

2. The Board enters a **finding of invalidity** with respect to the following portions of Ordinance No. 03-063:

- The portion that expanded the Arlington urban growth area by 110.5 acres to include the Island Crossing area.
- The portion that replaced the 75.5 acre area of Riverway Commercial Farmland designation with an Urban Commercial designation
- The portion that rezoned the 75.5 acres of A-10 to General Commercial (GC)
- The portion that replaced the 35.5 acre area of Rural Freeway Service with an Urban Commercial designation
- The portion that rezoned the 35.5 acres of Rural Freeway Service (RFS) to General Commercial

FDO, at 40-41.

On March 30, 2004, the Board received “Snohomish County’s Motion for Determination of Validity Pursuant to RCW 36.70A.302(4)” (the **County’s Motion**), which provided in part:

As the Board noted, this ordinance [Ordinance No. 03-063] includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined invalid. Snohomish County requests that the Board enter an order determining that these prior policies and regulations are valid as required by RCW 36.70A.302(4).

County’s Motion, at 1.

The County further states:

The County is concerned that uncertainty of the validity of County land use designations and zoning during the period of remand could adversely affect the availability of grant funds for planning and transportation activities. Confirmation from this Board that the prior land use designations and zoning are valid is essential for the County to remain competitive for these funds.

County’s Motion, at 2-3.

On March 31, 2004, the Board issued a “Notice of Corrected Final Decision and Order” which listed a number of corrections to the FDO and attached a “Corrected FDO” (the **Corrected FDO**).

On April 7, 2004, the Board received “CTED’s Response to Snohomish County’s Motion for Determination of Validity Pursuant to RCW 36.70A.302(4)” (the **CTED Response**), which provides in part:

CTED has reviewed the prior policies and regulations that would be revived if the savings clause in Snohomish County Amended Ordinance No. 03-063 were declared valid. CTED does not object to the Board granting the County’s motion.

CTED Response, at 2.

On April 9, 2004, the Presiding Officer asked Susannah Karlsson, the Board’s Administrative Officer, to contact the other parties to determine whether they wished to file a response to the County Motion. Ms. Karlsson contacted counsel for 1000 Friends and Intervenor Dwayne Lane, both of whom indicated they did not wish to file a response.

II. DISCUSSION

A. Applicable Law

RCW 36.70A.302(4) provides:

If the ordinance that adopts a plan or development regulation under this chapter includes a savings clause intended to revive prior policies or regulations in the event the new plan or regulations are determined to be invalid, the board shall determine under subsection (1) of this section whether the prior policies or regulations are valid during the period of remand.

WAC 242-02-534(1) provides in part:

A party served with a motion shall have ten days from the date of receipt of the motion to respond to it, unless otherwise directed by the presiding officer.

B. Conclusions

The only Response to the County’s Motion, by CTED, was timely filed. Neither CTED, nor any other party to this matter, objected to the County’s Motion. The Board has reviewed the land use and zoning designations that were revived by the operation of

Section 6 of Ordinance No. 03-063 and finds and includes that those prior policies¹ are valid during the period of remand.

III. ORDER

Having reviewed and considered the Corrected FDO, the County's Motion, the CTED Response, the GMA and the Board's Rules of Practice and Procedure, as well as the prior land use and zoning provisions that were revived by the operation of Section 6 of Ordinance No. 03-063, the Board finds and concludes that these revived designations and zoning are valid pursuant to RCW 36.70A.302(4).

The Board **rescinds** the findings of noncompliance and invalidity that were adopted in the FDO and issues Snohomish County a **Finding of Compliance** with respect to the Riverway Commercial Farmland and Rural Freeway Service land use designations and the Agriculture-10 Acres and Rural Freeway Service zoning designations for Island Crossing.

So ORDERED this 9th day of April 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, FAICP
Board Member

¹ The revived land use plan designations are Riverway Commercial Farmland and Rural Freeway Service and the revived zoning is Agriculture-10 Acres and Rural Freeway Service. Findings of Fact 15 and 16, Corrected FDO, at 10.