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NO. 80395-1 DONALD R. CARPENTER

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SUPREME COURT OF THE STATE OF WASHINGTON

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.

**CTED'S BRIEF IN ANSWER TO
AMICUS CURIAE BRIEF OF BIAW**

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I. INTRODUCTION

This brief is filed by the Director of the State of Washington Department of Community, Trade and Economic Development (CTED), a Respondent in this matter, in answer to the Amicus Curiae Brief of Building Industry Association of Washington (BIAW).

II. ARGUMENT

BIAW raises three primary arguments, relating to deference, the review of evidence in the record, and statutory interpretation. This brief responds to those arguments.

A. **The Growth Management Hearings Boards Are Statutorily Charged With Determining GMA Compliance And Are Not Obligated To Defer To Local Actions That Do Not Comply With The GMA**

BIAW asserts that a Growth Management Hearings Board is obligated to defer local planning decisions. BIAW Br. at 1, 7-11, 13-14. In doing so, it mischaracterizes CTED's arguments regarding the appropriate standards for judicial review of a Board's order: "Under CTED's theory, Growth Boards shall be given greater deference than local jurisdictions planning under the GMA." BIAW Br. at 6. Having misstated CTED's legal argument, BIAW then contends that argument is contrary to *Quadrant Corp. v. Growth Mgmt. Hrgs. Bd.*, 154 Wn.2d 224,

110 P.3d 1132 (2005), and falsely implies that CTED failed to acknowledge the *Quadrant* decision to the Court.¹

In fact, CTED has cited *Quadrant* numerous times in its briefing in this case.² Unlike BIAW, however, which focuses primarily on one sentence in that decision in an attempt to convert a statement of legislative intent into a standard of review, CTED has attempted to provide a more thorough analysis of the context and application of the entire paragraph in which that sentence is found, the statutes on which it rests, and its place in this Court's line of GMA decisions.³

In *Quadrant*, this Court reviewed, for the second time, challenges to King County's designation of the "Bear Creek area" for urban growth. The central issue in that case was whether the County had clearly erred in complying with the GMA when it included vested development

¹ See BIAW Br. at 10 n.7 ("Remarkably, neither CTED nor Futurewise cite to this controlling case law"); *id.* at 17 ("Remarkably, neither CTED nor Futurewise cite to or attempt to distinguish controlling case law," referencing the *Quadrant* decision); *id.* at 1 n.1 ("CTED omits statutory and case law" and attempts to "contravene" the *Quadrant* decision). BIAW also wrongly characterizes CTED as attempting to "mislead" the Court, *id.* at 13, and attempting to overturn *Quadrant*, *id.* at 20. None of these assertions is true.

² See pages 2, 16, 21, and 22 in the Response Brief of the Director of the State of Washington Department of Community, Trade and Economic Development (filed March 31, 2006, in the Court of Appeals) ("CTED Resp. Br."); pages 7, 8, 9, 12, 13, and 18 in CTED's Petition for Review by the Supreme Court (filed June 28, 2007) ("CTED PFR"); pages 14, 18, 19 in the Supplemental Brief of Respondent Director of the State of Washington Department of Community, Trade and Economic Development (filed May 2, 2008) ("CTED Suppl. Br."). Of the 18 citations to *Quadrant* in these three briefs, six were to the precise paragraph relied upon by BIAW.

³ See CTED Resp. Br., pp. 21-23; CTED PFR, pp. 12-13; CTED Suppl. Br., pp. 13-15.

applications in determining that the Bear Creek area was “characterized by urban growth” under RCW 36.70A.110. The Court held the County’s action was not “clearly erroneous” and the Board’s contrary interpretation was inconsistent with legislative intent. *Quadrant*, 154 Wn.2d at 239, ¶¶ 25-26. It was because the Board erroneously had interpreted and applied the statute—not because of a lack of deference to the County—that the Court held the Board’s interpretation of the GMA was not entitled to deference in a review under the Administrative Procedure Act (APA), RCW 34.05.

The Court explained that the GMA gives local jurisdictions “broad discretion in adapting the requirements of the GMA to local realities,” *Quadrant*, 154 Wn.2d at 236, ¶ 21. That discretion is implemented in the legislative requirement that a Growth Management Hearings Board “shall find compliance unless it determines that the action by the [county] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.” *Id.* (quoting RCW 36.70A.320(3)).⁴ The Court explained the consequence where the Board

⁴ The Court observed that the Legislature “took the unusual additional step” of having its statement of intent codified to ensure proper deference to local land use planning. *Quadrant*, 154 Wn.2d at 237, ¶ 22. With due respect to that observation, the codification of legislative intent may not be all that unusual. The GMA itself contains nine sections or subsections codifying statements of legislative intent in addition to RCW 36.70A.3201. See RCW 36.70A.011; 050; .070(9); 180(1); .367(3)(g); 385(1); .420; .480(3)(b), (c). A quick search of the Revised Code of Washington reveals at least 150

fails to apply the clearly erroneous standard in reviewing a local action for compliance with the GMA:

In the face of this clear legislative directive, we now hold 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. While 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. Thus a board's ruling that fails to apply this "more deferential standard of review" to a county's action is not entitled to deference from this court.

Quadrant, 154 Wn.2d at 238, ¶ 23. BIAW focuses on the first sentence of this paragraph, emphasizing the notion that deference to local actions

codified intent sections or subsections. *See, e.g.*, RCW 2.72.005; 7.71.010; 9.35.001; 9.46.903; 11.118.005; 13.32A.010; 13.32A.015; 13.60.100; 13.70.003; 15.54.265; 18.20.010; 18.52C.010; 18.55.015; 18.118.005; 18.145.005; 19.29A.005; 19.200.005; 19.200.010; 19.240.005; 19.280.010; 19.295.005; 21.30.005; 23B.19.010; 26.19.001; 26.25.010; 28A.150.211; 28A.150.260(2); 28A.170.075(4); 28A.193.005; 28A.300.395; 28A.630.881; 28B.14H.060; 28B.15.555; 28B.50.835; 28B.50.901(2); 28B.67.005; 28B.76.555; 28B.76.600; 28B.76.680; 28B.101.005; 28B.102.010; 28B.117.005(2); 28B.118.005; 28B.119.005; 28B.133.005; 28B.142.005; 28C.04.520; 29A.53.020; 34.05.001; 35.102.010; 35.103.010; 35A.92.010; 36.125.005(3); 39.92.010; 41.04.370; 41.04.650; 41.05.033(1); 41.56.028(11); 41.56.029(10); 42.17.460; 42.56.904; 43.06.450; 43.06.465(1); 43.21J.010; 43.31.422; 43.42.005(8); 43.43.753; 43.52.383(1); 43.70.050(1); 43.70.064; 43.70.400; 43.88.145(2); 43.121.170; 43.130.010(6) (as amended by Laws of 2008, Ch. 327, § 1); 43.215.355(2); 43.215.500; 43.270.010; 43.280.010; 46.37.540; 47.46.011; 48.68.005(2); 49.44.160; 51.32.099(1); 52.33.010; 53.56.010; 59.18.500; 59.21.006; 59.30.010; 69.51A.005 (enacted by Initiative 692); 70.42.005; 70.47.010(5); 70.47A.010(2); 70.56.020(1) (as amended by Laws of 2008, Ch. 136, § 1); 70.77.111; 70.83C.005; 70.128.005; 70.128.043(2); 70.129.005; 70.132.010; 71.148.120; 70.170.010(1), (3); 70.190.060(1); 70.190.100(8)(b); 71.05.012; 71.05.025; 71.05.145; 71.24.015; 71.24.016; 71.24.310; 71.24.470(3); 71.36.005; 71A.10.010; 72.09.100; 72.09.460(1); 72.23.025(1); 73.16.005; 74.09.460(2); 74.09.5241; 74.09.540; 74.13.287; 74.14C.005; 74.31.005; 74.39A.005; 74.39A.090(1); 74.39A.100; 76.09.368; 76.13.140; 77.15.005; 77.120.050; 79.13.500; 79.15.540; 79A.05.130; 79A.25.800; 80.36.610(2); 80.80.005(3); 81.80.321; 82.14.010; 82.33A.005; 88.02.270(1); 90.03.395; 90.48.570(2); 90.56.005(4)(e); 90.58.250(1); 90.71.270(4); 90.71.340(1); 90.71.350(1); 90.76.005; 90.84.005(2).

under the GMA supersedes judicial deference to the Boards under the APA. See BIAW Br. at 6, 10, 11-12. BIAW's analysis is too narrow. Three holdings are imbedded in this paragraph; all three are consistent with and have been amplified by other decisions of this Court, and by other language in the *Quadrant* decision.

First, the Board must apply the "clearly erroneous" standard when reviewing a local planning action adopted under the GMA.⁵

BIAW's argument treats the reference to "deference" in RCW 36.70A.3201 as if it were a legal standard of review. It is not. The standard of review to be applied by the Boards is the standard set out in RCW 36.70A.320(3): "The board shall find compliance unless it determines that the action by the [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." See *Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hrgs. Bd.*, 161 Wn.2d 415, 423-24, ¶ 8, 166 P.3d 1198 (2007); *Lewis Cy. v. W. Wash. Growth Mgmt. Hrgs. Bd.*, 157 Wn.2d 488, 497, ¶ 7, 139 P.3d 1096 (2006); *King Cy. v. Cent. Puget Sound*

⁵ To find a local action "clearly erroneous," the Board "must be "left with the firm and definite conviction that a mistake has been committed." *Quadrant*, 154 Wn.2d at 237, ¶ 21 (quoting *King Cy. v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 142 Wn.2d 543, 552, 14 P.3d 133 (2000); *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)). This is precisely the standard applied by the Board in this case. See CP vol. XII, pp. 2572-73 (Final Decision and Order at 11-12) (quoting *Dep't of Ecology*, 121 Wn.2d at 201).

Growth Mgmt. Hrgs. Bd., 142 Wn.2d 543, 552, 14 P.3d 133 (2000). An action is clearly erroneous if the Board is “left with a firm and definite conviction that a mistake has been committed.” *King Cy.*, 142 Wn.2d at 552.

This standard is to be used as an evidentiary standard by the Board in reviewing the record before it. Like any evidentiary standard, it is used to weigh the evidence in the record to determine whether persons challenging a local action have met their burden. Contrary to BIAW’s suggestion, this standard does not give unlimited deference to local governments in how they implement the GMA, as this Court made clear in *Swinomish*, 161 Wn.2d at 435 n.8:

Without question, the “clearly erroneous” standard requires that the Board give deference to the county, but all standards of review require as much in the context of administrative action. The relevant question is the degree of deference to be granted under the “clearly erroneous” standard. The amount is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the county’s actions a “critical review” and is a “more intense standard of review” than the arbitrary and capricious standard.

The 1997 amendments to the GMA did not strip the Boards of their authority to interpret the goals and requirements of the GMA and to apply the law to the facts. RCW 36.70A.320(3) requires the Board to assess the local action’s compliance “in light of the goals and requirements of [the

GMA].” While the GMA requires local governments to adopt comprehensive plans and development regulations that comply with the GMA, thereby placing on local governments the primary responsibility implementing the Act, the GMA does not leave it to local governments to decide their own compliance with the Act—that duty unambiguously is assigned to the Growth Management Hearings Boards. See RCW 36.70A.280(1)(a), .290(2), .300(1), .300(3)(a); .320(3), .330(1).

The Boards necessarily must interpret the GMA if they are to decide whether a local government has complied with the GMA, and they are not required to defer to a local action that violates the GMA or that is rooted in an interpretation of the GMA that is inconsistent with the statute. *Thurston Cy. v. Cooper Point Ass’n*, 148 Wn.2d 1, 14, 57 P.3d 1156 (2002). *Accord Quadrant*, 154 Wn.2d at 240 n.8. Since courts must give substantial weight to the Boards’ interpretation of the GMA, see *Lewis Cy.*, 157 Wn.2d at 498 ¶ 9; *King Cy.*, 142 Wn.2d at 553, it would be illogical to conclude that local governments may disregard the Boards’ interpretation in favor of their own.

Second, a local planning action that complies with the GMA is entitled to deference from the Board, but the Board owes no deference to a local planning action that is a clearly erroneous application of the GMA. “Deference” is a shorthand reference to the presumption of

compliance inherent in all standards of review. *Swinomish*, 161 Wn.2d at 435 n.8. A local planning action is presumed to comply with the GMA unless and until a petitioner brings forth evidence from the record and persuades a Board that the action is clearly erroneous in light of the goals and requirements of the GMA, as required in RCW 36.70A.320(3). If the petitioner does not meet that burden, the presumption is not overcome and the Board may not second-guess the local government, even though the Board may have preferred a different action. Similarly, if the Board were to fail to apply the clearly erroneous standard and instead used some lesser standard (like the preponderance of the evidence standard that applied until 1997), it would have no legally permissible basis for determining that the presumption of compliance had been overcome, and again it would not be authorized to second-guess the local government.

However, “deference ends when it is shown that a county’s actions are in fact a ‘clearly erroneous’ application of the GMA.” *Quadrant*, 154 Wn.2d at 238, ¶ 23. In other words, if the Board applies the clearly erroneous standard and the petitioner meets that burden by identifying evidence in the record and presenting legal argument, then the presumption of compliance has been overcome and the Board is authorized to conclude that the local government has not complied with the GMA.

This holding in *Quadrant*, tying deference to compliance with the GMA, reiterated two earlier decisions in which the Court rejected arguments advocating broad deference to local decisions. In *Thurston Cy.*, 148 Wn.2d at 14, the Court held that “deference is only given to policy choices that are consistent with the goals and requirements of the GMA.” In *King Cy.*, 142 Wn.2d at 561, this Court’s first decision interpreting RCW 36.70A.3201, the Court emphasized that local discretion is “bounded by” and must be “consistent with” the GMA’s goals and requirements.

The Court also has echoed this same conclusion subsequent to *Quadrant*. In *Lewis County*, the Court rejected the argument that deference to local discretion is so great that there are no meaningful bounds on local decisions:

[T]he GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. RCW 36.70A.3201. In other words, there *are* bounds.

Lewis Cy., 157 Wn.2d at 508 n.17. In *Swinomish*, 161 Wn.2d at 424, ¶ 8, the Court stated the same rule in response to Skagit County’s argument that the Board had failed to give its decisions proper deference: “Although RCW 36.70A.3201 requires the Board to give deference to a

county, the county's actions must be consistent with the goals and requirements of the GMA.”

Third, a Board order that applies the clearly erroneous standard is entitled to judicial deference in a review under the APA, but a Board's ruling that fails to apply this standard is not entitled to judicial deference. There can be no dispute that APA standards of review govern judicial review of Board decisions. *See* CTED's Petition for Review at 10 (citing cases). The Court of Appeals correctly cited the tests in RCW 34.05.570(3)(d) and (e) as the standards governing judicial review. 138 Wn. App. at 12, ¶ 16.⁶

In the paragraph quoted at page 6, above, the Court in *Quadrant* held that a Board's ruling that fails to apply the clearly erroneous standard to a local action is not entitled to judicial deference. Such a failure would be an erroneous interpretation or application of law under RCW 34.05.570(3)(d). The logical and necessary corollary to this holding is that a Board's decision that does apply the clearly erroneous standard to local action is entitled to normal judicial deference under the APA, as this Court has held consistently. In *Lewis Cy.*, for example, decided after *Quadrant*,

⁶ Under those standards, a court may grant relief from the Board's order only if the Board “has erroneously interpreted or applied the law,” RCW 34.05.570(3)(d), or the Board's order “is not supported by evidence that is substantial when viewed in light of the whole record before the court,” RCW 34.05.570(3)(e). Although the Court also cited RCW 34.05.570(3)(c) and (i), its decision was not based on those standards.

the Court held that “while the Board must defer to Lewis County’s choices that are consistent with the GMA, the Board itself is entitled to deference in determining what the GMA requires.” *Lewis Cy.*, 157 Wn.2d at 498, ¶ 8 (citing *King Cy.*, 142 Wn.2d at 553). In the section of the *King Cy.* decision cited in *Lewis Cy.*, the Court applied the normal APA rule that that the party challenging the Board’s order bears the burden of demonstrating its invalidity, under the standards set forth in the APA:

The burden of demonstrating that the Board erroneously interpreted or applied the law, or that the Board’s order is not supported by substantial evidence, remains on the party asserting the error RCW 34.05.570(1)(a).

This court reviews the Board’s legal conclusions de novo, giving substantial weight to the Board’s interpretation of the statute it administers. *Diehl v. Mason County*, 94 Wn. App. 645, 652, 972 P.2d 543 (1999). In reviewing the agency’s findings of fact under RCW 34.05.570(3)(e), the test of substantial evidence is “a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order.” *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997).

King Cy., 142 Wn.2d at 553. *Accord Thurston Cy.*, 148 Wn.2d at 7-8.

Consistent with the standards of judicial review used in *King Cy.* and *Thurston Cy.*, the Court affirmed that the standard for judicial review of

Board decisions is drawn from the APA, not from the GMA. *Lewis Cy.*, 157 Wn.2d at 508 n.17.⁷

In this case, as explained at length in the Respondents' prior briefing, the Board applied the correct standard of review, properly reviewed the evidence under that standard, found that the local action was not supported by the evidence and violated the GMA's requirements regarding the designation of agricultural lands of long-term commercial significance (RCW 36.70A.030(10) and .170) and the expansion of urban growth areas (RCW 36.70A.110). The Board's orders are supported by evidence that is substantial when viewed in light of the whole record before the Court, and its interpretation of the GMA soundly comports with

⁷ BIAW nonetheless argues for a "GMA deference" standard on judicial review, contending courts have "not hesitated to reverse" Board orders that have "failed to grant the proper deference to local governments." BIAW Br. at 9. None of the decisions BIAW cited reversed the Board because of a lack of deference to a local government.

In *Quadrant*, the Court held the County's action did not violate the GMA's requirements, and the Board therefore erred as a matter of law by concluding the action was clearly erroneous. *Quadrant*, 154 Wn.2d at 240.

At issue in *Manke Lumber Co., Inc. v. Diehl*, 91 Wn. App. 793, 959 P.2d 1173 (1998), *review denied*, 137 Wn.2d 1018 (1999), was an order the Board had issued under the former preponderance of the evidence standard. *Id.* at 803. Although the Court of Appeals referenced the 1997 amendment changing the standard of review, its reversal of the Board was based not on GMA deference but on APA standards of review: substantial evidence and error of law. *Id.* at 804-09.

At issue in *Clark Cy. Natural Res. Coun. v. Clark Cy. Citizens United, Inc.*, 94 Wn. App. 670, 972 P.2d 941, *review denied*, 139 Wn.2d 1002 (1999), was a pure issue of law: whether the GMA required the County to use state population projections as a cap on non-urban growth. *Id.* at 675. The only deference discussed by the Court of Appeals was the general APA rule that courts review legal issues de novo, giving deference to the Board's interpretation of the GMA; it held that no deference was due because the Board had misread the statute. *Id.* at 677.

the plain language of the statute and the legislative intent underlying the statute. Applying the appropriate standards of judicial review, the Board's orders should be affirmed.

B. The Court Of Appeals Did Not Correctly Apply The Substantial Evidence Test In Reviewing The Board's Orders

BIAW argues that the Board "ignored" evidence in the record, while the Court of Appeals weighed all of the evidence and determined that the evidence "ignored" by the Board supported the County's legislative finding. BIAW Br. at 2-3, 14-17.

To the extent the Court of Appeals weighed the evidence, it exceeded its judicial review function. Under the substantial evidence test, the reviewing court does not weigh the evidence or substitute its view of the facts for that of the Board. *Callegod v. Wash. State Patrol*, 84 Wn. App. 663, 676 n.9, 929 P.2d 510, *review denied*, 132 Wn.2d 1004 (1997).

More fundamentally, the Board did not "ignore" evidence, as CTED explained out in its supplemental brief at 10-12. The Board reviewed all evidence in the record, weighed its credibility and usefulness, and found the County's action was contrary to weight of evidence in the record. Indeed, in adopting the challenged ordinances, the County explicitly relied *only* on the documents in the record that supported its action. Because the County's action was not supported by the evidence in

the record (and because the evidence in the record did not support the de-designation of Island Crossing using the factors set forth in RCW 36.70A.170, .030(10), and WAC 365-190-050), the Board ruled the action was clearly erroneous.⁸

C. The Court Of Appeals Erroneously Reversed The Board In Reliance On An Erroneous Interpretation Of The GMA

BIAW contends the Court of Appeals did not simply rely on a dictionary to determine the meaning of “adjacent” in RCW 36.70A.110, but also considered the GMA’s legislative intent in interpreting that term. BIAW Br. at 17-19. The language of the Court of Appeals decision belies that contention.

The Court of Appeals focused solely on “the 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).” 138 Wn. App. at 23. On that basis, and without any reference to legislative intent, to the GMA’s goals, to the evidence that contradicted the County’s assertions regarding the character of Island Crossing (such as its “unique access to utilities”), the Court refused to look beyond “the simple dictionary definition of ‘abutting’ or ‘touching.’”

⁸ See the Final Decision and Order at 26-30 (CP vol. XIII, pp. 2587-91); Order Finding Continuing Compliance at 15-18 (CP vol. XV, pp. 2900-03). See also CTED Resp. Br. at 28; CTED Suppl. Br. at 10-12; Futurewise Resp. Br at 23-47; Futurewise Suppl. Br. at 9-20.

138 Wn. App. at 23-24, ¶¶ 32-35. As explained in CTED's supplemental brief at 16-20, this simple resort to the dictionary resulted in an interpretation of RCW 36.70A.110 that subverts legislative intent to control urban sprawl and protect agricultural lands, and that allows counties to gerrymander urban growth areas to the GMA's locational requirements. The Court of Appeals did not give "careful consideration to the subject matter involved, the context in which words are use, and the purpose of the statute." *Quadrant*, 154 Wn.2d at 239. Its resort to a dictionary yielded a statutory interpretation that does not carry out legislative intent. *See Thurston Cy.*, 148 Wn.2d at 12.

While this Court has the final word as to the meaning of a statute, it has held that substantial weight must be given to the Board's interpretation of the GMA. *Lewis Cy.*, 157 Wn.2d at 498 ¶ 9; *Thurston Cy.*, 148 Wn.2d at 14-15; *King Cy.*, 142 Wn.2d at 553; *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hrgs. Bd.*, 136 Wn.2d 38, 46, 959 P. 2d 1091 (1998). The Court of Appeals gave *no* weight to the Board's interpretation of RCW 36.70A.110. That was error.

III. CONCLUSION

The Board correctly articulated and applied the "clearly erroneous" standard in RCW 36.70A.320(3) in reviewing the County's actions in this case. The Board weighed all the evidence in the record and concluded the

County's actions were not supported by the record, violated specific requirements in the GMA, and therefore were clearly erroneous. The Board's orders are supported by substantial evidence in the record, rest on correct interpretations of the GMA, and should be affirmed.

The Court of Appeals erred by mischaracterizing the Board's weighing of the evidence, by reweighing the evidence, and by failing to give any deference to the Board's interpretation of the GMA. The Court of Appeals should be reversed.

RESPECTFULLY SUBMITTED this 16th day of June, 2008.

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I declare under penalty of perjury under the laws of the State of Washington that on the 16th day of June, 2008, I caused a true and correct copy of CTED's Brief in Answer to Amicus Curiae ~~Brief~~ of BIAW to be served on the following in the manner indicated:

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DATED this 16th day of June, 2008, at Olympia, Washington.


Shirley Cordova