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CHAPTER TWO

AVOIDING SPRAWL IN RURAL AREAS

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Many counties have found it difficult to interpret the requirements of the Growth Management Act (GMA) regarding the issue of permissible rural growth or to satisfy the Growth Management Hearings Boards (Boards) that they have correctly planned for rural areas. Although most counties have by now struggled their way through the comprehensive planning process, a few counties, such as Clark, Kitsap, Snohomish, Whatcom and Island remain hung up on GMA Plan compliance. A review of the numerous attempts by these counties to address the required rural element in comprehensive plans illustrates the problems with the rural development provisions of the Act and the Boards' interpretations of these.

A major issue that has frequently led the Boards to hold comprehensive plans out of compliance with GMA, and on occasion to invalidate such plans, is the issue of whether counties properly distinguish between urban and rural lands. For example, the issue of what constitutes impermissible "sprawl" and the appropriate size of UGA boundaries was a key factor in the invalidation of the plans of Whatcom County and Kitsap County. Other counties, such as Island County and Pierce County, have also run into problems because they were not able to show their work to the Board's satisfaction in sizing their UGAs. In the case of Snohomish County, Kitsap County and King County, a major stumbling block in their plans was the density of proposed rural residential development and the allowance of impermissible "sprawl."

The Boards have focused heavily on density as the defining characteristic of "rural" and "urban." Contrary to the Boards' decisions' definitive proclamations, however, a "bright line" which distinguishes urban growth from rural growth is not easily discernable in the GMA itself. The Boards' rigid density definitions of urban and rural also appear to ignore other characteristics that might be germane to the characterization of development as rural. In addition, the "one size fits all" density definitions of urban and rural have posed difficulties for more rural counties because of longstanding development patterns and preferences.

B. ISSUES OF COMMERCIAL AND INDUSTRIAL DEVELOPMENT IN RURAL AREAS. ISSUES OF COMMERCIAL AND INDUSTRIAL DEVELOPMENT IN RURAL AREAS

The role of commercial and industrial areas in the rural element has also proven to be a headache for some counties. On the one hand, counties must decide how much industrial land is appropriate within a UGA. On the other hand, counties have struggled with what industrial uses are allowed outside of UGAs. Attempts to reserve areas for future industrial use as tried by Clark, Pierce and other counties, have been rejected by the Boards. Whatcom County's industrial land designations were also invalidated for failure to adequately justify the market factors it utilized in sizing its industrial areas.

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Clusters of development outside of existing cities have also posed an interesting dilemma for counties. Some counties have tried to use the concept of "island," "satellite" or "non-municipal" UGAs (allowed by the 1995 amendments to the GMA) to address these pockets of denser development outside of cities. To date, the Boards have take a dim view

of non-municipal UGAs. However, a non-municipal UGA supported by a county's CPPs recently was upheld by the King County Superior Court. The court reversed a portion of a Central Board reconsideration decision in King County, Vashon-Maury v. King County, CPSGMHB 95-3-0008 (Final Decision 10/23/95), which decision would have eliminated an island UGA. The court decision is now on appeal and a decision is expected sometime this fall. A recent decision of the Eastern Board in Douglas County, Wenatchee Valley Mall Partnership v. Douglas County, EWGMHB 96-1-0009 (Final Decision and Order 12/10/96), also appears to have allowed a non-municipal airport industrial area, although its facts may not be broadly applicable.

D. ATTEMPT TO UTILIZE "RURAL ACTIVITY CENTERS" CONCEPT FOR DENSER DEVELOPMENT OUTSIDE OF UGAs. ATTEMPT TO UTILIZE "RURAL ACTIVITY CENTERS" CONCEPT FOR DENSER DEVELOPMENT OUTSIDE OF UGAs

Finally, several counties have crafted the concept of "rural activity centers" such as "villages," "hamlets" and "crossroads," to provide a method of recognizing existing development outside of cities and of clustering rural development. Pierce County attempted to utilize this approach, but was unsuccessful because the Central Board did not find sufficient restrictions to prevent urban growth in a rural area. Douglas County's rural service centers were recently remanded to provide for density limitations. San Juan County's newly adopted comprehensive plan contains several varieties of activity centers, such as villages, hamlets and island centers, all of which allow rural growth. This plan is currently being appealed by more than ten different parties, one of whom is sure to raise the issue of urban growth in rural areas.

E. PROBLEMATIC FIT OF GMA WITH RURAL AREAS. PROBLEMATIC FIT OF GMA WITH RURAL AREAS

These issues demonstrate the difficult fit of GMA with the realities of development patterns in rural counties. Unfortunately, as interpreted by the Boards, GMA represents a "one size fits all" approach, while each county is obviously distinct in its historical development patterns, geographical and natural features, growth rates, lifestyle preferences, economic realities, etc. While it may work for an urban county, such as King County, to have the bulk of its municipalities included in UGAs, that approach may not work so well in Snohomish County, where many residences already exist in rural areas, and have brought with them the beginnings of rural commercial development. The strict notion of density confined in UGAs also does not work as well in counties such as Kitsap, Whatcom and San Juan where the recreational and aesthetic attractions of shorelines have spread development along the coastlines.

F. LEGISLATIVE ATTEMPTS TO DEAL WITH RURAL DEVELOPMENT ISSUES. LEGISLATIVE ATTEMPTS TO DEAL WITH RURAL DEVELOPMENT ISSUES

Some new legislation this year has attempted to reconcile GMA requirements with the realities of rural counties. These included amendments to the definition of rural lands and the master planned resorts provisions, as well as adding new provisions for industrial land banks.

This legislation is discussed further in Section V below.

II. OVERVIEW OF GMA PROVISIONS REGARDING "URBAN" AND "RURAL". OVERVIEW OF GMA

PROVISIONS REGARDING "URBAN" AND "RURAL"

GMA provisions provide little guidance regarding what development is "urban" and where it is appropriate. Even less guidance is provided regarding what is "rural." Only indirectly, by providing that no urban growth can occur outside of a UGA, does GMA indicate that rural, whatever it may be, is to occur outside UGAs.

A. URBAN GROWTH. URBAN GROWTH

1. RCW 36.70A.020(1) includes as a planning goal:

> Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

2. RCW 36.70A.030(14) defines urban growth:

"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 such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

3. RCW 36.70A.030(16) defines urban governmental services:

> "Urban governmental services" include those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas.

B. THE RURAL ELEMENT. THE RURAL ELEMENT

1. "Rural" is not explicitly defined in GMA and is defined only in the negative in the WAC regulations. WAC 365-195-210 defines "rural lands" as:

[A]ll lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

2. RCW 36.70A.070(5) provides:

> Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses and may also provide for clustering, density transfer, design guidelines, conservation easements, and

other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.

3. RCW 36.70A.110(4) provides:

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

C. COMMERCIAL AND INDUSTRIAL LANDS. COMMERCIAL AND INDUSTRIAL LANDS

1. The Major Industrial Development (MID) section, RCW 36.70A.365, authorizes counties to establish a review process for proposals to site specific MIDs outside UGAs. "Major industrial development" is defined as "a master planned location for a specific manufacturing, industrial, or commercial business that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent." MIDs may not be used for retail commercial development or multitenant office parks. Section .365 provides a list of criteria that must be met for a MID to be approved outside a UGA.

2. RCW 36.70A.367 provides for an industrial land bank, however the provision is drafted in such a way that it can only be utilized by Clark County.

3. WAC 365-195-330(2) recommends steps for preparing the rural element of a plan. These include:

(c) (ii) Provision for a variety of densities for residential, commercial, and industrial development consistent with maintenance of the rural character of the area.

4. WAC 365-195-070(2) indicates that whether a jurisdiction adopts a separate economic development element in its plan or not, "levels of job growth, and of commercial and industrial expansion should be identified and supporting strategies should be integrated" with the other features of the plan.

III. GMHBS INTERPRETATION OF WHAT IS "URBAN" AND WHAT IS "RURAL". GMHBS INTERPRETATION OF WHAT IS "URBAN" AND WHAT IS "RURAL"

A. LACK OF RURAL DEFINITION -- "The Leftover Meatloaf in the GMA Refrigerator". LACK OF RURAL DEFINITION -- "The Leftover Meatloaf in the GMA Refrigerator"

Because prior to July 27, 1997 the GMA did not define "rural," the Boards have struggled on their own to come up with an acceptable definition. Early in this process, the Central Board in Rural Residents v. Kitsap County, CPSGMHB 93-3-0010 (Final Decision and Order 6/3/94) at 433 adopted the WAC 365-195-210 definition of rural lands as the proper definition of "rural" in the GMA context. Later, in Bremerton v. Kitsap County, CPSGMHB 95-3-0039 (Final Decision and

Order 10/6/95), the Central Board attempted to add to the concept of rural, as follows:

 The GMA universe consists of three major land use types: (1) resource lands (designated forest, agricultural and mineral resource lands); (2) urban lands, which are within UGAs; and (3) rural lands, which are entirely outside UGAs and exclude resource lands. In order to discern the uses permitted in each of these types of lands, it is important to recognize that various provisions of the Act create a relationship between and among them. Bremerton at 1198.

 See also, Achen v. Clark, WWGMHB 95-2-0067 (Final Decision and Order 9/20/95), at 1133 which recognized the fact that although the rural element often seems like an afterthought of GMA, in reality it is an important element of comprehensive planning. The Board wrote that "[w]hile rural lands may be the leftover meatloaf in the GMA refrigerator, they have very 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."

B. FOCUS ON DENSITY AS THE DETERMINATIVE CHARACTERISTIC. FOCUS ON DENSITY AS THE DETERMINATIVE CHARACTERISTIC

In the absence of clear guidance from GMA regarding what characteristics make an area rural as opposed to urban, the Boards have come to rely on density as the defining characteristic. Although individual decisions indicate a "bright line" has been established, review of the many references to densities indicates that the line is not really so clear.

 In Peninsula Neighborhood Association v. Pierce County, CPSGMHB 95-3-0071 (Final Decision and Order 3/20/96) at 1740 the Central Board held that in general new land use patterns of 5 to 10 acre lots is appropriate in rural areas. A new land use pattern of lots smaller than 5 acre is generally prohibited in rural areas.

 Vashon-Maury v. King County, CPSGMHB 95-3-0008 (Final Decision and Order 12/23/95) at 1295 held 10 acre lots are clearly rural. This line was followed also in Tacoma v. Pierce County, CPSGMHB 94-3-0001 (Final Decision and Order 7/5/94) at 480 and Sky Valley v. Snohomish County, CPSGMHB 95-3-0068c (Final Decision and Order 3/12/96) at 1661. Rural lots smaller than 10 acres are subject to increased scrutiny to assure the pattern of such lots sizes (meaning their number, location and configuration) does not constitute urban growth, present an undue threat to large scale natural resource lands and large critical areas, and will not thwart long term flexibility to expand the UGA and will not otherwise be inconsistent with GMA.

 Decisions are consistent that densities between 1 and 2.5 dwelling units per acre are generally urban, contribute to sprawl, and are therefore prohibited by GMA outside of IUGAs or UGAs. See, e.g., Bremerton at 1199-1200, adopting a "bright line" at 4 dwelling units per acre at which density or higher residential development is clearly compact urban development. Any larger urban lots are subject to increased scrutiny. The decision indicates there are exceptions to the bright line, but they are infrequent and cannot constitute a pattern over a large area. New 1 and 2.5 acre lots are prohibited as a residential development pattern in rural areas. Id. at 1201.

 Port Townsend v. Jefferson County, WWGMHB 94-2-0006 (Final Order 8/10/94) at 573 indicates 1 dwelling unit per acre density will rarely, if ever, be able to comply with GMA. "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 governmental 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."

 Gig Harbor v. Pierce County, CPSGMHB 95-3-0016 (Final Decision and Order 10/31/95) discouraged lots from 1 to 5 acres just outside a UGA boundary because it could "thwart the long term flexibility to expand the UGA." Id. at 1355. The Board also held in this decision that the 5 acre lot size in rural areas could result in urban growth because as an incentive it was possible to double density and there was no requirement to cluster. Therefore, the result could be two freestanding building pads each centered on a 2.5 acre lot. Id. at 1353-54.

 The Eastern Board held in Woodmansee v. Ferry County, EWGMHB 95-1-0010 (Final Decision and Order 5/13/96) that "given circumstances unique to Ferry County, and in acceptance of the local decision making process, that 2.5 acre lots constitute rural development in Ferry County" and that "lots under 2.5 acres are urban development in Ferry County." Id. at 2070. The Ferry County plan required community water service for lots between 1 acre and 2.5 acres, contributing to the Board's decision that these lots constitute urban development that was inappropriately allowed in rural areas by the Island County plan.

C. PATTERN OF DENSITIES ALSO DEEMED IMPORTANT. PATTERN OF DENSITIES ALSO DEEMED IMPORTANT

In addition to overall residential density, the Boards have stated that the pattern and variety of densities plays an important role in what constitutes rural development. However, despite the Boards' suggestion that a proper variety of densities could justify a pattern of lots with less than 5-10 acres, there are few situations where this has been approved.

 Achen held that a variety of densities are required, although GMA does not require any particular methodology to provide for such variety. In this case, providing for variety by "default" was sufficient because the Board found more varieties of densities occurred in Clark County after 1990 than ever envisioned by GMA. Id. at 1134. The Board also held that a uniform 5 acre provision for rural areas was insufficient because it failed to recognize differences in existing parcelization within the rural areas. Id. at 1132-33.

 Gig Harbor at 1355 held providing only 2 types of densities is insufficient because it is too small a number to constitute a variety and such small selection consumed too much of the total rural area.

 The Central Board in Bremerton determined that Kitsap County's five rural classifications did not constitute a variety because two of the densities were identical, two others were "virtually the same," and the final density, at 1-9 dwelling units per acre was not a rural density at all. Id. at 1215-16. The Board indicated its expectation was "to see a true variety of rural densities, such as, for example, 1du/10 acres, 1du/20 acres, 1du/40 acres and 1du/80 acres." Id. at 1216. The Board, at pg. 1199, also held that suburban growth is a subset of urban growth and therefore is prohibited in rural areas.

 Sky Valley decision held that as a general rule, a land use pattern consisting of between 5 and 10 acre lots is an appropriate rural use, provided the criteria established in Vashon-Maury are met. Any new land use pattern of lots smaller than 5 acres would be prohibited as urban growth in rural areas.

D. ELEVATION OF THE "SPRAWL GOAL". ELEVATION OF THE "SPRAWL GOAL"

Although there are numerous goals set out in the Act that indicate the purposes of GMA, Board decisions have generally focused on the goal of eliminating urban sprawl. The result is that the sprawl goal has apparently been elevated above all the other goals of the Act.

 "The foundational characteristic of the Act is the avoidance of inefficiencies found in a sprawling development pattern." Reading v. Thurston County, WWGMHB 94-2-0019, (Final Order 3/23/95) at 749.

 "Among the primary intentions are to reduce sprawl (and the attendant high cost to taxpayers), to conserve natural resources and to protect critical areas." Friends of Skagit County v. Skagit County, WWGMHB 95-2-0065, (Finding of Non-Compliance and Finding of Invalidity, Regarding Interim Urban Growth Areas (IUGAs) 2/7/96) at 1547.

 "[T]he County has a responsibility to its residents to stop sprawl, commercial and industrial strip developments and the corresponding a bill that will become unnecessarily large because of poor planning." Port Townsend at 572.

The Central Board in Bremerton explained that the Boards' rationale for elevating the sprawl goal arises from the fact that the key purposes of GMA are compact development within a rural/resource lands landscape and transformance of governance.

> [T]wo of the fundamental purposes that both UGAs and CPPs must serve: to achieve the transformation of local governance within the UGA such that cities are, in general, the primary providers of urban governmental services and to achieve compact urban development. It must be remembered that much of the impetus to adopt the GMA was the sprawling urbanization of many of these unincorporated areas. It would be illogical now to blindly include within UGAs not only every unincorporated parcel urbanized within the past century, but non-urbanized intervening lands. The Board will give a higher degree of scrutiny to UGA challenges that allege that these fundamental purposes are thwarted. Bremerton at 1193. See also, Tacoma at 473.

E. LIMITATIONS ON COMMERCIAL AND INDUSTRIAL DEVELOPMENT IN RURAL AREAS. LIMITATIONS ON COMMERCIAL AND INDUSTRIAL DEVELOPMENT IN RURAL AREAS

The Central Board in Bremerton at 1201 attempted to describe the intensity and character of activity and development permitted by GMA in rural areas. In doing so, the Board adopted language of the Puget Sound Regional Council that stated:

> Rural lands primarily contain a mix of low-density residential development, agriculture, forests, open space and natural areas, as well as recreation 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.

Bremerton at 1201 (quoting *Vision 2020-1995 Update* at 27).

Thus, although commercial and industrial development are generally only allowed within UGAs, the Board recognized that in limited circumstances, commercial and industrial development is acceptable in rural areas. Thus far, the circumstances appear to have been limited to where the use, by its very nature, is dependent on a rural location and is functionally and visually compatible with the rural character in the vicinity. See, e.g., Gig Harbor at 1349 and Vashon-Maury at 1290. Additionally, essential public services (such as K-12 schools) are also permitted in rural areas. Id.

Theoretically, industrial or commercial development outside UGA's is allowed by RCW 36.70A.365, the major industrial development (MID) provision, if certain criteria are met, but no jurisdiction has taken advantage of this yet. Perhaps the reason is that the MID section of GMA does not function well as the sole method to allow non-resource dependent industrial development in rural areas because that section requires siting development outside an UGA on a project specific basis. Counties and prospective industrial users need to have advance notice of large available areas designated for new industrial development in order to attract the development. Thus, it becomes a problem analogous to the chicken and the egg. How can counties use the project specific MID process to designate large areas of rural land for industrial development if in order to attract a specific project to guide through the MID process a large area of rural land stated for industrial development must already be designated?

Some of these issues will be resolved if proposed amendments to GMA are adopted. Provisions allowing "grandfathering" of industrial lands within rural areas and the allowance of infill therein, discussed in detail below, should also help alleviate some of the tension. The proposed industrial land bank legislation, section .367, is also particularly designed to deal with this problem.

IV. OVERSIGHTS IN GMA AND HEARINGS BOARDS' ANALYSES. OVERSIGHTS IN GMA AND HEARINGS BOARDS' ANALYSES

A. FAILURE TO CONSIDER ELEMENTS OF RURAL CHARACTER. FAILURE TO CONSIDER ELEMENTS OF RURAL CHARACTER

Having the benefit of some hindsight, it is now possible to analyze the picture of "rural" that has developed from GMA and Board decisions, and to question whether this is really what is best for "growth management." The near exclusive focus on establishing lower densities in rural areas is an example of the conventional thought that lower densities will defacto preserve rural character. In fact, however, the result could be development spread out further ("exurban" versus "suburban" development) because there is less land available if it is divided up into 5-10 acre parcels, each parcel to accommodate only one dwelling. (i.e. "rural sprawl"). Also, when supply of land is limited, land prices rise and all but high income households are excluded from rural areas. Additionally, lower densities do nothing to establish public open space.

A more reasonable and comprehensive approach to preserving rural lands is one of the challenges facing the GMA and the Boards today. As noted by one Board already, rural sprawl is no better than urban sprawl. See Achen at 1133 (noting that `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.") Thus, it isn't merely the fact that a definition of rural should be included in GMA, but rather the definition that is included should encompass considerations beyond those taken into account so far by GMA and Board decisions. For instance, open space preservation and the configuration of uses in rural lands are important considerations to rural character that to date have not played a major role in the determination of what is rural.

Several planners have suggested that with performance standards to judge what makes rural lands "rural," there is a better chance of preserving traditional characteristics of the rural landscape, such as: indigenous vegetation, undisturbed terrain and cultivated land; buildings limited to a few farm and "out" buildings, houses and freestanding commercial buildings; buildings covering five percent of an average 10 acre site; and the usual two lane road with open ditches. Methods that could be utilized in conjunction with lower densities to preserve the rural environment include cluster housing, reduced lots wherein each homeowner has the right to disturb only a small area and the remainder of the property is shared and owned in common, and transfer of development rights.

B. DIFFICULTY UTILIZING RECOGNIZED EXCEPTIONS TO URBAN GROWTH IN RURAL AREAS--FCCs, MPRs AND MIDs.DIFFICULTY UTILIZING RECOGNIZED EXCEPTIONS TO URBAN GROWTH IN RURAL AREAS--FCCs, MPRs AND MIDs

1. Fully Contained Communities, Master Planned Resorts and Major Industrial Developments.

Since GMA was passed, many counties have encountered difficulty locating all intense development in urban areas. GMA does recognize certain circumstances where urban type growth is acceptable outside UGAs; for instance, section .360, Master Planned Resorts (MPRs), section .350, Fully Contained Communities (FCCs), and .365 Major Industrial Developments (MIDs). As yet, however, no county has been able to utilize these provisions. The Boards have indicated that some development outside of urban areas is theoretically permissible, but in fact they have rarely approved it.

- In Whidbey Environmental Action Network v. Island County, 95-2-0063 (Second Compliance Hearing Order and Finding of Invalidity 4/10/96) at 1818, the Western Board held that 6 dwelling units per acre "is clearly urban and is not required to meet criteria for fully contained communities or master planned resorts." According to the Western Board, a less dense development could utilize the FCC or MPR provisions. The Board also stated: "The Act allows appropriate non-urban uses outside IUGAs. Non-residential uses outside IUGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area." Id.

- In Kitsap Citizens For Rural Preservation v. Kitsap County, CPSGMHB 94-3-0005 (Final Decision and Order 10/25/94) at 608-609, the Central Board held the County's IUGA development regulation out of compliance with GMA because it did not include a maximum limit on acreage or units permitted in rural areas nor any restraints on the configuration, servicing or location of rural development. The Board stated it could "conceive of a well designed compact rural development containing a small number of homes that would not look urban in character, not require urban governmental services, nor have undue growth-inducing or adverse environmental impacts on surrounding properties" which would not constitute urban growth.

2. "Island" UGAs.

GMA explicitly allows counties to include within UGAs land beyond municipalities. See RCW 36.70A.110(1) which allows UGAs to include territory located outside a city if the territory is already characterized by urban growth, is adjacent to territory already characterized urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350. Thus far, Boards have given section .110 a strict reading, and have not endorsed "island" or "non-municipal" UGAs, with the exception of the Eastern Board in Wenatchee Valley Mall v. Douglas County.

- The recent Eastern Board decision in Wenatchee Valley Mall Partnership v. Douglas County, EWGMHB 96-1-0009 (Final Decision and Order 12/10/96) indicates that island UGAs are permitted, although they "must be scrutinized in detail because of the Act's goal to stop sprawl." Id. at 2239. In that case, the Board held petitioners did not meet their burden to demonstrate the Pangborn Airport Industrial Area encouraged sprawl. A Motion for Reconsideration of this decision was recently denied by the Board and as yet an appeal has not been filed. It is important to note that this is an Eastern Board decision and therefore it may not be a trend the other Boards will follow. Additionally, this decision does not provide a rationale for its decision on the island UGA issue and may in the future be limited to its facts.

- In Rural Residents at 446, the Central Board indicated that if it can be shown that existing cities cannot accommodate projected population growth, counties may extend UGAs beyond existing incorporated areas per GMA section .110. On reconsideration, the Central Board wrote that "counties do not have carte blanche permission to include unincorporated urban areas, or even non-urban areas, in UGAs. Nevertheless, it is possible that a county may choose to and can justify the inclusion of non-city and even non-urban land within a UGA." Rural Residents v. Kitsap County, CPSGMHB 93-3-0010 (Order Denying Kitsap County's Petition for Reconsideration 6/24/94) at 446. To do so, the Board indicated, a county must acknowledge the rank order preference of section .110, meet the other requirements of the Act, and "show its work." Id. The Board concluded Kitsap County had not followed, or even attempted, those requirements. Id.

- The Central Board reiterated its decision in Rural Residents in the Vashon-Maury decision, concluding that counties do not have "carte blanche permission to designate as UGAs *all* urbanized unincorporated lands . . . ." Id. at 1260-61. Additionally, the Board questioned whether an island UGA could meet the goals and requirements of GMA without sufficient safeguards such as the MPR, FCC or MID requirements. Id. at 1270. On reconsideration, the Board remanded the island UGA back to the county for deletion, redesignation as an FCC, or justification as to why it was consistent with section .110 and the Board's Orders. Vashon-Maury, (Order on Motions to Reconsider and Motion to Correct 12/1/95) at 1393. This decision was partially reversed by the King County Superior Court, however, which held the Board on reconsideration erroneously interpreted King County's CPPs. *King County v. CPSGMHB*, King County Superior Court Cause No. 95-2-33178-5SEA (K.C. Sup. Ct. 1996). The court reinstated the original CPSGMHB decision regarding inclusion of the Bear Creek urban planned development sites within the UGA. Friends of the Law has appealed and a decision is not expected until sometime this fall.

- Friends of the Law v. King County, CPSGMHB 94-3-0009 (Order Granting Dispositive Motions 11/8/94) at 652-653 theoretically acknowledges counties have some discretion in designating UGAs provided they support their designations. "While the objective analysis is essential, counties also have the latitude to consider subjective factors, such as a land supply market factor and the preferred vision that each city expresses in its comprehensive plan . . . . [T]he County is entitled to exercise its discretion in applying the requirements of the Act for designating FUGAs. The appropriate exercise of that discretion may lead to FUGAs being drawn to include unincorporated lands and even non-urbanized lands."

- Whatcom Environmental Council v. Whatcom County, WWGMHB 94-2-0009 (Final Order 11/9/94) at 623 required a "proper planning analysis of the necessity for land areas outside municipal boundaries, the availability of public facilities and services to those areas and the recognition of the cost of providing those facilities and services"

as part of establishing IUGAs outside of municipal boundaries. Without such analysis, "an IUGA beyond municipal boundaries cannot be established."

3. Rural Activity Centers.

Another category of rural development that counties have struggled with are rural activity centers (RACs). Counties have attempted to use RACs as a means to acknowledge existing "crossroads" development or to provide for commercial businesses located in rural areas to serve the needs of local communities. As noted above, however, both the Gig Harbor and Vashon-Maury decisions determined that the only avenues for this type of growth in a rural area are rural-dependent uses compatible with the rural area, essential public facilities, or developments explicitly authorized by sections of GMA (e.g. MPRs, FCCs, and MIDs).

- RACs as provided by Pierce County's plan were held out of compliance by the Central Board in Gig Harbor because the RAC policies did not contain necessary limitations on non-residential uses, including limiting such uses to those that depend on a rural location and are functionally and visually compatible with the character of the immediate vicinity. Id. at 1350-51. In the later case of Peninsula Neighborhood Association, the Central Board reviewed the development regulations associated with the Pierce County RACs. The Board held the RAC development regulations out of compliance with the Act because the regulations permitted new urban growth outside of designated UGAs. Id. at 1734-35. The Board wrote that "[a]lthough counties cannot be expected to undo past land use practices, they cannot adopt regulations that fail to place appropriate conditions on growth outside UGAs to limit it to achieve conformance with requirements of .110." Id. at 1735.

- The recent decision in Wenatchee Valley Mall Partnership at 2227, remanded portions of the plan relating to rural service centers back to the County for addition of density limitations. The Board also noted the plan did not appear to limit new non-residential growth to uses that are dependent by their nature on rural location and which are functionally and visually compatible with the surrounding land character. The Board ultimately decided it was unnecessary to reach this issue in this case. However the Board indicated it "would be persuaded to join other Growth Management Hearings Boards in their conclusion that non-residential uses outside UGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area." Id.

The appeal of the recently adopted San Juan County plan will likely provide additional guidance on this issue. That plan contains provisions for "villages," designed to provide rural governmental services to unincorporated areas, "hamlets," which are "high density residential surroundings rural and resource land uses," and "island centers," which may include rural commercial and rural industrial uses. One of the many parties challenging this plan will raise the issue of whether this amounts to urban development in rural areas.

V. IMPACTS OF NEW GMA REFORM BILLS ON "URBAN" AND "RURAL". IMPACTS OF NEW GMA REFORM BILLS ON "URBAN" AND "RURAL"

Several bills amending GMA's rural provisions were passed in the most recent legislative session. These include Engrossed Senate Bill 6094, Substitute House Bill 2083, and Senate Bill 5915. Overall, these bills loosen

some of the restrictions on rural development that were the result of the hearings boards' interpretations of GMA.

Engrossed Senate Bill 6094 ("ESB 6094") contains the majority of the GMA amendments. The majority of ESB 6094's provisions that affect rural development originated from the Governor's Land Use Study Commission, which published its final report in January 1997. There were a couple sections that went beyond the Land Use Study Commission's proposal that were vetoed by the Governor.

Engrossed Senate Bill 6094 adds several new definitions to GMA, which reflects the Land Use Study Commission's goal to clarify the Act. Terms related to the rural element that are now defined include "rural character" and "rural development." These are defined as follows:

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

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

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

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

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

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

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

ESB 6094 □□3(14) and (15).

Section 7 of ESB 6094 also addresses the mandatory rural element of comprehensive plans. That section gives jurisdictions authority to consider local circumstances, provided a written record is developed to demonstrate

how the rural element harmonizes GMA's planning goals. ESB 6094 ☐7(5)(a). It also explicitly allows counties to utilize clustering, density transfers, conservation easements, and other innovative techniques to achieve GMA's required variety of rural densities and uses. ESB 6094 ☐7(5)(b).

Counties are required to include in the rural element measures to protect rural character. ESB 6094 ☐7(5)(c). These measures should:

- ☐ contain or control rural development;
- ☐ assure visual compatibility of rural development with the surrounding area;
- ☐ reduce the inappropriate conversion of undeveloped land into low-density sprawl;
- ☐ protect critical areas and water resources; and
- ☐ protect against conflicts with agricultural, forestry, and mineral use.

ESB 6094 ☐7(5)(c)(i-v).

ESB 6094 contains provisions explicitly allowing more intense development in some rural areas. This includes "infill, development, or redevelopment of existing commercial, industrial, residential, or mixed use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments." ESB 6094 ☐7(d)(i). Industrial areas are not required to principally serve the existing and projected rural population. Id. The rural element may also allow more intense development of lots containing recreational uses, tourist uses, isolated nonresidential uses, new development of isolated cottage industries and small-scale businesses. ESB 6094 ☐7(d)(iii). These uses are also not required to be principally designed to serve the existing and projected rural population. None of these provisions are intended to allow major industrial developments in master planned resorts in rural areas. ESB 6094 ☐7(5)(e). Counties are required to establish logical outer boundaries for all areas of more intensive rural development. The more intense development must be provided in a manner that does not encourage low-density sprawl. ESB 6094 ☐7(d)(iv).

Some question has been raised regarding the effect of ESB 6094 because of a recent Central Board decision. In Kelly v. Snohomish County, CPSGMHB 97-3-0012 (Final Decision and Order 7/30/97), Snohomish County requested that the Central Board apply ESB 6094 because it was to take effect 2 days after the hearing on the merits. The Central Board did not apply ESB 6094, however, pointing instead to the bill's prospective effect. The Board held that "[a]ny actions taken by a local government after July 27, 1997, to comply with a Board remand order will be subject to the provisions of ESB 6094. The Board's compliance review of the remand action will, likewise, be subject to ESB 6094." 1997 Westlaw 453593 at 4. This Central Board case makes it unclear whether coounties which adopted comprehensive plans prior to July 27, 1997 will benefit from the provisions of ESB 6094. However, arguably, at minimum the additional rural lands clarifications in ESB 6094 should be considered by the Boards in interpretation of the statute for the purposes of reviewing prior enacted comprehensive plans.

GMA amendments were also included in Substitute House Bill 2083 ("SHB 2083") that, among other things, modified the Master Planned Resorts provision contained in RCW 36.70A.360(1). Counties are now allowed to designate existing resorts as master planned resorts and these may constitute urban growth outside of UGAs.

SHB 2083 § 1. Existing master planned resorts may include conference facilities, residential facilities, and commercial activities to support the resort, as well as recreational facilities which are already allowed. Counties are also authorized to account for the number of projected permanent residents within the master planned resort by allocating a portion of the 20 year population projection to the master planned resort. SHB 2083 §1(5).

The final bill that affected GMA's rural provisions is Senate Bill 5915. This bill added to the major industrial development provisions, codified at RCW 36.70A.365 and .367, to allow a very small number of counties (Clark and Whatcom counties) to establish up to two industrial land banks as permissible urban growth outside of UGAs. Land banks may not be used for retail commercial development or multitenant office parks and must generally include or be adjacent to existing industrial or commercial growth. To utilize the provisions, a county would need to find that necessary infrastructure, buffers, development regulations, and transportation can be developed and/or provided.

VI. CONCLUSION

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Given the difficulty involved in determining what is permissible development in rural areas, the logical next question is whether GMA, in spite of its sometimes confusing provisions and interpretations, is effective at controlling "sprawl." With regard to rural areas, it seems that to date the GMA provisions and the Hearings Boards' decisions have generally clamped down on most development in rural areas except very large lot residential and very small scale rural-dependent industry.

Very large lot residential, meaning homes on 10 acre or greater residential lots, may not end up looking like anyone's idea of rural, however. Even the requirement for a variety of densities may amount to "rural sprawl" if each house and its related garages and drives are visible from the road. The ability to control sprawling development is especially problematic if the residences that are placed on rural lots are not the small farmhouses of the past, but instead are the large suburban-style houses of individuals who desire and can afford to escape "city life." How well counties size their UGAs impacts who will be able to afford these rural residential lots and thereby the type of houses that will be built. Sizing of UGAs depends upon many considerations, including the political, economic and environmental realities in the individual counties.

Although pursuant to current Board decisions rural development is severely restricted, it is unclear if this will remain the case. It is hard to know whether strict constraints on rural development will backfire, pushing "rural sprawl" farther into the hinterland or whether growth will truly be contained in UGAs.

Perhaps the recent GMA amendments which aim to loosen the constraints on rural development, especially rural commercial and industrial development, will relieve some of the pressure of "rural sprawl" by allowing some concentrated areas of rural development.

If carefully constructed, it appears that allowing pockets of more intense, clustered development in rural areas, may be the best way to preserve larger areas of open space, and hence the desired "rural character." This would recognize the principle that the Western Board emphasized by paraphrasing Bonnie Raitt: we cannot change the past, but we can leave it behind.