

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

No. 80395-1 2008 MAY 27 P 2:01

BY RONALD R. CARPENTER

SUPREME COURT OF THE STATE OF WASHINGTON
CLERK

CITY OF ARLINGTON, DWAYNE LANE,
and SNOHOMISH COUNTY,

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS
BOARD, STATE OF WASHINGTON; 1000 FRIENDS OF
WASHINGTON nka FUTUREWISE; STILLAGUAMISH FLOOD
CONTROL DISTRICT; PILCHUCK AUDUBON SOCIETY; THE
DIRECTOR OF THE STATE OF WASHINGTON DEPARTMENT OF
COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT; and
AGRICULTURE FOR TOMORROW,

Respondents.

AMICUS CURIAE BRIEF OF BUILDING INDUSTRY
ASSOCIATION OF WASHINGTON

Timothy M. Harris, WSBA No. 29906
Andrew C. Cook, WSBA No. 34004
Building Industry Association
of Washington
111 21st Avenue SW
Olympia, WA 98507
Telephone: (360) 352-7800
Facsimile: (360) 352-7801

FILED
SUPREME COURT
STATE OF WASHINGTON
2008 JUN -4 P 3:15
BY RONALD R. CARPENTER
CLERK
b/h

ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	IDENTITY AND INTEREST OF AMICUS CURIAE BUILDING INDUSTRY ASSOCIATION OF WASHINGTON	5
III.	ISSUES OF CONCERN TO AMICUS CURIAE	5
IV.	STATEMENT OF THE CASE.....	5
V.	STANDARD OF REVIEW	6
	1. Standard of review under the GMA.....	7
	2. Standard of review of Growth Board decisions.....	9
VI.	ARGUMENT.....	11
	A. The Court of Appeals Properly Held that the Growth Board Erred by Incorrectly Interpreting and Applying the Law under RCW 34.05.570(3)(d) of the APA.....	12
	B. The Court of Appeals Correctly Applied the Substantial Evidence Test When It Found that the Evidence in the Record Did Not Support the Growth Board’s Decision that the Snohomish County’s Actions Were Clearly Erroneous.....	14
	C. The Court of Appeals’ Interpretation of the GMA’s Requirements for Expanding Urban Growth Areas is Consistent with Legislative Intent and Complies with this Court’s <i>Quadrant</i> Decision	17
VII.	CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases

<i>Callecod v. Wash. State Patrol</i> , 84 Wn. App. 663 (1997).....	16
<i>City of Arlington v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.</i> 138 Wn. App. 1 (2007).....	2, 3, 11, 12, 13, 14, 15, 16, 18, 19
<i>City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.</i> , 136 Wn.2d 38 (1998).....	3, 11
<i>Clark County Natural Res. Council v. Clark County Citizens United, Inc.</i> , 94 Wn. App. 670, <i>rev. denied</i> , 139 Wn.2d 1002 (1999).....	9
<i>Diehl v. Mason County</i> , 94 Wn. App. 645 (1999).....	1
<i>Honesty in Environmental Analysis and Legislation v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.</i> 96 Wn. App. 522 (1999).....	9
<i>King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.</i> , 142 Wn.2d 543 (2000).....	1, 9
<i>Manke Lumber Co. v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.</i> , 113 Wn. App. 615 (2002).....	8, 9
<i>Manke Lumber Co., Inc. v. Diehl</i> , 91 Wn. App. 793 (1998) <i>rev. denied</i> , 137 Wn.2d 1018 (1999).....	8, 9
<i>Nat'l Elec. Contractors Ass'n v. Riveland</i> , 138 Wn.2d 9 (1999).....	10
<i>Quadrant Corp. v. State Growth Mgmt. Hr'gs Bd.</i> , 154 Wn.2d 224 (2005).....	1, 6, 8, 9, 10, 11, 13, 17, 18, 19
<i>State v. Bradshaw</i> , 152 Wn.2d 528 (2004) <i>cert denied</i> , 544 U.S. 922, 125 S.Ct. 1662, 161 L.Ed.2d 480 (2005).....	10
<i>Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hr'gs Bd.</i> , 161 Wn.2d 415 (2007).....	1, 8

Statutes

RCW 34.05.425	10
RCW 34.05.570(1)(a)	10
RCW 34.05.570(3)(c)	12
RCW 34.05.570(3)(d).....	3, 12, 13,14
RCW 34.05.570(3)(e)	3, 4, 12, 13, 14
RCW 34.12.050	10
RCW 36.70A.110(1).....	17, 19
RCW 36.70A.190.....	1
RCW 36.70A.320.....	1, 7, 8
RCW 36.70A.3201.....	1, 6, 8
RCW 36.70A.350.....	17

Administrative Code

WAC 365-195-010(3).....	6
WAC 365-195-060(2).....	7

County Ordinance

Snohomish County's Amended Ordinance 03-063	2
---	---

Miscellaneous

Richard L. Settle, <i>Washington's Growth Management Revolution Goes to Court</i> , 23 Seattle U. L. Rev. 5, 11 (1999).....	7
---	---

I. INTRODUCTION

This case exemplifies the trend of the Washington Growth Management Hearings Boards ignoring the plain language of the Growth Management Act (hereinafter “GMA” or “Act”) and well-established case law granting deference to local jurisdictions. *See* RCW 36.70A.320; 36.70A.3201; *see also* *Quadrant Corp. v. State Growth Mgmt. Hr’gs Bd.*, 154 Wn.2d 224, 235-38 (2005); *King County v. Cent. Puget Sound Growth Mgmt. Hr’gs Bd.*, 142 Wn.2d 543, 561 (2000); *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 161 Wn.2d 415, 430 (2007); *Diehl v. Mason County*, 94 Wn. App. 645, 651 (1999). Applying the correct standard of review and properly weighing the evidence in the record, the Court of Appeals reversed the Central Puget Sound Growth Management Hearings Board (Central Board).

Despite the GMA’s mandate granting local governments deference, the Washington Department of Community, Trade and Economic Development (CTED)—the state agency with authority to provide technical assistance to local jurisdictions under the GMA¹—along

¹ BIAW’s brief responds mainly to CTED’s briefing because it is the state agency in charge of administering the GMA. *See* RCW 36.70A.190(1). CTED omits statutory and case law, misrepresents the Court of Appeals’ decision, and in direct contravention of this Court’s decision in *Quadrant Corp. v. State Growth Mgmt. Hr’gs Bd.*, 154 Wn.2d 224 (2005), attempts to overturn controlling case law granting deference to local

with two other sets of parties² filed a petition for review with the Central Board. Specifically, the parties challenged Snohomish County's Amended Ordinance 03-063. That ordinance amended Snohomish County's Comprehensive Plan by adding 110.5 acres of land known as "Island Crossing" to the Arlington urban growth area. The ordinance also changed the designation of the land from Riverway Commercial Farmland and Rural Freeway Service to Urban Commercial, and rezoned the land from Rural Freeway Service and Agricultural-10 to General Commercial. *See City of Arlington v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.* 138 Wn. App. 1 (2007).

Ignoring the evidence in the record and not granting the proper deference to Snohomish County, the Central Board found the County's ordinance noncompliant.³ The trial court upheld the Central Board's decision and granted the motion to dismiss based on res judicata and collateral estoppel.

On appeal, the Court of Appeals, Div. 1 reversed the lower court and Central Board. Specifically, the Court of Appeals ruled that the

governments planning under the GMA by elevating the APA's standards over the GMA's standard of review.

² 1000 Friends of Washington aka Futurewise, Agriculture for Tomorrow, and Pilchuck Audubon Society; and the Stillaguamish Flood Control District.

Central Board's order was not supported by substantial evidence when viewed in light of the whole record, *i.e.*, the "substantial evidence" standard.⁴ In addition, the Court of Appeals found that the Central Board erroneously interpreted and applied the law. Specifically, the Court of Appeals found that the Central Board incorrectly relied on this Court's decision in *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 136 Wn.2d 38 (1998) to dismiss evidence in the record supporting the County's legislative finding. *See City of Arlington*, 138 Wn. App. at 20-21.

CTED, Futurewise,⁵ and Stillaguamish Flood Control District filed separate petitions for review with this Court, which were ultimately granted. CTED mainly argued in its briefing that the Court of Appeals erred by misapplying the "substantial evidence" standard under RCW 34.05.570(3)(e) of the Administrative Procedure Act (APA). However, CTED completely ignores the fact that the Court of Appeals reversed the Central Board because the Board erroneously interpreted and applied the law under RCW 34.05.570(3)(d). CTED fails to argue in its briefing that

³ The Central Board took the extraordinary length of entering an Order Finding Continuing Noncompliance and Invalidity and Recommendation of Gubernatorial Sanctions.

⁴ RCW 34.05.570(3)(e).

the Court of Appeals' decision was erroneous under RCW 34.05.570(3)(d). Instead, CTED merely alleges that the Court of Appeals erred because it misapplied the "substantial evidence" standard under RCW 34.05.570(3)(e).

As the state agency with rulemaking authority under the GMA, CTED is taking the extraordinary position that the Administrative Procedure Act (APA) grants Growth Boards greater deference than local governments under the GMA. In taking this position, CTED ignores well established case law, the plain language of the Act, and the agency's own administrative rules.

Because the Court of Appeals applied the proper standard of review under the APA and GMA, the Court's decision reversing the Central Board regarding the redesignation and urban growth area expansion of Island Crossing should be upheld. Moreover, the Court of Appeals properly applied the substantial evidence standard (RCW 34.05.570(3)(e)) when it found that there was substantial evidence in the record supporting the County's legislative finding. Accordingly, this Court should uphold the Court of Appeals.

⁵ Futurewise is representing Agriculture for Tomorrow and Pilchuck Audubon Society.

**II. IDENTITY AND INTEREST OF AMICUS CURIAE
BUILDING INDUSTRY ASSOCIATION
OF WASHINGTON**

BIAW is the state's largest non-profit trade association with over 13,500 members engaged in various development and construction related activities throughout Washington. BIAW members are greatly affected by the GMA. BIAW has an interest in ensuring that the GMA is properly applied by local jurisdictions, the three growth management hearings boards, CTED, and the courts of this state.

III. ISSUES OF CONCERN TO AMICUS CURIAE

1. Whether the Court of Appeals correctly applied the substantial evidence test in reviewing the Board's decision and whether the Board granted the proper deference to the County.
2. In applying the criteria governing the designation of agricultural land of long-term significance, whether the Court of Appeals properly concluded that the County's removal of the agricultural designation from the "Island Crossing" was supported by substantial evidence.
3. Whether the Central Board incorrectly determined that Snohomish County's urban growth area expansion of "Island Crossing" was clearly erroneous and whether the Court of Appeals granted the proper standard of review under the APA.

IV. STATEMENT OF THE CASE

BIAW adopts and incorporates by reference the Statements of the Case provided by Appellants Snohomish County, City of Arlington, and Dwayne Lane.

V. STANDARD OF REVIEW

CTED's main argument is that the Court of Appeals erred by not applying the proper standard of review under the APA. Under CTED's theory, Growth Boards shall be given greater deference than local jurisdictions planning under the GMA. CTED makes this argument despite the fact that the Legislature and this Court have admonished the Growth Boards for failing to properly grant local jurisdictions deference. *See* 36.70A.3201 ("In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter."); *see also* *Quadrant*, 154 Wn.2d 224, 235-38 (2005) (this Court holding that "deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general.").

In fact, CTED's own regulations recognize the GMA's mandate of granting local jurisdictions deference and the Act's focus on local decision making. *See* WAC 365-195-010(3) (The GMA "process should be a 'bottom up' effort, involving early and continuous public participation, with the central locus of decision-making at the local level.") (emphasis

added); WAC 365-195-060(2) (Noting the GMA's "emphasis on a 'bottom up' planning process and on public participation."). Commentators have also recognized that the GMA is unlike Oregon's more top-down planning approach. See Richard L. Settle, *Washington's Growth Management Revolution Goes to Court*, 23 Seattle U. L. Rev. 5, 11 (1999) (Explaining that unlike Oregon's growth planning law and Washington's Shoreline Management Act, the GMA does not require state administrative approval of local regulations.) (Emphasis added).

Because the Court of Appeals correctly applied the standard of review and granted Snohomish County the proper deference under the GMA, this Court should uphold the Court's decision.

1. Standard of review under the GMA

The GMA grants local jurisdictions broad discretion in how they plan for growth. For example, the GMA provides in relevant part:

- ...comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.
- ...the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.
- ...the board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board, and in light of the goals and requirements of this chapter.

RCW 36.70A.320(1)-(3)(emphasis added).

In response to a number of Growth Board decisions overturning local government actions, the Legislature amended the GMA to include a more deferential “clearly erroneous” standard. RCW 36.70A.320. In amending the section, the Legislature took the unusual step of codifying its intent statement:

In amending RCW 36.70A.320(3)...the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201 (emphasis added).

The GMA and numerous courts interpreting it make clear that the Act leaves local officials a broad range of discretion, giving them the ultimate responsibility and authority for determining how to apply its requirements to particular circumstances of their communities. *See* RCW 36.70A.320; 36.70A.3201; *see also Quadrant*, 154 Wn.2d at 233, 235-38; *Swinomish*, 161 Wn.2d at 430; *Manke Lumber Co. v. Cent. Puget Sound*

Growth Mgmt. Hr'gs Bd., 113 Wn. App. 615, 628 (2002); *Honesty in Environmental Analysis and Legislation v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.* 96 Wn. App. 522, 531-32 (1999).

When the Growth Boards have failed to grant the proper deference to local governments, the courts have not hesitated to reverse them. *See Quadrant*, 154 Wn.2d at 241; *Manke Lumber Co., Inc. v. Diehl*, 91 Wn. App. 793, 809 (1998) *rev. denied*, 137 Wn.2d 1018 (1999); *see also Clark County Natural Res. Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 677 *rev. denied*, 139 Wn.2d 1002 (1999). Here, the Central Board once again failed to grant Snohomish County the proper deference owed under the GMA. Accordingly, this Court should uphold the Court of Appeals' opinion reversing the Central Board.

2. Standard of review of Growth Board decisions

On appeal from the Growth Boards, RCW 34.05 (APA) governs judicial review. *See Quadrant*, 154 Wn.2d at 233; *see also King County*, 142 Wn.2d at 552. The APA establishes nine bases on which a party may challenge an agency's action.⁶ The "burden of demonstrating the

⁶ *See* RCW 34.05.570(3):

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

invalidity of agency action is on the party asserting invalidity.” RCW 34.05.570(1)(a).

While the APA provides the proper standard of review of Growth Board’s decision, this Court recently ruled that “deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general.” See *Quadrant*,⁷ 154 Wn.2d at 238 (emphasis added); citing *State v. Bradshaw*, 152 Wn.2d 528, 535 (2004) (general desire of legislature to promote uniformity must give way to legislature’s specific direction), *cert denied*, 544 U.S. 922, 125 S.Ct. 1662, 161 L.Ed.2d 480 (2005), *Nat’l Elec. Contractors Ass’n v. Riveland*, 138 Wn.2d 9, 24 (1999) (holding specific provisions must prevail over more

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

⁷ Remarkably, neither CTED nor Futurewise cite to this controlling case law.

general statutes). This Court explicitly noted in *Quadrant* that “[w]hile we are mindful that this deference ends when it is shown that a county’s actions are in fact a ‘clearly erroneous’ application of the GMA, we should give effect to the legislature’s explicitly stated intent to grant deference to county planning decisions.” 154 Wn.2d at 238.

Here, the Court of Appeals found that the Board failed to grant proper deference to the County by dismissing the evidence in the record supporting Snohomish County’s actions. *See City of Arlington*, 138 Wn. App. at 15, 20-21. After applying the substantial evidence standard, the Court of Appeals also determined that the evidence in the record did not support the Central Board’s finding that Snohomish County’s ordinance was clearly erroneous. *Id.* In addition, the Court of Appeals properly ruled that the Central Board erroneously interpreted and applied the law by incorrectly relying on this Court’s *City of Redmond*⁸ decision. *Id.* Accordingly, this Court should uphold the Court of Appeals’ opinion.

VI. ARGUMENT

CTED is attempting to elevate the APA standards over the GMA, which, noted above, this Court expressly rejected. *See Quadrant*, 154 Wn.2d at 238 (“we now hold that deference to county planning actions,

⁸ 136 Wn.2d 38.

that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general.”) Applying the proper standard of review, the Court of Appeals correctly ruled that the County’s legislative finding met the substantial evidence standard. Moreover, the Court of Appeals determined that the Central Board erred by incorrectly interpreting and applying the law under RCW 34.05.570(3)(d). Therefore, this Court should uphold the Court of Appeals’ decision.

A. The Court of Appeals Properly Held that the Growth Board Erred by Incorrectly Interpreting and Applying the Law under RCW 34.05.570(3)(d) of the APA

As explained above, the APA governs judicial review of a case on appeal from the Growth Board. RCW 34.05.570(3). Here, Snohomish County, City of Arlington, and Dwayne Lane appealed the Growth Board’s decision under three of the APA’s nine standards. Specifically, the parties argued that the Growth Board: 1) engaged in unlawful procedure or decision making process or failed to follow a prescribed procedure (RCW 34.05.570(3)(c)); 2) the Board erroneously interpreted or applied the law (RCW 34.05.570(3)(d)); and 3) the Board’s order was not supported by evidence that is substantial when viewed in light of the whole record before the court (RCW 34.05.570(3)(e)). *City of Arlington,*

138 Wn. App. at 12. It is this last standard—RCW 34.05.570(3)(e)—that CTED solely focuses on without properly analyzing the other standards.

Although CTED acknowledges that Snohomish County alleged—and the Court of Appeals held—that the Board “erroneously interpreted or applied the law” under RCW 34.05.570(3)(d), this is where CTED’s discussion of this standard ends. Instead of discussing the proper standard of review under RCW 34.05.570(3)(d) and rebutting the Court of Appeals’ decision under this standard, CTED only argues that the Court of Appeals misapplied the substantial evidence standard under RCW 34.05.570(3)(e). CTED Supp. Br. at 10-15.

As explained above, CTED misleads this Court by attempting to elevate the APA over the GMA’s more deferential standard of review of local government actions. Furthermore, CTED never addresses the second alleged error under the APA -- RCW 34.05.570(3)(d). Under this section of the APA, the Court may grant relief from a Growth Board order if the Board “erroneously interpreted or applied the law.” RCW 34.05.570(3)(d). This Court reviews issues of law under RCW 34.05.570(d) de novo. *Quadrant*, 154 Wn.2d at 233.

In reviewing the Growth Board’s decision, this Court explained that it “accord[s] deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues but [this

court is] not bound by an agency’s interpretation of a statute.” *Id.* at 233; quoting *City of Redmond*, 136 Wn.2d at 46.

The Court of Appeals applied the correct standard of review. In doing so, the Court of Appeals ruled that the Central Board erroneously interpreted and applied the law by applying this Court’s *Redmond*⁹ decision as a basis for dismissing the evidence in the record. *City of Arlington*, 138 Wn. App. at 20-21. Yet CTED fails to rebut this portion of the Court of Appeals’ decision in its briefing.

The Court of Appeals applied the proper standard of review under RCW 34.05.570(3)(d) when it ruled that the Growth Board erroneously interpreted and applied the law. As a result, the Court of Appeals’ decision regarding the redesignation of Island Crossing from Agricultural Resource Land to Urban Commercial should be upheld.

B. The Court of Appeals Correctly Applied the Substantial Evidence Test When It Found that the Evidence in the Record Did Not Support the Growth Board’s Decision that the Snohomish County’s Actions Were Clearly Erroneous

CTED’s main argument is that the Court of Appeals “misapplied” the substantial evidence standard under RCW 34.05.570(3)(e). Contrary to CTED’s claim, the Court of Appeals properly applied the substantial

⁹ 136 Wn.2d 38 (1999).

evidence standard and correctly found that the evidence in the record supported Snohomish County's legislative finding.

According to CTED, the Court of Appeals replaced the "well established substantial evidence test" with a lesser judicial review similar to that of summary judgment. CTED Supp. Br. at 12. CTED claims that the Court of Appeals "effectively held the [Central] Board *must* uphold an action of the County if the County can cite to *any* evidence in the record that supports its action—no matter the quality or quantum of that evidence, and no matter whether the weight of the evidence in the record to the contrary." *Id.* at 15 (emphasis in original).

CTED completely mischaracterizes the Court of Appeals' decision. Contrary to CTED's claim, the Court of Appeals did not rule that *any* evidence will suffice under the substantial evidence standard. Instead, the Court specifically ruled that the "evidence in the record support[ed] the County's determination..." *City of Arlington*, 138 Wn. App. at 15.

The Court of Appeals weighed all of the evidence in the record and found the evidence ignored by the Central Board supported the County's legislative finding. The Court specifically explained:

Because the evidence supports the County's finding that the land at Island Crossing has no long-term commercial significance for agricultural production, the Board erred in not deferring to the County's decision to redesignate the land for urban commercial use.

...
To the extent this evidence [the Higa-Burkholder analysis excluded by the Central Board] supports the County's conclusion that the land was not of long-term commercial significance to agricultural production, and we find that it does, the Board would be required under the GMA to defer to the County and affirm its decision redesignating the land urban commercial.

City of Arlington, 138 Wn. App. at 15 & 21 (emphasis added).

Contrary to CTED's argument, the Court of Appeals' decision does not stand for the proposition that the Growth Boards must uphold a local government action if the city or county can cite to just a scintilla of evidence. Instead, the Court of Appeals applied the substantial evidence standard. After weighing all of the evidence the Court determined that the evidence the Central Board found unpersuasive was in fact a sufficient quantity "to persuade a fair-minded person" that the Board erred by finding the County's actions clearly erroneous. *See Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673 (1997).

CTED and the rest of the petitioners apparently disagree with the Court of Appeals' decision regarding the evidence in the record. However, unlike the Central Board which ignored the evidence, the Court of Appeals applied the proper standard under RCW 34.05.570(3)(e). It weighed the evidence in the record, determined that the evidence supported the County's legislative finding, and ruled that the Central

Board erred by overturning the County's redesignation of Island Crossing. Therefore, this Court should uphold the Court of Appeals decision.

C. The Court of Appeals' Interpretation of the GMA's Requirements for Expanding Urban Growth Areas is Consistent with Legislative Intent and Complies with this Court's *Quadrant* Decision

Continuing its quest to elevate the APA "substantial evidence test" over the GMA's deferential standard of review, CTED again claims that the Court of Appeals erred by misapplying this standard. Remarkably, neither CTED nor Futurewise cite to or attempt to distinguish controlling case law. *See Quadrant*, 154 Wn.2d 224 (this Court dismissing the argument that the substantial evidence standard supersedes the deference granted to local jurisdictions designating urban growth areas when county's planning actions are consistent with the goals and requirements of the GMA.)

The GMA provision designating urban growth areas provides in relevant part:

[A]n urban growth area may include territory that is located outside of a city only *if such territory already is characterized by urban growth* whether or not the urban growth area includes a city, *or is adjacent to territory already characterized by urban growth*, or is designated new fully contained community as defined by RCW 36.70A.350.

RCW 36.70A.110(1)(emphasis added).

The Court of Appeals determined that the evidence in the record supported the County's finding that Island Crossing met the GMA's locational requirements because the subject land is adjacent to territory already characterized by urban growth. *City of Arlington*, 138 Wn. App. at 23. In reaching its decision, the Court of Appeals applied the substantial evidence standard. *Id.* at 11-12.

CTED bemoans the fact that the Court of Appeals used a dictionary definition of "adjacent." Supp. Br. of CTED at 18. Yet, this is precisely what this Court did in *Quadrant* when it applied the same GMA provision. *See Quadrant*, 154 Wn.2d at 239 ("As the legislature has not specifically defined the term 'growth' as used in the GMA we apply its common meaning, which may be determined by referring to a dictionary.").

CTED further claims that the Court of Appeals in this case used the dictionary definition without regard to statutory context or legislative intent. CTED Supp. Br. at 18. This is patently false. In addition to the dictionary definition the Court of Appeals also considered the GMA's legislative intent.

For example, the Court of Appeals found that the facts in the case met the legislative intent of granting deference to local jurisdictions based

on local circumstances and designating the urban growth area adjacent to territory already characterized by urban growth:

[T]he unique location of the land at Island Crossing as abutting the intersection of two freeways and its connection to the Arlington UGA together meet the requirements of RCW 36.70A.110(1). Thus, the County's reliance on such facts in expanding the Arlington UGA was proper and the Board's decision reversing the County's action is erroneous.

City of Arlington, 138 Wn. App. at 23.

Contrary to CTED's hyperbole¹⁰, the Court also correctly cited to persuasive evidence in the record demonstrating that the land is appropriate to be included within the urban growth area because of its unique access to utilities and existing freeway service structures. *Id.* Granting the proper deference owed to local jurisdictions based on local circumstances, the Court of Appeals ruled that the Central Board's decision reversing the County was erroneous.

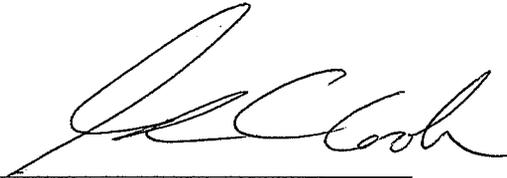
Because the Court of Appeals' decision complies with RCW 36.70A.110(1) and this Court's decision in *Quadrant*, this Court should uphold the Court of Appeals' decision.

¹⁰ Without providing any analysis to support its claims, CTED argues that the Court of Appeals' interpretation "subverts the legislative intent" of the GMA. Even more curious, CTED makes the accusation that the Court of Appeals' interpretation means that "any UGA expansion would comply with the GMA, no matter how illogical the boundary and no matter the character of the land included in the expansion, so long as some part of the UGA expansion 'touches' the existing UGA." Nothing in the Court of Appeals' well reasoned decision leads to this sweeping conclusion.

VII. CONCLUSION

BIAW requests that this Court reject CTED's attempt to overturn *Quadrant* by elevating the APA's "substantial evidence test" over the GMA's deferential "clearly erroneous" standard of review. Based on the foregoing, amicus curiae BIAW respectfully requests that this Court uphold the Court of Appeals' decision overturning the Central Board's Order of Noncompliance and Invalidation.

RESPECTFULLY SUBMITTED this 27th of May, 2008.



Andrew C. Cook
WSBA No. 34004
*Attorney for Amicus Curiae Building
Industry Association of Washington*