

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

MAXINE KEESLING,)) Case No. 05-3-0001
))
Petitioner, <i>pro se</i> ,)) (Keesling CAO)
))
v.))
)) FINAL DECISION AND ORDER
KING COUNTY,))
))
Respondent.))
))
))

SYNOPSIS

*In response to the GMA requirement for review and update of critical areas regulations by December 1, 2004, King County adopted a set of ordinances referred to collectively as its CAO or Critical Areas Ordinances package: Ordinance No. 15051 - Critical Areas Ordinance, Ordinance No. 15052 - Surface Water Management Ordinance, and Ordinance No. 15053 - Clearing and Grading Ordinance (collectively, **Ordinances**).*

Maxine Keesling, Petitioner pro se, challenged specific provisions of each of the Ordinances as non-compliant with the Growth Management Act. Petitioner contended that the challenged provisions interfere with agriculture and rural land practices in ways that are (a) inconsistent with the GMA protection of agriculture and rural farming, (b) inconsistent with the King County Comprehensive Plan Update policies supporting agriculture and rural lifestyles, and (c) inconsistent with the GMA Property Rights Goal – Goal 6.

The Board reviewed the cited statutory and King County Plan Update provisions. The Board found that in both the GMA and the King County Plan Update, provisions supporting environmental values are paired with provisions supporting agriculture and rural lifestyles, frequently in the same section of the GMA or County Plan. The Board concluded that the balance which the County struck is within the parameters of the GMA and that the specific regulations challenged by Petitioner are consistent with County Plan Update policies. The Board also concluded that Petitioner had not met her burden of proving non-compliance with GMA Property Rights Goal 6.

*The Board ruled that Petitioner **did not meet her burden** of proof in demonstrating that the County’s action was clearly erroneous. The petition for review is **dismissed**.*

I. BACKGROUND¹

On October 29, 2004, King County adopted a set of ordinances referred to collectively as its CAO or Critical Areas Ordinances package: Ordinance No. 15051 - Critical Areas Ordinance, Ordinance No. 15052 - Surface Water Management Ordinance, and Ordinance No. 15053 - Clearing and Grading Ordinance (collectively, **Ordinances**). The Ordinances amended prior King County development regulations for critical areas, surface water management, and clearing and grading, in response to the GMA requirement for review and update of critical areas regulations by December 1, 2004. The Surface Water Management Ordinance, and Clearing and Grading Ordinance regulate activities throughout unincorporated King County, not solely in designated critical areas.

On January 4, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Maxine Keesling (**Petitioner** or **Keesling**) challenging various provisions of the Ordinances. The matter was assigned Case No. 05-3-0001, and is hereafter referred to as *Keesling-CAO*.

The Board conducted the Prehearing Conference on February 10, 2005, in the Boards and Commissions Room, City Hall, 600 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference. Board members Ed McGuire and Bruce Laing also attended. Petitioner Maxine Keesling was present *pro se* and John F. Briggs and Steve Hobbs represented Respondent King County. The Legal Issues were discussed in some detail, and the Board ruled that Petitioner would file a restatement of issues by February 15. The parties agreed to use King County's Bates-stamp system to identify core documents and exhibits in these proceedings.²

On February 14, 2005, the Board received "Petitioner's Motion to Re-State RCW 36.70A References and to Clarify Intent on Ag Issues" (**Motion to Restate**) which restated Petitioner's Legal Issues pursuant to the prehearing conference discussion. The Board's Prehearing Order (**PHO**), issued February 17, 2005, states the Legal Issues to be resolved in this proceeding.

All prehearing briefing and exhibits were timely filed and consisted of Petitioner's Brief (**Keesling PHB**) and Respondent King County's Prehearing Brief (**County Response**).

On May 11, 2005, the Hearing on the Merits (**HOM**) was held in Room 2096, 900 Fourth Avenue, Seattle. The Hearing on the Merits was convened at approximately 10:00 a.m. and closed at 11:45 a.m. Present for the Board were Board members Margaret Pageler (Presiding), Bruce Laing, and Ed McGuire, and Board extern Rachel Henrickson. Petitioner Maxine Keesling appeared *pro se*, and Respondent King County was represented by Deputy Prosecutor John Briggs. Reporting services were provided by Eva

¹ See Appendix A for the complete procedural history in this matter.

² The Core Documents are Ordinance 15028, adopting the King County Comprehensive Plan 2004 Amendments [**Plan Update**], Ordinance 15051 – the Critical Areas Ordinance [**CAO**], Ordinance 15052 – the Surface Water Management [**SWM**] Ordinance, and Ordinance 15053 – the Clearing and Grading Ordinance. The Board takes official notice of the Plan Update pursuant to WAC 242-02-660(4).

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Jankovits of Byers and Anderson. Petitioner's oral argument was read verbatim and the Board requested and received the written statement (**Keesling Oral Argument**).

The Board ordered the court reporter's transcript of the hearing and received the transcript (**HOM transcript**) on May 17, 2005.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Petitioner challenges King County's adoption of Ordinance Nos.15051 (Critical Areas Ordinance), 15052 (Surface Water Management Ordinance), and 15053 (Clearing and Grading Ordinance). Pursuant to RCW 36.70A.320(1), County Ordinance Nos. 15051, 15052 and 15053 are presumed valid upon adoption.

The burden is on Petitioner, Maxine Keesling, to demonstrate that the actions taken by the County are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by the county is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find King County's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to King County in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA ... cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, ___ Wn.2d ___, 110 P.3d 1132, 2005 WL 1037145, at 10. The *Quadrant* decision affirms prior State Supreme Court rulings that "Local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals of the GMA.'" *Cooper Point Association v. Thurston County*, 108 Wn.App. 429, 444, 31 P.3rd 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3rd 1156 (2002) and cited with approval in *Quadrant, supra*, fn. 7, at 5.

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review. RCW 36.70A.290. The Board's decision does not extend to

unchallenged elements of a County's ordinance or plan, which are presumed valid as a matter of law.

III. BOARD JURISDICTION, PRELIMINARY MATTERS AND PREFATORY NOTE

A. BOARD JURISDICTION

The Board finds that the Petitioner's PFR was timely filed, pursuant to RCW 36.70A.290; Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinances, which amend King County's development regulations, pursuant to RCW 36.70A.280(1)(a).

B. PRELIMINARY MATTERS

On February 16, 2005, the Board received Petitioner's Motion to Supplement the Record, requesting permission to cite additional portions of the GMA. The Presiding Officer did not deem the request to be an amendment of the Legal Issues stated in the Prehearing Order and permitted additional citations.

On March 21, 2005, the Board received Petitioner's "Motion for Clarification" asking to re-title Legal Issue No. 4 as "35%/50%/65% Rural Area Maximum Clearing Restrictions." At the Hearing on the Merits, Respondent King County indicated no objection and the motion was **granted**.

At the Hearing on the Merits, Petitioner presented her oral argument from prepared text, providing copies to the Board and Respondent at the Board's request. The Respondent objected that the written text was in essence an untimely reply brief which he would need opportunity to rebut. The Presiding Officer ruled that the text was simply a transcript of Petitioner's oral argument and would be helpful to the Board in following the argument.

C. PREFATORY NOTE AND ABANDONED ISSUES

Petitioner's PFR challenges five specific aspects of three King County Ordinances which were adopted concurrently on October 29, 2004. This Final Decision and Order addresses Petitioner's five legal issues sequentially, prefacing each discussion with a description of the particular regulation being challenged.

Because substantially the same GMA provisions and King County Comprehensive Plan policies are referenced in each of the legal issues, the relevant texts of those provisions and policies are set forth in Appendix B and C respectively.

The Board discusses the GMA consistency requirements and the necessity for considering and harmonizing GMA planning goals primarily under Legal Issue Nos. 1 and 2. The Board discusses GMA planning goal (6) – Property Rights - primarily under Legal Issue No. 4. The Board discusses the requirement for the use of best available science in

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designating and protecting critical areas, to the extent that question is relevant in this case, primarily under Legal Issue No. 4.

Petitioner **withdrew** Legal Issue Nos. 1(b), 4(b) and 6 in her February 14, 2005 Motion to Restate. Those issues are **dismissed**. For reasons set forth *infra*, at 33, the Board determines that Legal Issue No. 4(c) is **abandoned**.³

IV. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NO. 1

The Board's Prehearing Order sets forth Legal Issue No. 1:

*Issue #1. (Critical Aquifer Recharge Areas/Agriculture)*⁴

a. Does King County's designation and mapping of agricultural areas such as the Sammamish River Valley as Critical Aquifer Recharge Areas (CARA) fail to comply with RCW 36.70A.020, RCW 36.70A.040 and RCW 36.70A.060 and RCW 36.70A.130 because CARA Section 174.B.2 of Ordinance 15051 is inconsistent with text and policies contained in Comprehensive Plan Ordinance 15028, Attachment A, Chapter 3.V, Resource Lands, in the text preceding Policy R-501 and in Section A text and Policies R-503 through R-518 that emphasize conservation of productive commercial agricultural resource lands, which some of the newly-designated CARAs are?

c. Does CARA Section 179.B.9, with its wide applicability due to Ordinance 15051's Section 174.B.2, fail to comply with RCW 36.70A.130 because after Petitioner testified more than once that the lot-size wording should read 35,000 square feet instead of one acre, there was no county response and no apparent consideration given to Petitioner's suggestion?

Applicable Law

RCW 36.70A.020 Planning goals.

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

³ See WAC 242-02-570 and Prehearing Order (Feb. 17, 2005), at 6.

⁴ Legal Issue No. 1(b) was withdrawn by Petitioner in her February 14, 2005, Motion to Re-State. 05301 Keesling-CAO FDO.doc (July 5, 2005)

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest land and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.030 Definitions

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

RCW 36.70A.040 Who must plan -- Summary of requirements -- Development regulations must implement comprehensive plans.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county *shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas*, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall *adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan* on or before July 1, 1994

RCW 36.70A.060 Natural resource lands and critical areas -- Development regulations.

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, *shall adopt development regulations* on or before September 1, 1991, *to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW*

36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and *in accordance with best management practices*, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. . . .

(2) Each county and city *shall adopt development regulations that protect critical areas* that are required to be designated under RCW 36.70A.170. .

..

RCW 36.70A.130 Comprehensive plans -- Review -- Amendments.

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. A county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter The review and evaluation required by this subsection shall include, but is not limited to, *consideration of critical area ordinances* and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(b) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. *Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.*

Emphasis supplied.

The Challenged Action

Under RCW 36.70A.060(2) and (3), King County is required to adopt development regulations that designate and protect environmentally critical areas. Critical areas include: (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

RCW 36.70A.130(1) requires local governments to ensure ongoing compliance with the GMA by “tak[ing] legislative action to review and, if needed, revise comprehensive plans and development regulations under a statutory schedule which, for Pierce County, imposed a December 1, 2004 deadline. The compliance review “shall include ... consideration of critical areas ordinances.” *Id.*

On October 29, 2004, King County adopted three ordinances that comprised the County's review and update of its critical areas regulations, as mandated by RCW 36.70A.130(1). The County began its review in 2002 with an analysis of scientific literature and drafting of issue papers by the County's scientific staff. Ex. 28 at MK-CAO 1526; Ex. 32, at MK-CAO 2195. During 2003, public drafts of the proposed Critical Areas Ordinance were circulated, public meetings were held, and the "Best Available Science" reports were sent out for peer review by qualified experts. County Response, at 4-5.

RCW 36.70A.172(1) requires that "best available science" (**BAS**) shall be included "in developing policies and development regulations to protect the functions and values of critical areas." The Division I Court of Appeals has held that "evidence of best available science must be included in the record and must be substantively considered in the development of critical areas policies and regulations." *Honesty in Environmental Analysis & Legislation (HEAL) v. Central Puget Sound Growth Management Hearings Board*, 96 Wash. App. 522, 532, 979 P.2d 864 (1999). *See also Whidbey Environmental Action Network (WEAN) v. Island County*, 122 Wn.App 156, 171, 93 P.3d 885 (2004).

In September, 2003, the second public draft of the CAO, Surface Water Management Ordinance and Clearing and Grading Ordinance were released. Ex. 1, 5, and 6. In the public review and County process that followed, the Ordinances and the supporting best available science were generally considered as a package under the rubric of "critical areas ordinances." However, Ordinance 15051 is the Critical Areas Ordinance (CAO) and the other two ordinances have more general application.

Concurrently, King County reviewed and updated its Comprehensive Plan, adopting its 2004 Comprehensive Plan Update [**Plan Update**] on September 28, 2004. Core 0001-0588.

Ordinance 15051 is the 2004 King County Critical Areas Ordinance (**CAO**). Core 0589-0851. Section 174 of the Ordinance is part of a new section defining three classes of critical aquifer recharge areas (**CARA**) in King County based on (a) susceptibility to contamination and (b) location within a sole source aquifer or a wellhead protection area. Core 0768. Category I CARAs are those mapped areas meeting both criteria – highly susceptible to contamination and located where potable water sources are at risk. Category II CARAs may be *either* (1) located where potable water is at risk but only of medium susceptibility to contamination *or* (2) *where highly susceptible to pollution but not located over a sole source aquifer or wellhead protection zone*. Category III CARAs are islands at risk for saltwater intrusion into the underlying aquifer.

Ordinance 15028 is the 2004 Plan Update. The Preamble to Plan Update Chapter 3.V, Resource Lands, states King County's commitment "to conserve and manage agricultural soils and activities." Core 0106. The Resource Lands policies are "King County's strategy for conservation of these valuable Natural Resource Lands and for encouraging their productive and sustainable management." *Id.*

Petitioner’s Legal Issue No. 1(a) challenges King County’s designation of Category II(2) critical aquifer recharge areas in locations where potable water sources are not directly impacted: that is, areas that “are highly susceptible to groundwater contamination and are not located in a sole source aquifer or wellhead protection area.” Core 0768. She asserts that these designations go beyond the statutory definition and conflict with GMA and County policies favoring agricultural uses.

Petitioner’s Legal Issue No. 1(c) challenges the section of Ordinance 15028 that prohibits on-site septic systems on rural lots of less than one acre unless the systems meet certain technical requirements. Section 179.B.9 of the Critical Areas Ordinance prohibits on-site septic systems on “lots smaller than one-acre” unless the system “either uses an up flow media filter system or a proprietary packed-bed filter system or is designed to achieve approximately eighty percent total nitrogen removal for typical domestic wastewater.” Core 0772. Petitioner contends that the County violated the GMA by failing to amend the regulation in response to her public testimony.

Discussion and Analysis

Positions of the Parties

One of Petitioner Keesling’s overarching concerns in this appeal is that regulations designed to protect the environmental values of critical areas have been extended by King County more broadly to regulate all new uses in rural and agricultural lands. She contends that this will thwart traditional agricultural activities in King County in contravention of the GMA, the County’s Plan Update policies, and the property rights of rural landowners.

In Legal Issue No. 1(a), Keesling contends that King County exceeded what is allowed by the GMA when it designated and mapped Critical Aquifer Recharge Areas (CARAs) in Agricultural Production Districts⁵ where the CARAs are not linked to protection of drinking water sources. Keesling PHB, at 1, 2. Such expansive CARA definitions and designations, she asserts, impermissibly burden the Agricultural Production District in the Sammamish River Valley, in particular, contrary to the GMA and Comprehensive Plan mandates to conserve agricultural uses. *Id.* (referencing CARA map at 0851)

Keesling points out that the GMA defines CARAs with reference to water potability – “areas with a critical recharging effect on aquifers *used for potable water*,” RCW 36.70A.050(5) (emphasis supplied). The guidelines created by the Department of Community, Trade and Economic Development (CTED) to assist local governments in defining CARAs - WAC 365-190-080(2) - also focus on protecting sources of drinking water. *Infra*, fn. 7. WAC 365-190-030(2) defines critical aquifer recharge areas: “Areas with a critical recharging effect on aquifers *used for potable water* are areas where an aquifer that is a *source of drinking water* is vulnerable to contamination that would affect the *potability of the water*.” Emphasis supplied.

⁵ Agricultural Production Districts (APDs) are King County’s designated resource lands of “long-term significance for the commercial production of food or other agricultural products.” RCW 36.70A.170(1)(a). 05301 Keesling-CAO FDO.doc (July 5, 2005)

Keesling contends that the County's designation of lower elevation river valleys as CARAs is unjustified, first, because the aquifers have not been identified and mapped, and second, because the Sammamish River Valley area uses piped "city" water so that groundwater is not "used for potable water" as the statutory CARA definition requires. Keesling PHB, at 2. Keesling fears that the CARA designation of Agricultural Production District lands will lead to restrictions on normal agricultural practices, citing a prior King County regulation - KCC 21A.38.150 at MK-CAO 0137.

As to the new standards for on-site septic systems on rural lots smaller than one acre [CARA Section 179.B.9], Keesling contends that these new rules make most small vested rural lots unbuildable, because (a) the standard size of pre-GMA rural lots in King County is 35,000 square feet (about 0.8 acre),⁶ and (b) the new technologies, if available, are prohibitively expensive. Keesling PHB, at 3-4. Keesling argues that the County should have responded to her comments on this issue during its public process and amended the lot size to 35,000 square feet. *Id.*

The County responds that the Plan Update and regulations appropriately balance the GMA natural resource lands goal (Goal 8) with the environmental goal (Goal 10). The GMA requires the County to designate Critical Aquifer Recharge Areas in every zone (*citing Pilchuk Audubon Society, et al., v. Snohomish County (Pilchuk II)*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 11). The County indicates that merely *designating* CARAs and other critical areas does not limit agricultural practices and that "Agricultural practices are in no manner prohibited by these regulations." County Response, at 11.

The County asserts that it did not ignore the CTED guidelines. In mapping the Sammamish River Valley critical aquifer recharge area it followed WAC 365-190-080(2)⁷ for assessment of vulnerability to contamination, using soil type, topography,

⁶ An acre is 43,560 square feet.

⁷ WAC 365-190-080(2) provides:

(2) Aquifer recharge areas. Potable water is an essential life sustaining element. Much of Washington's drinking water comes from ground water supplies. . . . The quality of ground water in an aquifer is inextricably linked to its recharge area. . . . Where no specific studies have been done, counties and cities may use existing soil and surficial geologic information to determine where recharge areas are. To determine the threat to ground water quality, existing land use activities and their potential to lead to contamination should be evaluated.

Counties and cities shall classify recharge areas for aquifers according to the vulnerability of the aquifer. Vulnerability is the combined effect of hydrogeological susceptibility to contamination and the contamination loading potential. High vulnerability is indicated by land uses that contribute contamination that may degrade ground water, and hydrogeologic conditions that facilitate degradation. Low vulnerability is indicated by land uses that do not contribute contaminants that will degrade ground water, and by hydrogeologic conditions that do not facilitate degradation.

(a) To characterize hydrogeologic susceptibility of the recharge area to contamination, counties and cities may consider the following physical characteristics: (i) Depth to ground water; (ii) Aquifer properties such as hydraulic conductivity and gradients; (iii) Soil (texture, permeability, and contaminant attenuation

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depth to ground water, hydrogeology and potential for contaminant loading to identify critical aquifer recharge areas where aquifers were not already mapped. County Response, at 12; Ex. 19 and 28 at MK-CAO 1592-1595.

The County describes the proliferation of small wells throughout the County's rural and resource lands – Class C water systems serving two to 14 connections, and some 22,770 individual household wells which are not required by state law to have wellhead protection areas. Ex. 15, MK-CAO 1245; HOM Transcript, at 51. The County cannot be assured that rural and farm households, even with a piped water supply, are not using well water for drinking and cooking. *Id.* Further, aquifers not currently used for drinking may need to be tapped in the future and should be kept pure. *Id.* at 55-56. The County argues that neither the GMA nor the CTED guidelines prohibit the County from taking extra precautions to protect a future resource. *Id.*

As to the on-site septic systems, the County responds that Petitioner in fact testified about this matter on several occasions and that the County considered her comments. County Response, at 14. “Richard Tucker of King County’s Department of Natural Resources and Parks noted the Petitioner’s comments regarding CARA development regulations and septic systems set forth in her October 16, 2003 letter and Sarah Ogier of King County’s Department of Natural Resources and Parks also noted comments made on septic systems by the Petitioner at the October 16, 2003 Public Meeting.” County Response, at 11, *see* Ex. 21, MK-CAO 1287-1288. The County contends that Petitioner’s comments were considered, but the County had no duty to respond or adopt them. County Response, at 15, *citing Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Final Decision and Order (March 12, 1996), at 24; “Citizen disappointment in the final choices made by local government does not mean that the citizens have not had a chance to express their views.”)

Board Discussion

Consideration of CTED Guidelines. The Board agrees with the County that its CARA designations at issue here are consistent with CTED guidance in WAC 365-190-080(2).

King County has created and designated a class of critical aquifer recharge areas - Category II(2) - that are not based on location in sole source aquifers or wellhead

properties); (iv) Characteristics of the vadose zone including permeability and attenuation properties; and (v) Other relevant factors.

(b) The following may be considered to evaluate the contaminant loading potential: (i) General land use . . . (iii) Agriculture activities. . . and (v) Other information about the potential for contamination.

(c) Classification strategy for recharge areas should be to maintain the quality of the ground water, with particular attention to recharge areas of high susceptibility. In recharge areas that are highly vulnerable, studies should be initiated to determine if ground water contamination has occurred. Classification of these areas should include consideration of the degree to which the aquifer is used as a potable water source, feasibility of protective measures to preclude further degradation, availability of treatment measures to maintain potability, and availability of alternative potable water sources.

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protection zones but rather on assessment of vulnerability to contamination. In creating this CARA category, the county analyzed topography, soil types, and hydrogeology, i.e., the hydrogeological susceptibility to contamination, and the specific land use activities, e.g., agriculture, landscaping and animal husbandry, and their potential for contaminant loading. This analysis was supported by scientific assessment. Ex. 28, Best Available Science, Vol. I, Ch. 6, MK-CAO 1592-1620.

The Board finds that King County considered CTED guidelines in designating critical aquifer resource areas in agricultural resource lands.

Consistency with GMA. The Board notes that the GMA provisions relied on by Petitioner in fact require protection of **both** agricultural lands **and** critical areas. RCW 36.70A.020 goal (8) – “Maintain and enhance . . . productive agricultural industries”- is followed by goal (10) – “Protect the environment . . . including water quality and the availability of water.”

RCW 36.70A.040(3) requires counties to “designate critical areas [and] agricultural lands . . . and adopt development regulations conserving these designated agricultural lands . . . and protecting these designated critical areas.”

RCW 36.70A.060(1) requires counties to “adopt development regulations to assure the conservation of agricultural . . . resource lands,” and the following subsection (2) states that each county “shall adopt development regulations that protect critical areas.”

The GMA “requires local governments to designate *all* lands within their jurisdictions which meet the definition of critical areas.” *Pilchuk II*, at 11. Agricultural lands cannot be excluded. *Id.* The County’s designation of Category II(2) CARAs in the Sammamish Valley Agricultural Production District recognizes the dual obligation under GMA to protect agricultural resource lands and to protect long-term water quality for people and for fish and wildlife.⁸ The Board will defer to King County in the balance it has struck. The Board finds that Petitioner has not met her burden of proving that the County’s action was inconsistent with the cited provisions of the GMA.

Consistency with Comprehensive Plan. King County’s Plan Update policies for Resource Lands repeatedly spell out the importance of protecting the natural environment, including water quality, as agricultural activities are pursued.

R-504: Well-managed forestry and agriculture practices are encouraged because of their multiple benefits, including natural resource protection.

⁸ RCW 36.70A.3201 is the legislature’s statement of intent assigning to local jurisdictions the task of balancing the planning goals of the GMA: “Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances.”

King County's Natural Resource Lands are those with *long-term commercial significance for farming*, forestry, and minerals. Products from Natural Resource Lands play an important role in our economy by providing jobs and raw materials such as food, wood, and gravel, and by providing links to our cultural heritage. *Responsible stewardship* of resource lands produces *multiple environmental benefits*, such as:

- Stream and salmon protection;
- Clean air and water;
- Wildlife habitat;
- Flood prevention; and
- Groundwater recharge.

Conflicts with surrounding land uses and environmental problems can arise even with the best of precautions. Resource-based industries need reasonable certainty that operations can continue if *activities are performed in an environmentally sound manner*.

A resource management strategy that protects the environment is necessary to maintain the long-term productivity of the resource.

R-511: King County shall work . . . to conserve public and private Natural Resource Lands for *long-term productivity and environmental protection* in a consistent and predictable manner.

R-515: Resource-based industries should *use practices that protect the long-term integrity of the natural and built environment*, adjacent land uses, and cultural resources that maintain the long-term productivity of the resource base. Resource industry practices should result in maintenance of *ecosystem health and habitat*.

R-517: King County should be a leader in resource management by demonstrating *environmentally sound agriculture* and forestry on county-owned land.

Plan Update, at 3-32 to 3-36, emphasis supplied.

The Board finds that Petitioner has not met her burden of proving that the challenged CARA designations are inconsistent with the Plan Update.

Keesling is concerned that the County will overreach and will use the CARA designations to regulate and restrict normal farming practices in the Sammamish Agricultural Production District. Keesling PHB, at 3. The Board cannot invalidate a County development regulation based on a petitioner's speculation. The County is presumed to undertake good faith efforts to enforce its laws in compliance with the state statutes. *See WEAN*, 122 Wn.App. at 185.

Public Process – On-site Septic Systems on Small Rural Lots.

Petitioner relies on RCW 36.70A.130 as the basis for her public process challenge. RCW 36.70A.130(2)(a) establishes a special public process connected with annual review and amendment of County comprehensive plans (not development regulations), and goes beyond the regular public process required by Sections .035, .140, and .020(11) of the GMA. Petitioner cannot challenge the public process here under Section .130(2).

The Board notes King County's record of public outreach and meetings during the course of consideration of the Critical Areas Ordinances. County Response at 4-6, Ex. 1-15.

Petitioner acknowledges that she offered testimony concerning the issue of small-lot septic regulations at a public meeting with County officials in October, 2003. Keesling PHB at 3. Two County staff members made notes of her concern, as well as of other citizen concerns and questions about the CARA designations in the proposed critical areas ordinance. Ex. 21, MK-CAO 1287-1288.

The County Council was also aware of and responsive to the issue. In a Summary of Changes to the Critical Areas Ordinance, the Council listed:

- Issue: Concern about lack of flexibility on septic requirements for small lots where specific technology listed in ordinance is not feasible on a site.
- GMUAC Substitute Ordinance: Allow more flexibility on approval of septic systems with approval by Dept. of Health.

Ex. 15, MK-CAO 1125, at 4.

The GMA imposes no duty on jurisdictions to respond to specific citizen comments in the public process surrounding consideration of regulations. *Macangus Ranches, Michael Leung and Dennis Daley v. Snohomish County*, CPSGMHB No. 99-3-0017, Final Decision and Order, (Mar. 23, 2000), at 12 (“Respond to” public comments does not mean that counties and cities must react in response to all citizen questions or comments...means only that citizen comments and questions must be considered...); *See Montlake Community Club v. City of Seattle*, CPSGMHB No. 99-3-0002c, Final Decision and Order, (July 30, 1999), at 9 (Petitioner's arguments regarding public participation amounted to a disagreement with the City over the policy choices made by the City Council. Petitioner's dissatisfaction with the decision made by the City does not mean that the public participation process used by the City...failed to comply with the requirements of RCW 36.70A.140). The Board finds that Keesling has not met her burden of proof of a County failure to comply with GMA public process requirements.

Conclusion

The Board finds and concludes that Petitioner **has not met her burden of proving** that the County's Category II CARA designation of Ordinance 15051 section 174.B.2 or the on-site septic system standards of Ordinance 15051 section 179.B.9 violate the GMA,

RCW 36.70A.020, .040., .060, and .130, or are inconsistent with the CTED guidelines at WAC 365-190-080 or with the Plan Update. Legal Issue No. 1 is **dismissed**.

B. LEGAL ISSUE NO. 2

The Board's Prehearing Order sets forth Legal Issue No. 2 as follows:

Issue #2. (Surface Water Management/Agricultural Resource Protection)

a. Do the requirements of King County's Surface Water Management (SWM) Ordinance 15052 fail to comply with RCW 36.70A.130, 36.70A.040, and 36.70A.060 because 15052's Section 1 Definitions under Paragraphs GG and II and XX and its Section 3.A.8 Core requirement 8 are inconsistent with agricultural resource protection and policies contained in Ordinance 15028, Attachment A, Chapter 3.V, Resource Lands, in the text preceding Policy R-501 and in Section A text and Policies R-503 through R-518?

b. Do the answers in the SWM Design Manual Public Rule Revision's 10/26/04 Environmental Checklist in Section D to Questions #5 and #7 truly reflect land-use impacts because the amended SWM rules impact agriculture as described in preceding Paragraph a. of Issue #2 and thus do not comply with the consistency requirements of RCW 36.70A.130, RCW 36.70A.040 and 36.70A.060?

Applicable Law

Petitioner relies on RCW 36.70A.040, RCW 36.70A.060, RCW 36.70A.130, set forth *supra*, at 5-7, requiring consistency between comprehensive plans and development regulations and requiring development regulations to implement plans.

The Challenged Action

Ordinance 15052 is the amended King County Surface Water Management (**SWM**) Ordinance. Core 0852-0890. Core Requirement #8 of the SWM Ordinance [Core 0871] requires "water quality treatment facilities to treat polluted surface and storm water runoff." The requirements are triggered when new or expanded agricultural activities create "pervious surfaces," including "pasture land, grassland, cultivated land, lawn and landscaping" (Definition GG, Core 0861) or when such activities create "pollution-generating pervious surface," i.e., surfaces subject to the use of pesticides and fertilizers (Definition II, Core 0861). A "water quality treatment facility" is "a drainage facility designed to reduce pollutants once they are already contained in surface or storm water runoff" (Definition XX, Core 0865).

Petitioner challenges this SWM regulation as likely to discourage new or expanded agriculture in the rural and agricultural areas of King County, contrary to Plan Update

policies. Further, she challenges the Environmental Checklist used by the County in evaluating this revision to its SWM regulations.

Discussion and Analysis

Positions of the Parties

Keesling contends that the new requirement for water treatment facilities impermissibly burdens agriculture because it is “unnecessary, unaffordable, and anti-agriculture.” Keesling PHB, at 6. New regulations are unnecessary, Keesling argues, because the environmental condition of King County’s agricultural production districts is already rated high (*citing* CORE 0850), therefore demonstrating that existing regulations and restoration efforts are effective. The new requirements will be costly and probably “unaffordable by agriculture,” according to Keesling, who attaches a County cost estimate for “simple on-site detention for a single-family lot.” MK-CAO 0012.

Further, Keesling argues that the County’s Declaration of Non-Significance (**DNS**) in its Environmental Checklist for this new regulation was inaccurate and misleading in its statement that the regulation would have “no effect” on land use. Keesling PHB, at 6-7.

The County responds that Petitioner’s brief consists of conclusory statements without documented facts or well-reasoned legal argument and therefore Issue No. 2 should be summarily dismissed. County Response, at 15-16.

On the merits, the County asserts that SWM Core requirement #8 appropriately harmonizes the Plan Update goals of fostering agriculture and protecting water quality. *Id.* at 17. The County explains that new water quality treatment facilities are required only for creation of 35,000 square feet (0.8 acre) or more of “new pollution-generating pervious surface.” Core 0871. The County explains that the requirements are fleshed out in the 2005 Surface Water Design Manual at Sections 1.2.8 [Ex. 26, MK-CAO 1496-1507] and 6.3 [Ex. 27, MK-CAO 1508-1510]. The water quality treatment facilities are only required if polluted surface water or storm water runoff is concentrated in a pipe or ditch on the property. Ex. 26, at Mk-CAO 1501. The facilities can be “as basic as a bio-filtration swale (a broad, grass or vegetation-lined channel) or filter strip (a strip of grass along the downslope edge of a pollution generating pervious surface) as opposed to a more complicated facility such as a wetpond or sand filter system.” County Response, at 17; Ex. 27 [MK-CAO 1509-1510].⁹ The County points out that an exemption is available “if there is a good faith agreement with the King Conservation District to implement a farm plan for agricultural purposes.” Core 0871; Ex. 26, MK-CAO 1501.

⁹ The options are 1) biofiltration swale, 2) filter strip, 3) wetpond, 4) wetvault, 5) stormwater wetland, 6) combined detention and wetpool facilities, and 7) sand filter.

The County complains here and throughout its response that Keesling’s allegations that various County regulations are too expensive to be affordable to farmers are speculative and unsupported by any factual record.¹⁰

Finally, the County argues that Issue No. 2(b) – misleading environmental checklist - must be dismissed both because it is beyond the Board’s jurisdiction and because the underlying assumptions of negative impact on agricultural land use have not been sustained. County Response, at 18.

Board Discussion

The Board reads King County’s challenged regulation to require “water treatment facilities” when new pervious surfaces (lawn, pasture, cultivated fields) of 35,000 square feet (0.8 acre) or more are created, if those surfaces are “pollution-generating” (subject to fertilizer application or animal waste, for example), and if the surface water is captured in a pipe or ditch before discharge. The water treatment facility required may be as simple as a biofiltration swale.¹¹

It appears to the Board that Petitioner made a mistake of fact in assuming that the “water treatment facilities” of Core requirement #8 refer to highly-engineered, costly structures such as the “water detention facility” referenced in MK-CAO 0012. The County points to the 2005 Surface Water Design Manual to clarify that various “soft” solutions are available under the regulations. County Response, at 17, Ex. 26 and Ex. 27.

King County Plan Update policies articulate a goal of encouraging agriculture in rural and agricultural areas through promoting farming practices that protect the natural environment. Relevant policies for agricultural resource lands are cited *supra*, at 13. Policies supporting traditional farming in rural lands similarly reference “best practices” and protection of the natural environment.

Designation and conservation of a Rural Area maintains rural community character as a valued part of King County’s diversity. It also provides choices in living environments, maintains a link to King County’s heritage, *allows small-scale farming* and forestry to continue and *helps protect environmental quality* and sensitive resources, *such as groundwater recharge areas*.

R-101: It is a fundamental objective of the King County Comprehensive Plan to maintain the character of its designated Rural Area. . . . Therefore, King County’s land use regulations and development standards shall protect and enhance the following components of the Rural Area:

¹⁰ The Board notes that the County has a range of programs that subsidize, promote, and seek to support the economics of agriculture. Core 0106, *et seq.*

¹¹ The Board notes that locating and applying these clarifying provisions in the 2005 Surface Water Design Manual at Sections 1.2.8 [Ex. 26, MK-CAO 1496-1507] and 6.3 [Ex. 27, MK-CAO 1508-1510] may be a daunting challenge, but the GMA does not ban complexity in plans and development regulations.

a. *The natural environment, particularly as evidenced by the health of wildlife and fisheries (especially salmon and trout), aquifers used for potable water, surface water bodies including Puget Sound and natural drainage systems and their riparian corridors;*

b. *Commercial and noncommercial farming, forestry, fisheries, mining and cottage industries. . . .*

. . . Some of the most important features [that characterize the Rural Area] include: integration of housing with traditional rural uses such as forestry, *farming and keeping of livestock; protection of streams, wetlands and wildlife habitat;* preservation of open vistas, wooded areas and scenic roadways; and reliance on minimal public services. King County is committed to maintaining these features.
...

R-104: *Farming and forestry are vital to the preservation of rural areas and should be encouraged throughout the Rural Area. King County should encourage the retention of existing and establishment of new rural resource-based uses, with appropriate site management that protects habitat resources.* King County's regulation of farming and forestry in the Rural Area should be consistent with these guiding principles:

....
c. *County environmental standards for forestry and agriculture should protect environmental quality, especially in relation to water and fisheries resources, while encouraging forestry and farming*

Plan Update, at 3-1 to 3-4, emphasis supplied.

The Growth Management Act also contains planning goals encouraging agriculture (Goal 8) and protecting the environment, including water quality and water supply (Goal 10). The GMA requires county plans and development regulations to be consistent but does not dictate how various goals should be balanced. Indeed, RCW 36.70A.3201 states the legislative intent that local jurisdictions bear "the ultimate burden and responsibility for ... harmonizing the planning goals of [GMA]."¹²

Keesling's statements concerning the break-even economics of small-scale agriculture in King County are not buttressed by factual evidence in the record. In *WEAN*, the Court of Appeals upheld the Board's ruling that Island County could not exempt farmers in the rural area from wetland buffer requirements, despite the GMA emphasis on protecting agricultural resource lands. 122 Wn.App. at 185. The court rejected the county's argument that this resulted in an "unreasoned taking of land." The court concluded: "Furthermore, the County's argument that there will be "unnecessary and considerable loss of arable land and money at the farmers' expense" is speculation and is not supported by any citation to the record." *Id.*

¹² "Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances." RCW 36.70A.3201. See also *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board, supra*, at 5.

The Board finds and concludes that Petitioner has not met her burden of demonstrating that the County regulation requiring water treatment facilities for new agriculture is inconsistent with policies in the County Plan Update or out of compliance with the County's obligation to consider and harmonize the planning goals of the Act. Petitioner has not persuaded the Board that the County's regulation is clearly erroneous.

In Issue No. 2(b), Keesling requests the Board to find the County's Environmental Checklist flawed and non-compliant because it lists the water treatment facilities requirement as having no impact on land use. This issue is moot because of the Board's finding that Petitioner has not met her burden of proof with respect to the regulation itself.¹³

Conclusion

The Board finds and concludes that Petitioner **has failed to carry her burden of proof** in demonstrating that the challenged sections of Ordinance 15052, the Surface Water Management Ordinance, do not meet the consistency requirements of RCW 36.70A.130, .040 and .060. Legal Issue No. 2 is **dismissed**.

C. LEGAL ISSUE NO. 3

The Board's Prehearing Order sets forth Legal Issue No. 3 as follows:

Issue #3. (Mandated-Everywhere Grading Permit)

Does the inclusion of the words "and for activities not listed on the table" (Line 261, page 12, Clearing & Grading Ordinance 15053), when combined with the definition of "Grading" (Lines 63, 64 on page 4 of said Ordinance) add up to the requirement for a grading permit not just for Critical Areas, Buffers and significant earth alterations, but also for insignificant removals of the duff layer in non-Critical Areas, thus becoming non-compliant with RCW 36.70A.020(6) and RCW 36.70A.030(14)(b)?

Applicable Law

RCW 36.70A.020 – Planning goals – includes a goal concerning property rights:

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

RCW 36.70A.030 – Definitions – contains a definition of "Rural character:"

¹³ The County asserts that the Board lacks jurisdiction here. The Board clearly has jurisdiction with respect to SEPA determinations underlying comprehensive plans and development regulations, assuming SEPA standing can be demonstrated.

(14) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat; . . .
- (g) That are consistent with the protection of natural surface water flows and ground water and surface water recharge and discharge areas.

The Challenged Action

Ordinance 15053 is the amended Clearing and Grading Ordinance that regulates clearing and grading activities in unincorporated areas of King County, including critical and non-critical areas. Core 0891-0965. The Clearing and Grading Ordinance requires permits for some types of land clearing. "Clearing," as defined in the ordinance, includes "the cutting, killing, grubbing or removing of vegetation . . . by physical, mechanical, chemical or any other similar means." Core 0892. "Grading" is defined to include the removal "of the duff layer." Core 0894.

The permit requirement is set forth in New Section 3¹⁴ of Ordinance 15053 which contains a three-page table listing a variety of activities and locations, prefaced by the explanation: "Clearing and grading permits are required when a cell in this table is empty, and for activities not listed on the table." Core 0902. The table includes a column covering activities "Out of Critical Areas and Buffer" as well as columns for activities in critical areas.

New Section 3 of the Ordinance is labeled "Clearing and grading permit exceptions." Core 0902-0905. Agriculture is one of the listed activities, and no permit [NP] is required for "Horticultural activity including tilling, discing, planting, seeding, harvesting, preparing soil, rotating crops and related activity." Core 0905. "Grazing livestock" is also exempt from permit requirements. *Id.*

Discussion and Analysis

Positions of the Parties

Keesling contends that the permit requirements for clearing and grading activities sweep too broadly. She argues that regulation of activities in non-critical areas through a "so-

¹⁴ The full table is attached to this FDO as Appendix B. "Conditions" in sections C.1 to C.24 are omitted.
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called critical areas ordinance” is “arbitrary and capricious.” The catch-all phrase –“all activities not listed on the table”- Petitioner asserts, requires the rural landowner to seek government permission for traditional farming and rural land use. This “could prohibit traditional farming activities in NON-critical, non-urban areas, where the cost and imposition of newly-required clearing and grading permits can significantly impact those landowners operating on a shoestring.” Keesling PHB, at 8. She contends that the permit requirement “for ALL clearing and grading including duff removal and ANY vegetation removal ... interfere[s] with non-urban traditional farming activities in both the Rural and Agricultural Production District areas.” *Id.*

Petitioner cites to GMA provisions supporting rural lifestyles and agriculture which she contends the permit requirements contravene:

RCW 36.70A.030(14)(b) defines Rural Character as fostering “traditional rural lifestyles ... and opportunities to both live and work in rural areas,” while RCW 36.70A.011 finds that such lifestyles and opportunities should be fostered by Counties. RCW 36.70A.020(8) calls for maintaining and enhancing natural resource-based industries, including productive agricultural industry. The Finding-Intent statement at the end of RCW 36.70A.030 calls for the long-term conservation of productive natural resource lands, while RCW 36.70A.040(3) calls for adoption of development regulations conserving designated ag lands. Even the County’s Ordinance 15051’s page 15, Lines 322-326, recognizes a “GMA mandate” to protect agriculture (Core 0603, attached.)

Id. at 7.

The County responds that Petitioner cannot base her challenge on RCW 36.70A.030(14)(c) because this section of the GMA is a definition. GMA definitions inform comprehensive plans, not development regulations, and do not create affirmative duties.¹⁵ County Response, at 19.

The County states that its Clearing and Grading Ordinance, like its Surface Water Management Ordinance, has always applied broadly to activities throughout the County, not just in critical areas. The 2004 revisions were made as part of a broader process to update regulations for critical areas based on best available science, but the Ordinance has more general application. The County asserts there is nothing arbitrary about regulating both non-critical and critical areas in the County’s Clearing and Grading Ordinance. *Id.* at 20-21.

¹⁵ *Citing Hanson v. King County*, CPSGMHB No. 98-3-0015c, Final Decision and Order (Dec. 16, 1998) at 7-8: “RCW 36.70A.030 defines the terms used in the GMA. Definitions, by themselves, do not create GMA duties. The substantive significance of the definition section of the GMA is to give meaning to words and terms used within the GMA. The Board notes that the seven components listed in RCW 36.70A.030(a-g) define the term “rural character” and give meaning to the rural elements of the County’s comprehensive plan.”

The County points out that Ordinance 15053 exempts from permit requirements “traditional farming activities” such as “tilling, discing, planting, preparing soil, rotating crops,” and grazing livestock. Core 902, 905. Thus permits are not required for farming, and the property rights goal (6) is in no way infringed. County Response, at 21.

Board Discussion

Again it appears to the Board that Petitioner misconstrued the Ordinance, failing to put together the various clauses that collectively allow for continuance of traditional farming in rural and agricultural areas without additional permit requirements. While the Board agrees with the County, it is not unsympathetic to Petitioner in her effort to understand the County’s complex regulatory regime. It would serve the County well to simplify its regulations in the first place and not have to rely upon “clarifying” and “supporting” documents to glean an understanding of the County’s regulations.

The Board agrees with the County that regulation of clearing and grading of land countywide [without distinguishing whether the lands are critical areas or not] is not arbitrary and discriminatory nor does it run afoul of GMA Planning Goal 6.¹⁶ Nor do the regulations conflict with traditional rural lifestyles or traditional farming activities, inasmuch as many such activities are exempt from permit requirements.

The Board notes that the GMA definition of “rural character,” appealed to by Petitioner, includes not only “foster[ing] rural lifestyles and rural-based economies” [RCW 36.70A.030(14)(b)] but also “compatibil[ity] with the use of the land by wildlife and for fish and wildlife,” [.030(14)(d)] and “consist[ency] with the protection of surface water flows and ground water and surface water recharge and discharge areas” [.030(14)(g)].

Conclusion

The Board finds and concludes that Petitioner **has failed to carry her burden of proof** in demonstrating that the challenged sections of Ordinance 15053, the Clearing and Grading Ordinance, do not comply with RCW 36.70A.020(6) and .030(14)(b). Legal Issue No. 3 is **dismissed**.

D. LEGAL ISSUE NO. 4

The Board’s Prehearing Order states Legal Issue No. 4. as follows:

¹⁶ Planning Goal 6 is discussed more fully *infra*, under Legal Issue No. 4.
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Issue #4. (35%/50%/65% Rural Area Maximum Clearing Restrictions)¹⁷

a. Did the King County adoption of the 35%/50%/65% maximum clearing restrictions in Clearing & Grading Ordinance 15053, Section 14, fail to comply with RCW 36.70A.011, RCW 36.70A.020(5), (6), and (8), RCW 36.70A.030(14)(b), RCW 36.70A.040, .060, and .130 because those clearing restrictions effect a blanket prohibition on Rural Area residents' ability to enjoy traditional rural activities and/or produce income from farming activities no matter soil types or the presence of critical areas, as well as impact private property rights?

c. Do those adopted 35%/50%/65% maximum clearing restrictions fail to comply with the intent of RCW 36.70A.150 and .160 because the county chose to regulate, rather than acquire, private land considered by the county to be necessary to benefit the public?

Applicable Law

For Issue 4(a) Petitioner relies on the following provisions of the GMA: RCW 36.70A.040, .060, and .130, set out under Legal Issue No. 1, at 5-7; the GMA definition of "rural character" at RCW 36.70A.030(14)(b), set out *supra*, at 20; and on the GMA planning goals RCW 36.70A.020(5) Economic development, (6) Property rights, and (8) Natural resource industries; and GMA Findings – Rural lands – RCW 36.70A.011.

RCW 36.70A.020 – Planning goals – includes the following goals:

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

¹⁷ Legal Issue No. 4(b) was withdrawn by Petitioner in her February 14, 2005, Motion to Re-State. By Motion for Clarification received March 21, 2005, Petitioner requested leave to change the title of Legal Issue No. 4 from "35%/50% Rural Area Maximum Clearing Restrictions" as stated in the PHO to "35%/50%/65% Rural Area Maximum Clearing Restrictions." Without objection from Respondent, the amendment was allowed.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.011 Findings -- Rural lands – provides as follows¹⁸:

The legislature finds that this chapter is intended to recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment, while respecting regional differences. Rural lands and rural-based economies enhance the economic desirability of the state, help to preserve traditional economic activities, and contribute to the state's overall quality of life.

....

Finally, the legislature finds that in defining its rural element under RCW 36.70A.070(5), a county should foster land use patterns and develop a local vision of rural character that will: Help preserve rural-based economies and traditional rural lifestyles; encourage the economic prosperity of rural residents; foster opportunities for small-scale, rural-based employment and self-employment; permit the operation of rural-based agricultural, commercial, recreational, and tourist businesses that are consistent with existing and planned land use patterns; be compatible with the use of the land by wildlife and for fish and wildlife habitat; foster the private stewardship of the land and preservation of open space; and enhance the rural sense of community and quality of life.

The Challenged Action

Section 14 of Ordinance 15053, the Clearing and Grading Ordinance, limits clearing of individual lots in the rural zone.¹⁹ Core 0935. In general and subject to numerous and varied provisos, rural lots greater than five acres must leave 65% of the lot uncleared and rural zoned lots of less than 5 acres must leave 50% of the lot uncleared. The clearing restrictions apply only in the rural zone and apply to both critical areas and non-critical areas. An exemption is available for properties with an approved rural stewardship plan or farm management plan.

The area required to remain uncleared must be identified on the site plan approved at the time of permit application. Section 14.E, Core 0945. The uncleared area “shall be maintained by the owner as a resource area. The uses permitted in the resource area shall not prevent the long-term purpose of the resource area to promote forest cover.” Section 14.F, Core 0945. Permitted uses in the uncleared area include forestry, passive recreation

¹⁸ This section states legislative intent and creates no substantive GMA duty.

¹⁹ By its terms, this regulation does not apply to designated agricultural resource lands, only to “individual lots in the rural zone.” Core 0935.

such as camping and trails, utilities, tree-thinning for fire protection and hazard-tree removal, and removal of noxious or invasive vegetation. Section 14.F.2-6, Core 0945-0946. Lands cleared prior to January 1, 2005, are grandfathered in – no permit is required unless the use is expanded. Section 14.A.1.a.(1), Core 0935.

Discussion and Analysis

Positions of the Parties

Petitioner contends that the rural land clearing restrictions override GMA policies promoting productive use of land:

RCW 36.70A.020(5) – encourage/promote economic development THROUGHOUT the state; RCW 36.70A.020(6) – protect property rights of landowners from arbitrary and discriminatory actions; RCW 36,70A.020(8) – maintain and enhance natural resource-based industries; and RCW 36.70A.030(14)(b) – foster traditional rural lifestyles and opportunities to both live and work in the rural areas: All envision USE of private property, assuming adequate protection of environmentally sensitive (critical) areas.

Keesling PHB, at 8-9. Petitioner points out that King County’s restrictions on land clearing apply only in the rural area and are not based on presence of critical areas. *Id.*

Keesling contends that the County’s rural land clearing restrictions impermissibly favor forestry over agriculture in rural zones with a goal to return rural lands to “pre-development forest cover.” *Id.* at 9. The County’s preference for forests over farms in rural lands is not supported by the GMA or by the County’s own Plan Update, she asserts. Further, Petitioner argues that the 65% uncleared area requirement is based on dubious science. *Id.* at 10. She contends that modeling and trying to restore pre-development forest conditions is contrary to the underlying GMA intent of reconciling human use and environmental protection. *Id.*

Petitioner alleges that the rural land clearing restrictions effect “a blanket prohibition on Rural Area residents’ ability to enjoy traditional rural activities and/or produce income from farming activities.” Keesling PFR, at 3. The clearing restrictions, she asserts, conflict with the Plan Update Policy R-101.b requirement to protect and enhance commercial and non-commercial farming in the rural area [Core 0086]. Keesling Oral Argument, at 2. At oral argument, she stated that it is self-evident that no agricultural economic development is possible on unclearable land. *Id.*

Petitioner contends that the governmental intrusion on ordinary *use* of rural land is contrary to law. She cites *Isla Verde v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002), and other cases for the rule against pre-set mitigation requirements based on a flat percentage, not on actual development impacts. Keesling PHB, at 9. Making the intrusion more onerous, she states, are the detailed restrictions on activity within the set-aside

portion of the property and the permanence of the resource-area tracts, which “shall be a) shown on the face of the recorded plat map to delineate where the uncleared area is to remain on each lot; and b) marked with at least one sign per buildable lot adjoining the area indicating that the area is a permanent resource management area.” CORE 0947, Keesling PHB, at 10.²⁰

The County responds that most of Petitioner’s arguments must be dismissed on various technical grounds:

- GMA Section .030(14) is a definition of “rural character”; definitions create no enforceable duties for counties in adopting development regulations.
- GMA Sections .040 and .060 pertain to agricultural resource lands, not rural lands, and so are not relevant to these rural area restrictions.
- GMA Sections .150 [public purpose land] and .020(5) [planning goal - Economic development] were not briefed and analyzed in Keesling’s prehearing brief and those issues should be dismissed as abandoned.
- Keesling failed to allege violations of the GMA “best available science” provision, RCW 36.70A.172, in her statement of legal issues as finalized in the board’s Prehearing Order; she should therefore be barred from challenging the science relied on by the County.

On the merits, the County argues that the GMA property rights goal (6) was not infringed. The County asserts that its decision makers took into account citizen comments about property rights, which would constitute procedural consideration of the property rights goal. *Citing Shulman v. Bellevue (Shulman)*, CPSGMHB Case No. 95-3-0076, Final Decision and Order, (May 13, 1996); County Response at 24, fn. 10.

Substantively, the County says its adoption of the clearing restrictions was not arbitrary or discriminatory. The regulations were not arbitrary, the County argues, because they were based in sound science and well-considered public policy. The science supporting the County’s Critical Areas Ordinance, Clearing and Grading Ordinance and Surface Water Management Ordinance is summarized in two volumes of Best Available Science, Feb. 2004 [Ex. 28 and 29]. The specific restrictions on rural lot clearing are supported in Exhibit 28, at 1647-48 and 1820-37. The lot-clearing restrictions are not discriminatory, the County states, because they apply uniformly throughout the rural zone. County Response, at 25-26.

Finally, the County asserts that the clearing restrictions are consistent with its Plan Update policies for rural lands:

The County’s Comprehensive Plan states that farming and forestry are vital to the preservation of rural areas and should be encouraged

²⁰ As to the rural stewardship option, Petitioner opines: “The county’s touted alternative of adopting a rural stewardship plan (RSP) is no help, as the environmental protections of an RSP must equal or exceed those of the standard CAO regulations. They merely customize – with every last land detail studied by and for the government, with ongoing monitoring and adaptive management.” Keesling PHB, at 11, MK-CAO 0133.

throughout the rural area. See Core 87 (Comprehensive Plan Policy R-104). However, land use regulations and development standards for rural areas should protect and enhance the natural environment, particularly aquifers, surface water bodies and natural drainage systems and their riparian corridors while at the same time protecting and enhancing commercial and noncommercial farming. See Core 86 (Comprehensive Plan Policy R-101). King County's regulation of farming and forestry in the rural area should use environmental standards for forestry and agriculture that protect environmental quality, especially in relation to water and fisheries resources while encouraging forestry and farming. Core 88 (Comprehensive Plan Policy R-104). Ground water in the rural area is to be protected, in part by requiring standards for maximum vegetation clearing limits. See Core 136 (Comprehensive Plan Policy E-156).

Board Discussion

Consistency with the GMA and with County Plan Update Policies

Keesling's Legal Issue 4(a) alleges that the rural lot clearing restrictions "effect a blanket prohibition on Rural Area residents' ability to enjoy traditional rural activities and/or produce income from farming activities no matter soil types or the presence of critical areas." The Board briefly reviews the various GMA provisions referenced in Legal Issue 4(a) and then focuses on the property rights goal and on the scientific basis for the regulations.

RCW 36.70A.011 – Findings – Rural lands – reflects the legislature's findings with respect to the rural element of county comprehensive plans. Petitioner is not challenging King County's comprehensive plan, and this section of the GMA does not create an enforceable duty. This portion of Petitioner's issue is dismissed.

RCW 36.70A.020 – Planning goals (5) – Economic development and (8) - Natural resource industries – must be considered by counties in adopting both comprehensive plans and development regulations. The Board notes that Goal 8 is specific to agricultural lands (not farming in rural zones), and that Goal 5 was not briefed or argued by Petitioner in her prehearing brief. Petitioner at the hearing on the merits argued that it's self-evident that there can be no agricultural economy on unclearable land. Keesling Oral Argument, at 2. Petitioner's argument is too little, too late. Keesling's challenge related to these goals is deemed abandoned.

RCW 36.70A.030(14)(b) is a definition of "rural character" which imposes no direct or cognizable duty with respect to development regulations.

RCW 36.70A.040. and .060 require a county to adopt development regulations to conserve agricultural resource lands as well as critical areas. RCW 36.70A.040 and .130 require a county to ensure that its development regulations as adopted and as amended

from time to time, are consistent with its Comprehensive Plan. The land clearing restrictions at issue here are not applicable in designated agricultural lands, only in rural areas, and are not tied to critical areas. The only GMA provisions relevant here are the requirements for consistency between the comprehensive plan [King County Plan Update] and development regulations. The relevant Plan Update policies provide:

E-156 King County should protect groundwater in the rural area by: (a) Preferring land uses that retain a high ratio of permeable to impermeable surface area and that maintain or augment the infiltration capacity of the natural soils; and (b) Requiring standards for maximum vegetation clearing limits, impervious surface limits, and, where appropriate, infiltration of surface water [*referencing R-231*].

R-231 Rural development standards shall be established to protect the natural environment by addressing seasonal and maximum clearing limits, impervious surface limits, surface water management standards that emphasize preservation of natural drainage systems and water quality, groundwater protection, and resource-based practices.

The Board finds that King County's rural clearing restrictions are consistent with Plan Update policies E-156 and R-231.

RCW 36.70A.020(6) - Property Rights.

One of the themes of Keesling's petition is that the challenged Ordinances constitute unwarranted government intrusion in traditional rural lifestyles and farming activities. Requiring permits for land clearing and surface water management in connection with farming in non-critical areas, she asserts, is arbitrary and discriminatory. Keesling acknowledges that people who choose to farm in rural or agricultural zones in King County have the alternative of entering into voluntary rural stewardship or farm management plans through the King Conservation District, but these plans, she contends, amount to government micromanagement of private properties, depriving landowners of the use of their land. Keesling Oral Argument, at 3.

GMA Planning Goal 6 states:

Property Rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

The GMA Planning Goals guide local government adoption of comprehensive plans and development regulations. In reviewing a challenge based on Goal 6, the Board asks four questions:

- Is the challenge within the Board's jurisdiction?

- Did the local government take landowner rights into consideration in its procedure?
- Was the challenged action arbitrary?
- Was the challenged action discriminatory?

Is the challenge within the Board's jurisdiction? The Board lacks jurisdiction to decide constitutional questions or issues arising under statutes other than those listed in RCW 36.70A.280(1)(a). The legal precedents relied on by Petitioner here construe state and federal constitutional protections or the state impact fee statute, Chapter 82.02 RCW.²¹ Whether King County's rural land use restrictions amount to inverse condemnation or a "taking" must be decided in the courts, not by this Board.

Did King County take landowner rights into consideration in its procedure? For procedural compliance, the Board looks for evidence that the property rights goal has been included in the jurisdiction's debate and consideration when taking action on a comprehensive plan or development regulation. In *Shulman, supra*, the Board noted that the City's record included submittals by petitioners objecting to legislation on the grounds that it would be a taking and a city official's advice that the proposed action, being legislative, could not be a taking. On this record, the Board concluded "that the City considered the Act's sixth planning goal." *Id.* at 8.

The present record includes numerous citizen comments to the County concerning impacts of the proposed Critical Areas Ordinance, Surface Water Management Ordinance and Clearing and Grading Ordinance on property rights, particularly the property rights of rural and agricultural landowners. See, e.g., Ex. 4, MK-CAO 1179 (Public Comments response letter); Ex. 8, MK-CAO 0222 (Response to Public Comments, March, 2004); Ex. 13, MK-CAO 1142. Keesling submitted a letter to the County Planning Director and to all County Council members outlining her grounds for believing that the rural clearing limits would destroy the use of substantial portions of private property, citing "takings" cases. MK-CAO 141-142; see Keesling PHB, at 9.

²¹ See cases cited in Keesling PHB, at 9, incorporating by reference MK-CAO 0141-0142:

- *State v. Roberge*, 144 Wash. 74, 256 P. 781 (1927) decided on constitutional grounds; reversed, *State of Washington ex rel. Seattle Title Trust C. v. Roberge*, 278 U.S. 116, 49 S.Ct. 50, 73 L.Ed. 210 (1928).
- *Arastra Ltd. Partnership v. City of Palo Alto*, 401 F. Supp. 962 (N.D.Cal., 1975), inverse condemnation (constitutional) case; decision vacated, 417 F. Supp. 1125 (N.D.Cal. 1976).
- *Cobb v. Snohomish County*, 64 Wn.App. 451, 829 P.2d 169 (1991) decided under RCW 82.02.020.
- *Cougar Mountain Associates v. King County*, 111 Wn. 2d 742, 765 P.2d 264 (1988), decided on pre-GMA grounds based on inconsistency between comprehensive plan and zoning code.
- *Pierce v. Northeast Lake Washington Sewer and Water Dist.*, 123 Wn.2d 550, 870 P.2d 305 (1994), decided under state constitution.
- *Allingham v. City of Seattle*, 109 Wn.2d 947, 749 P.2d 160 (1998), invalidating city greenbelt ordinance under U.S. constitution; overruled by *Presbytery of Seattle v. King County*, 114 Wn.2d 947, 787 P.2d 907 (1990).
- *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000), decided under state constitution.
- *Isla Verde v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002), decided under RCW 82.02.020.

A County Council “Briefing on CAO Substitute Ordinances” contains a list of issues and concerns, among them: “**Rural residents:** Concerns about Urban-rural equity, ... government interference in day-to-day activities ... **Property Rights Advocates:** Feel that clearing limits constitute a taking, landowners should be compensated, and ordinances not needed.” Ex. 13, MK-CAO 1142.

Further, the record indicates that County Council members *responded* to rural citizens by making several amendments to the clearing and grading regulations to “ensure that people can carry out traditional rural activities like farming, forestry, and keeping horses.” Ex. 14, MK-CAO 1101. Changes included: “Scale clearing limits to lot size, to ensure a wider range of traditional rural uses, eliminate requirement for notice on individual lots ... Make it easier to remove blackberries and invasive plants; ensure that people can take step to reduce wildfire hazards.” Ex. 14, MK-CAO 1101. The 65% clearing limit was amended to 50% for lots smaller than 5 acres, and activities like collecting firewood and grubbing out blackberries were exempted from permit requirements. Ex. 15, MK-CAO 1131-1132; Ex. 16, MK-CAO 1136-38.

In short, the record demonstrates that County officials took note of citizen concerns about limitations on ordinary use of land and then proposed and passed responsive amendments. The Board finds that the County considered the property rights planning goal when taking action on the Clearing and Grading Ordinance.

Was the challenged action arbitrary? Beyond determining whether a local government has procedurally “considered” the takings question, the Board asks whether a local comprehensive plan or regulatory provision is “arbitrary and discriminatory” in its impact on landowner property rights. In *Shulman*, the Board held that the clear language of the goal requires that an action must be “both arbitrary and discriminatory” to overcome the presumption of validity. *Id.* at 8 (emphasis in original).

Government action is not arbitrary unless it is completely baseless. *State v. Ford*, 100 Wn.2d 827, 830-31, 755 P.2d 806, 808 (1988).²² The suite of County ordinances challenged here were adopted following two years of scientific study, policy review and public debate. Petitioner argues that they defy common sense and that the County’s preference for a return to pre-development forest cover, rather than enhancing rural farming, is arbitrary: “It is impossible to aim for the purpose/goal ‘to promote forest cover’ and at the same time purport to be ‘enhancing commercial and noncommercial farming’ unless the sole crop is trees.” Keesling Oral Argument, at 3. She argues that the County bases its regulation on dubious science. *Id.*

The County urges the Board to dismiss Petitioner’s critique of the scientific basis for the rural lot clearing restrictions because Petitioner did not cite the relevant GMA section, RCW 36.70A.172, or “best available science,” in her statement of legal issues. However,

²² “First, an error in judgment is not arbitrary and capricious. A judicial conclusion that an administrative decision was erroneous is not sufficient. Second, the action essentially must be in disregard of the facts and circumstances involved.” *Id.*

the Board notes that GMA Section .172 requires “best available science” for designation and protection of *critical areas*. The challenged action here is a general regulation for *rural lands*, not a designation or regulation of critical areas. While the “best available science” provision of Section .172 is not applicable to Petitioner’s challenge of the Clearing and Grading Ordinance, Petitioner is entitled to question the basis for the County’s action, independent of RCW 36.70A.172.

However, Keesling has not met her burden of proof on this issue. King County, in this case, chose to undertake a “best available science” study of not only its critical area designations and regulations but also of the proposed Surface Water Management Ordinance and Clearing and Grading Ordinance amendments. MK-CAO 1512. Conducting a scientific analysis of regulations for non-critical areas, while not required by the GMA, is within the discretion of a local jurisdiction.

The County’s Best Available Science Report explains the basis for lot-clearing restrictions in the rural area:

Landscape scale measures (such as protection of forest cover) are needed to protect functions such as hydrology ... that largely originate outside of the immediate riparian corridor. Physical and biological effects tend to be more pronounced in heavily urbanized areas ... but they can also occur in relatively rural areas where impervious area is low but forest cover has been reduced.

To help minimize impacts of development, a 65 percent forest retention standard has been implemented in selected watersheds in King County. ... The Tri-County Model (2001) proposed a “65/10” standard for all rural residential zoned parcels. This standard called for retaining native vegetation on at least 65 percent of the parcel and restricting the amount of “effective impervious surface” to no more than 10 percent through the application of runoff dispersion and infiltration techniques.... While this 65/10 threshold is helpful in minimizing impacts, it is not sufficient for avoiding them [P]reservation of aquatic resources in developing areas must include impervious area limits, forest retention policies, stormwater detention, riparian buffer maintenance, and protection of wetlands and unstable slopes. ...

In summary, the key to attaining effective aquatic area protection against landscape level changes is maximizing forest cover (including continuity of riparian areas along streams and wetlands) and minimizing impervious surfaces.

MC-KAO 1648; Ex. 28, at 7-26-27 (citations omitted throughout).

One of the studies attached to the BAS document is “Forest Cover, Impervious-Surface Area, and The Mitigation of Urbanization Impacts in King County,” by Dr. Derek Booth, (2000)²³ which concludes:

Land development that eliminates hydrologically mature forest cover and undisturbed soil can result in significant changes to urban stream hydrology and, in turn, to the physical stability of stream channels.

Under typical rural land uses, the magnitude of observed forest-cover losses affects watershed hydrology as much as or more than associated increases in impervious area.

MK-CAO 1835, Ex. 28.

In contrast, the evidence presented by Keesling consists of newspaper clippings and other material lacking the credibility of the peer-reviewed studies and analysis conducted and compiled by the County.²⁴ The Board finds that Keesling has failed to carry her burden of challenging the analysis underlying the rural lot clearance rules. In Keesling’s judgment, the County’s regulations are contrary to common sense and everyday experience; but under the GMA, a challenger has a heavier task. Under the property rights goal, the challenger must prove the County’s regulations were “baseless” and “in disregard of the facts and circumstances,” not merely, in Petitioner’s opinion, misguided or an error in judgment. *See State v. Ford, supra*, fn. 22. The Board finds and concludes that the County had a basis for its rural land clearing restrictions and that its action was not arbitrary.

Was the challenged action discriminatory? Section 14 of the Clearing and Grading Ordinance applies to all lands in the rural zones. The Board finds that it is not discriminatory.

²³University of Washington. Center for Urban Water Resources Management, Seattle, WA. Unpublished, 2000.

²⁴ Petitioner submits the following items:

- A 1988 newspaper article concerning clearcutting and groundwater: “When it comes to clearcutting...there is no detrimental impact on the groundwater supply, according to state Department of Ecology officials” [MK-CAO 0121];
- Several letters to the Seattle TIMES, Feb. 6, 2005, one written by Petitioner, concerning the Queets River [MK-CAO 0124];
- A 1994 assessment of water quality in King County rivers and streams [MK-CAO 0120];
- A letter Petitioner wrote regarding a King County SWM study of the East Lake Sammamish Pipeline in 1995;
- Petitioner’s letter of November 15, 2004, pointing out the history of flooding from spring snowmelt off the forested slopes of the Issaquah Creek Basin [MK-CAO 0116];
- A fragment of an article by Dr. Derek Booth in the Northwest Environmental Journal, Institute for Environmental Studies, University of Washington, [date] which Petitioner asserts misstates the facts of a flooding event in her neighborhood in 199- [MK-CAO 0134];
- A fragment of “Urbanization and the Natural Drainage System,” an article written by Dr. Derek Booth in 1991, with this sentence highlighted: “Modeling the predevelopment condition is done because it is more convenient than making on-site measurements.”

In sum, the Board finds that the County considered the GMA property rights goal (Goal 6) along with the goals to foster agriculture (Goal 8) and protect the environment, including water resources (Goal 10). RCW 36.70A.3201 assigns to local governments the “ultimate burden and responsibility for ... harmonizing the planning goals of [GMA].” It is not for this Board to substitute its judgment for the County’s or to determine whether the ordinances were wise or prudent. Petitioner has not persuaded the Board that the County’s action was clearly erroneous.

Issue 4(c) – RCW 36.70A.150 and .060 Petitioner’s opening brief contains no argument or analysis concerning alleged violations of the intent of RCW 36.70A.150 – Lands useful for public purposes – or RCW 36.70A.060 – Natural resource lands and critical areas.

At the hearing on the merits, Petitioner characterized the clearing restrictions as contrary to the GMA provisions for designation of lands for public purposes, including open space corridors. RCW 36.70A.150. “[T]he 35%/50%/65% clearing requirements result in locked-up, recorded, public-purpose land tracts, which per .150 should be ACQUIRED by the County, not confiscated by the County.” Keesling Oral Argument, at 2.

The Board’s rules provide, at WAC 242-02-570, that a petitioner’s failure to brief and argue an issue in the prehearing brief constitutes abandonment of the issue. See also, Prehearing Order (Feb. 17, 2005), at 6. The Board finds and concludes that Legal Issue No. 4(c) is **abandoned**.

Conclusion

The Board finds and concludes that Petitioner **has failed to carry her burden of proof** in demonstrating that Section 14 of Ordinance 15053, the Clearing and Grading Ordinance, does not comply with RCW 36.70A.020(5), (6), (8) .030(14)(b), .011, .040, .060,.130, .150,. 160. Petitioner has not persuaded the Board that the County’s action was clearly erroneous. Legal Issue No. 4 is **dismissed**.

E. LEGAL ISSUE NO. 5

The Board’s Prehearing Order states Legal Issue No. 5 as follows:

Issue #5. (“Natural”/“Native Vegetation”)

a. Are King County’s critical areas requirements for the retention/restoration of “native vegetation” and “natural” aquatic areas (including streams) and wetlands’ locations and compositions, along with huge buffers, as required by Ordinance 15051’s Section 185.B, Section 187.B, Section 193.C and D, and Section 197.B an overkill for protection of water quality and quantity and for flood prevention and consequently

do not comply with RCW 36.70A.040, RCW 36.70A.060 and RCW 36.70A.130?

b. If the answer to Issue 5.a. is no, then is it sufficient for those requirements to be enacted to cover only the meager 15% of King County that is the Rural Area where, if so, then those requirements become arbitrary and discriminatory actions against the property rights goal of RCW 36.70A.020(6)?

c. Do those critical areas requirements for the Rural Area work to preclude the Natural Resource industries enhancement called for in RCW 36.70A.020 (8), and the fostering of traditional rural lifestyles and rural-based economies called for in RCW 36.70A.030(14)(b)?

Applicable Law

Petitioner relies on portions of the Act cited previously: Planning Goals (6) Property Rights and (8) Natural Resource Lands (*supra*, at 23); on the definition of “rural character” in RCW 36.70A.030(14)(b), (*supra*, at 20) and on the GMA consistency requirements of RCW 36.70A.040, .060, and .130 (*supra* at 6-7).

The Challenged Action

Ordinance 15051, the Critical Areas Ordinance (CAO), establishes new wetland and stream buffer requirements, including requirements concerning native vegetation. Various sections address requirements in different zones and drainages. Petitioner challenges the following sections of the Ordinance:

- Section 185.B of the CAO establishes the County’s wetland and stream buffer requirements for all lands outside the urban area. Core 779-784.
- Section 187.B prohibits introduction of non-indigenous plants or wildlife into any wetland or wetland buffer anywhere in the County under most circumstances. Core 785.
- Section 193.C establishes the stream buffer requirements for streams located outside the urban boundaries except for the Bear Creek Drainage Basin, which is dealt with in Section 193.D. Core 797.
- Section 197.B, applicable to all lands in the County, states the mitigation standards for permanent alterations that require restoration or enhancement of the altered aquatic area or buffer. Core 801-802.

Discussion and Analysis

Positions of the Parties

Keesling’s position is that *increasing* the King County regulatory restrictions to protect wetlands and streams is unnecessary because existing regulations are effective and the increased restrictions unfairly impinge on farming and rural lifestyles. Keesling PHB, at

12. She points out again the high quality of King County drainage basins in the rural and agricultural areas [Core 0850; MK-CAO 0120] as a result of existing regulations and restoration projects. *Id.* at 14. She cites inconsistencies in scientific and governmental pronouncements concerning the pollution-absorbing value of wetlands and concerning the role of forest cover in preventing floods. MK-CAO 0118, 0116, 0121, 0003-6.

Keesling argues that this level of government intrusion is unwarranted: “[T]his back-to-nature with Native Vegetation is interwoven with all of King County’s ’04 Critical Areas development regulations. The Board should direct King County to be free to do a good job of selling the merits of Native Vegetation to the public, but to give the public the option of whether or not to take the County’s advice.” Keesling PHB, at 14.

Keesling contends that native vegetation requirements will be most onerous in the 15% of King County that is designated rural, leaving the 60% of land designated as Forest Resource Land virtually unaffected, which is arbitrary and discriminatory in contravention of protection of property rights (Goal 6). Further, she asks the Board to find that the regulations are contrary to the goal of enhancing agriculture (Goal 8) and contrary to the fostering of rural life-styles and rural-based economies (RCW 36.70A.030(14)(b) (defining “rural character”).

In response, the County lays out the scope of the “best available science” review that produced the protective scheme for streams and wetlands and their buffers. County Response, at 32-33.²⁵ The County argues that much of the evidence produced by Petitioner is outdated and consists of newspaper articles written for other purposes, opinion pieces, letters, and self-referential items.²⁶ *Id.* at 33-35. The County states that Keesling has failed to show how the prohibition on introducing non-native plants in wetland buffers interferes with protection of agricultural lands.

The County denies that the CAO regulations are discriminatory, since all have broad application. The County cites *Tulalip Tribes v. Snohomish County*, CPSGMHB No. 96-3-0029, Final Decision and Order (Jan. 8, 1997) at 9, for the proposition that counties may apply differing buffer widths for wetlands in the urban area as long as the buffer widths in the urban area are within the range of BAS.

The County asserts that Keesling’s Prehearing Brief has only conclusory statements or rhetorical questions, not reasoned arguments, concerning Issues 5(b) and 5(c), so that these issues must be deemed abandoned. Keesling replies that the propositions are self-evident: “Pasture, grassland, cultivated land, lawn, and landscaping” all involve non-native vegetation. Agriculture by definition introduces non-native plants. “Natural/native

²⁵ The County’s two-volume BAS review, Ex. 28, was “an exhaustive peer-reviewed scientific inquiry into the science of protecting critical areas.” County Response, at 32. The Aquatic Areas chapter [MK-CAO 1649-1661] contains references to over 175 scientific studies and papers and was peer-reviewed by six fisheries experts [MK-CAO 1865-1870]. The Wetlands chapter [MK-CAO 1790-1812] contains references to over 225 scientific studies and papers and was peer-reviewed by two wetland experts [MK-CAO 1865-1870]. The authors of the two chapters are recognized experts in their fields and are the authors of scores of scientific papers and reports [MK-CAO 1842-1850, 1853-1860]. *Id.* at 33.

²⁶ See WAC 365-195-905(5)(a) “Common sources of non-scientific information.”

vegetation requirements obviously preclude productive farming.” Keesling Oral Argument, at 4.²⁷

Board Discussion

Keesling’s Legal Issue No. 5 challenges certain wetland and stream buffer requirements in King County’s Critical Areas Ordinance, including buffer widths and prohibition of introduction of non-native plants. The GMA imposes a unique requirement concerning designation and protection of environmentally critical areas – the requirement that counties and cities “shall include the *best available science* in developing policies and development regulations to protect the functions and values of critical areas.” RCW 36.70A.172(1). Keesling’s Petition for Review did not raise the issue whether King County’s critical areas regulations met the “best available science” obligations imposed by the statute but rather whether the regulations were arbitrary or inconsistent with the goals and policies supporting agriculture and rural lifestyles.

Here the Board agrees with the County. Neither the PFR nor the Petitioner’s arguments and exhibits properly put in issue the scientific basis for the County’s critical areas regulations concerning wetland and stream buffer widths and vegetation management. The Board notes that even if the issue had been argued in the Section .172 context, the County’s Best Available Science reports were extensive and thorough, thereby increasing Petitioner’s heavy burden of proof. As to the issue of consistency with goals to support agriculture, the Board has previously pointed out the parallel requirements, both in the GMA and the King County Plan Update policies, for support of farming and of environmental values. Petitioner offers only conclusory statements to contravene the County’s regulatory solutions.

In Legal Issue 5(b) Petitioner asks the Board to find the wetlands regulations discriminatory in their unequal impact on rural lands compared to forest lands. The Board notes that the Critical Areas Ordinance provisions cited by Petitioner apply to the County’s rural, agricultural, and forest lands alike. See Sections 185.B, 187.B, 193.C, 197.B, CORE 779-784, 785, 797, 801-802. The Board finds that the regulations are not discriminatory.

In Legal Issue 5(c) the Petitioner simply asks the rhetorical question whether these regulations “preclude the Natural Resources industries enhancement called for in RCW 36.70A.020(8) and the fostering of traditional rural lifestyles and rural-based economies called for in RCW 36.70A.030(14)(b)?” The County asks the Board to rule that Petitioner has failed to adequately brief this issue and that therefore it should be deemed abandoned.

The Board reads this issue as an allegation that the County’s regulations “substantially interfere” or thwart Goal 8 of the Act.²⁸ However, the Board finds that Petitioner has not

²⁷ “It’s obvious, without spelling out, that there’ll be no ag economic development on unclearable land.” Keesling Oral Argument, at 2. “Again, it’s OBVIOUS, without stating and without evidence, that when native surfaces can’t be converted to pastures and cultivated land, then the offending development regulations fail to promote agricultural productivity.” *Id.* at 4.

met her burden of proof on the underlying issue [Legal Issue No. 5]. Petitioner has not persuaded the Board that the County's action was clearly erroneous. The Board has not found noncompliance with the goals or requirements of the GMA; therefore the Board need not and will not address the request for invalidity.

Conclusion

The Board finds and concludes that Petitioner has **failed to carry her burden** of demonstrating that Section 185.B, 187.B, 193.C and D, and 197.B of Ordinance 15051, the Critical Areas Ordinance, do not comply with GMA planning goals, RCW 36.70A.020(6) – Property rights - and (8) – Natural resource industries – or with the consistency requirements of RCW 36.70A.040, .060, and .130. Petitioner has not persuaded the Board that the County's action is clearly erroneous. Legal Issue No. 5 is **dismissed**.²⁹

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- Petitioner has **failed to carry her burden of proof** in demonstrating that the challenged portions of King County Ordinance No. 15051, Critical Areas Ordinance [Sections 174.B.2, 179.B.9, 185.B, 187.B, 193.C and D, 197.B], Ordinance No. 15052, Surface Water Management Ordinance [Section 3.A, Core requirement 8], and Ordinance No. 15053, Clearing and Grading Ordinance [Sections 3 and 14], do not comply with the Growth Management Act.
- The Board was not persuaded that the County's action in adopting Ordinance Nos. 15051, 15052, and 15053 was clearly erroneous with respect to the provisions of the Ordinances that were challenged.
- The petition for review is **dismissed**.

²⁸ If a jurisdiction's plan or development regulations are noncompliant with the GMA and that noncompliance substantially interferes with the goals of the Act, the Board may on its own motion or at the request of a petitioner declare the non-compliant plan or regulation invalid. RCW 36.70A.302.

²⁹ Petitioner withdrew Legal Issue No. 6 – Government Land Management – in her Prehearing Brief. Keesling PHB at 15. "Are wetlands' impact-measuring criteria in Ordinance 15051's Section 185.B.2 in compliance with RCW 36.70A.020(6) because those criteria effectively "force" private-land management by the government by penalizing those who choose not to enroll their land in rural stewardship or farm management plans?"

So ORDERED this 5th day of July 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

APPENDIX – A

Chronological Procedural History of CPSGMHB Case No. 05-3-0001

On January 4, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Maxine Keesling (**Petitioner** or **Keesling**). The matter was assigned Case No. 05-3-0001, and is hereafter referred to as *Keesling-CAO*. Board member Margaret A. Pageler is the Presiding Officer for this matter. Petitioner challenges King County's adoption of Ordinance Nos. 15051 (Critical Areas Ordinance), 15052 (Surface Water Management Ordinance), and 15053 (Clearing and Grading Ordinance) amending the County's development regulations. The basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**).

On January 6, 2005, the Board received a Notice of Appearance from Darren E. Carnell and Peter G. Ramels, Deputy Prosecuting Attorneys with the King County Prosecuting Attorney's Office.

On January 14, 2005, the Board issued a Notice of Hearing setting a Prehearing Conference and a tentative schedule for the case.

On January 20, 2005, the Board received "Maxine Keesling's Critical Areas Ordinance Package Exhibits List" with 17 exhibits, including cover and pages from Ordinances 15028, 15051, 15052, and 15053.

On January 21, 2005, the Board received a Notice of Withdrawal and Substitution of Attorneys substituting Deputy Prosecuting Attorney John F. Briggs for Attorneys Carnell and Ramels.

On January 28, 2005, the Board issued an Order Changing Location for the Prehearing Conference.

On February 10, 2005, the Board conducted the PHC in the Boards and Commissions Room, City Hall, 600 Fourth Avenue, Seattle. Board member Margaret Pageler, Presiding Officer in this matter, conducted the conference. Board members Ed McGuire and Bruce Laing also attended. Petitioner Maxine Keesling was present *pro se* and John F. Briggs and Steve Hobbs represented Respondent King County. The Legal Issues were discussed in some detail, and the Board ruled that Petitioner would file a restatement of issues by February 15. King County stated that it has Bates-stamped the documents being produced in CPSGMHB Cases No. 04-3-0024, 04-3-0026, 04-3-0028, and 04-3-0029 (appeals of the County's 2004 Comprehensive Plan update). The parties agreed to use the Bates-stamp system to identify exhibits in these proceedings.

On February 14, 2005, the Board received “Petitioner’s Motion to Re-State RCW 36.70A References and to Clarify Intent on Ag Issues,” which restated Petitioner’s Legal Issues pursuant to the PHC discussion.

On February 14, 2005, the Board also received King County’s Initial Index of the Record.

On February 16, 2005, the Board received Petitioner’s Motion to Supplement the Record, requesting permission to cite additional portions of the GMA.

On February 17, 2005, the Board issued its Prehearing Order (**PHO**).

On March 14, 2005, the Board received King County’s Core Documents:

King County Ordinance 15028 – King County Comprehensive Plan 2004

King County Countywide Planning Policies (December 2003)

King County Critical Areas Ordinance 15051 2004

King County Surface Water Management Ordinance 15052 2004

King County Clearing and Grading Ordinance 15053 (2004)

and additional documents (MK-CAO 1-121) designated by Maxine Keesling.

On March 21, 2005, the Board received Petitioner’s “Motion for Clarification” asking to re-title Issue #4 as “35%/50%/65% Rural Area Maximum Clearing Restrictions.” At the Hearing on the Merits, Respondent King County indicated no objection and the motion was granted.

On April 18, 2005, the Board received Petitioner’s Brief (**Keesling PHB**) on Legal Issues, and 69 Exhibits.

On May 2, 2005, the Board received Respondent King County’s Prehearing Brief (**County Response**) and Exhibit Notebook with 34 Exhibits.

Petitioner did not submit a reply brief.

On May 11, 2005, the Hearing on the Merits (**HOM**) was held in Room 2096, 900 Fourth Avenue, Seattle. The HOM was convened at approximately 10:00 a.m. and closed at 11:45 a.m. Present for the Board were Board member Margaret Pageler (Presiding), Bruce Laing, and Ed McGuire and Board extern Rachel Henrickson. Petitioner Maxine Keesling appeared *pro se*, and Respondent King County was represented by Deputy Prosecutor John Briggs. Reporting services were provided by Eva Jankovitz of Byers and Anderson. Petitioner presented her oral argument from prepared text, providing copies to the Board and Respondent at the Board’s request. The Respondent objected that the written text was in essence an untimely reply brief which he would need opportunity to rebut. The Board ruled that the text was simply a transcript of Petitioner’s oral argument and would be helpful to the Board in following the argument. At the close of the hearing, the Board ordered the court reporter’s transcript of the hearing. The Board received the transcript on May 17, 2005.

APPENDIX – B

Section 3 of Ordinance 15053

NEW SECTION. SECTION 3. There is hereby added to K.C.C. chapter 16.82 a new section to read as follows:

Clearing and grading permit exceptions.

A. For the purposes of this section, the definitions in K.C.C. chapter 21A.06 apply to the activities described in this section.

B. The following activities are excepted from the requirement of obtaining a clearing or grading permit before undertaking forest practices or clearing or grading activities, as long as those activities conducted in critical areas are in compliance with the standards in this section and in Ordinance 15051, Section 132 (allowed alterations). In cases where an activity may be included in more than one activity category, the most-specific description of the activity shall govern whether a permit is required. For activities involving more than one critical area, compliance with the conditions applicable to each area is required. Clearing and grading permits are required when a cell in this table is empty and for activities not listed on the table.

KEY													
"NP" in a cell means	O	C	E	F	C	L	S	V	S	C	W	A	W
no permit required	U	A	O	R	L	H	M	A	A	E	O	T	H
if conditions are met.	T	R	A	O	O	A	I	N	N	I	L	E	A
A number in a cell	E	L	S	O	N	G	D	D	S	C	E	Z	T
means the	O	A		I	D	N	R	S	M	A	P	A	I
numbered condition	F	M	O		E	A	L	B	I	N	R	C	A
in subsection C.	A	I	N	H	L	T	I	U	C	I	S	D	A
applies.	C	N	N		A		I	D	F		C	L	L
"Wildlife area	R	D	E	H	Z	O	E	F	H		O	&	E
and network" column	I		A	A		N	E	A	H	P	A	A	R

applies to both Wildlife Habitat Conservation Area and Wildlife Habitat Network	T I C A L R	B U F F E R D	H A Z A D	Z A R	R D		H A Z A R D	R A Z A D	Z R D	A Z R D	E U F F E R	Q U I F F E R	A U R D	N D	E A	R A	R E K A
ACTIVITY																	
Grading and Clearing																	
Grading	NP 1, 2	NP 1, 2	NP 1, 2				NP 1, 2	NP 1, 2		NP 1, 2							
Clearing	NP 3 NP 24	NP 3	NP 3	NP 3	NP 3		NP 3	NP 3		NP 3	NP 4 NP 23	NP 4 NP 23					
Covering of garbage	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5	NP 5
Emergency tree removal	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6	NP 6
Removal of noxious weeds	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Removal of invasive vegetation	NP 7	NP 7	NP 7	NP 7	NP 7		NP 7	NP 7		NP 7	NP 8	NP 8	NP 8				
Non conversion Class I, II, III, IV-S forest practice	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9	NP 9
Emergency action	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10	NP 10
Roads																	
Grading within the roadway	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11	NP 11							NP 11
Clearing within the roadway	NP	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12	NP 12			NP 12	NP 12	NP 12	NP 12	NP 12
Maintenance of driveway or private access road	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13

Maintenance of bridge or culvert	NP 13, 14, 15												
Construction of farm field access drive	NP 16												
Maintenance of farm field access drive	NP 17												
Utilities													
Construction or maintenance of utility corridors or facility within the right-of-way	NP 18	NP 19	NP 18	NP 19	NP 19	NP 19							
Construction or maintenance of utility corridors or facility outside of the right-of-way	NP 1, 2, 3		NP 1, 2, 3				NP 1, 2, 3	NP 1, 2, 3		NP 1, 2, 3			
Maintenance of existing surface water conveyance system	NP 11												
Maintenance of existing surface water flow control and surface water quality treatment facility	NP 11												
Maintenance or repair of flood protection facility	NP 20												
Maintenance or repair of existing instream structure	NP	NP 11	NP 11	NP									
Recreation areas													

Maintenance of outdoor public park facility, trail or publicly improved recreation area	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13
Habitat and science projects													
Habitat restoration or enhancement project	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21	NP 21
Drilling and testing for critical areas report	NP 1, 2	NP 1, 2	NP 1, 2	NP 22	NP 22	NP 22	NP 1, 2	NP 1, 2	NP 22	NP 1, 2	NP 22	NP 22	NP 22
Agriculture													
Horticulture activity including tilling, discing, planting, seeding, harvesting, preparing soil, rotating crops and related activity	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Grazing livestock	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
Construction and maintenance of livestock manure storage facility	NP 16	NP 16	NP 16	NP 16	NP 16	NP	NP 16	NP 16	NP	NP 16	NP 16	NP 16	NP
Maintenance of agricultural drainage	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15
Maintenance of farm pond, fish pond, livestock watering pond	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15	NP 15
Other													
Excavation of cemetery grave in established and approved cemetery	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP

Maintenance of cemetery grave	NP	NP 13	NP 13	NP	NP 13	NP 13	NP	NP	NP 13	NP	NP 13	NP 13	NP 13
Maintenance of lawn, landscaping and gardening for personal consumption	NP	NP 13	NP 13	NP	NP 13	NP 13	NP	NP	NP 13	NP	NP 13	NP 13	NP 13
Maintenance of golf course	NP 13	NP 13	NP 13	NP 13	NP 13	NP 13	NP	NP	NP 13	NP 13	NP 13	NP 13	NP 13

[Section C lists the 24 “conditions” to which the numbers in the cells of the table refer.]