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SUPREME COURT
STATE OF WASHINGTON No. 80115-1

2008 MAR -6 P 12:00
SUPREME COURT
OF THE STATE OF WASHINGTON
BY RONALD R. CARPENTER
RRC
CLERK THURSTON COUNTY,

Petitioner,

v.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD and 1000 FRIENDS OF WASHINGTON,

Respondents,

And,

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,
OLYMPIA MASTER BUILDERS, and PEOPLE FOR RESPONSIBLE
ENVIRONMENTAL POLICIES,

Petitioner-Intervenors.

SUPPLEMENTAL BRIEF OF PETITIONER-INTERVENORS

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INTRODUCTION

Pursuant to RAP 13.7, Petitioner-Intervenors Building Industry Association of Washington, Olympia Master Builders, and People for Responsible Environmental Policies respectfully submit this supplemental brief in support of their petition for review. Since 1995, the Growth Management Hearings Boards have improperly adopted and applied “bright line” rules to fill in areas of the Growth Management Act (GMA) that the Legislature intentionally left to the discretion of local governments. The Western Washington Growth Management Hearings Board (Growth Board) in this case continued this trend by adopting policies setting the acceptable levels of rural density and the maximum excess land supply that local governments can consider in sizing their Urban Growth Areas (UGA).

In *Viking Properties* and *Quadrant*, this Court made clear that the growth boards (1) do not have the authority to establish “bright line” standards, and (2) are required to review a challenge to a comprehensive plan in light of the presumption of validity and broad deference that was afforded to local government decisions by the GMA. *Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 129 (2005); *Quadrant Corp. v. State Growth Management Hearings Board*, 154 Wn.2d 224, 233-34, 238 (2005).

The record here establishes that Thurston County, acting in accordance with the discretion granted under the GMA, designated a variety of rural densities based on local circumstances and incorporated innovative techniques to preserve rural character. Similarly, the record shows that Thurston County considered reasonable market factors and other local circumstances to establish the size of its UGAs. In doing so, the County engaged in a detailed analysis of how much land it needed to set aside to address various circumstances, including but not limited to existing oversized lots, undevelopable property, infrastructure limitations, the need to curtail escalating housing costs, and the need to preserve open spaces. However, by applying its “bright line” standards, the Growth Board failed to grant Thurston County the discretion and deference required by the GMA and its decision should be reversed. *See Quadrant*, 154 Wn.2d at 233-34, 238; RCW 36.70A.320; RCW 36.70A.3201.

I

ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals’ decision conflicts with the Supreme Court’s holding that growth boards do not have the authority to establish or apply “bright line” standards that do not appear in the Growth Management Act. *See Viking Properties, Inc. v. Holm*, 155 Wn.2d 112 (2005).

2. The Court of Appeals' decision conflicts with Supreme Court and Division I precedent requiring that the growth board review a County's designation with due deference and in light of the unique local circumstances that justify the designation. See *Quadrant Corp. v. State Growth Management Hearings Board*, 154 Wn.2d 224, 233-34 (2005); *Whidbey Environmental Action Network v. Island County (WEAN)*, 122 Wn. App. 156, 167 (2004); *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 116 Wn. App. 48, 55 (2003).

II

STATEMENT OF THE CASE

In November, 2004, the Thurston County Commissioners amended the County's comprehensive plan and development regulations to comply with update requirements of the Growth Management Act. *Thurston County v. Western Washington Growth Management Hearings Board*, 137 Wn. App. 781, 787-89 (2007). Pertinent to this petition for review, the comprehensive plan and development regulations included updates to the County's rural elements. In this portion of the plan, the County allocated approximately 400,000 acres of land to rural use. *Thurston County*, 137 Wn. App. at 806. The plan designated six rural areas with varying densities. AR 778-83. Approximately 5.5% of the total rural area permitted development at densities between 1 to 4 residences per acre based on existing development patterns in the specified areas. AR 780-82. The County also updated its Urban Growth Area boundaries to provide for projected growth through

2025. *Thurston County*, 137 Wn. App. at 803.

In January, 2005, Futurewise (formerly 1000 Friends of Washington) filed a petition for review with the Growth Board challenging, in relevant part, the updates to the rural and UGA elements of the comprehensive plan update. *Thurston County*, 137 Wn. App. at 788. Specifically, Futurewise challenged the County's rural element because it permitted densities greater than one dwelling per five acres (1:5 du/acre) on 5.5% of the County's approximately 400,000 acres of rural land. *Thurston County*, 137 Wn. App. at 805-06. Futurewise challenged the County's designation of UGA boundaries because it designated more land than minimally necessary to accommodate for projected growth. *Thurston County*, 137 Wn. App. at 803-05.

The Growth Board concluded that 4 of the 5 Thurston County rural designations violated the GMA based solely on the fact that the designations permitted development at densities greater than 1:5 du/acre. *See* Final Decision and Order, attached as appendix B to Intervenors' Petition for Review at 17 ("Rural densities . . . are generally no more intense than one dwelling unit per five acres."). As a result, the Board concluded that Thurston County's rural element failed to comply with the GMA. On direct appeal, Division II of the Court of Appeals affirmed the Growth Board's

conclusion invalidating all rural designations more intense than 1:5 du/acre.

Thurston County, 137 Wn. App. at 807-08.

In regard to the County's designation of UGA boundaries, the Growth Board concluded that the land supply provided by the new boundaries exceeded the amount of land necessary to accommodate projected growth through 2025 and concluded that the UGA designation failed to comply with the GMA. *Thurston County*, 137 Wn. App. at 803-05.

SUPPLEMENTAL ARGUMENT

Despite this Court's decisions in *Viking Properties* and *Quadrant*, the Growth Board's lack of authority to adopt and apply "bright line" rules continues to be an acute issue regarding the proper administration of the GMA. In enacting the GMA, the Legislature adopted a presumption that a GMA update is "presumed valid upon adoption." RCW 36.70A.320(1). Thus, the Legislature placed the burden on the petitioner "to demonstrate that any action taken by [local government] is not in compliance with the requirements of [the GMA]." RCW 36.70A.320(2). The Growth Board is instructed to find compliance unless the Petitioner meets its burden of proving that the GMA regulation was "clearly erroneous." RCW 36.70A.320(3).

The GMA does not authorize the Growth Board to adopt any contrary

presumptions or establish new requirements. RCW 36.70A.320; RCW 36.70A.3201; *see also Quadrant*, 154 Wn.2d at 238 (“In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the requirements of the GMA, supersedes deference granted to the APA and courts to administrative bodies in general.”); *Viking Properties*, 155 Wn.2d at 125-26 (“GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs.”); WAC 365-195-010(3) (The GMA “process should be a ‘bottom up’ effort . . . with the central locus of decision-making at the local level.”). And the GMA simply does not permit the Growth Boards to establish inflexible, “bright line” rules that impose a rebuttable presumption of invalidity. *Whidbey Environmental Action Network v. Island County (WEAN)*, 122 Wn. App. 156, 167 (2004) (the GMA “does not require a particular methodology for providing a variety of densities.”)

In 2005, this Court concluded that the Growth Boards do not have the authority to adopt or impose such rules:

. . . [T]he growth management hearings boards do not have authority to make “public policy” even within the limited scope of their jurisdictions, let alone to make *statewide* public policy. The hearings boards are quasi-judicial agencies that serve a limited role under the GMA, with their powers

restricted to a review of those matters specifically delegated by statute.

Viking Properties, Inc. v. Holm, 155 Wn.2d 112, 129 (2005) (emphasis in original, citations omitted); see also *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378, ¶¶ 34-38 (2007) (the Growth Board's authority is limited and does not permit the Board to make public policy).¹ The *Viking Properties* decision is of critical importance because actions of an agency that are in excess of its statutory authority are void. *Properties Four, Inc. v. State*, 125 Wn. App. 108, 117 (2005); *Marley v. Department of Labor and Indus. of State*, 125 Wn.2d 533, 539 (1994); *Port Townsend School Dist. No. 50 v. Brouillet*, 21 Wn. App. 646, 653 (1978). And under Washington's Administrative Procedure Act, this Court will reverse an agency decision that is based on an erroneous interpretation of the law, or is outside of the agency's authority. RCW 34.05.570(3); *Diehl v. Western Washington*

¹ In *Gold Star Resorts*, the Growth Board had concluded that several of Whatcom County's rural zones failed to comply with the GMA because they permitted rural density greater than the Board's one dwelling unit per five acres "bright line" rule. *Gold Star Resorts*, 140 Wn. App. at ¶ 34. Gold Star argued on appeal that the Growth Board's adoption of a "bright line" rule violated this Court's decision in *Viking Properties*. Division One of the Court of Appeals agreed that the Growth Board's authority is limited and does not permit the Board to make public policy and ruled that the "principles of *Viking* should be considered" on remand. *Gold Star Resorts*, 140 Wn. App. at ¶ 39.

Growth Mgmt. Hearings Bd., 153 Wn.2d 207, 213 (2004).

A. The Growth Board's Bright Line Rules Were Intended To Improperly "Fill In" Legislation and Limit Local Government Discretion

The growth boards' adoption of "bright line" rules has had historical and ongoing impacts that are much broader than this case. Since 1995, the growth boards have repeatedly explained that the "bright line" standards that the Central Board first adopted in *Bremerton v. Kitsap County*, 1995 WL 903165 (1995), were intended to limit local governments' broad planning discretion under the GMA. *See, e.g., City of Gig Harbor v. Pierce County*, 1995 WL 903183, at *22 (1995) (explaining circumstances where the Central Board had adopted "the device of a bright line to indicate to local governments the range within which discretion may be exercised" particularly regarding maximum rural density). Specifically, the Central Growth Board explained that it had adopted its "bright line" standards to "fill in" areas of the GMA that the Legislature had intentionally left to the discretion of local governments. *See Sky Valley v. Snohomish County*, 1996 WL 734917, at *4-9 (1996). More than simply being a guideline or evaluative criteria for review, the Board has applied its "bright line" rules to impose an "increased scrutiny" standard on local government under which any density that departs from the Board's standards will rarely be approved. *Sky Valley*, 1995 WL

903183, at *8-9; *Peninsula Neighborhood Ass'n v. Pierce County*, 1996 WL 650338, at *15 (1996); *Vashon-Maury v. King County*, 1995 WL 903209, at *70 (1995).

**B. The Growth Boards Have Continued To Apply
“Bright Line” Rules after *Viking Properties***

This Court’s 2005 decision in *Viking Properties* has had little impact on the boards’ continuing application of their “bright line” rules. Immediately following *Viking Properties*, it appeared that the growth boards would abandon their “bright line” standards and review local government actions under the deferential standards set forth in the GMA.²

However, within a year, the Eastern Growth Board had resurrected their “bright line” density rules. *See Futurewise v. Pend Oreille County*,

² In June 2006, the Eastern Growth Board recognized that *Viking Properties* prohibited the Board from imposing “bright line” rules, and as a result, required that the Board give deference to local government planning based on local circumstances. *Citizens For Good Governance v. Walla Walla County*, 2006 WL 2415825 at *11-12 (2006). In that case, petitioners argued that the *Bremerton* minimum 4 du/acre urban density “bright line” rule prohibited Walla Walla county from permitting urban densities of 3 du/acre. The Eastern Growth Board rejected the petitioners’ “bright line” argument under *Viking Properties*, and instead analyzed the argument under the GMA, which required the Board to give deference to local government planning based on local circumstances unless the county’s actions were clearly erroneous. Under this standard, the Eastern Growth Board found that the petitioners had failed to meet their burden of proof. *Citizens For Good Governance*, 2006 WL 2415825 at *12.

2006 WL 3749673 *11, 05-1-0011 (2006); *Kittitas County Conservation v. Kittitas County*, 2007 WL 2729590, at *10-11 (2007). Instead of citing the phrase “bright line rule,” the Board cited to prior decisions in which it had applied its density rules. *Pend Oreille*, 2006 WL 3749673 at *11; *Kittitas County*, 2007 WL 2729590, at *10-11. Relying on these decisions, the Eastern Board concluded that any rural density greater than the previously adopted standards will depart from the goals and requirements of the GMA and must be “scrutinized more carefully” and “justified in the record.” *Pend Oreille*, 2006 WL 3749673 at *11 (applying a 1:10 du/acre rural density standard); *Kittitas County*, 2007 WL 2729590, at *10-11 (applying a 1:5 du/acre rural density standard). This most recent iteration of the boards’ “bright line” density rules is merely an end-run around the holding of *Viking Properties*, because the standards adopted in the prior Board decisions are in fact the very same “bright line” rules that *Viking Properties* invalidated.

C. The Growth Boards’ Adoption of “Bright Line” Rules Render Planning Decisions Meaningless

At least one member of the Central Growth Board has grown uncomfortable with the Board’s continued application of its inflexible “bright line” rules. The flip side of the Board’s “bright line” rules is a “safe harbor” presumption of validity. Under this “safe harbor” application of the “bright

line” rule, any density that falls within the Board’s predisposed standards for compliance will be found valid, regardless of local circumstances that may warrant review. See *Suquamish Tribe v. Kitsap County*, 2007 WL 2694968, at *51 (2007). Responding to the automatic and uncritical nature in which the Board has applied its density standards, Central Puget Sound Board Member Pageler dissented,

[A]s I read the Supreme Court’s opinion in *Viking Properties v. Holm*[], 155 Wn.2d 112 (2005), neither the Board nor the parties can take refuge in a ‘bright line’ urban density measure when cogent facts point in another direction.

Suquamish Tribe, 2007 WL 2694968, at *51. Board Member Pageler concluded that GMA’s requirement that local government develop locally appropriate plans based on local circumstances is rendered “meaningless” if planning is based on “bright line” rules and “doesn’t have to be based in reality.” *Suquamish Tribe*, 2207 WL 2694968, at *51.

Board Member Pageler’s criticism of “bright line” rules illustrates why this issue remains of paramount importance to the proper administration of the GMA. At the GMA’s very foundation is the mandate providing local jurisdictions broad deference in planning decisions: the “GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs.”

Viking Properties, 155 Wn.2d at 125-26; *see also* WAC 365-195-010(3) (The GMA “process should be a ‘bottom up’ effort . . . with the central locus of decision-making at the local level.”). Local government retains “broad discretion in adapting the requirements of the GMA to local realities.” *Quadrant*, 154 Wn.2d at 236-37. Indeed, the GMA emphasizes local governments’ discretion to balance the planning goals and local circumstances—it is this “balancing that the County is entitled to engage in with its local circumstances in mind; and a balancing to which the Board must give the County considerable deference.” *Clallam County v. Western Washington Growth Management Hearings Board*, 130 Wn. App. 127, 139 (2005).

The Boards’ continued application of “bright line” rules undermines the Legislature’s intent that local government have the discretion to develop locally appropriate regulations “based in reality” (*i.e.*, local circumstances and balancing the various GMA goals). Moreover, as Board Member Pageler recognized, the application of such inflexible standards encourages local government (especially those governments bowing under the cost and pressures of GMA planning) to engage in “meaningless” planning whereby it opts for uniform, safe harbor density standards without regard to the realities of its local circumstances and the goals of the GMA.

**D. Application of a “Bright Line” Rule Deprived
Thurston County of Review on the Merits**

1. Application of “Bright Line” Rural Density Rule

In adopting a variety of densities for its rural element, Thurston County made a policy choice based on existing development patterns and unique local circumstances. There is no question that the Growth Board applied a “bright line” rural density rule to conclude that Thurston County’s rural designations – permitting development denser than 1:5 du/acre – failed to comply with the GMA. That is exactly what Futurewise argued in its pre-hearing brief. AR 339 (Pre-Hearing Brief at 8). And that is precisely how the Board formulated the issue in the case:

[D]oes adoption of [the rural element] comply with [the GMA] when [it] allow[s] . . . densities greater than one unit per five acres when this board has determined that such densities fail to comply with the GMA?

AR 2546 (Issue No. 1). Because the Growth Board lacks authority to create such GMA standards, the Board’s application of its “bright line” rule to find Thurston County’s rural densities out of compliance is void and should be reversed.³

³ The Court of Appeals avoided the *Viking Properties* “bright line” rule issue based on the concession of Thurston County’s former counsel that densities greater than 1:5 du/acre were generally not considered rural. *See Thurston County*, 137 Wn. App. at 807 n.18 (2007) (citing RP 98-99). But what the

Under the GMA's presumption of validity, the burden was on Futurewise to prove, based on a review of the facts and unique circumstances underlying the designations, that the County's action was clearly erroneous. RCW 36.70A.320; RCW 36.70A.3201; *Quadrant*, 154 Wn.2d at 236-38; *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 116 Wn. App. 48, 55 (2003) (failure to apply the GMA's presumption of validity and deferential standard of review is reversible error); *WEAN*, 122 Wn. App. at 168-69 (lot size is just one of many factors that the Board should consider to determine whether the plan protects the County's rural character). Futurewise never raised the issue as to whether the County's policy decision was supported by local circumstances, and therefore failed to adequately support its petition. Thurston County was entitled to have its planning decisions reviewed on the merits under the standards that the Legislature set forth in the GMA – not pursuant to a “bright line” rule. The Board's decision should be reversed.

Court of Appeals failed to acknowledge is that there is a significant difference between a general guideline for appropriate densities and a “bright line” standard. A general guideline can be used as a point of reference while still adhering to the GMA's deferential standard of review. By contrast, a “bright line” rule imposes a threshold standard which, if not adhered to, results in a presumption of invalidity and “increased scrutiny.”

2. Application of “Bright Line” Market Factor Rule

Similarly, the Growth Board’s application of a “bright line” rule limiting the County’s discretion to designate excess land supply within its UGA violated the GMA and *Viking Properties*.⁴ In the same 1995 decision in which the Growth Board adopted its “bright line” density rules, the Board also adopted a “bright line” rule limiting excess UGA land supply to a 25% market factor. *See Bremerton*, 1995 WL 903165, at *30 (“the Board holds that a ‘market factor bright line’ will be drawn at the 25 percent threshold.”).⁵

The GMA, however, sets no fixed limit on local governments’ discretion to include excess land supply within its UGA, beyond what is reasonable based on local circumstances:

[B]ased on the growth management population projection made for the county by the office of financial management, the county and each city . . . shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or the city for the succeeding twenty-year

⁴ In its prehearing brief before the Growth Board, Futurewise argued for the application of the Board’s 25% market factor bright line standard. AR 348 (prehearing brief at 17).

⁵ The Board explained that under its “market factor bright line” rule, excess land supply that is less than 25% of the total land needed to accommodate 20-year growth will be presumptively reasonable, whereas a designation of excess land supply greater than the 25% threshold will be subject to increased scrutiny with the burden of proof shifted to the local government. *Bremerton*, 1995 WL 903165, at *30-31; *see also Gig Harbor*, 1995 WL 903183, at *32.

period An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

RCW 36.70A.110(2). By its very terms, therefore, the GMA mandates that local governments set the minimum size of its UGA large enough to accommodate projected growth for a 20 year period, but grants local governments broad discretion to determine the maximum size of its UGA. RCW 36.70A.110(2).

There is no dispute that Thurston County satisfied the GMA requirement to size its UGA sufficiently to accommodate projected growth. Instead, Futurewise challenged Thurston County's exercise of its discretion in determining how much extra land it would include in its UGA. Before the Growth Board, Futurewise did not challenge any of the local circumstances that supported Thurston County's UGA designation. Instead, Futurewise relied entirely on a Board created "bright line" rule which limited local government to a 25% market factor when setting the size of its UGA.⁶ AR

⁶ Futurewise's petition for review before the Growth Board was limited to challenging to the overall size of the UGA without any discussion of the market factors or local circumstances underlying these designations. AR 347-50 (Pre-Hearing Brief); AR 571-79 (Reply Brief).

The Court of Appeals recognized that both the Growth Board and Futurewise framed the issue on review as whether the County's designation of UGA was too large assuming a 25% market factor. *See Thurston County*, 137 Wn. App. at 804. Despite this, the Court of Appeals erroneously concluded that the Board did not apply its "bright line" rule.⁷ *See Thurston County*, 137 Wn. App. at 804. This conclusion is unavailing – the Board's review was of the issues presented by Futurewise which included an application of the 25% market factor "bright line" rule to Thurston County's UGA. This argument is inextricably intertwined with the Board's conclusion that the County's UGA was too large, and the issue cannot be avoided on appeal.

Indeed, it is because of local circumstances, like those set forth in

⁷ This is in part due to the fact that the Court of Appeals erred in concluding that neither Thurston County nor the Petitioner-Intervenors assigned error to the Board's finding that the County did not state that it was using a market factor, or provide reasons why one was necessary. *See Thurston County*, 137 Wn. App. at 804; *but see*, Thurston County's Opening Brief at I-ii (Assignment of Error 2, Issues Pertaining to Assignment of Error 2); Intervenors' Opening Brief at 4-5 (Assignment of Error 1, Issues Pertaining to Assignment of Error 1 and 2). And it is wholly based on this clear error that the Court of Appeals avoided ruling on the Board's unlawful application of a "bright line" rule. *See Thurston County*, 137 Wn. App. at 804 (applying *Diehl v. Mason County*, 94 Wn. App. 645 (1999), to require that local government provide an explanation in support of excess land supply).

Thurston County's record, that the Board has elsewhere recognized that it should not end its reasonable market factor analysis with a simple calculation of excess land supply percentage. In *Vashon-Maury*, the Board noted that simply dividing the total theoretical dwelling unit capacity by the 20-year forecasted demand does not necessarily result in an accurate calculation of excess land capacity. *Vashon-Maury*, 1995 WL 903209, at *12-13. The calculus must take into account local circumstances to determine whether the county's designation of gross land supply for its UGAs complied with the goals of the GMA. *Vashon-Maury*, 1995 WL 903209, at *12-13; *see also Viking Properties*, 155 Wn.2d at 127 (Focusing solely on urban density as the touchstone of GMA compliance "requires [the Court] to elevate the singular goal of urban density to the detriment of other equally important GMA goals. To do so would violate the legislature's express statement that the GMA's general goals are nonprioritized."). By narrowly focusing on the percentage of Thurston County's gross "excess supply," the Board failed to review the various local circumstances that were set forth at length in Thurston County's record (including, but not limited to, existing oversized lots, undevelopable property, infrastructure limitations, the need to curtail escalating housing costs, and the need to preserve open spaces). *See* Intervenor's Reply Br. at 18-20. As a result, Thurston County was deprived of its entitlement to have

its planning decisions reviewed on their merits under the standards set forth in the GMA, and the Board's decision should be reversed.

E. The Legislature Intended That Local Government Have the Discretion and Flexibility to Make Locally Appropriate Planning Decisions

Why is it so important to allow local government to consider local circumstances and balance the various GMA goals in making land use planning decisions? Because these planning decisions will have real impacts on each county's citizens. A recent University of Washington study drives this point home. In February, 2008, University of Washington Professor Theo Eicher published a study in which he found that GMA regulations in Seattle have added approximately \$200,000 to the average cost of a home. *See* Theo S. Eicher, Ph.D., *Growth Management, Land Use Regulations, and Housing Prices: Implications for Major Cities in Washington State*, at 10 (February 2008).⁸ According to Professor Eichert, the GMA's emphasis on limiting rural development while concentrating growth within UGAs has the effect of limiting housing and land supply and is one of the primary regulatory culprits driving up the cost of housing. *Id.* at 12, 14. This study raises the very policy question the Legislature intended to leave to the

⁸ Available at <http://depts.washington.edu/teclass/landuse/Seattle.pdf> (Last visited February 29, 2008).

discretion of local government: whether extra land should be included in a UGA to increase supply and increase affordable housing. Application of a uniform “bright line” market factor rule improperly takes this type of policy decision out of the hands of local government and places it in an unelected administrative agency. This is not what the Legislature intended in enacting the GMA.

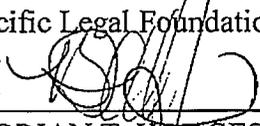
CONCLUSION

For the foregoing reasons, Petitioner-Intervenors Building Industry Association of Washington, Olympia Master Builders, and People for Responsible Environmental Policies respectfully request that this Court reverse the Growth Board’s decision applying “bright line” rules to Thurston County’s designation of rural densities and UGA designation.

DATED: March 0, 2008.

Respectfully submitted,

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By 

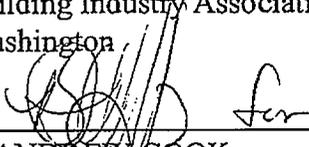
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Washington, Olympia Master
Builders, and People for Responsible
Environmental Policies*

Respectfully submitted,

ANDREW COOK
Building Industry Association of
Washington

By  for

ANDREW COOK

WSBA No. 34004

*Attorney for Petitioner-Intervenor
Building Industry Association of
Washington*

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 MAR -6 P 12: 01

BY RONALD R. CARPENTER

DECLARATION OF SERVICE

I, Brian T. Hodges, declare as follows:

I am a resident of the State of Washington, residing or employed in

Bellevue, Washington.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 10940 NE 33rd Place, Suite 210, Bellevue, Washington.

On March 6, 2008, a true copy of the SUPPLEMENTAL BRIEF OF PETITIONER-INTERVENORS was e-mailed and placed in envelopes addressed to the following:

Tim Trohimovich
Futurewise f/k/a 1000 Friends of WA
814 2nd Avenue, Suite 500
Seattle, WA 98104-1503
Attorneys for Respondent 1000 Friends

Martha P. Lantz
Assistant Attorney General
Licensing & Admin Law Division
1125 Washington St.
P.O. Box 40110
Olympia, WA 98504-0110
Attorneys for Growth Board

Shelley E. Kneip
Deputy Prosecuting Attorney
614 Division Street, MS-35A
Port Orchard, WA 98366
Attorneys for Amicus Kitsap County

Ann M. Gygi
Brian Free
Hillis Clark Martin & Peterson
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1221 2nd Avenue
Seattle, WA 98101-2925
Attorneys for Amicus Clallam County

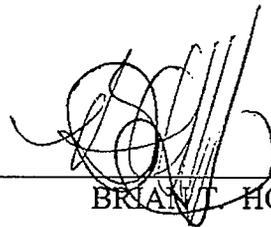
Andy Cook
BLAW
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Jeffery G. Fancher
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Attorney for Thurston County

Richard L. Settle
Special Deputy Prosecuting Attorney
Foster Pepper PLLC
1111 3rd Avenue, Suite 3400
Seattle, WA 98101-3299
Attorney for Thurston County

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Bellevue, Washington.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 6th day of March, 2008, at Bellevue, Washington.



A handwritten signature in black ink, appearing to read "Briant L. Hodges", is written over a horizontal line.

BRIANT L. HODGES

FILED AS ATTACHMENT
TO E-MAIL