearing was held to correct the errors and resulted in

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a change of designation to what was originally intended in a portion of Clark County. Yet another petition was filed on April 3, 1995, which was within the 60-day period after publication of the corrected designation.

Ultimately, nine days of hearings on the merits were held in Vancouver. The hearings occurred over a 3 week period commencing June 19, 1995, and ending July 7, 1995. In the intervening months between the filings of the petitions and the hearings on the merits, weeks of prehearing conferences and motions hearings were held.

During the interlude between filing and hearings, Clark County acknowledged that some revisions to the CP and DRs were needed. Seven of the original 62 petitions were voluntarily remanded by stipulation between the parties. Five other petitions were dismissed either voluntarily or by stipulation. During the motions portion of our process, we dismissed 3 other cases; one for filing beyond the 60-day period of RCW 36.70A.290(2), one because the petitioners failed to participate in either the prehearings or motions process, and one that involved plat covenants that were unaffected by the County's actions.

Forty-four different parties were granted intervenor status in various petitions. Of the original 85 petitioners, approximately one half involved property specific challenges while the remainder set forth more generalized issues. Intervenors consisted of entities such as all school districts in Clark County, the Clark County Homebuilders Associations, Vancouver Chamber of Commerce and various individuals and corporations. Most of the intervenors involved parties who supported the actions taken by the County and the various cities. A small number of intervenors were involved in the property specific challenges, generally in support of the actions of Clark County.

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Over 20 attorneys represented different parties. While there was not a breath of conflict of interest from the multiple representations, there were occasionally some very interesting changes in the dynamics of arguments. Of the original 62 petitions, 23 were consolidated for purposes of argument. We declined to consolidate all cases prior to the hearings on the merits to avoid each petitioner having to serve pleadings on over 100 other parties. Ultimately, on July 19, 1995, after all the hearings had been completed, we did issue an Order of Consolidation for all pending cases for purposes of issuing one final order and dealing with any subsequent motions.

During the motions portion of the process, Clark County challenged the right of a number of petitioners to proceed with their cases. Of the approximately 35 *pro se* petitions, Clark County challenged most for the failure to serve a copy of the petition on the County. Some of the petitioners failed to serve a copy on any representative of Clark County, some failed to serve the Auditor, and some failed to serve the Auditor until weeks after filing the petitions. Clark County acknowledged that it suffered no prejudice as a result of these late or nonexistent services since all of the ones not served by a petitioner had been received from our office. By a series of orders we declined to dismiss any of the cases under the provision of WAC 242-02-230, since there was no showing of prejudice to the County. The City of Battle Ground filed a similar motion on a petition challenging its comprehensive plan, which was also denied.

Clark County also moved to dismiss the State Environmental Policy Act (SEPA) challenges asserted in 5 different petitions. The County acknowledged that each of the petitioners had standing under the Act but asked that we impose a different standing requirement for SEPA challenges. By Order dated May 24, 1995, we declined to do so and held each of the petitioners had standing to challenge SEPA actions or nonactions.

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The record ultimately presented to us consisted of designations from the record below of Clark County, Vancouver, Camas, Washougal, Battle Ground, and Ridgefield. Additionally, supplemental evidence requests were made by a number of parties, including many of the intervenors. Most of the requests involved matters that were part of the record and overlooked in the designations, or material that was available to the decision makers during the growth management planning process. Some, but very few, documents outside the record that were available prior to the December 20, 1994, decision of the Board of County Commissioners (BOCC) of Clark County, were admitted. No materials generated after December 20, 1995 were admitted.

One petitioner, Clark County Citizens United, Inc. (CCCU), requested that affidavit or testimonial evidence be presented concerning their challenge to the adequacy of the final supplemental environmental impact statement. We decided to wait until the completion of our review of the record and the hearings on the merits to rule on that request. By Order dated July 18th, 1995, we determined that further evidence supplemental to the record would not be of assistance or necessary for us to reach our decision. The motion by CCCU was denied.

During the prehearing conference process we encouraged each of the parties to coordinate briefing and argument such that duplication would be avoided. We specifically noted in each prehearing order that failure of a party to argue a specific issue would not constitute a waiver of that issue. We also discouraged intervention by an existing petitioner in other cases solely to protect later rights of appeal. The parties cooperated with this direction, and in our view, no party has waived any argument or position on any issue.

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The planning process in Clark County began in October 1991. It involved staff from the eight cities and towns and Clark County, as well as individuals, groups, special districts, other agencies, and utility providers. A process, known as the *Prospectives Program* included a steering committee of mayors and county commissioners and a staff-driven technical advisory committee, which included school districts, utilities, ports, and issue-based subcommittees. Nine newsletters were sent to every household in the County, which included two separate mail-in surveys. Three random sample telephone surveys were done. Eight specific issue papers were mailed to people who had indicated an interest. A toll free telephone hotline was established, as were speakers bureaus, a monthly cable television series, workshops, planning fairs, and open houses each Wednesday night. The public participation process culminated in a lengthy series of joint public hearings before the County Planning Commission and BOCC.

In July 1992, Clark County adopted its county-wide planning policies (CPP) (Ex. 1). The County then embarked on adoption of a more comprehensive policy that involved a community visioning process. A final environmental impact statement (FEIS) (Ex. 77) was issued March 5, 1993, and the County then adopted a "community framework plan" (CFP) some 60 days later (Ex. 2). The purpose of this subsequent CFP was stated in county brief number 1 at page 2 as follows:

> "...The Framework Plan provided policy direction for both the County and the cities in the development of the 20-Year Comprehensive Plan. The Community Framework Plan addressed the regional issues associated with the GMA process, while the County-Wide Planning Policies, for the most part, addressed process issues. . ."

During the 3-year planning process, numerous items of correspondence were received by the county. The various citizen advisory groups and technical advisory groups met at different times throughout the process. Interim Urban Growth Boundaries were

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established in September 1993 following public hearings before the Clark County Planning Commission and the BOCC.

A supplemental draft environmental impact statement (SDEIS) (Ex. 78) for the CP and the first draft of the CP were available in June 1994. A supplement final environmental impact statement (SFEIS)(Ex.79) for the CP was issued in early September 1994, along with an updated draft of the CP. Shortly before the first joint public hearing, the planning department staff published a recommended plan that added an "agri-forest" designation to the resource lands element and eliminated the concept of rural villages and hamlets that was included in earlier drafts.

The joint Planning Commission/BOCC public hearings commenced September 9, 1994, and continued through November 30, 1994. Some 23 public hearings were held during which members of the Planning Commission and BOCC were present. The BOCC listened to the public testimony, but were not present for the deliberation portions held by the Planning Commission. Verbatim transcripts of all public hearings were prepared and submitted as part of our record. Some 38 separate staff reports were prepared during the public hearing process.

When the Planning Commission had forwarded its recommendations, the BOCC held another public hearing on December 13, 1994, and continued deliberations on the CP and DRs for 5 days thereafter. On December 20, 1994, the CP and DRs were adopted.

Throughout this entire 3 year planning process, Clark County never complied with the mandates of RCW 36.70A.060 and .170 regarding classification, designation, and conservation of resource lands and protection of critical areas. Except for a new wetlands ordinance which was the subject of *Clark County Natural Resources Council,*

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et. al., v. Clark County (Clark County I), #92-2-0001, the County relied upon previously adopted designations and zoning ordinances. Consistent with an earlier decision by the Central Puget Sound Growth Management Hearings Board, we recently held in *Friends of Skagit County v. Skagit County (Friends of Skagit County)*, #94-2-0065, (Dispositive Order dated May 26, 1995) that such reliance without formal action of the BOCC did not procedurally comply with GMA.

No challenge to Clark County's failure to comply was brought until September 8, 1994, when a petition was filed entitled *Rural Clark County Preservation Association v. Clark County*, #94-2-0014. Since the CP was about to be adopted, a stipulation was entered between the parties that dismissed the petition. The parties agreed that certain arguments would be preserved for presentation if an appeal was filed after adoption of the CP and DRs. Such an appeal was filed as part of this case. After a motions hearing in May, 1995, we determined that certain of those issues could be presented. They will be discussed later in this Order. We declined re-examination of our final order in *Clark County I*, that related to the Clark County wetlands ordinance that remained in effect.

With this general background of the actions of Clark County in adopting its CP and DRs, we turn to the issues that were presented for resolution at the hearings on the merits. In order to facilitate readability we will generally refer to any or a portion of the petitioners as petitioners and specifically identify respondents Clark County and/or the individual cities. Intervenors will be referred to collectively unless specific identification is helpful to understanding the issues and/or the ruling.

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SEPA

A number of petitions raised SEPA challenges. In *Reading, et. al., v. Thurston County, et. al.* (*Reading*), #94-2-0019, we established the parameters of our EIS review as follows:

1. The scope of review is *de novo*;

2. The adequacy of an EIS is determined by the "rule of reason"; and

3. The governmental agency's determination that an EIS is adequate is entitled to "substantial weight".

We pointed to a provision of SEPA, WAC 197-11-442(4), relating to the scope of a non-project action which states:

> "The EIS's discussion of alternatives for a comprehensive plan,...shall be limited to a general discussion of the impacts of alternative proposals for policies contained in such plans,...and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures...."

The rule of reason directs us to determine "whether the environmental effects of the proposed action are sufficiently disclosed, discussed, and substantiated by supportive opinion and data." *Klickitat Cy. Citizens Against Imported Waste v. Klickitat Cy. (Klickitat Cy.),* 122 Wn.2d 619, 644, 860 P.2d 390, 866 P.2d 1256 (1993).

Petitioners contended that the adopted CP dramatically limited the amount of land available for residential use and instead designated it to resource activities. Therefore, the FSEIS did not adequately discuss any "probable negative environmental impacts" from more intensive agricultural practices relating to water quantity, e.g., irrigation, or water quality, e.g., increased use of fertilizers and pesticides.

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The FEIS for the Community Framework Plan (Ex. 77) indicated that such "adverse" environmental impacts of agricultural practices would be later addressed. In the FSEIS (Ex. 79) this information was addressed albeit in summary form. However, as in *Klickitat Cy.*, the County here referenced its groundwater management plan (Ex. 912 volume 1 and 2) as authorized by WAC 197-11-640. Even assuming that petitioners presented sufficient evidence to substantiate their claim, the incorporation of the 850 page groundwater management plan sufficiently disclosed the possible environmental impacts from increased agricultural use.

Petitioners also claimed that the staff proposal of an agri-forest designation, which added some 36,000 acres to previous comprehensive plan drafts' resource designations, and the elimination of rural centers from the previous drafts, was beyond the scope of the alternatives discussed in the FSEIS. Petitioners pointed to Ex. 93 which stated the "permitted density of development on virtually all this additional acreage is substantially less than what the EIS discussed." Thus, according to petitioners, a supplemental EIS (a supplement to the supplement) or, at the very least, an addendum pursuant to WAC 197-11-600(4)(c), was required.

WAC 197-11-405(4)(a) directs that a supplemental EIS is to be prepared if there are "substantial changes to a proposal so that the proposal is likely to have *significant adverse environmental impacts*" (italics supplied). While we do not say that in every situation a reduction of residential development and replacement by a resource land designation could never have "significant adverse environmental impacts," the record here convincingly discloses that the agri-forest proposal did not have any significant adverse environmental impacts. There was no requirement to prepare another supplemental EIS. While an addendum would have been helpful and could have been

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prepared, the County did not violate SEPA in failing to do so. The same reasoning applies to the elimination of rural villages and hamlets from the CP.

Petitioners further contended that the FSEIS failed to address a "no action" alternative as required by WAC 197-11-440(5). The FSEIS noted that a continuation of the existing CP and zoning regulations had been evaluated in both the draft (Ex. 76) and final (Ex. 77) EIS for the community framework plan. This "no action" alternative was rejected in those documents for which exhibit 79 was the supplement, i.e. FSEIS. Further discussion was not required.

Finally, petitioners contended that the County failed to respond to comments on the DSEIS in developing the final statement. WAC 197-11-500(4) provides that responding to comments on a draft EIS is a "focal point" of the Act's commenting process. Here, the FSEIS responses were contained in section 5. The County chose a range of available responses under WAC 197-11-560(3). As shown by section 5 at pages 22 and 23, the FSEIS did respond to the water quality issues raised.

GOAL SIX

Virtually every individual petitioner who challenged his/her comprehensive plan designation, as well as a number of general petitioners, relied upon Goal 6 (property rights) as one of the bases for Clark County's alleged noncompliance.

RCW 36.70A.020(6) states:

> "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions."

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Actually, Goal 6 contains two separate and distinct goals; (1) takings and (2) protection from arbitrary and discriminatory actions. We have previously held in *Mahr v. Thurston County (Mahr)*, #94-2-0007 (Dispositive Order dated August 7, 1994) that our jurisdiction granted under the Act does not include resolution of violations of the U.S. and/or Washington State Constitution. *See also Gudschmidt vs. Mercer Island,* CPSGMHB #92-3-0006. Rather the "takings" prong of Goal 6 is to be reviewed to determine if adequate consideration of that prong has been given by the decision makers. The record in this case discloses that significant time and consideration was given to this prong throughout all levels of the decision-making process. Consideration started with the initial newsletter program in 1991, and continued through many of the reports. It was discussed in staff reports and at the Planning Commission hearings, during the BOCC hearings and deliberation, and was contained in the CP.

None of the petitioners alleging violation of this prong have sustained their burden of proof to show that Clark County had an obligation under the Act to go beyond what was done. We reject the request of petitioners to expand our jurisdiction to include a finding that a "taking" had occurred. We are not authorized to do so under the Act, both for jurisdictional and practical reasons.

The second prong of Goal 6 relates to protection of "property rights of landowners" from "arbitrary and discriminatory action". As we noted in *Clark County I,* compliance with GMA involves both the goals and requirements of the Act. Our four-question analysis invokes a methodology of ensuring both procedural and substantive compliance. Since neither "property rights of landowners" nor "arbitrary and discriminatory actions" are defined in the Act we must discern legislative intent to reach a general definition that can apply throughout this and future cases.

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In attempting to define "arbitrary and discriminatory" actions, we note first that the Legislature has used the conjunctive (and) rather than the disjunctive (or) form. This indicates a legislative intent that the protection is to be from actions which are together "arbitrary and discriminatory". The term arbitrary connotes actions that are ill-conceived, unreasoned, or ill-considered. The term discriminatory involves actions that single out a particular person or class of persons for different treatment without a rational basis upon which to make the segregation.

The term "property rights of landowners" could not have been intended by the Legislature to mean any of the penumbra of "rights" thought to exist by some, if not many, landowners in today's society. Such unrecognized "rights" as the right to divide portions of land for inheritance or financing, or "rights" involving local government never having the ability to change zoning, or "rights" to subdivide and develop land for maximum personal financial gain regardless of the cost to the general populace, are not included in the definition in this prong of Goal 6. Rather the "rights" intended by the Legislature could only have been those which are legally recognized, e.g., statutory, constitutional, and/or by court decision.

We conclude then that this prong of Goal 6 involves a requirement of protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. We will use this test to measure the claims of the various petitioners that are raised in this case. We note that in our four-question analysis question 3, concerning reasoned consideration of appropriate factors and avoidance of inappropriate factors, provides a nexus for determination of this test.

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REMANDS

Prior to the hearings on the merits, six different cases were remanded by agreement between Clark County and the petitioners involved. One other case was remanded that involved both Clark County and the City of Ridgefield. In each case, the local government acknowledged that it was necessary to revisit the action challenged. In order to forestall any question as to the effect of the remands, we note that in each case none of the particulars of the petition were presented for resolution by us. We therefore hold that in each instance of remand, any action or inaction by the local government if challenged would have to be the subject of a new petition. Since we have not issued any ruling on the merits of the petitions, we would not be in the position to adequately review the subsequent action of the local government by means of a compliance hearing.

RESOURCE LANDS

Primarily Devoted To

The foundational question raised regarding agricultural and forest designations involved both definitional sections of RCW 36.70A.030. Resource land that is "primarily devoted to" agriculture or forest is to be classified, designated, and conserved. Many of the petitioners maintained their property was not currently "primarily devoted to" either agricultural or forest uses.

Clark County countered that its obligation under RCW 36.70A.170 and WAC 365-190-050 and -060 was to classify and designate "land primarily devoted to" in the larger sense than contended by the individual petitioners. The "land" referred to in the Act, argued the County, was intended to be an area-wide description, rather than a specific individual parcel determination. It was upon this basis that Clark County focused its classifications and designations of agricultural and forest resource lands.

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In classifying and designating agricultural and forest lands, Clark County not only considered WAC 365-190-050 and -060, but in fact used them exclusively. It was the contention of at least one petitioner that prior to the County's consideration of these guidelines required by RCW 36.70A.050, the County must first establish whether the resource land was "primarily devoted to" agriculture or forest production. While this interpretation has some facial appeal, a closer reading of the Act reveals the flaws in such a restrictive reading.

The driving force for the classification and designation scheme of RCW 36.70A.170 is found in the goals section of the Act. RCW 36.70A.020(8) states:

> "Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses."

We also note the significance of the findings section of Ch. 307, Laws of 1994, which changed the definition of forest land from the "primarily useful for" to the "primarily devoted to" criterion. Those findings by the Legislature reiterated the language of Goal 8 and in part stated that:

> "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a *land base sufficient in size and quality* to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands...." (emphasis added)

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In view of these legislative declarations, it is clear that the "land" primarily devoted to resource production is intended to be viewed as an area-wide determination, rather than a site-specific analysis.

In *Olympic Environmental Council v. Jefferson County*, #94-2-0017, we addressed a resource land classification and designation scheme. We quoted with approval a March 9, 1994, DCTED memo which said in part:

> "[C]lassification and designation will be done on an area-wide basis in consideration of the overall character of the land and the Natural Resource Industries goal of GMA, as opposed to the specific characteristics of an individual parcel."

The use of an area-wide designation process for resource lands was an appropriate methodology for the County to employ.

CCCU challenged some of the area-wide agricultural designations as including land that was not "primarily devoted to agricultural use." It was petitioners' contention that some of the areas the County denominated "agricultural candidate areas" did not include even a majority of the land within the area in current agricultural uses.

After review of the record, we hold that CCCU has failed to sustain its burden of proof on this issue. Primarily and majority are not synonymous terms. While it may be possible, however unlikely, for a county to overly-designate resource lands, that has not been shown to be the case by this record.

Many individual petitioners whose property was designated contrary to their wishes complained that their "rights" were violated by the use of an "arbitrary and discriminatory" methodology and application of that methodology in the classification

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and designation process. None of those petitioners carried their burden of showing either a legally-recognized right or that they were singled out for unreasoned or ill-considered treatment.

Long-Term Commercial Significance

CCCU and many of the individual petitioners contended that much of the agricultural resource land classified and designated by Clark County did not meet the definition of "long-term commercial significance." Much of the support cited by petitioners for that contention came from a report (Ex. 181) issued by the Farm Focus Group. This group was a subcommittee of the Resource Lands Citizen Advisory Committee. It issued a report that agreed with the criteria used for initial agricultural land designations. However, a majority of the committee concluded that the commercially significant criterion could not be met in Clark County. A minority report found that agricultural resource lands were and would continue to be commercially significant for the long-term.

A close reading of the majority report does not support the conclusion asserted by petitioners. That report did not say that no commercially significant agriculture existed or would exist in the long-term. It asserted that traditional large scale farming operations, such as dairy and large acreage crops, were no longer viable. The report acknowledged that different, and in some instances smaller scale, agricultural activities would continue to be commercially significant in the long-term. The report concluded that support of this other long-term, but smaller scale, commercially significant agriculture could be achieved without requiring 40-acre and 80-acre minimum lot sizes.

The long-term commercially significant aspect of the agricultural and forestry designations was a contentious and time consuming issue in the CP process. Hordes of

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information and testimony were presented to the decision makers in support of, or in dispute of, a determination of commercial significance for the long-term. Many people testified and submitted written evidence that it was impossible to "make a living" from an operation of the size involved in their holding of property. However, they often related that testimony to a lesser proposed minimum lot size than that recommended by staff and others. Other evidence showed that many farms were made up of several parcels of land, some of which was owned and some of which was leased. The 1992 agricultural census information disclosed that many farms nationally, and in Clark County, were operated by people who had considerable non-farm income.

Our review of the record finds significant support for the ultimate conclusion of the BOCC that the agricultural land and forestry land designations were lands of "long-term commercial significance." Petitioners have failed to carry their burden of proving the decision was an erroneous application of the goals and requirements of the GMA. The County chose a decision that was within the reasonable range of discretion afforded by the Act.

Agri-Forest

After publication of the draft CP and finalization of the Resource Lands Committee report, staff concluded more resource lands existed than had been recommended for designation. In part, the separation of the farm focus group from the forestry group had led on occasion to exclusions of some resource lands from each category because those lands were neither completely agriculture nor completely forest.

One week prior to the commencement of the joint Planning Commission/BOCC public hearings, a staff report (Ex. 83) recommended adoption of a third resource land category entitled "agri-forest." This category involved an additional 36,000 acres of resource

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designation from that recommended by the CACs. Although a minimal amount of discussion about such designation had taken place during the resource group meetings, the record is clear that generation of this concept was primarily by planning department staff. The rationale for this additional resource land category was that:

> "...[T]his additional joint classification is recommended in order to account for lands which were originally overlooked from consideration for inclusion in either the agricultural or forestry category because they exhibited characteristics common to both, such as a property being used for both farm and forest activities, or a parcel suited to farming located adjacent to a group of forested lands."

This new category became one of the most vilified and thoroughly discussed aspects of the public hearings. It took up a large part of the deliberations of both the Planning Commission and BOCC. This category added 7% of the total acreage of Clark County to resource land designation. The CP explanation for this category was stated as:

> "[I]t was found that there were a number of areas where farming activity was occurring adjacent to forestry and vice versa or where parcels were not picked up as both farming and forestry activity was occurring on the site, with neither being the predominate use. Therefore, all the 'edges' of the resource areas were reevaluated. Through this process, the category of Agri-forest was developed which recognizes that both or either resource activity may be occurring in this area."

Various petitioners attacked this category as not allowed under GMA, unsupported by the record or violative of the public participation aspects of RCW 36.70A.140 and .020(11).

The GMA directs that classification, designation and conservation of agricultural and forest lands shall occur. CCCU contended that the Act's identification of specific classes (agriculture and forest) implied a legislative intent to exclude any other classes. We do not read the GMA as being so restrictive.

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Goal 11 of the Act provides for maintenance, enhancement, and conservation of natural resource lands and industries. Along with the requirements of RCW 36.70A.060, it provides a logical basis for the proposition that a major concern of any comprehensive plan is the conservation of lands that are producing, and can be anticipated to produce, resource-based commodities for commercial purposes. The designation of resource lands that do not precisely qualify as either agriculture or forest, but often have characteristics of each, is a choice that is within the reasonable range of discretion afforded to local decision makers under the Act.

CCCU also contended that evidence contained in the record did not support the County's use of the agri-forest category. Much of this argument focused on the CAC resource lands reports. That focus is too narrow. Regardless of the level of discussion by the resource lands subcommittees, the agri-forest category was extensively discussed subsequent to its presentation to the Planning Commission/BOCC. Sufficient evidence is contained in this extensive record to show that a wealth of information, discussion and written evidence existed to support the decision of the BOCC. Petitioners have failed to carry their burden of proof to overcome the presumption of validity that attached to the agri-forest category.

Various petitioners also attacked the use of aerial photographs by the County to specifically locate agriculture, forest, and agri-forest designations. Our review of the photographs, in conjunction with all of the record, discloses that the photos were a useful tool for providing specific information and were appropriately used by the County. What petitioners have overlooked in their complaints is that these photographs constituted only a piece of the entire collage and were not used as the exclusive means of designation. Public testimony, CAC recommendations, correspondence from property owners, and staff research were also used. The classification system took into account

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all of the criteria recommended by WAC 195-360-050 and -060. Only as part of the designation stage (mapping) did the County use aerial photographs. Their use was to implement the classification criteria.

A different group of petitioners, including Rural Clark County Preservation Association (RCCPA), contended that the County was required to classify every tract of land designated under the current use taxation scheme of RCW 84.34. Again, this contention focuses on too narrow a piece of the entire collage. The Act does not require such an automatic designation. Rather the benefits to landowners arising from the current use taxation scheme is only one of many considerations to be used. Clark County appropriately included it in that context.

We found disconcerting, however, the claims of individual property owners who challenged a resource land designation on their property where the property was, and had long been, placed in the current use classification system. We did not find persuasive any of the site specific challenges to a resource land designation where the property was receiving special tax benefits under the current use classification. We found the arguments that the property was not currently being used for agricultural or forest production to be disingenuous where the property was currently in that tax classification.

The final claim made by many petitioners was that the public participation goals and requirements of the Act were violated by the infusion of the agri-forest category so late in the overall GMA process. We have previously held that public participation was violated in two cases involving changes occurring late in the GMA process, *Berschauer v. Tumwater (Berschauer)*, #94-2-0002 and *Moore-Clark Co. Inc., v. Town of LaConner*

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(Moore-Clark), #94-2-0021. The circumstances and record in this case differ significantly from those cases.

The touchstone of the public participation goals and requirements of the Act involve "early and continuous" public involvement. As we said in *City of Pt. Townsend v. Jefferson County (Pt. Townsend)*, #95-2-0006, adequate and correct information must be available to both the public and the decision makers at the earliest opportunity in order to comply with the public participation aspects of the Act. Here, the agri-forest category was first proposed by staff on September 23, 1994. Over the next 3 months the category received extensive discussion and public participation. The ultimate decision on including the 36,000 acres as a resource designation was not made by the BOCC until December 20, 1994. While it may have provided better public confidence to have included this category at an earlier time, the entire concept of resource land designation classifications had been discussed since the beginning of the GMA process in 1991.

A close reading of both the *Berschauer* and *Moore-Clark* cases shows that in those cases the noncompliance arose because of a combination of the nature of the change, as well as the timing. In *Berschauer,* re-examination of the site specific designation arose as a result of neighborhood complaints near the end of the entire comprehensive plan process. Thereafter, a separate and distinct methodology was adopted for reconsideration of that neighborhood only. The subsequent CAC recommendation received only cursory review by the Planning Commission and city council. The designation was also inconsistent with the remainder of Tumwater's comprehensive plan.

In *Moore-Clark* the town council adopted a 1% population projection near the conclusion of its comprehensive plan process. We found a lack of authority by the Town to make that determination. Additionally, we held that adequate notice had not been provided for

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the decision. In combination with the reversal of the long-used 2.9% population projection, a violation of public participation was shown. In neither of those cases, however, did we hold that no changes could be made at the later stages of the GMA process. Here, the change that was adopted to include the agri-forest land area was not as dramatic or substantial as the changes made in *Berschauer* and *Moore-Clark.* Additionally, a very thorough discussion was made by both the public and the decision makers as to the reasons, impacts and necessities of the agri-forest designations. There was no violation of public participation in adopting the agri-forest category.

RCCPA and others contended that the total resource land designations for the County were insufficient and that resource land minimum lot sizes were inadequate. As to these issues, petitioners have failed in their burden of proof to show noncompliance. The Act provides a difference between interim resource land designations and DRs, and those involved in a comprehensive plan decision. While interim designations need to err on the side of over-inclusion, comprehensive plan designations and development regulations for resource lands involve a wider range of discretion and balancing of competing interests. The County's decision to set minimum lot sizes of 80 acres for some forest land, 40 acres for other forest land and 20 acres for agriculture and agri-forest districts, under the record presented here, was based upon appropriate information consideration and involved a reasonable range of discretion allowable under the Act. Likewise, the decision of Clark County to include golf courses as a conditional use in agriculture districts was within the discretion afforded under the Act.

The County did concede during the hearings on the merits that CP policies 6.2.2 and 6.2.3 regarding public water extensions and required hookups in rural and resource areas were internally inconsistent with policy 6.2.7 and with the CFPs which provided generally that extension of water service to rural areas should be discouraged. In a

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specific case challenging the water hookup provisions of the CP and DRs, the County stipulated to a remand. If the internal inconsistency was not resolved by that remand, it must be done by this one.

The 1980 Clark County Comprehensive Plan provided for "clustering" of residential development on resource lands as long as approximately three-quarters of the land remained for resource use. In adopting the Community Framework Plan, the County adopted policy 3.2.7 to review that clustering concept "to ensure these developments continued to conserve agriculture or forest land." That review was made and the County determined that the goal of conserving resource lands was not being achieved by the clustering concept. The record disclosed that the clustering concept as used in Clark County over the last 15 years had had exactly the opposite effect. This continued loss of resource land to clustering ended with the BOCC adopting an emergency moratorium regarding cluster subdivisions on April 19, 1993. The moratorium was later renewed.

Petitioners claimed that the omission of a clustering option from the 1994 CP violated Goal 6 of the Act. None of the petitioners showed any "property right" that was violated by the County's decision, nor did they show that the BOCC acted in an "arbitrary and discriminatory" manner. Ironically, one petitioner even claimed that the remaining portion of a clustered property should not have been designated as a resource land because of the proximity of residential development emanating from the cluster options used under the old plan. Given the record in this case, we find that the County is in compliance by eliminating the cluster development provisions and may well have been out of compliance had those provisions been retained.

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Mineral Lands

Clark County adopted a "mineral resources map" as part of its CP process. The map was based upon information submitted by the Mineral Focus Group, a subcommittee of the Natural Resources Advisory Committee. The land classification methodology was based upon DCTED guidelines. Tier 1 lands (readily identified as capable of long-term aggregate production) and Tier 2 (based upon criteria analyzed from a matrix adopted as part of the CP) were designated. The focus group also recommended a policy, later incorporated into the CP, that prohibited mining activities within any 100-year floodplain. Two landowners challenged the exclusion of 100-year floodplain areas from mineral resource designation.

The record reveals that the reasons for the exclusion were "the general fragile character of these areas and some concern about how to manage mining areas over the long term." While the record reveals what was done, it reveals nothing of why. There was no review or analysis of the effect of mining within a 100-year floodplain constrained by the Shoreline Management Act (SMA), SEPA, and/or the Surface Mining Act (RCW 78.44).

The property owned by petitioners met the criteria established in the matrix of Table 4.4 of the CP to an even higher degree than many of the designated sites. Clark County has on many occasions dating back to *Clark County I* argued that SMA, SEPA, and other statutes provided adequate authority for protection of critical areas. The County did not examine either why that statutory authority would not apply in the instant case or why the 100-year floodplain was "fragile" only to mining but nothing else. The exclusion of these mining designations under the record before us does not comply with the Act.

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Buffers

RCW 36.70A.060 requires a county to adopt development regulations that "assure that the use of *lands adjacent* to agricultural, forest, or mineral resource lands *shall not interfere*" with the continued use of such agricultural, forest, or mineral lands (italics added). This statutory provision forms the basis for a mandate to provide adequate buffering between resource lands and incompatible uses. CFP policy 3.2.10 directs that the County establish buffers for natural resource lands to "lessen potential impacts *to* adjacent property" (italics supplied). Because this issue continues to surface in all cases in our jurisdiction where resource lands are at issue, we take this opportunity to once again state what this statute clearly directs.

The required development regulations are not intended to protect development from the resource, but are to be designed to protect the resource from incompatible encroachments. Clark County adopted "right to farm" and "right to log" ordinances, and a vicinity resource activity plat notification ordinance. Clark County dealt with the edge issues of resource lands and provided minimum lot sizes as an attempt to comply with .060. Nonetheless, we find that Clark County has not complied with this requirement to buffer resource lands from incompatible uses.

While plat notification and right to farm and log ordinances are essential first steps, their objectives are often lost under the barrage of complaints from adjoining residential neighbors. Dealing with edge issues on resource land designations furthers the requirements of .060. Those steps by themselves are not sufficient to comply with the mandate. Minimum lot sizes in rural designations do not fulfill the requirements of .060. After remand Clark County must consider additional mechanisms to avoid the single most destructive reason for elimination of resource lands; adjoining incompatible land uses.

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RURAL ISSUES

An understanding of Clark County's rural element can not be had without a review of the events that occurred over the 3 years preceding adoption of the CP. The unprecedented number of petitioners and intervenors in this case dramatically demonstrates an unusually high level of involvement in the GMA process. The actions of many citizens of Clark County over the 3-year period prior to adoption of the CP dramatically demonstrates an unmatched level of sophistication. The evidence of these actions is derived from a stipulation between Clark County and RCCPA, staff reports, the FSEIS, and other exhibits.

The sophisticated actions began shortly after the passage of the Growth Management Act and commencement of Clark County's planning process under it. In the decade of the 80's, cluster subdivision applications and resource lands segregations averaged approximately 6 per year. In 1990 and each year thereafter, the rate more than doubled to 13.3 per year. General subdivision applications in 1992 were the highest ever recorded and in 1993 increased an additional 27%. In May and June of 1992, approximately 40 new "rural" lots were created. In May and June of 1994, over 270 new lots were created. Overall in 1993, the planning department received an average of 135 permit applications per month, an increase of 17% from 1992.

Large lot subdivisions (between 5 and 20 acres) allowed as "segregations" by the previous comprehensive plan and zoning ordinance totaled 117 for the year 1989. In 1990, the number jumped to 789. In April of 1993, prior to adoption of an emergency moratorium there were applications for segregations of 407 parcels, an 800% increase from the previous month and more than the entire year of 1992. At the time of adoption of the emergency moratoria on clusters, subdivision planned unit developments, and

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large lot developments in April of 1993, an estimated 19 square miles of segregations had occurred since May 1, 1990. Ultimately in November 1994, one month prior to adoption of the CP, yet another emergency moratorium on all new developments less than 20 acres had to be adopted by the BOCC. The segregations and subdivisions applied for prior to the moratoria presumptively vested under current Washington law.

Within this backdrop the County adopted a rural designation and provided that *all* rural lands would have a minimum lot size of 5 acres. The rural designation applied to approximately 83,500 acres of Clark County's roughly 500,000 acre total. We find this decision and minimum lot size, under the facts of this case, to be inconsistent with both the GMA and the County's own policies as reflected in the CFPs and CP.

While rural lands may be the leftover meatloaf in the GMA refrigerator, they have very necessary and important functions both as a planning mechanism and as applied on the ground. One of the most important symbiotic relationships is the one between rural and resource lands. Properly planned rural areas provide necessary support of and buffering for resource lands. Early in the planning process, the Farm Focus Group established what became known as the "rural resource line." South and west of this resource line, the focus group, staff, and the Planning Commission recognized that segregations and parcelizations had occurred involving thousands of lots ranging from 1 to 2.5 acres. However, north of the "resource line", less parcelization had taken place. Much of the prime resource areas were found in that location. The focus group concluded that south of the line a 5 acre minimum lot size was appropriate for rural lands but that north of the line a 10 acre minimum would further the CFP and CP policies of providing large minimum lot sizes for residential development in rural areas to maintain the rural character. (CFP 4.2.3)

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The FSEIS stated that a 5/10 split for alternative B was not as good as the "environmentally preferred" 10/15 acre split for alternative C. The planning department recommended a 5/10 split while the Planning Commission was unable to agree. Some members agreed with the planning department's recommendation while others favored a uniform 10 acre minimum lot size throughout the County. The record contained significant evidence concerning the relationship of minimum lot size to current resource activity and the necessity for buffering. A major omission that the BOCC made in establishing a 5-acre minimum lot size for all rural areas was ignoring the differences that existed north and south of the "resource line".

A secondary aspect of a proper rural element planning involves the preservation of a rural lifestyle. A "rurban sprawl" has the same devastating effects on proper land uses and efficient use of tax payer dollars as urban sprawl. Uncoordinated development of rural areas often involves greater economic burdens than in urban areas. Infrastructure costs for rural development are, by definition, more inefficient than for urban.

The population projection issue is more thoroughly discussed in the urban section of this Order. Nonetheless, it is important here to recognize that in its initial planning stages the County allocated 15,000 of the population projection number for non-urban growth. While the Act does not require a land capacity analysis for rural areas similar to that necessary for UGAs, it does not allow existing and future conditions to be ignored. There was ample evidence in this record to show that sufficient lots existed as of December 1994 to accommodate the allocated 15,000 population increase in the rural areas. The FSEIS stated that if all existing vacant parcels were developed with single family residences over the next 20 years, the 15,000 population allocation would be exceeded. An October 13, 1994 staff report based on tax lot information indicated there was an excess of 13,500 preexisting undeveloped tax lots. At an average of 2.33

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persons per household (used in the CP), there would be more than twice the number of lots available to house the allocated 15,000 population projection, even without additional divisions of land that would likely occur over the next 20 years. Clark County asserted that it would be impossible for each lot or tax lot to develop, and with that we agree. Nonetheless, the County candidly acknowledged that no different figures were reviewed or analyzed other than those noted above.

The usefulness of population projections is destroyed if an arbitrary allocation number is picked that has no basis in reality and which is not considered in relationship to the total picture. Contrary to the assertion of CCCU, the population allocations for urban areas plus the population allocations for non-urban areas must total the population projection. Population projections and allocations are interdependent and are not solely for use in urban areas. There are available lots which were presumably made for residential purposes that far exceed the rural population allocation. A failure to recognize those conditions necessarily skews the appropriate allocations for urban areas. Exacerbation of this problem by placing only 5 acre minimum lot sizes for what unsegregated rural areas remain in the County renders that determination not in compliance with the GMA.

CCCU and other petitioners contended that the 5 acre minimum lot size throughout the County violated the GMA provision requiring a "variety of densities." Petitioners' argument was that the BOCC must specifically provide a variety of densities at the time of adopting the CP rather than allowing the variety to occur by "default." The Act does not require a particular methodology for providing for a variety of densities. Given the evidence in this case, more variety of densities has occurred in rural Clark County since 1990 than was ever envisioned in the Act. There has been no violation of the Act regarding this issue.

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Likewise, we do not find a violation of the public participation goals and requirements of the Act simply because the decision on county-wide 5 acre rural lot size was made by the BOCC near the end of their 5-day deliberative process. Many petitioners contended that there was no specific consideration, study, or recommendation for such a county-wide 5 acre minimum prior to the BOCC decision. The record reveals that many different suggestions and recommendations were made as to appropriate minimum lot sizes for rural areas. The FSEIS alternative A involved a 2 1/2 minimum lot size. Much public comment recommended 1 acre minimums. The mere fact that a different decision than that recommended by staff, the Planning Commission, or the CAC was reached does not *ipso facto* show a violation of public participation.

Rather, the flaw in the BOCC decision for a uniform 5 acre minimum lot size is shown by reference to questions 3 and 4 of our four-question analysis. The BOCC did not give appropriate consideration to the evidence contained in their own record concerning the need for greater levels of buffering for resource lands, particularly north of the resource line. They did not appropriately consider the impacts of the parcelizations and segregations that had occurred since 1990. Regardless of fault, blame, or reasons why, the extraordinary number of divisions in resource and rural lands allowed since 1991 lessened the reasonable range of discretion normally afforded to local decision makers under the Act.

Before we began writing, we decided that each of the site-specific challenges would be individually addressed in this Order. Many of the petitioners had expressed frustration at the County process. They felt that their individual complaints and concerns were lost in the morass of information and issues that accompanied the incredible scope of the County's efforts. We empathized with those frustrations while understanding the need of the County staff and elected officials to proceed the way they did.

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To facilitate our desire to respond to each individually, we reviewed the briefs, arguments, evidence, and petitions of the site-specific claims. They involved a wide range of complaints about designations as resource lands or rural lands, property right violations, arbitrary and discriminatory action and public participation violations.

Once we reviewed these site-specific claims, we determined that logic dictated we first decide and articulate our reasons for the generalized issues that were presented. When we had completed that portion, we returned to the information regarding the site-specific claims. As we rereviewed the site-specific information, we realized that all of the answers to those claims were provided by the answers to the generalized issues. Taking into account that this Final Order already neared 75 pages, we reevaluated the value of adding 20 more pages to repeat the same conclusions already stated. In the end, the drawbacks of adding 20 pages outweighed the benefit of demonstrating to each petitioner that we thoroughly reviewed his/her case.

We understand the expressed frustration that many of the site-specific petitioners had towards the predicament in which they found themselves. Those who did not take advantage of the County's benign neglect between 1991 and 1994 now see their neighbors allowed unencumbered rights to load the landscape with incompatible uses. There are implementation measures the County could take to level this playing field and reinject some fairness into the situation. Aggregation of the segregated lots, restrictions on lots under 5 acres in the vicinity of resource lands, and other vehicles are available. Whether the BOCC will adopt such measures remains to be seen. If they do not, the unfair position that many of these site-specific petitioners find themselves in will be perpetuated.

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Urban Reserve

Under Clark County's Comprehensive Plan the concept of "urban reserve" involved a designation for lands not classified as resource areas that were located on the fringe of urban growth boundaries and thus available for possible future additions to urban growth areas. The purpose of the urban reserve designation was to "protect the area from premature land division and development that would preclude efficient transition to urban development." The designation consisted of two components: "urban" (residential) and "industrial". Urban reserve areas for the cities of Battle Ground, Camas, La Center, Ridgefield, Washougal, and Vancouver involved 10 acre minimums for residential urban reserves and 20 acre minimums for industrial urban reserves. Actual acreage involved ranged from a low of 27 acres surrounding Camas to a high of 6,400 acres surrounding Vancouver.

Some petitioners complained that the concept violated the GMA. We do not agree. Long range planning for a time-frame in excess of 20 years does not violate the GMA and is a laudable planning achievement. We take official notice that other states with longer histories of GMA planning than we, are experiencing problems with the proliferation of 5 acre or less lots adjacent to urban growth boundaries when the time for expansion of the UGA arrives. Contrary to some petitioners' assertions, GMA does not require all planning to stop at the end of the 20 year period. We commend Clark County for use of what appears to be an "innovative technique" for long range planning purposes.

We do share some of petitioners' concerns about the application of the designations and the lack of standards for future uses. The standards issues will be discussed later under the urban section of this Order. The record is unclear as to whether any land that would have otherwise been designated resource lands has been included in the urban reserve

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area. If so, such inclusion would constitute a violation of the County's own policies as well as the GMA.

CRITICAL AREAS

In an Order entered May 24, 1995, we declined petitioners' invitation to revisit our decision in *Clark County 1*. The County has acknowledged that it failed to comply with the provisions of RCW 36.70A.060 (3) to review its wetland ordinance to assure consistency with its comprehensive plan. As we noted in *North Cascades Audubon Society v. Whatcom County* (*North Cascades*), #94-2-0001, a critical area ordinance is not "interim" since the Act does not require adoption of new designations and DRs in the comprehensive plan process as is the case with resource lands. The statute does, however, require a local government to review its critical area ordinance for consistency, and this Clark County has not done. As this noncompliance is a procedural one, once that review has taken place by the County, a person with standing who wishes us to review that action as to its substance, must file a new petition.

As we noted in *Clark County 1*, the wetlands ordinance constitutes only a portion of the critical area protection requirements of the Act. Other areas that must be protected by development regulations include areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. At the time of our review of Clark County's wetlands ordinance, these other areas had neither been designated nor protected.

Subsequent to September 1, 1991, Clark County did not take any action to adopt DRs as required by RCW 36.70A.060. Rather, the County relied upon its existing regulations as compliance. Reliance on pre-GMA designations and regulations without public

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participation and new legislative action does not comply with the Act, *Friends of Skagit County*.

Regardless of its failure to act during the time between September 1, 1991 and adoption of its CP, Clark County did adopt Ordinance #94-12-53 as part of its development regulations requirements. Section 28 of that ordinance is entitled "Existing Ordinances" and is cited by Clark County as compliance with the critical area requirements of the Act. The language of section 28 is often obscure. What is clear is that it does not rise to the status of compliance with the Act.

While the most technical of notices of the impending adoption of these preexisting ordinances was published, a review of this record disclosed that no adequate notice as required by the Act was provided. There was never a hearing concerning critical areas or implementing ordinances, nor was there any discussion by the BOCC. The only reference in any part of the record about critical areas involved a question of one Planning Commission member to the planning director about why the critical areas were not being covered or discussed. The response from the planning director essentially said that not enough time remained to completely deal with the topic. His answer, of course, did not cover a reason for their omission since 1991.

While it is tempting to comment specifically on some of the substantive issues presented by the pre-GMA ordinances, we will not. Since the County on at least 3 separate occasions specifically requested us to "tell them what is necessary to adopt," we make the following general observations. We are not unmindful of the irony of a local government requesting precise and directive requirements. The County's position here seems totally antithetical to both the protection of a local government's land use authority and the direction of the GMA. The County candidly acknowledged that this

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request was based in part upon feared financial ramifications of Initiative 164. This seems nothing more than the old political twist of trying to "put the turtle in another's pocket." We will not accept this snapper. Suffice it to say that the GMA does not yet have a provision for a local government to avoid its responsibilities because of fear of Initiative 164.

We also note that section 114 of ESHB 1724 emphasizes the need for integrated planning between GMA and SEPA. It would appear difficult for a local government to properly integrate SEPA into GMA if the GMA process is ignored with sole reliance being placed on pre-GMA SEPA ordinances.

AND NOW FOR SOMETHING COMPLETELY DIFFERENT

URBAN

(Nan Henriksen did not participate in hearing or deciding the urban portion of this Order)

Population Projections

In its initial planning stages, Clark County adopted population projections that were a conglomerate of Office of Financial Management (OFM) figures and projections issued by Metro (Multnomah, Washington, and Clackamas Planning Agency) and IRC (Clark County Intergovernmental Resource Center). The figures were projected to the year 2010 and Clark County thereafter used a straight line interpolation to year 2012. These figures exceeded the OFM projection, although the County contended that the difference was only approximately 3,000 people. In August of 1994, the planning director issued a

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memorandum (Ex. 93) that stated the County was required to use the OFM figures under recent Growth Management Board decisions. The County then decided to abandon use of the conglomerate Metro projections and to strictly use the OFM 2012 projections. As so often happens, the plan was good but the execution was lacking. During the hearing on the merits, the County conceded that the original Metro population projections continued to be used through the CP process.

We held in *Port Townsend*, that the OFM projections must be used unless convincing evidence for a different figure was presented. In this case, Clark County did not even attempt to present evidence that the Metro figures should have been used because the County decided to use the OFM projections. Unquestionably, if the OFM projections are the proper ones then those exact figures must be used. The County's failure to do so results in noncompliance with the GMA.

The County and many intervenors contended that the difference of 3,000 people over a 20-year period was *de minimis* and should not require a remand. The first answer to that contention is that the record is not at all clear that only a 3,000 population projection difference resulted. Remand is also required because there are other instances of noncompliance within the UGA and population projection panorama. As noted earlier in this Order, the arbitrary assignment of 15,000 additional population to the rural areas was not based on sustainable evidence. The record showed that even if Clark County imposed a 20-year moratorium on division in rural areas for residential purposes, there would still be significantly more than a 15,000 person influx into the rural area. The County must analyze the reality of the preexisting lot sizes in some manner and correlate that reality with OFM population projections.

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As pointed out by CCNRC, the County had a planning expiration date of 2012 when it adopted its CP in December 1994. When readjusting the projection in August 1994, the County failed to take into account the 3-year population influx since 1991. This had the effect of implanting projections that were not based on OFM numbers, for a 20-year population into a 17-year plan. This action does not comply with the GMA.

In order to comply with the GMA the County must (1) use the OFM 2012 projection, (2) deduct from that number the population increase in the County since 1991 and (3) make an allocation of projected rural growth that is reasoned and reasonable considering existing conditions. The remaining number must then be allocated to the various cities and towns before urban growth boundaries are determined. We are aware of recent legislation, ESB 5876, that allows the County to use a projection within a range rather than an exact number. This would perhaps affect step 1 but does not have any relationship to steps 2 and 3.

Lest there be any question about the scope of our ruling as to Clark County's UGA decisions, the necessity for this remand is a result of two factors. The first is Clark County's nonuse of the correct OFM population projections. Were it not for that noncompliance, we would not be requiring reallocation of steps 2 and 3 above. In *Port Townsend*, we recommended challenging OFM projections by petition rather than ending up as Clark County has here.

We are also concerned about the impact of changing the 15,000 rural allocation figure. It is not our intention to promote sprawl and somehow "reward" the County for its allowance of these parcelizations and segregations during the 3 year planning process. It is our intention to not have the sprawl problem exacerbated by the addition of overly

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large UGAs. Our decision here reflects some very unusual circumstances presented by this record.

Because the proper defining of an UGA involves more that just population projections, we address the remaining issues raised in this case to facilitate the County's ultimate decision after remand.

Vacant Lands Analysis

Many petitioners challenged the Vacant Lands Analysis (VLA) prepared by Clark County and used as one of the bases to determine the proper UGAs. The attacks centered not on the methodology of the VLA but rather upon the assumptions that went into it. After reviewing this record and listening to hours of argument, it is clear to us that the assumptions used by Clark County, with the exception of the market factor discussed in the next paragraph, were all well within the range of discretion afforded to the local decision maker under the Act. We reaffirm our oft-stated precept that our review is not to determine whether a better planning strategy exists but rather to determine whether the goals and requirements of the GMA have been achieved.

In the assumption phase of the VLA the County used a market factor of 25% for residential areas and 50% for commercial and industrial areas. This market factor was applied to land to ensure a viable continuing market that would not be artificially inflated by an overly restrictive land base. The use of a market factor was generally consistent with DCTED guidelines in place at the time of the adoption of the CP. Those guidelines, however, recommend only a 25% increase for industrial and commercial areas.

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The other two Boards have had occasion to rule on the issue of the use of a market factor and have held that the GMA authorizes such a consideration. We take this opportunity, our first, to agree with those decisions. In any event, all questions about the use of a market factor were clarified by EHB 1305. The problem that arises in this case is not the use of a market factor but rather its use in conjunction with the establishment of urban reserve areas and the lack of standards for implementation.

As noted earlier, the noncompliance in Clark County's use of urban reserve areas is because of a lack of criteria for conversion of the urban reserve area to urban growth area. In conjunction with that flaw, the use of a 25 or 50% market factor in setting the initial UGA in effect "double-dips" the land area under consideration. In its CP the County established an annual review of the factors used to establish the urban growth boundary. The purpose of this annual review was to determine whether the location of the boundary "is working" or whether it needed to be expanded or contracted. The effect is to have a fluid UGA with inadequate infill provisions that does not achieve the anti-sprawl cornerstone of the Act.

While an urban growth boundary does not have to be cast in concrete, it must have liberal applications of superglue. The County must make a choice on remand between the use of a market factor in the vacant lands analysis and the use of urban reserve areas. The County's concept of incremental movement of the urban growth boundary to always have a 20-year planning horizon is not in compliance with the GMA.

To a large extent, the reason for that noncompliance is because of the lack of standards for moving the boundary into the URA and the lack of strong DRs from the County and/or the affected city to implement tiering and infill. These omissions distinguish this case from *Reading*.

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Urban Holdings/Contingency Zoning

As part of its concurrency requirement, Clark County adopted policies in its comprehensive plan for "urban holding districts" and "contingent zoning" provisions. At page 12.4 of the CP, these concepts were explained as follows:

> "The comprehensive plan map contemplates two land use methods to assure the adequacy of public facilities needed to support urban development within urban growth areas (1) Contingent Zoning which applies an "X" suffix with the urban zone and (2) applying an Urban Holding District combined with urban zoning."

The stated goal of these two concepts was to prohibit urban growth within the urban growth area until sufficient infrastructure was in place or assured, or until annexation took place. Clark County used these two concepts within the UGA to support the concurrency goals and requirements of the Act and to provide a mechanism for tiering of urban growth.

Petitioner CCNRC contended that the urban holding district was invalid because the Act prohibits allowing an area to be included in the UGB that is not able to be served with public facilities and services in the 20-year planning period. Secondly, CCNRC pointed out, annexation of these urban holding areas would not necessarily resolve the problem of lack of concurrent public facilities and services. Petitioner Holsinger contended that the contingent zoning area was applied in an "arbitrary and discriminatory" manner to the 179th Street/I-5 area where his property is located.

The urban holding residential areas have minimum lot sizes of 1 du/10 acres. Industrial urban holding zones have a minimum lot sizes of 1 du/20 acres. Unlike the urban reserve areas, which are located outside the UGA, the urban holding areas are definitionally located within the boundary. Each holding area is identified in the CP at

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page 12.5 and 6 for each individual city. Each area is required to maintain the "holding" designation until the city can assure adequate provisions are in place or will be made if the area is to be annexed. While we are unsure of how the County could enforce such a requirement if annexation did occur, we do not find a violation of the GMA on the basis of that possibility alone. The concept of the urban holding area within an urban growth area furthers the concurrency goals and requirements of the Act. The use of such a concept is in the discretion afforded to local decision makers.

It is accurate to say that the CP provides for contingent zoning restrictions only in the 179th Street/I-5 area as petitioner Holsinger claims. It is also true that that area provides the most significant reason for the adoption of the contingent zoning concept. In order to show a violation of Goal 6, a petitioner must first show that a "right" of a landowner has been violated. This has not been done by Holsinger. We do not perceive that there exists a recognizable "right" to develop property for the maximum profit regardless of the short-term and/or long-term impact to the taxpayer. Nor has petitioner shown that even if such a "right" existed that the mere fact this area is the only one burdened by the contingent zone concept is in and of itself an arbitrary and discriminatory decision. The record is clear that the area in question, of which petitioner owns but a small portion, has significant inadequacies in public facilities. The correction of these deficiencies prior to further urbanization follows exactly what GMA requires. We find no violation.

Industrial Designations

As an integral part of the economic development element of its CP, Clark County relied heavily on background work done by the Technical Advisory Committee and by Columbia River Economic Development Council (CREDC). Working together, those groups developed a report dated March 12, 1993 (Ex. 613) which included an extensive parcel-by-parcel industrial land survey. Recognizing the regional nature of economic

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development, the groups surveyed both county and city industrial land areas. The report concluded that approximately 12,000 acres were designated or zoned industrial land throughout the county. Some 4,800 acres were currently in use. Only 1,200 acres of the vacant industrial land were determined to be "prime". The remaining 6,000 acres were categorized as marginal or poor. The 3 categories of prime, marginal or poor were chosen after reviewing the "key factors" of parcel size, sensitive lands and utilities. Adjoining land use was also taken into account in the categorization process.

To answer the question of the amount of industrial land needed over the planning cycle, the report looked at 3 separate methodologies. The first was a forecast based upon historical industrial land absorption of 100 acres per year. The resulting figure of 2,000 (although only a 17-year planning cycle was used by the County) was then multiplied by a 50% market factor. A projected need for 3,000 acres of *prime* industrial land was thus determined.

The second methodology involved a cooperative inventory with the Washington State Department of Employment Security to estimate industrial land densities. Determining that an average employee per acre ratio of 8 existed, the needed acreage was estimated to be 1,739. Again, a 50% market factor was added to reach a total of 2,609, which was then converted in the report "with a slight cushion" to be 3,000 acres.

The final methodology involved a 1984 study conducted by the Stanford Research Institute (SRI) for the Portland metropolitan area. That 1984 report indicated that 3,000 acres of industrial land were necessary for an adequate 20-year supply. The SRI report apparently did not segregate "prime" from other industrial lands.

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Based upon these methodologies, the report recommended that the CP include a prime industrial land base of 3,000 acres. Clark County and the cities agreed. The report did not recommend any increase to, or even retention of, the 6,000 acres that had been categorized as marginal or poor.

The "3,000 prime acres" became engulfed by exuberance and seemed to take on a "mystical" quality. It is commendable, laudable, and important for a county and its cities to designate sufficient areas to facilitate economic growth. The workings of CREDC and the Land Use Committee in determining the appropriate level of those goals were thorough. There are however, two matters that require remand and re-examination.

The most obvious flaw in the CP designations involves the change in the rallying cry for "3,000 acres" to the policy of "3,000 *new* acres." The existing 1,200 acres of prime industrial land somehow was forgotten. In the context of the exhaustive planning process undertaken by Clark County it is easy to understand how that occurred.

The less obvious flaws involve the methodology used to arrive at the 3,000 acres. Clark County adopted industrial urban reserve areas outside UGAs. These URAs were not invested with any standards for the timing of, or criteria for, conversion from outside to within an urban growth area. These URAs were designated in addition to the 50% market factor used to estimate need. The historical forecast programmed for 20 years rather than the 17 years of the CP, and then used a straight 50% addition for projected need. The density requirement methodology not only contained a 50% market factor, but also projected an additional 15% cushion. The third methodology, the 1984 SRI study, did not provide any supporting rationale or even segregated "prime" from other classifications.

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The record before us is cloudy as to exactly the amount of industrial land classified by the County and the cities and how much of it was "prime." The amount of acreage in the industrial urban reserve area is unknown. Exhibit 2, a list of various acreages for the urban growth areas, designates "light" and "heavy" industrial acreages. These designations are not of assistance in reviewing the amount of "prime" acreage. We were unable to find any corresponding chart for the URA acreage. On remand, the figures used and the results must be more clearly set forth and must be within the limits provided by the Act as set forth in the preceding 2 paragraphs.

A second stated purpose for industrial URA was to provide large acreage areas outside the UGA for potential "emergency" use if a significant employer became available and public facilities and services issues could be resolved. This strategy was designed to keep small scale industrial and commercial uses out of the areas and preserve them for major industrial capabilities. If a user did appear on the scene, the URAs could be converted into the urban growth area at a later time after resolution of concurrency issues. Again, it is unclear from this record whether these large scale URAs were considered part of the "prime" 3,000-acre industrial areas.

Whatever question may have been involved at the time of adoption of these industrial URAs concerning the necessity for siting them within an urban growth area has been resolved by recent amendments found in ESB 5019. The 1995 Legislature has clearly directed that industrial growth outside of urban areas can occur under specified criteria. In conjunction with the reanalysis of the industrial land siting issues noted above, the County must reconsider the viability of industrial URAs in light of ESB 5019. If the URA designations are to continue, the criteria for their conversion must coincide with those set forth in the legislation. One of the standards that should be strongly considered is a prohibition of conversion of "prime" industrial designation to any other use.

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Additional urban issues were raised with regard to the proper designation of the UGA by Clark County, as well as challenges to the comprehensive plans and development regulations of individual cities. We will address those issues by means of identification of the city involved with the issues involving them and their urban growth areas.

Vancouver

We initially note that Vancouver asserted there were some 5,562 acres of vacant, industrially-designated land in its urban area. Of that amount, only 530 acres have been identified as "prime." The remaining 5,000 were designated as either secondary (marginal) or tertiary (virtually useless) (VLA Ex. 161). Prior to the County establishing an appropriate UGA, the City of Vancouver must determine what uses are to be made of these 5,000 acres that are concededly no longer useful as industrial lands.

Another major determination that has not been resolved by this record is the impact of the Vancouver Transit Overlay Ordinance. During the early stages of this case, the challenge to that ordinance was stipulated by Vancouver and Clark County to require a remand. Most of Vancouver's infill policies and implementation measures revolve around the success of high density transit corridors, which in turn are primarily dependent upon an effective transit overlay ordinance. Since that ordinance, and its accompanying high density aspects, is not presently before us, we have no alternative but to find the remaining infill and density portions of Vancouver's CP inadequate and not in compliance with the Growth Management Act. The City has conceded that other implementation measures to fulfill density and infill requirements under the CFP and GMA were in process but had not been adopted at the time of these appeals. The successful completion of those ordinances will be necessary to show compliance.

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Vancouver adopted a "sensitive lands ordinance" in 1992 pursuant to the requirements of GMA relating to critical areas. Unlike Clark County, the City of Vancouver has had development regulations in place since 1992 relating to critical areas protection. We have no authority at this late date to review petitioners' challenges to the substance of those ordinances, *North Cascades*. The City conceded that it did not complete the consistency review required by RCW 36.70A.060(3). In this regard, the City of Vancouver, like Clark County, is not in compliance with the goals and requirements of the Act. This review must be completed in order for the City to achieve compliance. Any changes made from that review or any challenges concerning the consistency of the ordinance with Vancouver's CP would be the subject for a new petition after the review has been completed.

Petitioners, particularly CCNRC, raised other challenges to the Vancouver CP. The initial challenge involved a failure of Vancouver to include the 10-year traffic forecast required by RCW 36.70A.070(6)(b)(iv). Submission of the information to CTED does not comply with the statute. It must be included in the comprehensive plan. *Reading*. The CP is not in compliance with the GMA in this respect.

The Capital Facilities Plan adopted by Vancouver, its concurrency system with established levels of service (LOS) and financial projections were all challenged. In all those challenges petitioners failed to meet their burden of proof of showing noncompliance.

The City established LOS standards for many public services including transportation and parks. The Act requires that these LOS standards be established but invests local governments with wide discretion as to their level. Petitioners have not shown that the Act was violated simply because a national park study LOS standard was not adopted or

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because the LOS standard for roads in some instances was established at a "failing" level. Vancouver has established concurrency requirements for transportation and other public facilities and services. Petitioners have not shown that these requirements are inadequate to the point of noncompliance with the Act.

Petitioners challenged the funding aspects of Vancouver's Capital Facilities Plan. Again, petitioners failed to show a violation of the Act. Local decision makers are directed to review potential revenue avenues, determine if projected funding will meet the needs set forth in the Capital Facilities Plan, and prioritize those projects to serve areas where growth is to be channeled. Vancouver has done this, albeit with more optimism than petitioners believe is likely. The decisions shown in this record are well within the discretion afforded by the Act. Vancouver has also complied with the Act by providing for alternative actions if revenues fall below projected levels.

Within the UGA of Vancouver petitioner Wade's property was designated as light industrial. Petitioner did not demonstrate that a violation of the GMA occurred simply because the County chose to limit further commercial expansion in the vicinity of that property. Nonetheless, the petition is remanded for further consideration in light of our finding that all the industrial area designations need to be reevaluated.

Camas

Clark County's CFP, adopted in conjunction with each city in accordance with RCW 36.70A.210, provided that urban density must average between 6 and 10 du/acre. Camas contended that it objected and continued to object to the imposition of this CFP policy. Under the provisions of RCW 36.,70A.210(6), the time for challenge to that policy has long since past. Camas also adopted a 75% single family to 25% multi-family ratio in contravention of the CFP.

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The FSEIS, Camas CP, and an acknowledgment by Camas at the hearing on the merits demonstrate that even at a minimum of 6 du/acre, under any conceivable rational population allocation, Camas would not have to expand its municipal boundaries for the next 20 years. Thus, there can be no justification for an UGA beyond the Camas municipal boundaries. There is no need for residential urban reserve areas surrounding Camas under the record that exists here.

Petitioners also challenged the critical area DRs adopted by Camas. We do not have authority to review the substantive portions of these regulations because they were adopted in August 1991. Our role at this stage is to determine whether such DRs are consistent with the CP.

Camas pointed out that its CP contains numerous references to critical area regulations "that facially demonstrate that the comprehensive plan was drafted in consideration of and to be consistent with the existing development regulations." This facial demonstration, however, does not comply with the requirement to review these DRs to achieve consistency with the CP. Local decision makers must be aware of the critical area DRs, the provisions of the CP and must allow an opportunity for the public to comment upon, and be involved in, the review process. There was no such action that took place here. The issue is remanded for procedural compliance. Any dissatisfaction with the result of that compliance would be the subject for a new petition.

As with Clark County and Vancouver, petitioners challenged the capital facilities plan, LOS standards and concurrency aspects of Camas' CP and DRs. Petitioners have failed to meet their burden of proof.

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The challenges of petitioners to the public services and facilities aspects of the Camas CP appeared to be almost an afterthought to the Clark County and Vancouver challenges. Our review of the record shows that Camas developed a number of background studies and plans for its capital projects for parks, water, sewer, streets, transportation, etc. LOS standards were adopted for transportation and, in addition, for parks, open space, police, fire, wastewater, and drinking water. Proposed expenditures were based upon these incorporated plans and studies. Major sources of funding were identified and an annual review process was instituted to make adjustments for changes in financial projections. Local governments have a wide range of discretion under the Act in developing funding sources and projections. The Act does require contingency plans if funding sources are later found insufficient. Camas has complied with the Act in these regards.

In reviewing Petitioners' challenges to water issues, this record showed that Camas met most of the goals and requirements of the Act. A 1994 Water System Plan update was made. It included an inventory of existing facilities and a projection of future needs and proposed improvements to the waste water system. Camas conceded, however, that its land use element did not comply with the stormwater drainage aspects of RCW 36.70A.070(1) that provides in part:

> ". . . [W]here applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state, including Puget Sound or waters entering Puget Sound."

This matter is remanded to Camas for compliance.

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Two additional petitions challenged the actions of Clark County regarding the Camas UGA. In the first, *North Lackamas, et. al.*, contended that their property was incorrectly designated as agricultural, forest or agri-forest and that SEPA provisions were violated. Those issues were answered in the resource lands portion of this Order. The petition also contended that the property was incorrectly left out of the Camas UGA. The necessity for the Camas UGA to be located at municipal limits shown above makes further consideration of that claim unnecessary. We note, however, that the fact that water and sewer services are or could be made available does not direct that an area must be included in an UGA. Availability of public facilities does not in and of itself define an area as "characterized by urban growth." We have consistently held that public facility availability cannot be the sole criterion for inclusion within an UGA. *Reading*.

The other petition was brought by Sun Country Homes, Inc. and alleged that its property within the Camas UGA was incorrectly designated by the BOCC as light industrial. Many of the arguments concerning the inappropriateness of an industrial designation to this property dovetail with and provide support for our decision to require reevaluation of all industrial designations. The property does not appear to be consistent with the CP emphasis on "prime" industrial land. Because of the necessity to establish the Camas UGA at the municipal limits and because petitioner's property is located between the Vancouver and Camas UGA, the County must assign a designation that more properly fulfills the goals and requirements of the GMA. That designation must include a recognition of the impact on the Fisher Quarry mining site located nearby.

Washougal

Various petitioners challenged the Washougal UGA on the grounds previously set forth in the Clark County UGA portion of this Order. Additionally, Friends of the Gorge

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challenged the decision by Clark County to place a portion of the UGA within the Columbia River Gorge National Scenic Area. The rational for the BOCC action was to "support" the efforts of Washougal to have the area eliminated from coverage under federal law. By dispositive motion we dismissed the claim of Friends of the Gorge that the action of the BOCC violated the federal statute. We held that we had no authority to rule on such a claim.

However, we did review this matter as part of the hearings on the merits because of the alleged violation of GMA. Under the situation shown by this record, we find that GMA has been violated and that there is no basis for the BOCC to place part of an urban growth area within the confines of the National Scenic Area. The Gorge Commission has the authority to establish densities at that location. One residence for every 2 acres is the maximum allowed. Obviously 1 du/2 acres is not an urban density. Until that density is changed, the GMA does not allow Clark County to impose an urban growth area there since it is not, nor could it be, urban.

Battle Ground

Much of petitioners' challenges to the Battle Ground CP involved the designation of the UGA. Clark County must reevaluate and reestablish the UGAs for all cities and towns, with the exception of Yacolt, and size them appropriately. This record is clear that the area established for Battle Ground is too large, particularly in light of Battle Ground's failure to comply with the community framework plan and the GMA.

Battle Ground acknowledged that it does not have any "infill" policies, but instead relied upon "concurrency" policies for appropriate phasing of its urban growth. The assumption made by Battle Ground was that until public facilities and services were available on a cost-efficient basis, the market place would necessarily preclude inefficient

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sprawl. The invalidity of this assumption is shown by many examples, both within Clark County and throughout the State of Washington. Much of the need for the Growth Management Act was a result of prior reliance on this assumption.

Concurrency is not the same as infill. Both have separate and distinct purposes. Infill relates to the phasing of growth. Its primary purpose is to avoid the inefficient use of the land resource, i.e., sprawl. Concurrency is intended to ensure that at the time of new development, public facilities and services are in place or are adequately planned. Its primary purpose is to avoid the predicament of development after development decreasing levels of service to complete failure with no funding relief in sight. Ultimately, the failure occasioned by added development becomes a burden on the public taxpayer of the city or county involved.

The lack of appropriate infill policies and DRs is exacerbated by the City's failure to adhere to the CFP ratio of 60% single family to 40% multi-family in order to provide appropriate densities for urban development. Battle Ground adopted a 75/25 ratio in its CP, which is a violation of the CFP and therefore of the GMA.

One purpose of the 60/40 ratio is to achieve affordable housing goals. Battle Ground did not adopt any adequate policies, nor implementing development regulations for affordable housing. In order to achieve compliance, Battle Ground must adopt a 60/40 ratio and implement policies and DRs for infill and affordable housing.

Petitioners also contended that Battle Ground failed to review and/or adopt adequate drainage, flooding, and stormwater strategies and policies as required by RCW 36.70A.070(1). Battle Ground accurately pointed out that existing facilities were noted in its Capital Facilities Plan and CP. However, there was a failure by Battle Ground to

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adopt drainage and stormwater goals, policies, strategies, and regulations. Merely listing existing facilities and stopping there does not fulfill the mandate of RCW 36.70A.070 (1).

Petitioners further contended that Battle Ground failed to provide groundwater protection because its wetland ordinance exempts class II wetlands from coverage. Other than making conclusory statements, petitioners did not carry their burden of proving that this exemption amounted to a failure to protect groundwater supply.

Petitioner Barner complained that the designation of her property adjoining the UGA of Battle Ground to a 5-acre minimum violated the GMA. Her complaint alleged a violation of RCW 36.70A.110 requiring urban growth to be located in areas characterized by urban growth which also have existing public facility and service capabilities. She contended that her property provided a natural physical boundary to the ultimately decided UGA of Battle Ground and that the existing road systems serving her property were "sufficient for development under 1-acre zoning" thus satisfying the goals of minimizing infrastructure costs.

This record provides ample support for the County decision to exclude this property from the Battle Ground UGA. While an area cannot be included in an UGA unless it is, or is adjacent to, an area characterized by urban growth, the reverse is not necessarily so. Existing urbanization does not always dictate UGA inclusion. In light of our earlier discussion concerning the reduction of the Battle Ground UGA, there is no reason to remand this case for further consideration.

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Ridgefield

As with the cities of Camas and Battle Ground, the CP for Ridgefield adopted a 75/25 ratio for single-family to multi-family designations. Ridgefield is not in compliance with the Act unless and until it adopts the 60/40 ratio and implements the same with appropriate DRs.

Because Ridgefield's UGA must be reevaluated, we will review the industrial lands decisions in order to provide guidance for the re-examination.

The Ridgefield city limits are located some 3 miles west of the 179th street junction with I-5. Known to all as the "junction," this undeveloped, agriculturally-based area was seen as the last virgin industrial territory available within 30 minutes of the Portland metropolitan area. In the 1980's, the Port of Ridgefield acquired and improved acreage at the junction for industrial purposes. As an accommodation for this industrial growth, the City assisted in obtaining funding to build a pressurized sewer line from the junction to the City's sewage treatment plant. This pressurized line was dedicated for industrial purposes only and was not to be used for any residential growth along its length. Currently the area around the junction has a low residential occupancy, small commercial and industrial uses and, like Alex Rodriguez, vast potential as yet unrealized. Recognizing this potential and the need for higher wages than those provided by service industries, Clark County and Ridgefield determined that the area around Ridgefield should be planned as a regional employment center. The UGA for Ridgefield was established with this regional employment center concept as the forerunner.

The County was confronted with two difficulties under the GMA in achieving its purpose of tying Ridgefield and the junction together. The first involved provisions of

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RCW 36.70A.110(3) that urban government services are to be provided by cities and are not to be provided in rural areas. The second was the prohibition of siting urban uses, such as industrial designations, outside of urban growth areas. In order to resolve these conflicts and ultimately allow the building of a gravity flow sewer and water system to the junction area from the City, the County established a circular "bell" around the City and a smaller "bell" augmented with urban reserve areas around the junction. The two "bells" were then connected by a wide "bar". In order to accomplish this gerrymandered UGA, the County committed thousands of acres of land that would have otherwise been designated as resource lands (Ex. 77).

While the regional employer concept is laudable and achievable, particularly under recent amendments to the GMA, the methodology chosen by the County is not in compliance with the Act. The use of 3 miles of resource lands to connect the "bells" and provide a topographical feature for a later to be installed gravity flow sewer and water system does not comply with the Act under the record shown here. As noted by both the City and the County, the area around the junction is not and never will be an urbanized residential area. The only urbanization involves the hope that some day a major employer will view the site as "econotopia".

On remand the County will want to consider the use of amendments found in ESB 5019 (Ch. 190, Laws of 1995) and the amendment to RCW 36.70A.110(4) implemented by EHB 1305 (Ch. 400, Laws of 1995) to accomplish its goals for the Ridgefield area while still achieving compliance with the Act. If the County decides to retain the industrial urban reserve area designation, it too could provide a vehicle to achieve the regional employment center goal. The County might also consider an expanded presence by the Port of Ridgefield. The record here does not contain information on the relationship of the Port to the junction area and the use that that relationship could be put to.

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LaCenter

Petitioner Beck alleged that his property should have been included in the LaCenter UGA as being adjacent to urban growth. The property has been designated agricultural since 1980 and is so designated in the current CP. It is under agricultural current use tax deferral status and does not have any current urbanization. The same situation exists as to the Woverton petition, except the prior zoning was rural estates and the 1994 CP designated the property agri-forest. It too is in the current use tax deferral program as agricultural property. The petitioners in those two cases have not carried their burden of proof of showing a violation of the GMA by exclusion of their property from the LaCenter UGA. There is no need to remand that decision to the BOCC even though re-examination of LaCenter's UGA is necessary.

ISSUES FOR WHICH WE COULD NOT FIND A CONVENIENT CATEGORY

Open Space Corridor

Given that the UGA of Camas must be maintained at the municipal boundaries in order to comply with the Act and that re-examination of Vancouver's UGA is in order, petitioners' contention that RCW 36.70A.160 required an open-space corridor between the two UGAs is not strictly an issue for resolution. However, it is clear from the language of the statute that such an "open-space corridor" need only be identified "within and between urban growth areas." The statute adds that such identification cannot be used to designate the area as agriculture or forest for the sole purpose of maintaining the land as a corridor unless a local government purchases development rights.

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The land between Vancouver and Camas includes an area called Fishers Swale, which should be reviewed by the County as it adopts a critical areas ordinance to determine consistency with its CFPs and with RCW 36.70A.160.

LOS Standards

Many petitioners challenged the traffic and road LOS decisions of the County. The record reveals that the County reviewed and analyzed the various options available in establishing these LOS standards. There is wide discretion afforded to a local government in establishing LOS standards. There was no violation of the GMA, shown by this challenge.

The transportation element of the CP does not include a traffic forecast as required by RCW 36.70A.070(6)(b)(iv). Clark County argued that the information was contained in various other documents. The Act requires that it be contained in the CP. Referencing other documents is not in compliance with the GMA. *Reading*.

Water, Sewer and Storm Water

As part of its CP, Clark County adopted "direct" concurrency requirements for a number of public services including water. At p. 6-4, the CP provided that:

> "...While the *GMA* requires direct concurrency only for transportation facilities, this plan extends the concept of direct concurrency to cover other critical public facilities of water, sanitary sewer and storm drainage."

While Clark County has been involved in a significant study of its water issues through its water plan (Ex. 912), it has failed to adopt any of the strategies contained in the plan for implementation measures. Having adopted a "direct" concurrency requirement through its CP, the GMA requires that implementing DRs be imposed that prohibit new

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development from reducing established levels of service. Clark County has not done this and thus is not in compliance with the Act.

Clark County also contended that since it owns no sanitary sewer or water systems, it was not required to comply with RCW 36.70A.070(3) which requires a CP to include a capital facilities plan element that consists of:

> "(a) An inventory existing capital facilities *owned by public entities*, showing the locations and capacities of the capital facilities (italics added);
> (b) a forecast of the future needs for such capital facilities;
> (c) the proposed locations and capacities of expanded or new capital facilities;
> (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
> (e) a requirement to reassess the land-use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent."

The language of that statute involves facilities owned by "public entities" and does not limit capital facilities planning to only those facilities owned by the County. Public facilities that are owned by cities and are covered in a different comprehensive plan do not need reiteration in a County's plan. Other facilities owned by "public entities" do need to be included in order to adequately assess and fulfill the requirements of RCW 36.70A.070(3). Clark County's failure to take this action was a violation of GMA.

Clark County further argued that if such a requirement existed it would merely incorporate the capital facilities plans of other public entities. This argument misses the point. The overall purpose of the capital facilities element of a comprehensive plan is to see what is available, determine what is going to be needed, figure out what that will cost, and determine how the expense will be paid. A simple incorporation of some other

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entity's plan without then reviewing the entire program in a coordinated manner to ensure consistency and achieve the goals and requirements of the Act would not be in compliance.

Petitioners also contended that Clark County's stormwater ordinance was insufficient compliance with the requirement of RCW 36.70A.070(1) to "provide guidance for corrective actions to mitigate or cleanse" stormwater runoff. The FSEIS (Ex. 79) at Ch. 5, p. 22 stated that:

> "Currently, most streams in the southern half of the County fail to meet water quality standards. The major source of pollution is runoff from development. The Clark County Storm Water Control Ordinance...will not correct pollution problems caused by existing development." (emphasis in original)

The CP at page 6-8 discussed the existing and future problems associated with stormwater drainage. County documents continually referred to basin plans and strategies contained therein. In order to comply with the Act, the County must implement these strategies through DRs. The County adopted no policies nor DRs to provide solutions to the existing and future problems of stormwater drainage. The County failed to comply with the requirements contained in RCW 36.70A.070(1).

Archeological and Historic Preservation

RCW 36.70A.020(13) provides:

> "*Identify* and encourage the *preservation of lands*, sites, and structures, that have historical or archaeological significance." (italics added)

Clark County and the cities have adopted CFP 13.2.3 and 13.2.4 which requires the establishment of criteria and programs to identify archeological and historic resources, to

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protect those resources, and to establish a process for resolving conflicts between preservation of the resources and development activities.

Various petitioners challenged the compliance of Clark County, Vancouver and Camas with these provisions. Clark County adopted a "historic archaeological and cultural preservation element" in its CP as did Vancouver (Ex. 651). Camas did not reference this issue in its CP.

Camas contended that since RCW 36.70A.070 does not require an archaeological and historic preservation element in the comprehensive plan, it had no obligation to address the issue. The argument, as far as it went, is correct. However, it overlooks two essential matters. First, the CFPs referenced above direct that cities will recognize and plan for archaeological and historic preservation. Secondly, we have held from our very first case, *Clark County I*, that the goals of the Act have substantive authority and must be considered and incorporated into all GMA actions. Camas has not complied with the CFP nor with the Act's archaeological goal and therefore is not in compliance.

Both Clark County's and Vancouver's CPs recognized the necessity for archaeological and historic preservation. Both also recognized the need for an updated and comprehensive inventory of the area's cultural and historic resources. The last inventory by Clark County was in 1979 and by Vancouver in 1980. Both plans recognized the crucial role played by the Heritage Trust of Clark County, a public non-profit organization chartered in 1982 by Clark County. Both plans also acknowledged the need for regulatory action. At page 53 of Vancouver's CP, implementation measure 1 provided in part:

> "...Based on this inventory, develop and implement a comprehensive preservation and management plan and regulations...."

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Policy 9.3.3 of Clark County's CP provided:

> "Revise the zoning ordinance to include provisions to permit the review of individual development, redevelopment and demolition plans to ensure protection and minimize the impacts on cultural, historic and, *particularly archaeological* resources." (italics added)

This record reveals that none of the actions provided in the CPs were taken. No inventory was initiated, no regulations were reviewed, and the only action taken subsequent to the adoption of the CPs was the disbanding of the Heritage Trust Board.

Vancouver did not address these issues in its brief. Clark County raised the specter of Initiative 164. As we stated in the critical areas section of this Order, the GMA does not exempt counties and cities from compliance because of Initiative 164.

Clark County and Vancouver are not in compliance with the GMA by their failure to adopt implementing mechanisms as required by their own CPs, the CFPs and the GMA. GMA fundamentally changes the planning concepts previously used in this state. One of those changes is that a comprehensive plan is no longer a binder full of pages that is placed on a shelf, the sole purpose of which is to give someone the responsibility of dusting. If it is in the plan, it must be implemented.

Airports

The challenges brought by various petitioners under this category involved both a specific designation complaint and more generalized "essential public facilities" issues. The specific designation issue involved a decision by the BOCC to classify land known as the "Clark Aerodrome" as a light industrial area. Petitioners desired a "public facility" designation.

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The property is located outside the Vancouver city limits but within its UGA. The airport is privately owned but was available for public use. Before the 1994 public hearings were completed, the owner had closed the airport. This closure was acknowledged by the Federal Aviation Administration. The Vancouver Planning Commission, City Council and Clark County Planning Commission had recommended that the property receive a public facilities designation. The basis upon which the BOCC decided to designate the area light industrial is best summarized at page 2 of the intervenor property owner's brief as follows:

> "The property has been surrounded by encroaching urban development. The designation is wholly consistent with the practical application of the land. It has an industrial park to the north, an active mine to the south and residential to the west and east of the site (within the former flight path). The property immediately to the east (owned by the Intervenor) received approval for a preliminary plat, known as Cedar View with a condition that a "Covenant Running with the Land" be placed on the subject property forever to prohibit use of the property for airport purposes."

After review of this record we find that petitioners have not sustained their burden of proof as to this issue. A local government, whether it is a county or a city, has a wide range of discretion in determining specific designations within an UGA under the Act. The GMA establishes many standards as to the establishment of an UGA but provides no goals nor requirements for specific designations within it. Resource lands and even rural areas have particular goals and standards not found for the area within a properly established UGA.

Petitioners' generalized issues challenged compliance with GMA requirements for public facilities and the County's CPPs. In accordance with RCW 36.70A.070(6)(b)(i), the CP included an inventory of air transportation facilities and services to define existing capital facilities and travel levels "as a basis for future planning." In addition to that

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requirement, RCW 36.70A.210(3) requires that the CPPs address county-wide siting of essential public facilities. The County fulfilled both of these requirements.

RCW 36.70A.200(1) requires that a comprehensive plan "shall include a process for identifying and siting essential public facilities." Airports are contained within the definition of that statute as an essential public facility. Clark County's CP policy 3.3.21 directed that a "Clark County Airport Analysis" study be undertaken. The scope of that future study was to include some 6 different matters, one of which was completion of the *1984 Airport Systems* planning effort. The other matters included determining whether to establish airport advisory committee, developing forecasts investigating current and planned land uses, etc. Essentially, the study would be used to decide whether more studies ought to take place and, amazingly, whether the 1984 study ought to be completed. This does not qualify as a process for siting essential public facilities. Clark County is in violation of RCW 36.70A.200(1).

Additionally, RCW 36.70A.200(2) provides that neither a comprehensive plan nor a development regulation "may preclude the siting of essential public facilities." Clark County is not in compliance with the GMA because, as to airports, it has violated this subsection.

The CP allows an airport as an outright use within urban areas. Regardless of the questionable reality of such a provision, we note that the plan goes no further in restricting incompatible uses surrounding current or future airport sites. As can readily be seen in the quote from intervenor's brief referenced above, the Clark Aerodrome closed largely because of the County's failure to properly regulate the surrounding area. During the hearings on the merits we were provided with an illustration of the Evergreen

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Airport flight path showing surrounding urbanization which will likely lead to the same death knell as befell the Aerodrome.

The concept of "siting" involves future applications but also, particularly in the case of airports, requires efforts towards maintenance of current facilities. Development regulations are an appropriate vehicle to prevent the encroachments that make siting and maintenance of existing public facilities so difficult. On remand Clark County must re-examine its approach to the areas surrounding existing airports.

This inattention to surrounding areas was dramatically illustrated by a portion of case #95-2-0057 (Sadri/Mill Plain property). The property under challenge in that case was designated residential in the CP. As noted by that petitioner, the property is "directly in the flight path of Clark County's busiest private airport" with the main air strip approximately 100 yards west of petitioner's land. Property north of this airport was being developed as multi and single-family residential, and high density apartment units were being built to the south and east. On remand the BOCC must reconsider this residential designation in light of RCW 36.70A.200(2).

Effective Notice and Public Participation

Petitioners complained that the effective notice requirements of RCW 36.70A.140 were violated because no specific notice (direct mailing) of proposed designations was made. The GMA does not require a particular methodology of providing for early and continuous public participation. An abundance of information was distributed early and continuously by Clark County (see page 5). Petitioners have failed to show that a violation of the GMA occurred by the failure to directly mail notices to affected property owners.

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Public participation challenges were also made concerning the joint Planning Commission/BOCC hearings. Each hearing between September and December 1994 imposed restrictions on oral statements. A 3 minute limitation for each speaker was established, each speaker was allowed only one opportunity to speak and restrictions as to the content of the oral presentation were imposed. We do not find a violation of the GMA public participation goals and requirements because of these restrictions.

The 3 minute limitation on oral presentations was softened by the availability of unlimited written submissions. In light of the tremendous scope of the CP and DR adoptions, we do not find that the County was required to allow more time to each participant. Although many attorneys complained about the restriction of only one appearance per meeting when multiple representations were the norm, the County was within its discretion, particularly as unlimited written presentations were allowed.

At one public hearing, an attorney began his presentation by disputing the County's authority to limit the content of the presentation. The BOCC Chairperson indicated that no oral presentation concerning the imposed restrictions would be allowed and prevented further discussion of this issue. It would have been in keeping with the public participation goals and requirements of the Act to allow a presentation of why the restrictions were inappropriate. However, the County's failure to do so under the circumstances that existed in this record is not a violation of the GMA. RCW 36.70A.140 provides that errors in exact compliance shall not be the basis for invalidation if the "spirit of the procedures is observed". This one minor instance of violation of public participation is not sufficient to remand the entire CP.

As part of its public participation process, Clark County invited any property owner to submit written comments (objections) to his/her designation established in the draft CP.

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Over 250 individual objections were registered with the County. Many of those property owners became petitioners in this case.

Various summaries of the individual objections were compiled by planning staff. Some of the objections were accepted and became part of the recommended final draft of the CP. Others were disputed. During its deliberative process, the Planning Commission expressed frustration at the inability to individually deal with each of these objections because of time constraints. Ultimately, the Planning Commission recommended that a special hearing examiner be appointed and a hearing be allowed on each complaint. The BOCC determined that there was sufficient information before them to make a determination on these objections.

We find no violation of the Act from the BOCC decision not to appoint a special hearings examiner and/or otherwise provide a hearing on each of these disputes. The record before us reveals that the BOCC had the information available, discussed the information, and exercised appropriate discretion as to the particular method of obtaining and resolving the facts presented by the objections. None of the petitioners sustained their burden of showing that the BOCC failed to comply with the public participation goals and requirements of the Act.

Commercial Designations

As noted previously, the GMA does not establish goals or requirements for specific designations within a properly established UGA. The scope of discretion to choose from a range of reasonable options is very wide when dealing with this issue. We have carefully reviewed the record with regard to the claims of misdesignations that either allowed or did not allow commercial locations presented by petitioners Ratermann, Sadri (except as noted in the airport section) and the North Salmon Creek Neighborhood

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Association. In none of the cases have petitioners sustained their burden of showing a violation of the GMA. The designations of these areas by Clark County were well within its range of discretion. The GMA does not allow us to substitute a "better choice." We deal only with whether a choice violates the goals and requirements of the Act.

ORDER

We have spent many pages of this Order discussing features and decisions found to be not in compliance with the Act. What must not be overlooked is the incredible scope of decisions that were made by the County and the cities that were correctly done. The record continually showed dedication, hard work and intelligence from citizens, staff and elected officials. While there are improvements that can be made, the overall quality of the work is excellent. We acknowledge the efforts of all who participated in this GMA process in Clark County.

In order to comply with the Act, the following actions must be taken:

A. By Clark County:

1. Resolve the inconsistency in CP Policies 6.2.2, .3, and .7;

2. Eliminate the prohibition of mining within the 100-year floodplain or adopt an analysis which substantiates the prohibition;

3. Adopt techniques to buffer resource lands in accordance with the CFP and GMA. Strong consideration must be given to aggregation of nonconforming lot sizes as well as other techniques to reduce the impact of the parcelizations that occurred between 1991 and 1994. Adopt development regulations that prevent incompatible uses from encroaching on resource land areas;

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4. Increase the minimum lot sizes of rural areas located north of the "rural resource line";

5. Eliminate areas that would have otherwise been designated as resource lands from inclusion in an urban reserve area;

6. Adopt DRs that protect critical areas in addition to the existing wetland ordinance and review them for consistency with the comprehensive plan;

7. Review the existing wetland ordinance for consistency with the comprehensive plan;

8. Adopt the OFM population projection. Revise the number in light of current information over the preceding, now, 4-year period to coincide with the year 2012 expiration date. Reevaluate the rural allocation based upon updated analysis of the effect of prior segregations. Analyze an appropriate relationship between the concept of urban reserve areas and market factors. Restrict the UGA of the City of Camas to its municipal boundary. Eliminate the UGA in the Columbia River Gorge National Scenic Area. Strongly consider allocating a larger population figure for areas surrounding Vancouver which are already characterized by urban growth, rather than areas surrounding other cities which are only adjacent to areas characterized by urban growth and which have resource lands that require buffering;

9. Reevaluate and appropriately designate the areas between the UGAs of Vancouver and Camas;

10. Specifically identify, after recalculation, the amount of acreage designated as prime. Eliminate the barbell effect of the Ridgefield UGA and the use of resource lands within the UGA. Analyze and evaluate the impact of ESB 5019 on the industrial urban reserve areas and adopt the criteria set forth therein. Strongly consider adoption of development regulations that prohibit the conversion of prime industrial area designations to other uses;

11. Place a 10-year traffic forecast in the comprehensive plan;

12. Comply with the requirements of RCW 36.70A.070(3) in the capital facilities element of the comprehensive plan;

13. Adopt DRs that implement concurrency requirements for potable water supply;

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14. Adopt appropriate DRs to implement the strategies and policies for stormwater drainage issues;

15. Follow the direction of the CFP and GMA in adopting implementation mechanisms for archeological and historic preservation;

16. Comply with the requirements of RCW 36.70A.200 for airport siting and reevaluate the residential designation of the Sadre/Mill Plain property;

B. By Vancouver:

1. Review the critical area ordinance for consistency with the comprehensive plan;

2. Include a 10-year traffic forecast in the comprehensive plan;

3. Adopt implementation mechanisms that implement the archeological and historic preservation policies of the comprehensive plan;

4. Determine appropriate designations for the 5,000 acres of land currently designated industrial which is not suited for that purpose;

5. Adopt appropriate infill DRs to include a transit overlay ordinance;

C. Camas:

1. Adopt a 60/40 ratio of single family to multi-family housing in order to comply with the CFP. Adopt appropriate development regulations to implement that policy;

2. Review the critical area ordinance for consistency with the comprehensive plan;

3. Adopt appropriate implementation mechanisms for archeological and historic preservation;

4. Comply with the stormwater drainage requirements of RCW 36.70A.070(1);

D. Battle Ground:

1. Adopt a 60/40 ratio of single family to multi-family housing in order to comply with the CFP. Adopt appropriate DRs to implement that policy;

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2. Adopt appropriate DRs for infill requirements;

3. Adopt DRs for affordable housing requirements;

4. Adopt appropriate policies and DRs for stormwater drainage and flooding as required by RCW 36.70A.070(1);

E. Ridgefield:

1. Adopt a 60/40 ratio of single family to multi-family housing in order to comply with the CFP. Adopt appropriate DRs to implement that policy;

2. Adopt implementing development regulations to further affordable housing requirements.

Because the work necessary to achieve compliance is exhaustive and interrelated, we extend the full 180 day period to the County and cities in order to complete these tasks.

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

So ordered this 20th day of September, 1995.

William H. Nielsen
Presiding Officer

Les Eldridge
Board Member

Nan A. Henriksen (Except Urban Section)
Board Member

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