
APPENDIX A

GROWTH MANAGEMENT HEARINGS BOARD CASES

Introduction

This section contains brief descriptions of a selection of cases that were brought before the Growth Management Hearings Boards (Board), primarily the Western Washington Growth Management Hearings Board (WWGMHB). The cases presented here are not representative of all the cases heard by the Hearings Boards but, instead, are provided to illustrate the processes and issues that many communities have addressed in drafting and implementing their comprehensive plans. The cases are arranged to follow the order of Elements in the Comprehensive Plan.

LAND USE/RURAL ELEMENT

Summary of Applicable Growth Management Hearings Board Decisions

The following paragraphs contain brief summaries of several issues pertaining to land use that were brought before the Growth Management Hearings Board. Land use densities generated the most discussion; however, more recent cases addressed issues of sprawl and permitted uses outside of Urban Growth Areas.

City of Port Townsend, Olympic Environmental Council, 1000 Friends of Washington vs. Jefferson County (1994)

The Hearings Board recognized that the Growth Management Act provided very little guidance on the types of land use densities that maintain compatibility with rural character. In attempting to identify rural densities, the Hearings Board determined that rural densities are those which are not urban.

In their discussion concerning appropriate rural densities the Hearings Board stated:

"Candidly we are not disposed to adopt a 'bright line' rule that prohibits the use of a 1:1 density in each and every case. We agree that 1:1 density can easily lead to a violation of the anti-sprawl goals and requirements of the Act as well as cumulatively place new demands for urban government services in violation of the Act. We would expect that very rarely, if ever, would a 1:1 density requirement in rural, or even most urban, designations comply with the Act. It is possible that a situation involving a proper background analysis for an area demonstrates that a 1:1 density within a 'variety of densities' could be within the discretion of local government officials authorized by the GMA.

In this case, Jefferson County does not have any analysis to support the use of a 1:1 density in rural areas. Standing alone as the sole 'rural' density requirement, a 1:1 rural density determination does not and cannot comply with the Act."

The Hearings Board conclusion was that a 1:1 rural designation without information or analysis and standing alone does not comply with the goals and requirements of the Act and cannot be used as a standard for rural densities.

Achen vs. Clark County (1995)

Clark County adopted a rural designation with a provision that all rural lands would have a minimum lot size of five (5) acres. The rural designation applied to approximately 83,500 acres of Clark County's roughly 500,000 acre total. The minimum lot size requirement is inconsistent with both the GMA and the County's own policies as reflected in the Capital Facilities Plan and Comprehensive Plan.

The Hearings Board stated "*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.*" and,

"A secondary aspect of proper rural area planning involves the preservation of a rural lifestyle. A "rural 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 Hearings Board conclusion was that a blanket designation of all rural lands with a density of one (1) unit per five (5) acres is contrary to the goals and intent of the Growth Management Act.

Bremerton et. al. vs. Kitsap County (1995)

Kitsap County failed to designate a variety of appropriate rural densities, thereby violating the Growth Management Act. In addition, the County used population projections which were inconsistent with the Capital Facilities element. The Central Puget Sound Growth Management Hearings Board has ruled that one (1) to two and one-half (2.5) acre lots are considered rural sprawl and therefore cannot be allowed in the rural areas of the County. The Board expects to see a variety of rural densities such as, one (1) dwelling unit (DU) per ten (10) acres, one (1) dwelling unit (DU) per twenty (20) acres, one (1) dwelling unit (DU) per forty (40) acres and one (1) dwelling unit (DU) per eighty (80) acres.

The Plan also permitted new residential structures at densities of one (1) dwelling unit per two and one-half (2.5) acres or greater on lands designated as mineral resource lands, which is fundamentally incompatible with the use of those lands for mineral resource purposes.

Vashon-Maury vs. King County (1995)

The Hearings Board invalidated portions of the King County Comprehensive Plan based on a number of issues. A central issue involved rural density designations which constitute urban growth, threaten natural resource lands and critical areas, or thwart the long-term flexibility of future Urban Growth Area expansion. The Board went so far as to say that any density of more than one (1) unit per ten (10) acres constituted sprawl and will be strictly scrutinized. The Board used this as the basis for invalidating Vashon Island's five (5) acre density. A formula of one (1) unit per ten (10) acre density was recognized as "rural."

The Board concurred with the description of "rural" that was adopted by The Central Puget Sound Regional Council's 1994 Rural Workshop:

"Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreational uses. Counties, small towns, cities and activity areas provide limited public services to rural residents. Rural lands are integrally linked to and support

resource lands. They buffer large resource areas and accommodate small-scale farming, forestry, and cottage industries as well as other natural resource-based activities."

Furthermore, the Board analyzed appropriate non-residential uses in rural areas with the premise that "urban growth" is not permitted in rural areas. The Board referenced RCW 36.70A.030(17) which states:

"Urban Growth refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses rural development and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth."

To paraphrase the County and the Hearings Board's Findings, the GMA does not require every non-residential use in the rural area to also accommodate a cornfield in the backyard; however the Act does require that such uses be compatible with the cornfields nearby.

City of Gig Harbor vs. Pierce County (1995)

The Growth Management Hearings Board stated that the County needed to collect and analyze data; define urban and rural uses and development intensity in clear and unambiguous terms (including lot sizes, lot quantities and specific locations); and fully describe the methods and assumptions used to support designations.

The Growth Management Hearings Board decision stated that five (5) acre lot sizes adjacent to UGAs could thwart the future expansion of the UGA boundary. The Board further held that any residential pattern of ten (10) -acre lots, or larger, is rural.

Any smaller rural lots will be subject to increased scrutiny by the Board to assure that the pattern of such lot sizes (their number, location and configuration) does not constitute urban growth; does not present an undue threat to large scale natural resource lands and large scale critical areas; will not thwart the long term flexibility to expand a UGA; and will not otherwise be inconsistent with the goals and requirements of the Act.

Sherilyn C. Wells, et. al. vs. Whatcom County (1997)

Through the continued application of a pre-GMA code, Whatcom County continued to vest urban-type development outside designated Urban Growth Areas. The Board ruled that this was contrary to the provisions of the Growth Management Act which specifically states that development in rural areas may occur only if it is not urban in nature. (RCW 36.70A.110(1)).

In 1997, several sections of Whatcom County's Comprehensive Plan were invalidated by the Hearings Board. The invalidated sections dealt with the identification and containment of existing areas of more intensive rural development. In delineating areas of more intensive rural development, Whatcom County utilized recent amendments to the GMA, specifically Engrossed Senate Bill (ESB) 6094. However, the County failed to supply an adequate background justifying the proposed boundaries, and instead, relied primarily on existing zoning boundaries for their delineation. In their invalidation order, the Hearings Board cited the County's insufficient background data as being problematic: *"The County needs to show much more clearly that its work to minimize and contain existing areas of more intensive rural development has been carried out."* Although the Hearings Board did not find fault with using zoning boundaries to help delineate the boundaries, it did take issue with Whatcom County utilizing existing zoning boundaries as the *sole* criterion for boundary identification.

The Hearings Board also took issue with the size of the proposed boundaries. The Hearings Board determined that Whatcom County had over-sized the boundaries in order to accommodate potential infill and failed to provide adequate supporting data to justify the size of the boundaries. The Hearings Board stated that: *“there is no analysis offered that shows how the County trimmed each area to more intensive rural development to areas necessary for ‘infill of existing patterns.’”*

Whidbey Environmental Action Network vs. Island County (1997)

This Hearings Board decision reiterated both the Jefferson and Whatcom County decisions relative to urban development outside designated Urban Growth Areas. The Board concluded that Island County substantially overzoned its lands located outside designated Urban Growth Areas.

In 1997, the Hearings Board invalidated sections of Island County’s Code (ICC). Island County’s Code permitted several uses in its rural residential zoning districts which failed to clearly identify the scale and intensity of the uses. The Hearings Board raised concern over the potential of allowing urban growth outside of urban growth areas, stating that: *“Depending on the scale of the particular development, its location on undeveloped lands outside of IUGAs may constitute urban growth.”* Petitioners also questioned the County’s ability to utilize the 1997 amendments to GMA (ESB 6094) to allow commercial development located outside of urban growth areas; however, the Hearings Board ruled that the new amendments to GMA do not apply to County action taken prior to 1997.

Analysis of Growth Management Hearings Board Rulings as They Apply to Land Use

While the Growth Management Hearings Board decisions have assisted counties in developing a clearer understanding of appropriate urban and rural densities, the decisions have not drawn conclusive lines on specific densities. As there are no specific standards for permitted land uses in rural areas; densities, or development regulations; ambiguity exists in the interpretation of the Hearings Board decisions. While it can be deduced from these decisions that rural lots should be a variety of sizes and may need to be greater than five (5) acres, the Hearings Board has not adopted a "bright line" rule that prohibits the use of a 1:1 density in each and every case and has even stated that higher densities may be appropriate in limited circumstances. Furthermore, it has been suggested that anything less than ten (10) acres is not "rural" in nature.

The following statements summarize the key outcomes of the Hearings Board decisions described above:

- One (1) to two and one-half (2.5) acre lots should be considered rural sprawl and therefore, should not be allowed in the rural areas of the County;
- Five (5) acre lot sizes adjacent to UGAs could thwart future expansion of the UGA boundary. As such, it appears that ten (10) or (20) acre designation may be more appropriate in these locations;
- Ten (10) -acre lots, or larger, are clearly rural;
- Lot sizes smaller than ten (10) acres will be subject to increased scrutiny by the Board;
- Uniform, or blanket, designations are inconsistent with GMA;
- Densities between one (1) unit per five (5) acres and one (1) unit per ten (10) acres may constitute sprawl and should be strictly scrutinized;

- Counties must provide a variety of appropriate rural densities, such as one (1) dwelling unit (DU) per ten (10) acres, one (1) dwelling unit (DU) per twenty (20) acres, one (1) dwelling unit (DU) per forty (40) acres, and one (1) dwelling unit (DU) per eighty (80) acres;
- Permitted rural uses should not require urban style infrastructure nor be characterized by urban style development; and
- Land use regulations must ensure that development is both consistent with surrounding uses and protects environmentally sensitive areas.

The 1997 GMA amendments, specifically Engrossed Senate Bill (ESB) 6094, provide rural counties with a greater opportunity to foster economic growth by allowing counties to recognize existing development patterns and accommodate limited new growth. Although ESB 6094 allows limited growth outside of urban growth areas, it is not intended allow sprawl nor violate GMA's prohibition against locating urban development outside of urban growth areas. Because amendments under ESB 6094 were only recently added to the GMA, few counties have utilized the recent amendments and, thus, only several cases have gone before the Hearings Board for review. The main criticism of Hearings Board regarding these cases that have been reviewed has been the lack of a sufficient record to justify the size of the containment boundaries. Although ESB 6094 provides rural counties with more opportunities and leeway in identifying and containing areas of more intensive development, the counties must provide a written record justifying their actions.

While these decisions are the result of individual Hearings Board decisions on specific Comprehensive Plans, they provide guidance on what are considered appropriate land use densities, designations, and uses. Taken together, these decisions provide Jefferson County with a general framework for developing its land use strategy.

NATURAL RESOURCES CONSERVATION ELEMENT

Summary of Applicable Growth Management Hearings Board Decisions

This summary has been prepared to provide examples of the Hearings Boards' interpretations of the Growth Management Act's goals and requirements for natural resource lands. These decisions neither represent all the Hearings Board Decisions nor are they individually exhaustive. Rather, taken together, they identify key issues regarding natural resource lands and resource-based industries, and provide guidance on methods to identify, designate, and protect them.

Merrill H. English vs. Columbia County (1993)

Columbia County utilized the Soil Conservation Service classifications of "prime" agricultural soils as the single criteria for designation of agricultural lands, which accounted for less than ten percent (10%) of the County's land in agricultural production. Consideration was not given to lands with less-than-prime soils, despite evidence that much of this land was more productive and higher yielding than land with prime soils. The Eastern Hearings Board found the County to be out of compliance because the inclusion of prime soils alone "is not sufficient if other soils classes meet the tests of growing capacity, productivity, and soil composition." In summary, the Board ruled:

"While there is opportunity for the exercise of local judgment and it is obvious that the local community understands its agricultural lands better than anyone else, the conclusions reached must be the product of a valid process."

The County's interim natural resource land ordinance allowed conversion of any designated land so long as its development did not interfere with the long-term commercial use of other agricultural or forest resource lands. This "interference" was to be determined through reliance on other ordinances, specifically SEPA, and the Columbia County Environmental Ordinance. The interim ordinance was found to be out of compliance because other ordinances would "allow development that is incompatible with the conservation of resource lands through their exemptions." The Hearings Board went on to define 'conservation of resource lands' as action that "prevents the loss or degradation of the resource" and "is intended to maintain agricultural and forest resources."

Save Our Butte Save Our Basin Society vs. Chelan County (1994)

In designating agricultural lands of long-term commercial significance, Chelan County's Resource Lands and Critical Areas resolution omitted over 9,000 acres of prime and unique soils from the designation without justification. The designation was not based on an analysis of soil types, productivity, growing capacity, proximity to urban areas, or availability of urban or agricultural services. While the Eastern Hearings Board did acknowledge the difficulty of classifying the diverse and complex agricultural lands in Chelan County, the resolution was found to be out of compliance because it was not the result of a valid process.

The resolution was found to be out of compliance because it permitted short platting, did not require a minimum lot size, and did not require setbacks for development on adjacent lands. Because it did not assure the conservation of agricultural lands, the resolution was also found to be out of compliance. In making this determination, the Board provided the following guidance for preventing incompatible uses on parcels adjacent to agricultural resource lands:

- A conservation strategy was recommended to make small acreage rural non-resource lots available in conjunction with larger minimum lot sizes in agricultural resource lands;
- Subdivision was determined to be incompatible with continued agricultural use; and,
- If setbacks are not required in the interest of reducing the burden on adjacent property owners, "the impact of this modification on the continued use of the affected resource lands must be addressed."

Following this logic, the Hearings Board found the resolution to be out of compliance with the GMA requirement to assure the conservation of forest lands because it did not provide sufficient minimum lot sizes or require appropriate setbacks on adjacent lands. Despite significant evidence that these strategies were essential to the continued economic viability of forestry, the County failed to consider or address the impacts of their exclusion.

Finally, Chelan County defended its Commercial Mineral Resource Lands resolution by relying on the existing zoning code to meet the GMA requirement to conserve and protect these lands from encroachment by incompatible adjacent uses. However, the Hearings Board found that in this case, the reverse was true. The purpose of the zoning code was to protect the adjacent lands from the mineral resource lands. Therefore, the resolution was found to be out of compliance. The Board went on to require that if a jurisdiction chooses to rely on other ordinances to meet the requirements of the GMA, those ordinances must be specifically referenced in the resolution.

RIDGE vs. Kittitas County (1994)

In reviewing Kittitas County's decision to exclude sixteen thousand (16,000) acres from its designation of forest lands of long-term commercial significance, the Eastern Hearings Board established a framework for the GMA requirement to designate certain lands. The determination of long-term commercial significance is based on three interdependent factors that must be evaluated in relation to each other:

- The growing capacity, productivity, and soil composition of the land;
- The land's proximity to population areas and the impact of this proximity on the ability to practically and economically manage the land; and,
- The possibility of more intense uses of the land.

If lands meet all the criteria for their designation as being long-term commercially significant, then they must be designated as such. However, the Hearings Board ruled that there is one limited qualification to this requirement; jurisdictions are provided flexibility and may use discretion in situations where the designation process would produce "anomalous results."

In making this determination, the Board recognized that the GMA planning goals may be inconsistent. The jurisdiction's duty is to harmonize these goals. If a jurisdiction is unable to harmonize the planning goals, the record must show that the decision makers engaged in a valid process and considered the matter.

Significantly, the Board determined that:

"...although there are procedural and substantive components of compliance with the planning goals, there was no requirement of a 'tangible procedural demonstration.' Rather, the ultimate test of consideration of the goals was whether the County's actions were substantively guided by the goals, whether their actions were consistent with the planning goals. The advantage of this approach is that it deals with the heart of the question, the substantive element, instead of a possible pro forma procedural exercise."

Olympic Environmental Council vs. Jefferson County (1994)

The conservation of resource lands, as envisioned by the GMA comprehensive planning process, requires two steps. The first is the development of objective criteria for the classification of resource lands. The second is the designation of natural resource lands based upon those objective criteria. This process must be followed in sequence to comply with the GMA. The Hearings Board held that "...first establishing a desired outcome and then developing data or criteria to support that outcome does not meet the test of a reasoned decision based on appropriate factors."

The purpose of the designation of natural resource lands is to conserve these areas by protecting them from conflicting uses. In order to assure the efficient fusion of these two goals, the designation process may be used to correct minor anomalies resulting from the use of objective classification criteria. Lands that are not currently in resource production may, therefore, be included in the designation as a means of preserving contiguous areas of natural resource lands and minimizing exposure to potential incompatible uses on adjacent, non-designated land.

The criteria used to classify resource lands must be meaningful within the local context and practices of resource industries. Although the Department of Natural Resources has issued guidelines for the

designation of natural resource lands, a “one size fits all” approach is not appropriate due to the varied natural conditions throughout the State. Each jurisdiction’s criteria must reflect the natural resource lands currently in commercial production. The only exceptions are in cases where these lands are within an urban growth boundary or are shown to be needed to accommodate population growth.

Friends of Skagit County vs. Skagit County (1995)

Skagit County’s criterion for commercial forest land designation was that these lands were “. . .only to be comprised of land zoned by the County as Forestry prior to adoption of [the Comprehensive Plan] unless the property owner initiates a request for reclassification.” Stating that *only* lands previously zoned forestry would be zoned industrial forest was found to be an “exclusionary criterion” and, therefore, out of compliance with the Act. The Western Hearings Board defined an exclusionary criterion as follows:

“Use of this sole criterion precludes designation of lands which clearly meet the criteria in the Act.”

The Hearings Board also found that while the GMA “does not specify a minimum parcel lot size for lands in commercial forestry designation, it does require their protection from conflicting uses.” For allowing these forest lands to be divided into twenty (20) acre lots, Skagit County was found to be out of compliance with the Act.

In addition, Skagit County was found to be out of compliance because they failed to designate areas with prime upland soils as agricultural land. The County justified this decision by arguing that the majority of these lands were utilized for pasture or hay ground and were not capable of maintaining “sole support” for a family. The Board found that because the land in question was currently in agricultural use, this criterion was not appropriate to determine long-term commercial significance.

Diehl, et. al. vs. Mason County (1995)

Mason County’s criteria for forest land designation included the requirement that the land be enrolled in the Open Space Property Tax classification. This criterion was found to be out of compliance because “. . .making participation in the tax program a prerequisite for forest land designation effectively leaves the designation decision to the land owner.”

The forest land criteria also included a minimum block size of five thousand (5,000) acres, excluding blocks of land in use and of long-term commercial significance smaller than this minimum from designation. Due to the “exclusionary” nature of this criterion and its disregard for current forestry practices in Mason County, it was found to be out of compliance.

Because Mason County has one of the smallest percentages of agricultural land in the State, it did not designate agricultural lands of long-term significance in its interim ordinance. The Western Hearings Board found that the GMA “contains no threshold below which agricultural land of long-term commercial significance should not be designated . . . if there is commercial viability, the land must be designated and conserved.”

Vashon-Maury vs. King County (1995)

King County did not pass interim ordinances for the protection of natural resource lands, as required by the GMA, but instead proceeded directly to developing a Comprehensive Plan. Therefore, the County did not review the interim ordinances as part of the process of adopting its Plan, as mandated by RCW 36.70A.060(3). However, the Central Hearings Board found King County to be in compliance because

“. . . the entire laborious process of developing the Plan’s forest land designations and policies . . . constituted such a review.”

City of Gig Harbor vs. Pierce County (1995)

Pierce County established a residential density for agricultural lands of one (1) dwelling unit per ten (10) acres. The Central Hearings Board found this policy to be in compliance with the GMA, although they did acknowledge that a larger minimum lot size requirement would reduce the risk of conflicts between agricultural uses and residences. Moreover, the Board refused to establish a threshold or “bright line” of one (1) dwelling unit per twenty (20) acres for agricultural lands because “many farm operations are operating on land that has been subdivided into lots smaller than twenty (20) acres.

Analysis of Growth Management Hearings Board Rulings

The Hearings Board cases illustrate that, because there is no definitive standard for the designation or protection of natural resource lands, ambiguity exists in interpreting the Hearings Board Decisions. The decisions do not delineate the appropriate criteria for the designation of natural resource land or the appropriate land use controls for their protection. The Hearings Boards have declined to issue “bright line” standards for designation criteria, minimum lot sizes, residential densities, clustering, setbacks, or buffers for resource lands.

However, the number of Hearings Board cases involving natural resource lands is indicative of the high priority that the Growth Management Act places on their conservation. In fact, for jurisdictions planning under the provisions of the Act, the first step in the planning process is the interim designation and regulation of natural resource lands and critical areas. It is significant to note that the GMA requires cities and counties to identify and protect resource lands and critical areas before the date that Interim Urban Growth Areas have been adopted.

The Hearings Board decisions summarized above delineate a sequential process that allows consideration of the GMA goals to conserve resource lands and maintain and enhance resource industries. Clearly, the goal of resource land conservation is to provide the stability necessary to maintain these lands in commercial production. However, as part of the Comprehensive Planning process, resource land conservation strategies must be substantively guided by all Growth Management planning goals to assure internal consistency.

HOUSING ELEMENT

Summary of Applicable Growth Management Hearings Board Decisions

This summary has been prepared to provide examples of the Hearings Board’s interpretations of the Growth Management Act goals and requirements for housing. These decisions neither represent all the Hearings Board decisions nor are they individually exhaustive. Rather, taken together, they identify key issues regarding housing planning and provide guidance on methods to maintain and enhance neighborhood character and affordability.

Cities of Edmonds and Lynnwood v. Snohomish County (1993)

The Cities of Edmonds and Lynnwood challenged Snohomish County’s Planning Policies pertaining to housing on the grounds that they violated land use powers which were properly the responsibility of municipalities. Under the provisions of the Growth Management Act, cities are the primary providers of urban services, while counties are to be regional policy makers and rural service providers.

The housing policies established a fair share process for allocating low-income and special needs populations among the jurisdictions in Snohomish County. The Central Puget Sound Hearings Board ruled that the County may allocate these households to municipalities as an extension of the process of allocating population and employment. The long-term purpose of this allocation process is to direct urban development to urban areas and to reduce sprawl.

The Board went on to rule that County-wide Planning Policy may recommend methods and strategies to cities for the purpose of accommodating population growth. However, although the recommended methods may be the preferred means for encouraging affordable housing, cities must be free to achieve the affordable housing goals in whatever manner they choose.

A city's duty to address the affordable housing goals established by the County-wide Planning Policy is not lessened by the fact that a county cannot dictate the actual mechanisms that are used. The County-wide Planning Policy may also establish monitoring programs to evaluate the progress made toward achieving housing goals on a County-wide and jurisdictional level.

Kitsap Citizens for Rural Preservation v. Kitsap County (1994)

When Kitsap County designated Interim Urban Growth Areas, it utilized its existing Zoning Ordinance as the GMA required implementing regulations. Therefore, when the County adopted a Conservation Easement Ordinance (CEO) as part of its Zoning Ordinance, it was subject to the requirements of the GMA.

The CEO allowed the internal transfer of density on parcels of property. The purpose of the CEO was for the preservation of rural and resource uses, open space, and critical areas on a portion of the property while allowing all or a portion of the permitted density to be transferred to the remaining portion of the property. Once approved, the conservation easement would become a binding agreement controlling the use and density of the property.

Kitsap County argued that the CEO would have no cumulative effect on the consequences of growth and development in the rural area because the gross density would remain the same if both the receiving and sending properties were used to make the density calculation.

The Hearings Board ruled that the consequences to the rural area should be assessed based only upon the receiving property where the CEO-enabled development would occur.

“The true test of whether the CEO results in urban growth is to ask the question -- what does the CEO permit to be physically constructed on the ground, in the real world, and how does that potential outcome square with the Act's definition of urban growth?”

Additionally, the CEO did not define parameters regarding the configuration, servicing, or location of development or establish an upper limit on the acreage or unit count permitted to occur in rural areas. Therefore, it could result in thousands of dwelling units being aggregated in a single development.

The Hearings Board found that because of this lack of defined limits and locations, the CEO did not comply with the requirements of the GMA to direct urban development to urban areas.

“As the size of a rural development project increases, the demand for urban governmental services inevitably increases, as do the offsite impacts on both natural systems and abutting properties. While no clear breakpoint is evident...it is only logical that, at some point along the continuum of potential project

*size and intensity, the **quantitative** dimension of clustered development in a rural area must have **qualitative** urban growth consequences.”*

While the goal of the CEO to preserve the sending properties as open space benefited the public good and achieved objectives of the GMA, it was not in compliance with the entire Act because of its potential consequences of urban growth in the rural area.

However, the Hearings Board did not preclude similar techniques being utilized at a greatly reduced scale and in specific locations in rural areas.

“The Board can conceive of a well designed compact rural development containing a small number of homes that would not look rural in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties.”

Aagaard v. City of Bothell (1994)

The City of Bothell’s Comprehensive Plan contained a provision that allowed high-density senior housing throughout the City, subject to restrictions related to land uses on properties adjacent to a proposed site. This provision was challenged on the grounds that it did not comply with the GMA requirements for the mandatory housing, capital facilities, and transportation elements.

Although the City was not required to plan for senior housing as a separate subcategory, it chose to do so in the housing element of its Comprehensive Plan. The senior housing provision was found to be out of compliance with the GMA housing requirements because the City failed to undertake the necessary inventory and analysis of “existing and projected housing needs” and the identification of sufficient lands for these housing needs. The Hearings Board ruled that if a jurisdiction chooses to create a separate subcategory in its housing element, it must also conduct an inventory and analysis of that subcategory.

The Children’s Alliance v. Bellevue (1995)

As part of the implementation of its Comprehensive Plan, the City of Bellevue adopted the Group Homes Amendment Ordinance. The ordinance established conditions under which group homes, group care facilities, and other shared living arrangements designed to serve persons with identifiable or diagnosable special needs could be located in the City.

The ordinance was challenged on the grounds that it violated: (1) the housing goals of the GMA by imposing discriminatory requirements and restrictions on group homes; (2) the GMA requirements for siting essential public facilities; and, (3) Bellevue’s Comprehensive Plan policies for group homes. This was the first case before the Hearings Board which challenged the validity of a development regulation within the purview of the residential land use and housing requirements of the GMA.

The Hearings Board found that the ordinance did not comply with the housing requirements of the Act because it placed numerous restrictions and requirements on residential structures used for group homes that it did not place on similar residential structures occupied by related or unrelated individuals. These restrictions included:

- Creating exemptions from the ordinance for specific types of group homes by including them in the City’s definition of “family,” but excluding group care facilities for children from the definition;
- Excluding group care facilities for children from being located in residential districts;

- Imposing occupancy limits and conditional use permit requirements on group care facilities; and,
- Requiring owners and operators of group care facilities to register with the City.

The Hearings Board also found that the ordinance violated the GMA because it precluded the siting of essential public facilities. Because of their role in treating individuals with mental and physical handicaps, group homes are essential public facilities. By forcing group care providers to locate their facilities in non-residential areas, the ordinance made the siting of group homes in Bellevue impractical. This would deny the group home residents the therapeutic benefits of living in a residential community and thwart the purpose of group care.

Under GMA, a jurisdiction retains the discretion to decide exactly how to implement its Comprehensive Plan through development regulations, but this discretion has legal and practical limits. Because the Group Homes Amendment Ordinance failed to implement and was inconsistent with its Comprehensive Plan Goals and Policies for special needs housing, the Board found that it exceeded this discretion.

In conclusion, the Board stated that “the GMA requires local governments both to manage change and change to manage.” Therefore, residential land use regulations must cease to be exclusionary and instead must reflect that our population has changed with regard to age, ethnicity, culture, economic, physical, and mental circumstances, household size and makeup.

Analysis of Growth Management Hearings Board Rulings

Although the Growth Management Hearings Boards’ conclusions represent individual decisions on specific comprehensive plans and ordinances, they provide valuable guidance and a clearer understanding of an appropriate approach to housing issues under the goals and requirements of the Act. The following points summarize the key findings of the Hearings Boards regarding housing:

- Under the provisions of the Growth Management Act, cities are the primary providers of urban services, while counties are to be regional policy makers and rural service providers. Therefore, because affordable and special needs housing are more feasible within UGAs, counties may allocate a fair share of these housing types to cities.
- Compact rural development is allowed under the Act. In order to comply with the GMA, this development would have to conform to established parameters for size, scale and location, as well as be compatible with rural character and resource lands.
- The Hearings Board ruled that if development rights are transferred within or between properties, the consequences of higher intensity residential uses to the rural area should be assessed based only upon the receiving area of the property where the development would occur.
- If a jurisdiction chooses to create a separate subcategory in its housing element, it must also conduct an inventory and analysis of that subcategory.
- Residential land use regulations must cease to be exclusionary and instead must reflect that our population has changed with regard to age, ethnicity, culture, economic, physical, and mental circumstances, household size and makeup.

OPEN SPACE, PARKS AND RECREATION, HISTORIC PRESERVATION ELEMENT

Summary of Applicable Growth Management Hearings Board Decisions

This summary has been prepared to provide examples of the Hearings Boards' interpretations of the Growth Management Act goals and requirements for open space, parks, recreation and historic preservation. These decisions neither represent all the Hearings Board Decisions nor are they individually exhaustive. Rather, taken together, they identify key issues regarding these resources and provide guidance on methods to maintain and enhance them.

Gig Harbor vs. Pierce County (1994)

Pierce County failed to identify and include greenbelt and open space areas in its Interim Urban Growth Areas. Additionally, the County did not map existing or planned parks, trails and critical areas and did not reference regulations requiring the provision of open space in development applications or other similar mechanisms. Therefore, the Hearing Board concluded that the County failed to comply with the requirements of RCW 36.70A.

Achen vs. Clark County (1995)

Goal thirteen of the GMA requires jurisdictions planning under the Act to preserve lands, sites, and structures with historical and archaeological significance. The City of Camas took no action of any kind regarding this planning goal. Even though the GMA does not require a specific historical and archaeological preservation element in comprehensive plans, the Hearings Board determined that the total inaction by Camas was not in compliance with the GMA. The Order required the City of Camas to consider and address the archaeological and historic preservation goal of the GMA.

Clark County included archaeological and historic preservation as an element of its comprehensive plan. The Element contained an updated and comprehensive inventory of cultural and historic resources and provided for regulatory action. However, the Hearings Board determined that the County had not "taken any further action" in this respect. The Hearings Board stated that "if it is in the plan, it must be implemented." Clark County was found to be out of compliance with the GMA because of its failure to take any steps beyond merely placing the historic and preservation element in its comprehensive plan.

Analysis of Growth Management Hearings Board Rulings

Although the Growth Management Hearings Boards' conclusions represent individual decisions on specific comprehensive plans and ordinances, they provide valuable guidance and a clearer understanding of an appropriate approach to open space issues under the goals and requirements of the Act. The following points summarize the key findings of the Hearings Board in relation to open space, parks and recreation issues:

- "Open space" and "greenbelt" must be identified by local jurisdictions;
- All comprehensive planning documents must identify and protect greenbelts, parks or open space areas;
- A map delineating open space, greenbelt areas and parks must be included;

- All comprehensive planning documents must consider recreation facilities as an integral part of public facilities;
- Criteria and a strategy to identify and protect archeological and historic resources must be developed and implemented.

ECONOMIC DEVELOPMENT

Summary of Applicable Growth Management Hearings Board Decisions

This summary has been prepared to provide examples of the Hearings Boards' interpretation of the Growth Management Act goals and requirements for economic development. These decisions neither represent all the Hearings Board Decisions nor are they individually exhaustive. Rather, taken together they identify key issues regarding economic development strategies and provide guidance on methods to maintain and enhance the local economy while maintaining the rural lifestyle valued in Jefferson County.

Whidbey Environmental Action Network v. Island County (1995)

The Hearings Board found Island County's continued reliance on the pre-GMA Island County Code, Chapter 17.02, to guide land use decisions to be contrary to the GMA. The Hearings Board found that Island County's continued application of this pre-GMA code has resulted in urban-type development being approved and vested outside of IUGAs. The Board stated that the continued vesting of new urban development outside of IUGAs "substantially threatens the fulfillment of several GMA goals".

The Hearings Board went on to state "[o]ur past decisions are consistent with the 1995 amendments to the GMA and CPS decisions. We have said that no new urban commercial or new urban industrial development can occur outside of IUGAs. We have not precluded the placement of natural resource-based industries or rural commercial development outside of IUGAs. The Act allows appropriate non-urban uses outside IUGAs.... The record in this case clearly supports the petitioner's contentions. We find that ICC 17.02.100 allows new urban commercial and new urban industrial development outside IUGAs and substantially interferes with the fulfillment of the goals of the GMA."

Vashon-Maury vs. King County (1995)

In Vashon-Maury, where the Hearings Board was reviewing the King County Comprehensive Plan, the Board acknowledged that a literal and solitary application of the definition of "urban growth" as the test of what is not permitted in a rural area would achieve an absurd result because it could exclude certain rural-dependent uses. Therefore, the Board established a rule for determining when non-residential uses in the rural areas are permitted:

"The Board holds that, as a general rule, proposed uses that meet the definition of urban growth will be prohibited in a rural area unless: (1) the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity; OR (2) the use is an essential public facility."

The Board emphasized that this holding is not a repudiation of prior Board holdings or the language from RCW 36.70A.110(1) that urban growth is prohibited beyond a UGA. Instead, it is simply a recognition that certain rural-dependent uses will intensively use land (thereby meeting the literal definition of "urban growth"). Industrial and commercial development is typically urban in nature and thus inappropriate in rural areas unless it depends on its location for viability (i.e., silvacultural or recreational activities), and is compatible with the function and visual character of uses in the immediate vicinity.

Analysis of Growth Management Hearings Board Rulings

There are few Hearings Boards decisions or rulings which specifically apply to the issue of economic development. Most challenges brought before the Boards have related to GMA issues other than economic development. Those rulings that do apply to some degree relate to the issue of whether it is appropriate to allow “urban” development to occur outside of IUGAs. Clearly the Hearings Boards have determined this type of action to be out of compliance with the Act, except in a few narrowly construed instances.

For example, rural industrial development may be appropriate in rural areas when the activity requires a rural or resource land location, or the nature of the activity is incompatible with urban development due to its potential threat to the public health, safety, and welfare, and/or there is a demonstrable need for a parcel of land so large that no suitable parcels are available within the IUGA.

If industrial development is to occur outside of a UGA there is legislation that provides detailed guidance on how and when this can happen. RCW 36.70A.365 (ESB 5019) states that counties, in consultation with cities, may establish a process for authorizing the siting of major industrial development outside of UGAs. The siting process must be consistent with the County-wide Planning Policy and certain criteria, which are outlined in more detail in the Goals and Policies section of the Economic Development element, must be met.

ENVIRONMENT

Summary of Applicable Growth Management Hearings Board Decisions

This summary has been prepared to provide examples of the Hearings Boards’ interpretations of the Growth Management Act goals and requirements for environmental protection. These decisions neither represent all the Hearings Board decisions nor are they individually exhaustive. Rather, taken together, they identify key issues regarding critical areas and provide guidance on methods to identify, designate, and protect them.

Woodmansee and Concerned Friends of Ferry County vs. Ferry County (1995)

The Hearings Board concluded that Ferry County’s Comprehensive Plan failed to meet the requirements of RCW 36.70A.170(1)(d) for the designation of wetlands, fish and wildlife habitat and aquifer recharge areas. The Plan contained “valid” definitions of critical areas and the intent to “locate the critical areas by way of its future land use map,” but since it did not provide designations of these critical areas, it provided “...almost no guidance or usefulness to a landowner or policy-maker for decision making.”

Whatcom Environmental Council vs. Whatcom County (1995)

The Board found sections of Whatcom County’s Critical Areas Ordinance invalid. It was determined that the adopted ordinance violated the Act for the following reasons:

- Type 4 and 5 waters were excluded from regulation, and the buffers for Type 2 and 3 waters were significantly below the levels necessary to protect these critical areas;
- Category III and IV wetlands under one acre were exempted from regulation, significantly reducing critical area protection;
- Protection of shellfish habitat was not addressed; and
- Mitigation measures were not provided to avoid significant adverse environmental effects.

The Board stated that critical areas ordinances are neither temporary nor interim measures and that severe and irreparable damage to the environment, water quality and fish and wildlife habitat continue as a result of the inadequacies of the protection afforded by Whatcom County over the past four years. The Board also ordered the County to bring the ordinance into compliance with the GMA and SEPA public participation requirements since it was proved that the County failed to conduct a public participation process which involved consideration of substantive comments by the public, County staff, and State resource agencies.

Moore vs. Whitman County (1995)

The Board determined that wildlife habitat issues had not been addressed by the County's Code Chapter 9.03 on wetland protection. The Hearings Board ruled that Chapter 9.03 failed to comply with RCW 36.70A.170(2) by failing to consider minimum guidelines in designated wildlife habitat areas and ordered the County to bring this component of the critical areas ordinance into compliance with the GMA.

Confederated Tribes vs. Kittitas County (1994)

The Board remanded the Critical Areas Ordinance to Kittitas County for modification to comply with the requirements of the Growth Management Act. The following environmental protections were not addressed by the ordinance:

- The protection of Category IV wetlands;
- The provision of adequate vegetative buffers for Type 4 waters; and,
- The establishment of appropriate building or structural setback requirements.

Save Our Butte vs. Chelan County (1994)

Chelan County was found to be in noncompliance with the Growth Management Act with regard to conservation of natural resource lands as well as critical area designation and protection. The Board found that the sections of Chelan County's plan dealing with riparian and wetland buffer, set-backs, subdivisions, and lot size reductions were invalid.

Merrill H. English vs. Columbia County (1993)

Columbia County was instructed by the Board to substitute an objective standard that protects critical areas in place of their current standard which "minimized impacts" in order to reach compliance with the Act. The Board concluded that the required standard of critical areas protection should be to "prevent adverse impacts" or at the very minimum "mitigate adverse impacts" rather than "minimize impacts." Moreover, there must be a specific, objective standard for review in the Ordinance that will protect designated critical areas with reasonable certainty, in accordance with RCW 36.70A.060(1).

Diehl vs. Mason County (1995)

Aquifer recharge areas in Mason County were designated in the County's Interim Resources Ordinance (IRO) but their protection, according to the record, was permissive. Moreover, no specific requirements were present in the ordinance to ensure meeting identified goals. The Board ruled that the aquifer recharge and floodplains sections were inadequate to protect these areas over the twenty year planning horizon, and, therefore, the IRO was not in compliance with the goals and requirements of the Act.

Analysis of Growth Management Hearings Board Rulings

Although the Growth Management Hearings Board's rulings represent decisions on specific comprehensive plans and/or ordinances, they provide valuable guidance and a clearer understanding of an appropriate approach to environmental protection under the goals and requirements of the Act. Considered together, these decisions provide Jefferson County with a general framework for an environmental protection strategy.

The following points summarize the key findings of the Hearings Board in relation to environmental protection:

- Adequate public participation is required in preparing environmental regulations;
- All environmental regulations should be established in strict compliance with the requirements of SEPA review;
- Valid definitions, designations, and specific and objective protection standards are required by the Act; and,
- Adopted planning policies and regulations should adequately address all of the important environmental issues of the planning area.

The cases presented in this section, and their accompanying analyses, provide insight to the types of issues that many communities planning under GMA, including Jefferson County has had to address. The Hearings Board interpretations are included to provide the legislative background which will aid in the understanding of the processes the County used in addressing a number of issues contained in the Comprehensive Plan.

ESSENTIAL PUBLIC FACILITIES

Summary of Applicable Growth Management Hearings Board Decisions

The following represents a summary of Hearings Board decisions regarding both the siting and expansion of essential public facilities. The cases are presented to offer greater clarification regarding the treatment of essential public facilities as interpreted by the Growth Management Hearings Boards.

Port of Seattle vs. City of Des Moines (1997)

The City of Des Moines included in its Comprehensive Plan provisions that would effectively preclude the expansion of an essential public facility, in this case, the third runway at Sea-Tac International Airport (STIA). The Hearings Board utilized the provisions contained in RCW 36.70A.200 and determined that the statute identified two duties: a duty to adopt in its Plan a process to site essential public facilities (EPFs), and a duty not to preclude the siting or expansion of essential public facilities.

Des Moines Comprehensive Plan contained policies that limited and opposed activities that would increase the level of adverse impacts to the city which will result with the expansion of the third runway at STIA. The Hearings Board determined that the City's action effectively precluded the expansion of STIA. As determined in *Children's Alliance v. City of Bellevue* (see below), the term preclude was defined by the Hearings Board as "render impossible or impractical." The Hearing's Board final ruling held that "the expansion of an existing EPF, including necessary support activities associated with that expansion, is protected by RCW 36.70A.200.

Vashon-Maury vs. King County (1995)

In 1995, the Hearings Board addressed the issue of permitting EPFs; some of which may be considered urban uses in rural areas. The Board ruled that any use specifically named RCW 36.70A.200 or on the EPF list maintained by the Office of Financial Management (OFM) is permitted in the rural area. However, the Board also determined that the mere presence of an essential public facility in a rural area does not provide a rationale for authority to place non-rural uses adjacent or nearby.

Hapsmith vs. City of Auburn (1995)

The Hearings Board found Auburn out of compliance for failing to have a process in place for siting Essential Public Facilities. Auburn's Comprehensive Plan contained policies which called for the establishment of a process to site EPFs. The Board ruled that GMA requires that the Plan contain an actual process for identifying and siting EPFs not, as with Auburn "a process to establish a process."

Children's Alliance vs. City of Bellevue (1995)

Bellevue, in 1994, adopted an ordinance that identified areas for the siting of group homes and other special needs housing units. Group homes are identified in RCW 36.70A.200 as Essential Public Facilities, the siting of which can not be precluded by comprehensive plans or development regulations. The Hearings Board determined that Bellevue's ordinance did in fact preclude group care facilities in residential areas by directing them instead to commercial areas. Children's Alliance contended that the City's provision to prohibit group care facilities in residential areas and restrict them to commercial areas effectively precluded—defined by the Hearing's Board as "to make impossible or impractical by prior action"—them from locating in Bellevue where commercial land prices make the siting of group homes financially infeasible. The Hearings Board found that the preclusion of siting group homes by the City of Bellevue violated RCW 36.70A.200.

Analysis of Growth Management Hearings Board Rulings

The Hearings Board conclusions offer guidance and direction for the identification and siting of Essential Public Facilities. The Hearings Board's decisions emphasize several key points:

- As discussed in *Vashon-Maury v. King County*, essential public facilities, some of which may require urban services, may locate in rural areas but may not serve as the rationale for locating other non-rural uses adjacent or nearby.
- Comprehensive Plans must have a process for siting essential public facilities
- No Comprehensive Plan or development regulations may preclude the siting or expansion of essential public facilities.