



### Clallam County Compliance Proceedings and its Legal Challenges

#### The Comprehensive Plan

- Clallam County's Comprehensive Plan determines where and at what density future rural and urban growth will occur in the county.
- The County's GMA Comprehensive Plan was first adopted in 1995. At that time most of the rural area was zoned 1 dwelling unit per 5 acres, with some pockets of higher density zoning 1 dwelling unit per 1 acre, 1 dwelling unit per 2.4 acres, etc.).
- The County's development regulations such as zoning, land division, critical area, and other land use controls are key implementation tools and must be consistent with the Comprehensive Plan.
- The County's Comprehensive Plan and Development Regulations are subject to continuing review and evaluation under the GMA, provisions of which require the County to take legislative action to review and, if needed, revise its Comprehensive Plans and Development Regulations to ensure continued compliance with the requirements of the GMA. Under the schedule established in RCW 36.70A.130(4), the deadline to comply with the review requirement was December 1, 2004, with subsequent reviews every seven years thereafter.
- Since 1995, in accordance with the GMA's continuing review and evaluation provisions, the County has periodically evaluated and updated its GMA comprehensive plan and development regulations. The County adopted and implemented a public participation plan in 2004 to gather public input, identify, and evaluate any necessary changes to the County's Comprehensive Plan and Development Regulations in response to the GMA 2004 evaluation and update requirement.
- In 2005, after the County had commenced its Plan review and update, Futurewise (formerly 1,000 Friends of Washington) appealed to the Western Washington Growth Management Hearings Board, challenging the County's failure to act. Before that case was heard, the County completed its review and update in 2007, and this earlier appeal was dismissed.
- In 2007, the County took two actions to complete the required GMA seven year review of its comprehensive plan and development actions. First, the County adopted Resolution 77 which contained findings and conclusions affirming that the County had completed its review and update of its Countywide Comprehensive Plan, Regional Comprehensive Plan, and development regulations for continued compliance with

#### **The Growth Management Act**

The 1990 Washington State Growth Management Act (GMA) is state law that requires most cities and counties to write comprehensive plans to manage growth and urban sprawl. Local governments that write plans under the GMA must address issues such as sprawl reduction, open space, environmental protection, regional transportation and public facilities.

GMA standards and policies. And secondly, the County adopted Ordinance 827 which amended Clallam County Code, Chapter 31.07, Countywide Comprehensive Plan to formally identify certain areas as LAMIRDs (local areas of more intensive rural development).

### **The Legal Challenge**

- Futurewise and non-profit, Dry Creek Coalition (DCC) appealed Resolution No. 77 and Ordinance 827. Futurewise and DCC claimed that certain areas of the County's Comprehensive Plan and Development Regulations were not in compliance with the Growth Management Act.
- The Western Washington Growth Management Hearings Board (WWGMHB) heard the case in 2008 and has ordered Clallam County to change portions of its Plan and Code. The Hearings Board found that:
  - o Clallam County's Plan and zoning established rural zoning densities which were urban rather than rural, and rural densities should be not greater than 1 dwelling unit for each 4.8 acres;
  - o The areas zoned at densities greater than 1 dwelling unit per 4.8 acres within Clallam County should be located in "Limited Areas of More Intensive Rural Development" (LAMIRD) area or within Urban Growth Areas (UGAs);
  - o The County's designation of Blyn as a Rural Activity Center for more intense rural development, where Blyn has not been established as either a UGA or a LAMIRD is invalid.
  - o The Carlsborg UGA does not possess a valid capital facilities plan for the construction and funding of a municipal sewer, and fails to establish sufficient law enforcement coverage for the area.
  - o The designation or boundaries of (20) of the County's LAMIRDs is not supported by sufficient facts that such more intense rural development was in existence as of July 1, 1990; and
  - o Three zoning designations within the Urban Growth Areas in the Sequim and Port Angeles areas establish densities which are more rural than urban.

### **The County Response**

- The Board of County Commissioners established interim control measures for the challenged UGA zoning, rural zoning, and Carlsborg UGA and Blyn in response to WWGMHB additional findings of "invalidity" as to these non-compliance rulings. With such findings of 'invalidity', and except as allowed under the interim controls, Clallam County is prevented from accepting most development applications in the areas affected by invalidity. State law allows for a very few exceptions: 1) for construction of single-family houses on pre-existing lots for the applicant's own use or their family's use; 2) for re-modeling or expanding pre-existing structures; and 3) boundary line adjustments that do not increase the number of buildable lots.

- The Board of Commissioners has also directed staff to respond to the Order of the WWGMHB, to seek to obtain compliance and lift invalidity.
- Clallam County has also appealed parts of the Hearings Board's decision to the Clallam County Superior Court.

### **The County's Appeal of the Hearings Board's Decision**

- The Board of County Commissioners has appealed the Hearings Board's decision to the courts. While the appeal is ongoing, the County must nevertheless pursue options for Plan changes and rezoning as ordered by the Hearings Board.
- Because the Hearings Board found portions of the County's Plan and zoning "invalid", the County is limited as to what development permits it can issue for those properties and land uses affected by the invalidity.
- If the County fails to timely adopt changes to its Plan and Code in accordance with the Hearings Board decision, "invalidity" will continue to prevent development and issuance of building permits, and the County could face the loss of grant and loan money for roads, parks, planning and drinking water improvements, and further legal and monetary sanctions from the Governor.
- A decision on the appeal to Superior Court should not be expected for many months, and further appeals could delay the decision several years.

### **The County's GMA Compliance Projects**

- The Board of County Commissioners takes the issues raised in the Hearings Board's decision very seriously and has directed staff to continue working to achieve compliance with the GMA. For information about the GMA Compliance projects, please see the "Frequently Asked Questions" handout on the Compliance proceedings.

#### **Who is the Western Washington Growth Management Hearings Board?**

The state legislature created three growth management hearings boards to "hear and determine" allegations that a city, county or state agency has not complied with the Growth Management Act (GMA). These boards do not approve or certify every locally adopted plan or development regulation. The GMA provides for state review by a hearings board only when a Petition for Review (an appeal of an adopted plan or regulation) is filed. The Western Washington Growth Management Hearings Board hears cases involving Clallam County.

#### **What is the Role of a Growth Management Hearings Board?**

Because disputes often center on conflicting views of the meaning of various GMA provisions, a board may need to interpret the Act to clarify ambiguities and reconcile apparent internal conflicts. It is a board's role, when a petition for review is filed, to determine if the local policy choice or action complies with the goals and requirements of the GMA.

#### **Who serves on the Growth Management Hearings Board?**

The Governor appoints three people to each of the three hearings boards – at least one must be an attorney and one must be a former local elected official. Each board member must live within the region and be qualified to hear land use matters. No more than two members may reside in the same county or be from the same political party. Brief biographies of current board members are available from the offices of each board.

*Information adapted from the Hearings Board website at <http://www.gmhb.wa.gov/>*