

May 23, 1996

The Western Washington Growth Management Hearings Board

In 1995, (2) Cases Presented to the Western Washington Growth Management Hearings Board Final Order and Decision;

The Western Washington Growth Management Hearings Board (WWGMHB) was established under the Growth Management Act to hear and determine when a state agency, county, or city planning under the Act is not in compliance with the Act. Recently, two cases have been argued before the WWGMHB regarding Skagit County's Natural Resource Lands Classification and Designation efforts. Listed below are summaries of both cases.

In the *first* case, *Friends of Skagit County v. Skagit County*, WWGMHB No. 95-2-0065 at 926, it was determined "that Skagit County's use of pre-existing ordinances to comply with the GMA in designation and protection of natural resource lands...was not in compliance with ... the GMA." It was argued that Skagit County had failed to adopt development mineral land as defined in RCW 36.70A.030 and that the County neglected to take legislative action authorizing the use of pre-existing ordinances and in failing to do so did not regulations. The WWGMHB concurred with this argument but did not rule on whether to provide the public an opportunity to participate in the development of natural resource land adopted protections and designations substantively complied with GMA or prior Board designations do not substantively comply with the Act that they must file for review a decisions and stated that if any person concludes that the newly-adopted protections and separate petition. The County complied with the WWGMHB final decision and order by Ordinance #15841 uses pre-existing ordinances to protect and conserve natural resource by scheduling a public hearing and adopting Natural Resource Lands (NRL) Ordinance #15841 uses pre-existing ordinances to protect and conserve natural resource lands.

The *second* case, *Friends of Skagit County v. Skagit County*, WWGMHB No. 95-2 0075, was the appeal of Ordinance 15841. In that case, the WWGMHB addressed a number of natural resource land substantive issues. The principal issues are addressed below.

The WWGMHB concluded that "the opportunity for public participation afforded the citizens of Skagit County in the adoption of this ordinance [#15841] falls short of meeting the goals and requirements of the Act." In responding to the public participation issues the WWGMHB indicated that the County should pay particular attention to adequate notice, including availability of pertinent materials to the public in advance of a public hearing, that there be a clear delineation of pre-existing ordinances, and that the use of pre-existing ordinances to conserve natural resource lands and meet the requirements of the Act must be specific.

**Issue #2: Defining, Designating and Conserving Natural Resource Lands
Forest Lands:**

Second, the WWGMHB rejected the County's reliance on existing zoning as an overriding criteria for natural resource land designation. By solely using pre-existing Forestry zoning, the County excluded from consideration as natural resource lands about 35,500 acres of Secondary Forest Land (as identified in the Draft Environmental Impact Statement). The Secondary Forest lands were characterized by the Forestry Citizen Advisory Committee as comprising of "forest tract size" parcels and "land primarily devoted to growing trees." The WWGMHB stated that the County excluded from consideration other minimum guideline criteria such as "predominant activity, average parcel size, or property tax classification from being used "Where the land in question had not been previously zoned forestry."

The Addendum to the Final Environmental Impact Statement contains a discussion on forest land parcelization. It was estimated that 500 acres or more is needed to sustain economic viability and manage timber lands in an industrial forest setting. The WWGMHB notes that "Although the GMA does not specify a minimum lot parcel size for lands in long term commercial forestry designation, it does require their protection from conflicting uses.

Under the record in this case [the 500 acres discussion], the County's choice of allowing such lands to be parcelized into 20 acre does not comply with the Act." (Emphasis added)

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Agricultural Lands:

About 26,500 acres of land with prime upland soils were not designated as agricultural because of the County's use of "sole support" as the basis of determining long term significance and roughly 1,500 acres of prime agricultural land were excluded because they were within IUGAs established prior to the designation of natural resource lands. The GMA requires land to be designated agricultural if it meets three criteria: (1) agricultural lands, (2) lands not already characterized by urban growth, and (3) lands with long-term significance for the commercial production of food or other agricultural products. The WWGMHB found that:

"The County's assertion that long-term significance for commercial production of food or other agricultural products requires the land to provide sole support for a family does not appear in the Act. The acreage in question is currently in agricultural use. The use of "sole support" as the basis of determination long-term commercial significance does not comply with the Act."

Mineral Lands:

The WWGMHB found that using existing County development regulations was inadequate to protect mineral lands and was not in compliance with the Act.

Issue #5: Interim Urban Growth Areas Excluded Agricultural, Forest, and Mineral Designated Lands

The WWGMHB concluded that Natural Resource Lands must be designated before Inter Urban Growth Areas are established unless there are overriding reasons not to do so. There were no reasons in the record for not following this sequence.

Issue #6: Consistency with GMA and County-wide Planning Policies

The WWGMHB concluded that "Pre-existing Codes adopted by reference... without a clear statement as to how they were to support the conservation of natural resource lands cannot be seen as internally consistent nor consistent with the GMA or CPP [County-wide Planning Policies]. "

Conclusion:

In conclusion the WWGMHB stated that:

"The County has failed to make documents available to the public in a timely fashion so that intelligent comment could be made at the one public hearing held for this Ordinance [#15841]. No clear delineation of pre-existing ordinances and how they were relied upon to comply with the Act was available. The County used an exclusionary criterion in designating forest lands which ruled out large areas of land which may have otherwise met the forest land criteria in the Act."

The record failed to demonstrate the reason for exclusion of prime upland agricultural areas. The use of the ability of the land to provide sole support for a family as a requirement is not in compliance with the Act. The County failed to adequately protect mineral lands from conflicting uses. The County adopted IUGAs out of the normal sequence and used that adoption as a reason for failing to designate natural resource lands within the IUGAs. The County has readopted pre-existing ordinances which conflict with the goals and requirements of the Act."