

No. 236927

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

CECILE B. WOODS,

Respondent

v.

KITTITAS COUNTY, a political subdivision of the State of Washington,
EVERGREEN MEADOWS, LLC, STUART RIDGE, LLC, STEELE
VISTA, LLC and CLE ELUM'S SAPPHIRE SKIES, LLC

Appellants.

**BRIEF OF APPELLANTS EVERGREEN MEADOWS,
LLC, STUART RIDGE, LLC, STEELE VISTA, LLC and
CLE ELUM'S SAPPHIRE SKIES, LLC**

300 East Pine
Seattle, Washington 98122
(206) 628-9500
Facsimile: (206) 628-9506

GROFF MURPHY TRACHTENBERG
& EVERARD PLLC

Michael J. Murphy, WSBA #11132
William J. Crittenden, WSBA #22033

Attorneys for Appellants

February 22, 2005.

No. 236927

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

CECILE B. WOODS,

Respondent

v.

KITTITAS COUNTY, a political subdivision of the State of Washington,
EVERGREEN MEADOWS, LLC, STUART RIDGE, LLC, STEELE
VISTA, LLC and CLE ELUM'S SAPPHIRE SKIES, LLC

Appellants.

**BRIEF OF APPELLANTS EVERGREEN MEADOWS,
LLC, STUART RIDGE, LLC, STEELE VISTA, LLC and
CLE ELUM'S SAPPHIRE SKIES, LLC**

300 East Pine
Seattle, Washington 98122
(206) 628-9500
Facsimile: (206) 628-9506

GROFF MURPHY TRACHTENBERG
& EVERARD PLLC

Michael J. Murphy, WSBA #11132
William J. Crittenden, WSBA #22033

Attorneys for Appellants

February 22, 2005.

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR..... 1

II. INTRODUCTION..... 1

III. STATEMENT OF THE CASE..... 2

A. The Rezone Application 2

B. Rezone Approval by Kittitas County 3

C. Respondent Woods’ LUPA Petition 3

D. Trial Court Decision 4

IV. ARGUMENT..... 5

A. Standard of Review 5

B. Legal Framework: Comprehensive Plans, Zoning Ordinances and the Growth Management Act (GMA)..... 6

1. Comprehensive Plans vs. Zoning Ordinances 6

2. Site-specific Rezones 7

3. The Growth Management Act 7

4. The Growth Management Hearing Boards 8

5. Exclusive Jurisdiction of the GMA Boards 10

6. GMA Board Decisions on Rural Density 11

C. The Board of Commissioners correctly concluded that the rezone to “Rural-3” was consistent with the Kittitas County Comprehensive Plan. 12

D. The superior court lacked jurisdiction to determine whether the Kittitas County “Rural-3” Zone violates GMA. 18

1. The superior court has no jurisdiction to consider GMA compliance issues, even in the context of a site-specific rezone. 20

2. The respondent’s reliance on dicta in *Wenatchee Sportsmen Association v. Chelan County* is misplaced. 21

3. The exclusive jurisdiction of the GMA boards includes pre-existing Kittitas zoning ordinances. 24

V. CONCLUSION 27

VI. APPENDICES 28

TABLE OF AUTHORITIES

Cases

<i>Association of Rural Residents v. Kitsap County</i> 141 Wn.2d 185, 4 P.3d 115 (2000).....	9, 10, 11
<i>Chelan County v. Nykreim</i> 146 Wn.2d 904, 52 P.3d 1 (2002).....	23
<i>Citizens for Mount Vernon v. Mount Vernon</i> 133 Wn.2d 861, 947 P.2d 1208 (1997).....	6, 7, 10, 20
<i>DeTray v. City of Olympia</i> 121 Wn. App. 777, 90 P.3d 1116 (2004).....	5
<i>Diehl v. Western Washington GMHB</i> 118 Wn. App. 212, 75 P.3d 975 (2003).....	9
<i>Henderson v. Kittitas County,</i> ___ Wn. App. ___, 100 P.3d 842 (2004).....	13, 15, 16, 17
<i>Holbrook, Inc. v. Clark County</i> 112 Wn. App. 354, 49 P.3d 142 (2002).....	6
<i>Larsen v. Town of Colton</i> 94 Wn. App. 383, 973 P.2d 1066 (1999).....	5, 13
<i>Leschi Improvement Council v. Wash. State Highway Comm’n</i> 84 Wn.2d 271, 525 P.2d 774 (1974).....	5, 13
<i>Skagit Surveyors and Engineers, LLC v. Friends of Skagit County</i> 135 Wn.2d 542, 958 P.2d 962 (1998).....	<i>passim</i>
<i>Somers v. Snohomish County</i> 105 Wn. App. 937, 949, 21 P.3d 1165 (2001).....	<i>passim</i>
<i>Thurston County v. Cooper Point Ass’n</i> 148 Wn.2d 1, 57 P.3d 1156 (2000).....	9
<i>Timberlake Christian Fellowship v. King County</i> 114 Wn. App. 174, 61 P.3d 332 (2002).....	10
<i>Tugwell v. Kittitas County</i> 90 Wn. App. 1, 951 P.2d 272 (1998).....	7, 16

<i>Wenatchee Sportsmen Association v. Chelan County</i> 141 Wn.2d 169, 4 P.3d 123 (2000).....	21, 22, 23
<i>Woodmansee v. Ferry County</i> EWGMHB No. 95-1-0010 (5/13/96).....	12

Statutes

RCW 36.70A.....	7, 8, 10, 25
RCW 36.70C.020(1)(a).....	6
RCW 36.70C.030(1)(a)(ii).....	10
RCW 36.70C.130(1)(b).....	5, 13
RCW Chap. 34.05.....	9

Ordinances

Kittitas County ode, KCC Chap. 17.56.....	2
---	---

I. ASSIGNMENT OF ERROR

Assignment of Error No. 1

The trial court erred in reversing the decision of the Kittitas County Board of Commissioners approving the rezoning of appellants' property as set forth in Kittitas County Ordinance No. 2004-15.

Issues Relating to Assignment of Error No. 1

(i) Whether the Board of Commissioners correctly concluded that the rezone to "Rural-3" was consistent with the Kittitas County Comprehensive Plan.

(ii) Whether the superior court lacked jurisdiction to determine whether the Kittitas County "Rural-3" Zone violates the Growth Management Act, RCW Chap. 36.70A.

II. INTRODUCTION

This appeal arises out of a decision of the Yakima County Superior Court to reverse a decision by Kittitas County to rezone property owned by appellants in Kittitas County. The trial court incorrectly ruled that the rezone violated the Growth Management Act, RCW Chap. 36.70A, ("GMA") by allowing "urban" growth in a "rural" area of Kittitas County.

The question of whether the Kittitas County Rural-3 zoning classification violates GMA is an issue over which the Eastern Washington Growth Management Hearing Board ("EWGMHB") has

exclusive jurisdiction. The trial court had no jurisdiction to consider GMA issues and its decision to reverse the rezone based on an alleged violation of GMA is erroneous as a matter of law.

III. STATEMENT OF THE CASE

Appellants Evergreen Meadows, LLC, Stuart Ridge, LLC, Steele Vista, LLC and Cle Elum's Sapphire Skies, LLC (collectively "CESS"), own approximately 250 acres of land in Kittitas County near, but outside of, the City of Cle Elum. The CESS property is designated as "Rural" land under the Kittitas County Comprehensive Plan ("Comprehensive Plan"). Prior to 2004, the property was zoned "Forest and Range-20" under the Kittitas County Zoning Code, KCC Chap. 17.56. Ex 22 at 1.¹

A. The Rezone Application

In January of 2004, CESS requested to rezone the property to "Rural-3," KCC Chap. 17.30. *Id.* Both the existing Forest and Range-20 zoning and the proposed Rural-3 zoning are consistent with the "Rural" land use designation in the Comprehensive Plan. Rural-3 zoning would be consistent with the zoning north of the subject property and prior development patterns east of the subject property. The change to Rural-3 would actually reduce the number of allowable land use activities on the

¹ "Ex" refers to the exhibits in the Certified Appeal Board Record transmitted by the Yakima County Superior Court. RAP 10.4(f).

CESS property. The change would also reduce the minimum lot size from 20 acres to 3 acres. Ex 22 at 2.

On January 20, 2004, Kittitas County issued the required notice to various agencies and nearby property owners, and various comments on the proposed rezone were received. Ex 13. On February 26, 2004, Kittitas County issued a mitigated determination of nonsignificance (“MDNS”) pursuant to the State Environmental Policy Act, RCW 43.21C (“SEPA”). Ex 20. A hearing was held before the Kittitas County Planning Commission on April 26, 2004. The Planning Commission recommended approval of the rezone by a vote of five to one. Ex 24 at 7.

B. Rezone Approval by Kittitas County

The Kittitas County Board of Commissioners (“Board”) held a closed-record hearing on the rezone application on May 18, 2004. The Board unanimously approved the rezone. Ex 5 at 4. On June 1, 2004, the Board enacted Ordinance No. 2004-15, setting for the Board’s findings of fact and approving the rezone. Ex 8; **Appendix A.**

C. Respondent Woods’ LUPA Petition

Respondent Cecil Woods challenged the rezone by filing a land use petition in the Yakima County Superior Court pursuant to the Land Use Petition Act, RCW Chap. 36.70C (“LUPA”). CP 166-76. Woods raised several challenges to the rezone. Woods’ main objection to the

rezone — and the only argument on which the trial court actually ruled — was that the rezoning to Rural-3 violated GMA by allowing “urban” growth in a “rural” area of Kittitas County. CP 98. In response, CESS pointed out that the court had no jurisdiction to consider Woods’ arguments under GMA, and that only the EWGMHB had jurisdiction to determine whether Kittitas County had complied with GMA. CP 72.

D. Trial Court Decision

The trial court erroneously concluded that it had jurisdiction over the GMA issue, and agreed with respondent Woods that the rezoning violated GMA. In its memorandum decision, the trial court stated:

1. The court has subject matter jurisdiction over this site-specific rezoning. Although the GMHB has jurisdiction to determine whether Kittitas County’s RR-3 zoning ordinance violates the GMA, it does not have jurisdiction to review whether the BOCC’s decision to rezone the subject property as RR-3 violates the GMA as applied by allowing urban growth (RR-3) in a rural area.
2. Whether this RR-3 rezoning is lawful depends on where the subject property is located within the county. In other words, the RR-3 ordinance may be consistent with the GMA when applied to some properties and inconsistent when applied to others. Since the property in this case is located outside of a designated UGA, a rezoning that allows for development which is urban in nature violates the GMA. The fact that the property may never be fully built out is irrelevant to whether the application of RR-3 to this property has the potential to turn a rural area into an area of urban growth density.

CP 28; **Appendix B.**

CESS moved for reconsideration, which the trial court denied. CP 18. This appeal followed.

IV. ARGUMENT

A. Standard of Review

In a LUPA action this Court reviews the land use decision of the local jurisdiction (Kittitas County) based on the administrative record. *DeTray v. City of Olympia*, 121 Wn. App. 777, 784, 90 P.3d 1116 (2004).

The issues presented in this appeals are questions of law which this Court reviews *de novo*. *City of University Place v. McGuire*, 144 Wn.2d 640, 647, 30 P.3d 453 (2001).

The interpretation of the Comprehensive Plan is a question of law. *See Larsen v. Town of Colton*, 94 Wn. App. 383, 394, 973 P.2d 1066 (1999) (interpretation of a zoning ordinance is a question of law); *see also Leschi Improvement Council v. Wash. State Highway Comm'n*, 84 Wn.2d 271, 285, 525 P.2d 774 (1974).

Under LUPA, the Board's interpretation of its own Comprehensive Plan must be affirmed unless respondent Woods can show that the County's interpretation is erroneous "after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise." RCW 36.70C.130(1)(b).

B. Legal Framework: Comprehensive Plans, Zoning Ordinances and the Growth Management Act (GMA)

A correct analysis of the issue in this case requires an understanding of the relationship between the Comprehensive Plan, zoning ordinances and GMA.

1. Comprehensive Plans vs. Zoning Ordinances

A comprehensive plan is a document that sets forth a local jurisdiction's fundamental land use policies and goals. *See Citizens for Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). Comprehensive plans generally are not used to make specific land use decisions (other than zoning decisions). *Id.* "Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations." *Id.*

The initial adoption of comprehensive plans and zoning ordinances, and area-wide amendments to such plans and ordinances, involve the exercise of a local legislative body's policy-making role. *Holbrook, Inc. v. Clark County*, 112 Wn. App. 354, 365, 49 P.3d 142 (2002). Such actions are generally considered legislative actions, *id.*, which are not subject to judicial review under LUPA. RCW 36.70C.020(1)(a).

2. Site-specific Rezones

In contrast, a decision to rezone a specific parcel of property is a quasi-judicial action, and such actions are subject to judicial review under LUPA. See *Citizens for Mount Vernon*, 133 Wn.2d at 865; RCW 36.70C.020(1)(b). To obtain a site-specific rezone an applicant is only required to establish that the rezoning bears a substantial relationship to the public health, safety, morals, or general welfare. *Tugwell v. Kittitas County*, 90 Wn. App. 1, 8, 951 P.2d 272 (1998). A rezone applicant is usually also required to show a substantial change in circumstances since the property was originally zoned. But such a showing is not required where the new zoning designation is consistent with the jurisdiction's comprehensive plan. *Tugwell*, 90 Wn. App. at 8 n.6.

3. The Growth Management Act

The Growth Management Act, codified at RCW 36.70A, regulates the manner in which local jurisdictions adopt and amend their comprehensive plans and zoning ordinances:

This state's Growth Management Act was enacted in 1990 in response to the problems associated with an increase in population in this state, particularly in the Puget Sound area, in the 1980s. These problems included increased traffic congestion, school overcrowding, urban sprawl, and loss of rural lands...

The Growth Management Act imposed substantial new requirements on local governments. Among those requirements is the duty on the part of most counties ... to

develop a comprehensive land use plan which, at a minimum, includes a plan, scheme, or design addressing each of the following elements: (1) land use, (2) housing, (3) capital facilities, (4) utilities, (5) rural areas, and (6) transportation. (Citations omitted).

Skagit Surveyors and Engineers, LLC v. Friends of Skagit County, 135 Wn.2d 542, 547, 958 P.2d 962 (1998). The goals of GMA were, among other things, to encourage urban development in areas where adequate public services exist and to reduce the conversion of undeveloped land into sprawling, low-density development. *Skagit Surveyors*, 135 Wn.2d at 547-48.

The primary method required for meeting these two goals is set forth in RCW 36.70A.110. That provision requires counties to “designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.” RCW 36.70A.110(1).

Id. As originally enacted, GMA had no administrative enforcement mechanism. *Id.*

4. The Growth Management Hearing Boards

In 1991 the Legislature created three growth management hearings boards, one for Eastern Washington, one for Western Washington, and one for the Central Puget Sound area. *Id.*; see RCW 36.70A.250. The GMA boards have authority to hear petitions to determine whether local comprehensive plans and zoning regulations, including pre-existing ordinances, comply with GMA. *Skagit Surveyors*, 135 Wn.2d at 549; see

RCW 36.70A.280 and -290. The GMA boards also have the authority to order local jurisdictions to comply with GMA within a reasonable time. *Id.*; see RCW 36.70A.300.

In 1995 the GMA boards were given the statutory authority to invalidate comprehensive plans and zoning regulations adopted after the passage of GMA. *Skagit Surveyors*, 135 Wn.2d at 560-61; see *Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 192 n.2, 4 P.3d 115 (2000). In addition, the GMA

grants the boards the authority to determine that a county which has failed to comply with [GMA] and which continues to enforce its pre-existing ordinances is not in compliance with [GMA]. However, the boards' remedy for noncompliance in such circumstances is limited to a recommendation that economic sanctions be imposed against the county.

Skagit Surveyors, 135 Wn.2d at 567. In other words, the GMA boards have exclusive jurisdiction over both pre-existing zoning regulations and new regulations adopted after GMA; the only difference is the remedy available to the GMA boards.

The GMA boards are state agencies. Decisions of the GMA boards are subject to judicial review under the state Administrative Procedure Act (RCW Chap. 34.05). See *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 57 P.3d 1156 (2000); *Diehl v. Western Washington GMHB*, 118 Wn. App. 212, 75 P.3d 975 (2003). Decisions of the GMA

boards are *not* subject to judicial review under LUPA. RCW 36.70C.030(1)(a)(ii).

5. Exclusive Jurisdiction of the GMA Boards

All questions of whether comprehensive plans, zoning ordinances, and development regulations comply with GMA are within the exclusive jurisdiction of the GMA Boards. RCW 36.70A.280(1); *Somers v. Snohomish County*, 105 Wn. App. 937, 945, 949, 21 P.3d 1165 (2001) (GMA board have exclusive jurisdiction over the question of whether a pre-existing local zoning ordinance complies with GMA). *See Citizens for Mount Vernon v. Mount Vernon*, 133 Wn.2d 861, 868, 947 P.2d 1208 (1997) (GMA board has jurisdiction over whether city's comprehensive plan complies with GMA). Only the GMA boards may invalidate a local zoning regulation. *Association of Rural Residents*, 141 Wn.2d at 192 n.2. Issues within the exclusive jurisdiction of the GMA boards cannot be raised in appeals of land use decisions under LUPA. *Somers*, 105 Wn. App. at 939; *Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 188 n.5, 61 P.3d 332 (2002) (superior court lacks jurisdiction under LUPA to consider question of whether county's criteria for conditional use permit complies with GMA).

Even where the particular land use decision is reviewable under LUPA, the superior court lacks jurisdiction to consider issues of GMA

compliance because such issues are within the exclusive jurisdiction of the

GMA boards:

Although the appeal of a decision approving a project permit application is generally the type of land use decision that would be subject to review by a superior court under LUPA, the present appeal is not. Rather, it is one in which the underlying issue is whether a pre-existing local zoning ordinance complies with the provisions of the Growth Management Act (GMA). *Accordingly, the proper Growth Management Hearings Board (GMHB or "the Board"), rather than the superior court, has exclusive jurisdiction to review the matter.* (Emphasis added).

Somers, 105 Wn. App. at 939; *see Association of Rural Residents*, 141 Wn.2d at 187-88 (PUD application must be considered under the existing zoning regulations whether or not those regulations arguably violated GMA).

6. GMA Board Decisions on Rural Density

Over the last thirteen years, the decisions of GMA boards have produced a large body of decisional law interpreting and applying every aspect of GMA. The decisions of the GMA boards are published on the GMA boards' website at www.gmhb.wa.gov.

One of the most contentious issues under GMA has been rural density. As the respondent points out, the GMA boards have invalidated some local zoning regulations that allow residential densities more dense than one development unit ("du") per five acres of property. While the EWGMHB has rejected rural densities more dense than 1du/5 acres in

some jurisdictions, it has allowed such densities in others. *See Woodmansee v. Ferry County*, EWGMHB No. 95-1-0010 (Final Decision and Order, 5/13/96) (upholding 2.5 acre rural zoning in Ferry County). Crucial to this case is the fact that the EWGMHB has never ruled on the issue, raised by the respondent, of whether the 1du/3 acre density permitted in the Kittitas County Rural-3 zone violates GMA.

C. The Board of Commissioners correctly concluded that the rezone to Rural-3 was consistent with the Kittitas County Comprehensive Plan.

As explained in Section B (2), to approve the rezone the Board of Commissioners was required to determine that the proposed Rural-3 zone is consistent with the Comprehensive Plan. The Board correctly concluded that the rezone to Rural-3 was consistent with the policies of the Comprehensive Plan for *rural* areas of Kittitas County:

5. The Board of Commissioners finds that the requested zone change is consistent with the rural land use designation of the Kittitas County Comprehensive Plan. The Comprehensive Plan designation of the property changed to “Rural” in 1996. The “Rural” designation has consistently been interpreted to be consistent with the Rural-3 zoning designation.

Ex 8 at 2. Although the trial court did not directly address this part of the Board’s decision, the trial court’s ruling was based on an erroneous and conflicting determination that the Rural-3 zone is an “urban” zone that is only appropriate within an Urban Growth Area (“UGA”). CP 28. That

determination is directly contrary to the plain language of the Comprehensive Plan and this Court's recent decision in *Henderson v. Kittitas County*, ___ Wn. App. ___, 100 P.3d 842 (2004).¹

The Comprehensive Plan explicitly recognizes that the Rural-3 Zone is considered "Rural" and that the Rural-3 Zone is part of a diversity of rural densities that the County has made a thoughtful legislative decision to retain:

There exists a generalization that 5 acre minimum lot sizes might preserve "rural character." The County Planning Department has GIS data showing over 603,716 acres eligible for consideration as rural land. If so, Kittitas County will retain rural character for a long time based on the five acre density criteria. State planners are concerned about "urban sprawl" with less than five acre minimum lots sizes. However, over the past fifteen to twenty years Kittitas County has experienced "rural sprawl" through the adoption of 20 acre minimum lot sizes, which has caused the conversion of farm land into weed patches. Small lot zoning with conservation easements for agriculture, timber, or open space may be preferable to the wasteful "sprawl" developments of large lot zoning and could be more conducive to retaining rural character. Where do our rural neighborhoods fit into the lot size debate? In Kittitas County there are rural settlements of all sizes and

¹ Although the Board labeled its determination a "finding of fact," the interpretation of the Comprehensive Plan is a question of law. *See Larsen v. Town of Colton*, 94 Wn. App. 383, 394, 973 P.2d 1066 (1999) (interpretation of a zoning ordinance is a question of law); *see also Leschi Improvement Council v. Wash. State Highway Commission*, 84 Wn.2d 271, 285, 525 P.2d 774 (1974). Under LUPA, the Board's interpretation of its own Comprehensive Plan must be affirmed unless respondent Woods can show that the Board's interpretation is erroneous "after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise." RCW 36.70C.130(1)(b). Respondent has not made such a showing.

descriptions, some resembling small towns and others simple “crossroads cluster.” While attaining higher densities, these areas remain rural in character.

Comprehensive Plan (2003) at 176; CP 77. The next paragraph notes that maximum densities advocated by certain GMA advocates are not necessarily the appropriate solution for Kittitas County:

Density alone may not describe rural character but the “appearance” of density might. More and more “appearance” rather than actual substance or function seems to be the goal of planning. Perhaps our rural lands do not have to be rural, they just have to “appear to be rural” to satisfy those aggressively demanding that government mandate “ruralness.”

Id. The Comprehensive Plan goes on to observe that Kittitas County has a variety of rural densities, including the Rural-3 zone:

The Rural Lands exhibit a vibrant and viable landscape where a diversity of land uses and housing densities are compatible with rural character. Many sizes and shapes can be found in the Rural lands, its topography and access variations allow for small to large acreage, economic activities, residential subdivisions, farming, logging and mining.

...

Present rural land uses in Kittitas County are a mixture of diverse development patterns stemming from trends established decades ago. These patterns include those resulting from the county's zoning code (Title 17, Kittitas County Code). In 1968, an agricultural zone was adopted with a minimum lot size of one acre. Since this time, down-zoning and additions to the code have resulted in minimum lot sizes in agricultural areas of 3 to 20 acres in size. In 1974, the Forest and Range Zone was created which also had a one acre minimum lot size. Minimum lot

sizes later increased in this zone to 20 acres and led to the creation of the Rural-3 zone, with a 3-acre minimum lot size. Further, a Commercial Forest zoning designation has recently been adopted which set an 80 acre minimum lot size for lands with this designation. Tables 2.1 and 2.2, contained in Chapter 2 of this document, list the permitted uses in these zones and those uses available through the conditional use permit process.

The aforementioned range of rural densities and uses has created and contributed to a successful landscape which contributes to an attractive rural lifestyle. The exception to this landscape can be seen in areas where individuals have had to acquire larger lots than desired in order to obtain a building site. This has created the effect of "rural sprawl." This current mix of rural uses and densities has not increased the cost to taxpayers for road and utility improvements, police and fire protection, or the education of school populations beyond the means of the local people to finance such infrastructure. The mix of rural uses and densities have allowed rural growth to be accommodated in a variety of areas where it is appropriate. This has been compatible with both resource activities and urbanization.

Comprehensive Plan (2003) at 177-178 (emphasis added).

In light of these provisions, the Board's determination that the Rural-3 zone is consistent with the Rural designation in the Comprehensive Plan was correct. The trial court's contrary determination was erroneous. The Board's decision to rezone the CESS property to Rural-3 is not only "compatible" with the Comprehensive Plan, but actually implements the goal of the Plan to make a variety of rural densities available for development. *Henderson*, 100 P.3d at 846.

After the trial court issued its memorandum decision, but before the trial court ruled on the motion for reconsideration, this Court issued its opinion in *Henderson, supra*. In *Henderson*, a developer applied for a rezone for over 100 acres in Kittitas County from Forest & Range to an agricultural zone with minimum 3 acre lots (“A-3”). The property at issue was in the *rural* area of Kittitas County. The Planning Commission recommended the rezone, and the Board approved the rezone. Opponents sought review under LUPA, and the superior court (Kittitas County) affirmed the rezone. The opponents appealed to this Court, which also affirmed the rezone.

On appeal, the opponents argued, *inter alia*, that there was no showing of changed circumstances. This Court disagreed, repeating its holding in *Tugwell, supra*, that a showing of changed circumstances is not necessary where a proposed rezone implements the policies of the Comprehensive Plan. *Henderson*, 100 P.3d at 846. This Court held that the rezone to A-3 implemented the policies of the Comprehensive Plan:

Additionally, the rezone appears to implement policies of Kittitas County's comprehensive plan. In a section entitled ‘Current Land Use Patterns--A Review of Existing Zoning,’ the plan reveals a concern with the effects of large rural lots:

The aforementioned range of rural densities and uses has created and contributed to a successful landscape which contributes to an attractive rural

lifestyle. The exception to this landscape can be seen in areas where individuals have had to acquire larger lots than desired in order to obtain a building site. This has created the effect of 'rural sprawl.'

In its introduction to the rural lands section, the comprehensive plan further describes the problem:

State planners are concerned about 'urban sprawl' with less than five acre minimum lot sizes. However, over the past fifteen to twenty years Kittitas County has experienced 'rural sprawl' through the adoption of 20 acre minimum lot sizes, which has caused the conversion of farm land into weed patches. Small lot zoning with conservation easements for agriculture, timber, or open space may be preferable to the wasteful 'sprawl' developments of large lot zoning and could be more conducive to retaining rural character.

Because the proposed rezone here from forest and rural 20-acre minimum lot sizes to agricultural 3-acre minimum lot sizes implements the express policy of the comprehensive plan, this fact alone would justify the rezone.

Henderson, 100 P.3d 846 (citations to record omitted, emphasis added).

The minimum lot size and rural density at issue in this case (Rural-3 acres) are exactly the same as the rural zoning at issue in *Henderson* (Agricultural-3 acres). The Board's determination that the "Rural-3" zone is consistent with the "Rural" designation under the Comprehensive Plan was clearly correct under *Henderson* and must be affirmed. The trial court contrary determination—that the "Rural-3" zone is an "urban" zone must be rejected.

D. The superior court lacked jurisdiction to determine whether the Kittitas County “Rural-3” Zone violates GMA.

The trial court’s decision is based on an erroneous conclusion that the superior court has jurisdiction under LUPA to consider whether the Rural-3 zone violates GMA “as applied” to the CESS property. CP 16. There are no “as applied” challenges under GMA. The exclusive jurisdiction of the GMA boards is determined by the legal issue presented, not by the context in which the issue arises.

The correct analysis of the jurisdiction question is set forth in *Somers*, 105 Wn. App. 937. In *Somers*, neighboring landowners brought an action under LUPA to review Snohomish County’s approval of a residential subdivision. The neighbors argued that the subdivision constituted urban growth outside the Monroe urban growth area (UGA) in violation of GMA. The trial court agreed, and reversed the approval of the subdivision. *Somers*, 105 Wn. App. at 940-41. The Court of Appeals reversed:

Although the appeal of a decision approving a project permit application is generally the type of land use decision that would be subject to review by a superior court under LUPA, the present appeal is not. Rather, it is one in which the underlying issue is whether a pre-existing local zoning ordinance complies with the provisions of the Growth Management Act (GMA). Accordingly, the proper Growth Management Hearings Board (GMHB or “the Board”), rather than the superior court, has exclusive jurisdiction to review the matter.

Somers, 105 Wn. App. at 939 (emphasis added).

Like the trial court in *Somers*, the trial court in this case incorrectly attempted to decide the GMA issue of whether the Rural-3 zone constitutes urban growth. Although a site-specific rezone is generally the type of land use decision that is subject to this Court's review under LUPA, the underlying legal issue is not. *Somers*, 105 Wn. App. at 939. Because the substance of the petitioner's argument is based entirely on GMA compliance, the GMHB has exclusive subject matter jurisdiction.

During questioning at oral argument, counsel for the *Somers* had to concede that the substance of their position is that, to the extent the County's R-20,000 zoning permits urban growth outside the IUGA, Cromwell Plateau (or any other development) is not permitted under the GMA. No matter how they attempt to otherwise characterize their challenge, the *Somers*' real argument is that the County failed to comply with the GMA when it applied a pre-existing ordinance that permitted urban densities outside of the IUGA. The question of whether a county is in compliance with the GMA is an issue over which the GMHB has exclusive subject matter jurisdiction.

Somers, 105 Wn. App. at 945 (emphasis added). Under *Somers*, the EWGMHB has exclusive jurisdiction over the question of whether the Rural-3 zone constitutes urban growth. The trial court exceeded its jurisdiction by holding that the "Rural-3" Zone violates GMA.

1. **The superior court has no jurisdiction to consider GMA compliance issues, even in the context of a site-specific rezone.**

In an attempt to distinguish *Somers, supra*, respondent Woods argues that the exclusive jurisdiction of the GMA boards does not apply to site-specific rezones. CP 57. That argument is directly contrary to the supreme court's decision in *Citizens, supra*.

In that case, the City of Mount Vernon rezoned a 40-acre parcel and approved a preliminary planned unit development (PUD). Project opponents challenged both decisions under LUPA. *Citizens*, 133 Wn.2d at 865. In response, the developer argued that the project opponents were required to challenge the action before the GMHB. The supreme court disagreed, explaining that the substantive legal issue — not the land use action itself — determines whether the GMA boards have jurisdiction.

Contrary to the position of Hagen, the challenge to the approval of the Hagen development by *Citizens* does not involve the issue of whether the Mount Vernon City Council properly complied with the GMA, but rather involves the effect of the comprehensive plan on specific land use decisions. The Board does not have jurisdiction over these types of issues and cannot provide the remedy or relief sought by *Citizens*

Citizens' complaint does not assert that the comprehensive plan implemented by the city of Mount Vernon does not comply with the requirements of the GMA. Rather, Citizens allege that the approval of the rezone and the approval of this specific development project do not comply with the underlying zoning or with the comprehensive plan, and that the comprehensive plan

cannot be used to make specific land use decisions. The Board is not able to render a decision on this issue because the approval granted by the city council falls outside the scope of review granted to the Board.

Citizens, 133 Wn.2d at 868 (emphasis added). In other words, if the project opponents in *Citizens* asserted that the comprehensive plan did not comply with GMA, that issue would have been within the GMA board's exclusive jurisdiction.

The issue-based analysis in *Citizens* is entirely consistent with *Somers, supra*. Furthermore, unlike the *Wenatchee Sportsmen* dicta relied on by respondent Woods (see subsection D (2)), the analysis in *Citizens* is the actual holding. Under *Citizens*, respondent's argument is erroneous and must be rejected.

2. The respondent's reliance on dicta in *Wenatchee Sportsmen Association v. Chelan County* is misplaced.

In the trial court, respondent Woods cited *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 4 P.3d 123 (2000), for the proposition that "review of site-specific rezones for compliance with [GMA] must be raised in a LUPA appeal." CP 55. But it is clear from a careful review of the *Wenatchee Sportsmen* case that the language relied on by respondent is both taken out of context and is *dicta*.

In *Wenatchee Sportsmen*, Chelan County rezoned certain property to "recreational residential" (RR-1) in 1996. Project opponents (WSA)

did not seek review of the rezone under LUPA at that time. After the rezone was approved, the developer submitted an application to subdivide the property. The county approved the subdivision in 1998, and the project opponents sought review under LUPA. *Wenatchee Sportsmen*, 141 Wn.2d at 174. The trial court found that project complied with the new zoning, but that the project violated GMA by allowing urban growth outside the county's interim urban growth area (IUGA). *Wenatchee Sportsmen*, 141 Wn.2d at 175. The exact basis of the trial court's decision is not clear from the *Wenatchee Sportsmen* opinion, and was irrelevant to the issue actually decided by the supreme court.

On direct review of the trial court's decision, the supreme court framed the legal issue as follows:

Does a party's failure to timely appeal a county's approval of a site-specific rezone bar it from challenging the validity of the rezone in a later LUPA challenge to county approval of a plat application to develop the property?

Wenatchee Sportsmen, 141 Wn.2d at 175. The court held that the project opponents' GMA argument was barred because opponents did not challenge original 1996 rezone decision under LUPA. *Wenatchee Sportsmen*, 141 Wn.2d at 182. But in reaching its conclusion that the project opponents' action was untimely, the court simply assumed that the

superior court would have had jurisdiction to consider the GMA argument if the project opponents had challenged the 1996 rezone under LUPA:

At that time a court reviewing the rezone decision could have considered whether the minimum density allowed by the RR-1 district was compatible with the IUGA. If there is no challenge to the decision, the decision is valid, the statutory bar against untimely petitions must be given effect, and the issue of whether the zoning ordinance is compatible with the IUGA is no longer reviewable.

Wenatchee Sportsmen, 141 Wn.2d at 181-82.

Given the legal issue and the actual holding in *Wenatchee Sportsmen*, the ambiguous suggestion that the project opponents could have challenged the rezone for GMA compliance if they had brought a LUPA action in 1996 is *dicta*. That *dicta* was simply repeated in *Chelan County v. Nykreim*, 146 Wn.2d 904, 924-25, 52 P.3d 1 (2002), where the actual issue was whether a “ministerial” land use decision (a boundary line adjustment) is reviewable under LUPA.

Another portion of the *Wenatchee Sportsmen* opinion, which is not merely *dicta*, shows that respondent Woods’ argument is incorrect. The developer argued that the project opponents were required to challenge the rezone before the GMHB. The court correctly disagreed. “[U]nless a petition alleges that a comprehensive plan or a development regulation or amendments to either are not in compliance with the requirements of the GMA, a GMHB does not have jurisdiction to hear the petition.”

Wenatchee Sportsmen, 141 Wn.2d at 178. This portion of the *Wenatchee Sportsmen* opinion is consistent with *Somers, supra*, and *Citizens, supra*, and confirms that issues of GMA compliance are within the exclusive jurisdiction of the GMA boards.

3. The exclusive jurisdiction of the GMA boards includes pre-existing Kittitas zoning ordinances.

In the trial court, respondent Woods argued that the court had jurisdiction to decide the issue of GMA compliance because the Rural-3 zoning ordinance, adopted in 1992 in Ordinance 92-4, could not have been appealed to the EWGMHB. CP 39-44. This argument is directly contrary to *Skagit Surveyors*, 135 Wn.2d at 567, and *Somers*, 105 Wn. App. at 947-48.

First, the respondent's suggestion that the Rural-3 zone could not have been appealed to the GMHB is incorrect. As explained in appellant Kittitas County's brief, the citizens of Kittitas County have had numerous opportunities to challenge the Rural-3 zone legislatively and before the EWGMHB. Woods and other critics of the Rural-3 zone simply have not pursued the issue in the appropriate venues. To avoid redundant briefing on this issue, appellant CESS adopts and incorporates the arguments of appellant Kittitas County on this issue. *See* RAP 10.1(g)(2).

Second, the argument that the GMA boards lack the authority to review pre-existing zoning ordinances was squarely rejected in *Skagit Surveyors*. In that case, the supreme court noted that under RCW 36.70A.290(2) all petitions challenging a particular comprehensive plan or development regulation must be filed with the GMA board within 60 days after enactment. Consequently, “[a] pre-Act ordinance could never be challenged under this section of the Act because the 60-day limitation period could not be met in such a case.” *Skagit Surveyors*, 135 Wn.2d at 559. Nevertheless, the GMA boards have the authority under RCW 36.70A.280 to determine whether such pre-existing ordinances violate GMA:

The statute grants the boards the authority to determine that a county which has failed to comply with the Growth Management Act and which continues to enforce its pre-existing ordinances is not in compliance with the Act. However, the boards’ remedy for noncompliance in such circumstances is limited to a recommendation that economic sanctions be imposed against the county.

Skagit Surveyors, 135 Wn.2d at 567. In other words, the GMA boards have exclusive jurisdiction over both pre-existing regulations and new regulations adopted after GMA; the only difference is the remedy available to the GMA boards.

There is no requirement that a city or county pass all new ordinances after GMA in order to comply with GMA. Existing zoning

codes and development regulations are not immune from review by the GMA boards simply because they may have existed prior to either GMA or prior to the first stage of comprehensive planning under GMA.

In *Somers, supra*, neighboring landowners argued that a pre-existing “R-20,000” zone violated GMA. Like the respondent in this case, the neighbors argued that the GMHB could only have jurisdiction over the issue if their challenge to the pre-existing zoning was raised within 60 days after the enactment of the ordinance. The appellate court disagreed:

In short, we read Skagit Surveyors to mean that if the Somers had a complaint with the densities permitted by the pre-existing R-20,000 zoning ordinance, they should have brought that matter to the GMHB, not the superior court. The GMHB has the “authority to determine that a county [that] has failed to comply with the Growth Management Act and [that] continues to enforce its pre-existing ordinances is not in compliance with the Act.”

Somers, 105 Wn. App. at 948.

The law is clear. If respondent believes the existing Rural-3 zone violates the GMA — whether that ordinance was passed before, after and/or in response to GMA or not — the respondent must take that issue to the EWGMHB. The trial court had no jurisdiction to consider the issue.

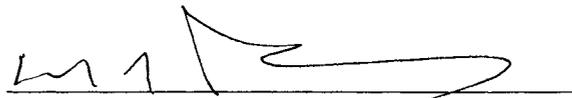
Somers, 105 Wn. App. at 949.

V. CONCLUSION

For all of these reasons the trial court's decision was erroneous and must be reversed.

RESPECTFULLY SUBMITTED this 22nd day of February, 2005.

GROFF MURPHY TRACHTENBERG
& EVERARD PLLC

A handwritten signature in black ink, appearing to be "MJ Murphy", written over a horizontal line.

Michael J. Murphy, WSBA #11132
William J. Crittenden, WSBA #22033
Attorneys for Appellants CESS

VI. APPENDICES

Appendix A	Ordinance No. 2004-15 (rezone decision)
Appendix B	Trial court's memorandum decision

CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 22nd day of February, 2005, I caused a true and correct copy of the Brief of Appellants to be forwarded, via the method(s) indicated below, to the following person(s):

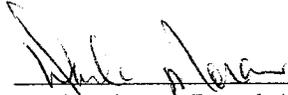
James C. Carmody
Velikanje Moore & Shore, P.S.
405 E. Lincoln Ave.
P.O. Box 22550
Yakima, WA 98907
Attorneys for Petitioner

- U.S. Mail
- Hand Delivery Via Messenger Service
- Facsimile

James E. Hurson
Kittitas County Attorney
205 W. 5th #213
Ellensburg, WA 98926
Attorney for Respondent Kittitas County

- U.S. Mail
- Hand Delivery Via Messenger Service
- Facsimile

Dated: Feb. 22, 2005



Darla Moran, Legal Assistant
Groff Murphy Trachtenberg & Everard
PLLC

APPENDIX A

BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON

ORDINANCE

NO: 2004-15
In the matter of

Evergreen Meadows L.L.C., Stuart Ridge L.L.C, and Steele Vista L.L.C. Rezone
(Z-04-01)

WHEREAS, according to Kittitas County Code Chapter 17, relating to the Zoning of Land, adopted pursuant to RCW 58.17, an closed record hearing was held by the Kittitas County Board of Commissioners on May 18th, 2004 for the purpose of considering a rezone from Forest and Range to Rural-3 known as the Evergreen Meadows L.L.C., Stuart Ridge L.L.C, and Steele Vista L.L.C. Rezone and described as follows:

General rezone of apx. 251.63 acres from Forest and Range to Rural-3 (File No. Z-2004-01). Proponent: Evergreen Meadows L.L.C. Location., Stuart Ridge L.L.C, and Steele Vista L.L.C.: South of Woods and Steele Road within Section 07, T19N, R15E, WM. (19-15-07000-0028; 0029; 0030; 0031)

WHEREAS, testimony was taken from those persons present who wished to be heard; and,

WHEREAS, due notice of the hearing had been given as required by law, and the necessary inquiry has been made into the public interest to be served by such change of zone; and,

WHEREAS, the Planning Commission recommended approval of said proposed rezone in a 5-1 decision; and,

WHEREAS, the following FINDINGS OF FACT have been made concerning said proposed rezone:

1. The Board of Commissioners finds that the Evergreen Meadows L.L.C., Stuart Ridge L.L.C, and Steele Vista L.L.C. submitted a complete application requesting a zone change of approximately 251.63 acres from Forest & Range to Rural-3 to the Community Development Services Department on January 13th, 2004. The applicant's address is 315 39th Ave SW, Suite 8, Puyallup, WA. 98373.

2. The Board of Commissioners finds that Community Development Services Department issued a Notice of Application pursuant to KCC 15A.03 on January 20th, 2004. Said notice solicited comments from jurisdictional agencies and landowners within 300 feet of the subject property as required by Kittitas County Code.
3. The Board of Commissioners finds that a SEPA mitigated Determination of Non-Significance was issued by the Community Development Services Department on February 27th, 2004. Notice of said determination was provided to all existing parties of record via United States Mail and was published in the Daily Record as required by State Statute and County Code.
4. The Board of Commissioners finds that an open record hearing was held by the Planning Commission on April 26th, 2004 to consider this general rezone request. Notice of said public hearing was provided to all parties of record via United States Mail and was published in the Daily Record as required by State Statute and County Code. Testimony was taken from those persons present at said hearing that wished to be heard and the necessary inquiry has been made into the public interest to be served by this non-project action.
5. The Board of Commissioners finds that the requested zone change is consistent with the rural land use designation of the Kittitas County Comprehensive Plan. The Comprehensive Plan designation of the property changed to "Rural" in 1996. The "Rural" designation has consistently been interpreted to be consistent with the Rural-3 zoning designation.
6. The proposed rezone to Rural-3 is consistent with the surrounding zoning of Rural-3 to the North of this property. Many properties to the East are zoned Forest and Range but contain lots more consistent with Rural-3 zoning.
7. The Rural-3 uses are consistent with the surrounding zoning and provides a substantial relation to the public health, safety, or welfare. The Rural-3 zone does not allow high intensity uses which including Asphalt Plants, Landfills, Log Sorting Yards, Airports, and Sawmills which are conditionally allowed in the Forest and Range zone. This protects public health, safety, and welfare, in an area with lots smaller than 20 acres in size.
8. The rezone restricts the number of conditional uses, as the

Rural-3 zone is restrictive in uses that are conditional under county zoning.

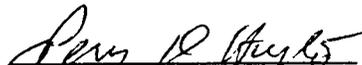
9. The Board of Commissioners finds that the proposed requested zone change does meet all seven criteria as listed in KCC 17.98.020 (E).
 1. The proposed amendment is compatible with the comprehensive plan. The Board of Commissioners finds that the requested zone change is consistent with the rural land use designation of the Kittitas County Comprehensive Plan. The Comprehensive Plan designation of the property changed to "Rural" in 1996. The "Rural" designation has consistently been interpreted to be consistent with the Rural-3 zoning designation.
 2. The proposed amendment bears a substantial relation to the public health, safety or welfare. The amendment lessens the amount of intense rural land uses, which are allowed within the Forest and Range zone. This bears a substantial relation to public health, safety and welfare.
 3. The proposed amendment has merit and value for Kittitas County or a sub-area of the county. The proposal has merit and value for Kittitas County or a sub area of the county because the potential for new tax lots within the area will increase the tax base for Kittitas County.
 4. The proposed amendment is appropriate because of changed circumstances or because of a need for additional property in the proposed zone or because the proposed zone is appropriate for reasonable development of the subject property. The area is appropriate for 3 acre development given the surrounding zoning and developments adjacent to the project area which allow three acre densities.
 5. The subject property is suitable for development in general conformance with zoning standards for the proposed zone. The uses allowed and conditional within the Rural-3 zone are more appropriate for the area than those allowed and conditional within the Forest and Range Zone given the amount of 3-acre sized lots adjacent to the property.
 6. The proposed amendment will not be materially detrimental to the use of properties in the immediate vicinity of the subject property. While this amendment allows higher density lots to be created, it limits the amount of permitted and conditional uses. This balance ensures that this amendment will not be detrimental to properties within the immediate vicinity.
 7. The proposed changes in use of the subject property shall not adversely impact irrigation water deliveries to other properties. The subject property is not located within an irrigation district therefore no impacts to irrigation deliveries will occur.
10. The Board of Commissioners finds that additional conditions are not necessary to protect the public's interest.

11. The Board of Commissioners finds that public concerns regarding water availability will be addressed during the project application phase of the project.

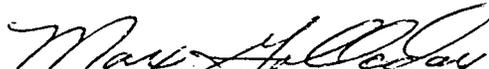
NOW, THEREFORE BE IT ORDAINED: by the Board of County Commissioners of Kittitas County, Washington, that said zone change of 251.63 acres as indicated in the attached map, from Forest & Range to Rural – 3 be, and the same hereby is, approved.

ADOPTED this 1st day of June 2004.

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON


Perry Huston, Chairman

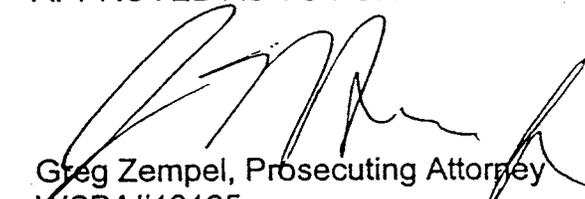

Bruce Coe, Vice-Chairman


Max Golladay, Commissioner




Julie A. Kjorsvik

APPROVED AS TO FORM:


Greg Zempel, Prosecuting Attorney
WSBA#19125

KITTITAS COUNTY

REZONE Z-2004-01
FROM: Forest & Range
TO: Rural 3

Owner: EVERGREEN MEADOWS
PARCEL # 19-15-07000-0028
ACRES: 63.00

Owner: STUART RIDGE
PARCEL # 19-15-07000-0029
ACRES: 84.00

Owner: STEELE VISTA
PARCEL # 19-15-07000-0030
ACRES: 84.00

Owner: SAPPHIRE SKIES
PARCEL # 19-15-07000-0031
ACRES: 20.63

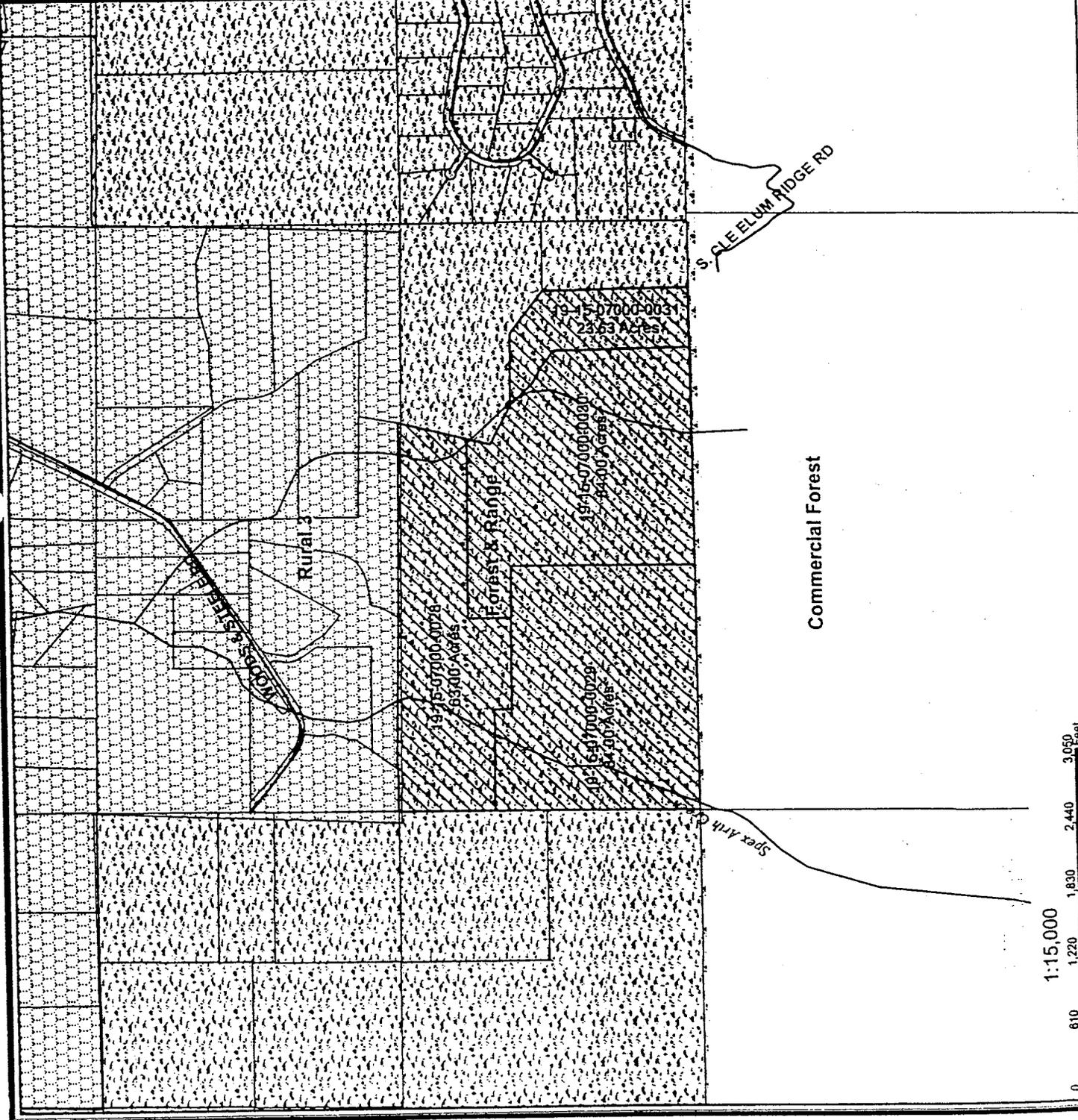
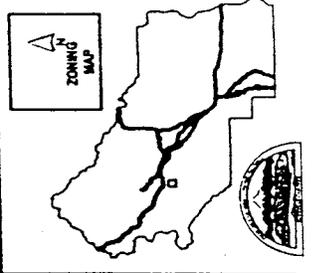
Legend

- State Roads
- County Roads
- Private Roads
- City Roads
- Railroads
- Streams / Rivers
- UGA
- City Limits
- Parcels
- Subject Parcels

ZONING

- Commercial Forest
- Forest & Range
- Rural 3

Kittitas County
 Community Development Services



APPENDIX B



Superior Court of the State of Washington
for the County of Yakima

Judge Susan L. Hahn
Department No. 1
Judge's Chambers

128 North 2nd Street
Yakima, Washington 98901
(509) 574-2710
Fax No. (509) 574-2730

October 25, 2004

Mr. James C. Carmody
Velikanje, Moore & Shore, P.S.
405 East Lincoln Ave
P.O. Box 22550
Yakima, WA 98907

Mr. Michael J. Murphy
Groff Murphy Trachtenberg & Everard PLLC
300 East Pine
Seattle, WA 98122

Mr. James E. Hurson
Deputy Prosecuting Attorney
Kittitas County Courthouse, Room 213
205 West Fifth
Ellensburg, WA 98926

RE: Woods v. Kittitas County, Evergreen Meadows, et al. 04-2-02188-9

Gentlemen:

This letter constitutes my oral ruling in Woods v. Kittitas.

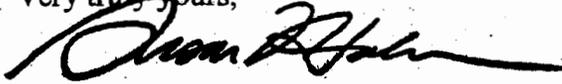
Having reviewed the memoranda, arguments and cases cited by the parties the court concludes:

1. The court has subject matter jurisdiction over this site-specific rezone. Although the GMHB has jurisdiction to determine whether Kittitas County's RR-3 zoning ordinance violates the GMA, it does not have jurisdiction to review whether the BOCC's decision to rezone the subject property as RR-3 violates the GMA as applied by allowing urban growth (RR-3) in a rural area.
2. Whether this RR-3 rezone is lawful depends on where the subject property is located within the county. In other words, the RR-3 ordinance may be consistent with the GMA when applied to some properties and inconsistent when applied to others. Since the property in this case is located outside of a designated UGA, a rezone that allows for development which is urban in nature violates the GMA. The fact that the property may never be fully built out is irrelevant to whether the application of RR-3 to this property has the potential to turn a rural area into an area of urban growth density.

3. Based on my decision that the BOCC erred by granting a rezone which allows for urban growth density in a rural area, it is unnecessary to reach the other arguments raised by Plaintiff.

Please prepare final papers for my signature within the next 30 days.

Very truly yours,

A handwritten signature in black ink, appearing to read "Susan L. Hahn", written in a cursive style.

Susan L. Hahn