

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

)	
SNO-KING ENVIRONMENTAL)	CPSGMHB Case No. 06-3-0005
ALLIANCE, EMMA DIXON, and)	
GERALD FARRIS,)	<i>(Sno-King)</i>
)	
Petitioners,)	
)	
v.)	ORDER ON MOTIONS
)	
SNOHOMISH COUNTY,)	
)	
Respondent,)	
)	
KING COUNTY,)	
)	
Intervenor.)	

I. BACKGROUND

On February 6, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Sno-King Environmental Alliance, Emma Dixon, and Gerald Farris (**Petitioners** or **Sno-King**). The matter is assigned Case No. 06-3-0005, and is hereafter referred to as *Sno-King v. Snohomish County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner challenges Snohomish County’s (**Respondent** or **County**) adoption of Emergency Ordinance Nos. 05-121, 05-122, 05-126, and 05-127 pertaining to odor and seismic regulations, amending essential public facility regulations, and approving a development agreement. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On February 13, 2006, the Board issued a “Notice of Hearing” in the above-captioned case. The Order set March 9, 2006 as the date for the prehearing conference (**PHC**) and established a tentative schedule for the case.

On March 9, 2006, the Board conducted the PHC at the Board’s offices in Seattle.

On March 10, 2006, the Board received King County’s Motion to Intervene on behalf of the County. Neither Snohomish County nor the Petitioners objected to King County’s Motion and, on March 20, 2006, the Board **granted** King County’s Motion.

1 On March 13, 2006, the Board received Sno-King's "Clarification of Issues in Petition for
2 Review." These clarified issues were included in the Board's "Prehearing Order" (**PHO**), issued
3 the same day.
4

5 *The Record: Index and Motion to Supplement*
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7 At the March 9, 2006 PHC, the County submitted "Snohomish County's Index to the
8 Administrative Record" (**Index**). The Index includes separate entries and identifying numbers
9 for the record for each of the four challenged ordinances. The record for Ordinance No. 05-121
10 lists seven items, referenced as Index A1 through A7; the record for Ordinance No. 05-122 lists
11 seven items, referenced as Index B1 through B7; the record for Ordinance No. 05-126 lists 34
12 items, referenced as Index C1 through C34; and the record for Ordinance No. 05-127 lists 14
13 items, referenced as Index D1-D14.
14

15 On March 28, 2006, the Board received a copy of a letter dated March 21, 2006, from Emma
16 Dixon to John Moffat requesting that the County amend the Index to include certain specified
17 items related to Ordinance Nos. 05-121, 05-122 and 05-127. Additionally, the letter asks that
18 testimony related to Ordinance Nos. 05-029 and 05-031 (prior Odor and Seismic Emergency
19 Ordinances) be included.
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21 On March 27, the Board received a copy of a letter dated March 23, 2006 from John Moffat to
22 Emma Dixon indicating that certain items would be added to the Index and others would not.
23
24

25 On April 12, 2006, the Board received the County's Amended Index (**Amended Index**). The
26 Amended Index lists 91 additional items by Index number, including some of the items requested
27 by Emma Dixon.
28

29 On April 10, 2006, the Board received "Sno-King Environmental Alliance Motion to
30 Supplement the Record" (**Petitioner Motion – Supp.**). Petitioners ask that the record be
31 supplemented with 20 items - labeled as proposed exhibits Exh. 1-19 and P1 through P18. Some
32 of the proposed exhibits, but not all¹, were attached to the motion.
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35 On April 25, 2006, the Board received the County's Second Amended Index (**2nd Amended
36 Index**). The 2nd Amended Index notes two changes to the previous Index: (1) Index D10 should
37 be dated October 16, 2005 and (2) Exhibit P11 should be added to the Index for both Ordinances
38 05-126 and 05-127.
39

40 On April 25, 2006, the Board received "Snohomish County's Response to Sno-King
41 Environmental Alliance's Motion to Supplement the Record" (**County Response – Supp.**).
42

43 On May 1, 2006, the Board received "Petitioners' Reply to Snohomish County's Response to
44 Petitioners Motion to Supplement the Record" (**Petitioner Reply – Supp.**). Petitioners included
45 a CD of the October 17, 2005 Snohomish County Council Public Hearing [Ex. A-2 and B-2] and
46 attached three items to their reply – attachments A, B and C.
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50 ¹ Petitioners sought to include the record from Emergency Ordinances 05-029 and 05-030. The record of these
ordinances was not provided to the Board.

1 On May 5, 2006, the Board received “Snohomish County’s Motion to Strike” (**County Motion –**
2 **Strike**). The County asks the Board to strike attachments A, B and C to Petitioners’ reply.

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4 Motion to Dismiss
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6 On February 22, 2006, the Board received a letter from Snohomish County indicating that it
7 intended to bring several dispositive motions to dismiss all or major portions of this matter.
8 Petitioners were copied on the letter to the Board.
9

10 On March 9, 2006, at the PHC, the Board reviewed the proposed dispositive motions with the
11 parties.
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13 On April 10, 2006, the Board received “King County’s Joinder and Brief in Support of
14 Snohomish County’s Dispositive Motions” (**King County Joinder**).² King County supports,
15 and incorporates by reference, Snohomish County’s arguments for dismissal. King County also
16 briefs the question of the Board’s subject matter jurisdiction over Ordinance No. 05-127 [the
17 Development Agreement].
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20 On April 11, 2006, the Board received “Snohomish County’s Dispositive Motions” with 20
21 exhibits from the Index. (**County Motion – Dismiss**). The County sought dismissal of many of
22 the Petitioners’ claims based on lack of subject matter jurisdiction, lack of standing, and other
23 legal defects. The County asserted that the Board has no jurisdiction over development
24 agreements and that the Petitioners, with some exceptions, lack standing under both GMA and
25 SEPA. The County further asserts that Legal Issues 1, 2A, 2B, 3B³, and 3C should be dismissed.
26

27 On April 25, 2006, the Board received “Sno-King Environmental Alliance’s Response to
28 Snohomish County’s Motion to Dismiss,” with 4 attachments, each proposed as additional
29 exhibits to supplement the record [P-19, P-20, P-21 and P-22] (**Petitioner Response – Dismiss**).
30

31 On May 1, 2006, the Board received “Snohomish County’s Reply Re: Dispositive Motions,”
32 with 4 attached exhibits from the Index. (**County Reply – Dismiss**).
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35 On May 5, 2006, the Board received the County’s Motion to Strike (**County Motion - Strike**),
36 asserting that exhibits attached to Petitioner’s Response – Dismiss are improperly before the
37 Board because they were not in the County’s Amended Index nor are they the subject of a
38 Motion to Supplement the Record.
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40 The Board first addresses SKEA’s Motion to Supplement the Record; then turns to Snohomish
41 County’s Motions to Dismiss.
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48 ² In granting intervener status to King County, the Board limited King County’s participation in this proceeding,
49 including motions. King County was authorized to support motions offered by Snohomish County, not initiate any
50 dispositive motions of its own. *See* Order on Intervention, (Mar. 20, 2006), at 2-3.

³ The County asserts that references to Ordinance 05-127 and RCW 36.70A.070 should be dismissed.

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3 **II. SKEA MOTION TO SUPPLEMENT THE RECORD**
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6 Petitioners attach 19 items [indicated as Ex. 1 and P1 through P18] to the Motion to Supplement
7 and ask that each exhibit be added to the record in this proceeding. Additionally, Petitioners ask
8 that the Board supplement the record in this proceeding with documents from the record for
9 Emergency Ordinance Nos. 05-029 and 05-030 [Ordinance No. 05-121 (Odor) replaced 05-029;
10 and Ordinance No. 05-122 (Seismic) replaced 05-030]. Petitioner Motion – Supp., at 1-8.
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13 In its response, the County noted that a few of the items requested for supplementation are in the
14 record [*i.e.* P3=D10 and P10=C14] and several items were only in the record for one of the
15 ordinances [*e.g.* P1=05-127]. The County objected to the remainder of the proposed exhibits,
16 questioning their relevancy and objected to inclusion of the record for Ordinance Nos. 05-029
17 and 05-030, since specific items were not attached and they were prior and separate actions.
18 County Response – Supp., at 1-6.
19

20 In their response brief to the County’s motion to dismiss, Petitioners attach 3 items [P19, P20,
21 and P21], and “request that these [items] be entered into the record as allowed under WAC 242-
22 02-540.” Petitioner Response – Dismiss, at 2.
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25 On May 1, 2006, Petitioners also included three items attached to their brief on supplementation
26 [A, B and C]. *See* Petitioner Reply – Supp., at 1-3 and attachments [hereafter referenced as P22,
27 P23, and P24⁴].
28

29 On May 5, 2006, the County filed a motion to strike P19, P20, and P21, indicating they were
30 untimely and that Petitioners did not move that they be supplemented. County Motion - Strike, at
31 1-4. The County did not include in this Motion any reference to the attachments to the
32 Petitioners’ Reply, *i.e.* P22, P23, and P24. County Motion – Strike, at 1-4.
33

34 The Board has reviewed the items presented and the briefing of the parties and has determined
35 that certain items, as indicated on the table below, may be necessary or of substantial assistance
36 to the Board in reaching its decision. Items admitted are assigned a “Supp. Ex. #.”
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Proposed Exhibit – Numbers from briefing:	Ruling
40 Item 1: 4/7/06 e-mail from Moffat to Hensley, re: 41 “lost e-mail” of 12/6/05 from Hensley to Sax.	<i>Denied</i> [No copy of 12/6/05 <i>e-mail provided.</i>]
42 Item 2/“proposed” (P)1: 10/10/05 Council News 43 Release with attachments, re: Brightwater 44 Settlement Agreement, review process, seismic and 45 odor standards, encourages comment on 10/17/06, 46 motion authorizing approval is the first step in	<i>Admitted – Supp. Ex. 1⁵</i> <i>[Notice of process for package of actions to address Brightwater facility and resolve lawsuits.]</i>

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49 ⁴ The Board deems these items to be included in Petitioners’ Motion to Supplement.

50 ⁵ The County indicates that P1 is in the 2nd Amended Index under Ordinance No. 05-127, but the specific reference is not identified; therefore the Board will admit it as a supplemental exhibit.

process	
P2: Excerpts from 3/12/01 King County Engineering and Environmental Constraints Analysis, pp. 9-11.	Admitted – Supp. Ex. 2 [Comments related to seismic issue.]
P3: 10/16/05 e-mail from Gray to County Council and Executive, re: comments for 10/17/05 hearing.	Already in record at D-10
P4: 12/2/05 e-mail from Gray to Council members, re: Ord. 05-126 and seismic hazards.	Admitted – Supp. Ex. 3⁶ [Comments related to EPF and seismic issues.]
P5: 10/6/05 e-mail from Hensley to Judge, re: 10 year update; and 10/7/05 reply.	Denied [No relevant comments.]
P6: 10/19/05 e-mail from Hensley to Judge and County Executive, re: public disclosure request on odor, seismic and Motion 05-451 on settlement agreement.	Denied [Public disclosure request, no relevant comments.]
P7: 10/26/05 letter from County Executive’s Office to Hensley, re: process and timeline for response to public disclosure request.	Denied [Public disclosure request, no relevant comments.]
P8: 10/31/05 e-mail from Allen to Hensley, re: public disclosure request for Brightwater documents – 30 pages noted.	Denied [Public disclosure request, no relevant comments.]
P9: 11/1/05 application for binding site plan for treatment plant site - schedule.	Denied [Project related information.]
P10: 11/14/05 e-mail from Gray to McCallister requesting SKEA be included as a party of record for Ordinance No. 05-126, with attached notice of 11/16/05 hearing.	Already in record at C-14
P11: 11/15/05 e-mail from Dixon to McCallister asking about 11/16/05 hearing on 05-126 and 05-127; reply indicates hearing is rescheduled to 12/7/05	Admitted – Supp. Ex. 4⁸
P12: 11/15/05 e-mail from Judge to Hensley, with attached memo re: documents available on odor and seismic Ordinances and settlement agreement.	Denied [Public disclosure request, no relevant comments.]
P13: 11/16/05 e-mail from Judge to Hensley, re: additional time to search e-mails for disclosure.	Denied [Public disclosure request, no relevant comments.]
P-14: 11/21/05 letter from County Executive’s Office to Hensley, re: public disclosure request for seismic, odor and Brightwater settlement – 442 pages noted.	Denied [Public disclosure request, no relevant comments.]

⁶ The County indicates P4 is in the 2nd Amended Index under Ordinance No. 05-126, but the specific reference (C=?) is not identified; therefore the Board will admit it as a Supplemental Exhibit.

⁷ The Board notes that the public disclosure requests ultimately yielded access to over 1200 pages and over 600 documents, all of which were available prior to the motions filing deadline. Petitioners did not identify any documents in their motion as resulting from that process.

⁸ The County added this to the 2nd Amended Index as P11. For consistency purposes, the Board assigns a Supplemental Exhibit Number.

P15: 11/23/05 memo from Judge to Hensley, re: public disclosure request – 58 documents (seismic), 80 documents (odor), 485 documents (settlement agreement) and 47 other documents.	<i>Denied [Public disclosure request, no relevant comments.]</i>
P16: 12/2/05 letter from County Executive's Office to Hensley, re: documents related to seismic, odor and settlement agreement – 491 pages noted.	<i>Denied [Public disclosure request, no relevant comments.]</i>
P17: 12/7/05 e-mail from Hensley to Judge, re: time to view documents related to seismic, odor and settlement agreement; and reply	<i>Denied [Public disclosure request, no relevant comments.]</i>
P18: 1/9/06 letter from Council to Hensley, re: public disclosure request on seismic, odor and settlement agreement – 305 pages noted.	<i>Denied [Public disclosure request, no relevant comments.]</i>
Record for prior odor and seismic ordinances, 05-029 and 05-030.	<i>Denied [No copies of relevant items or documents provided.]</i>
P19: 10/10/05 e-mail from Dixon to Council and Executive, re: seismic issues.	<i>Admitted – Supp. Ex. 5. [Comment on seismic issue.] Motion to Strike is denied.</i>
P20: 10/17/05 letter from Dixon to Council, re: seismic, odor, review/approval process	<i>Admitted – Supp. Ex. 6 [Comment on seismic issue.] Motion to Strike is denied.</i>
P21: Declaration of Linda Gray indicating she is a Board member of SKEA, and participated on SKEA's behalf.	<i>Admitted – Supp. Ex. 7 Motion to Strike is denied.</i>
P22: 10/6/05 e-mail from Farris to Council and Executive, re: seismic	<i>Admitted – Supp. Ex. 8 [Comments on seismic issue.]</i>
P23: 10/3/05 Confidential memo on settlement agreement.	<i>Denied</i>
P24: 11/2/05 letter from McCallister to Hensley, re: public disclosure request.	<i>Denied [Public disclosure request, no relevant comments.]</i>

The parties are cautioned that each exhibit submitted with briefing must be relevant to the issues before the Board. An exhibits listing on the County's 2nd Amended Index as a part of the record below, or its admission as a supplemental exhibit, does not necessarily mean that a specific exhibit is relevant to the legal issues, as set forth in the PHO.

The County's 2nd Amended Index identifies 21 items in Index A; 44 items in Index B; 29 items in Index C; and 45 items in Index D. The Board has supplemented the record with 8 additional exhibits, as indicated in the table *supra*. These 147 items constitute the Record for this proceeding. Although the County has organized the Index items under the different ordinances, perhaps with intent to limit their use to those ordinances; the Board will not restrict the parties in this way. **The Board is consolidating the County's 2nd Amended Index into a single unified Index.** As the County's news release indicates there were a series of actions necessary for the County to take to address the Brightwater settlement agreement. It is not unreasonable for the public to have commented on many aspects of the settlement agreement in combination without

1 reference to a particular proposed action – *i.e.* ordinance. *See* Supp. Ex. 1. **Consequently, the**
2 **parties may use any of the 147 items in the record to make their arguments on any of the**
3 **ordinances challenged in this proceeding** – so long as the exhibit is relevant to the Legal Issue.
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5 Please note that it is up to the parties to provide copies of relevant exhibits, referenced in briefing
6 to the Board at the time a brief is filed. Each exhibit filed with the Board shall reference the
7 document numbers as indicated in the 2nd Amended Index or as specified in the supplemental
8 exhibit table. Relevant exhibits, from the record, **shall be clearly tabbed by exhibit number**
9 **and filed with briefs.** The respective briefs shall include a **table of attached exhibits.** *See*
10 PHO, Section VII, at 6.
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13 **III. SNOHOMISH COUNTY MOTIONS TO DISMISS**

14 The County moves to dismiss ordinances, issues, petitioners and challenges to the County
15 actions. The Board will address the Motions to Dismiss in the following order: 1) Ordinance No.
16 05-127 [the Development Agreement] – Subject Matter Jurisdiction; 2) GMA standing; 3) SEPA
17 standing; 4) Issue 3C – CPPs; 5) Issue 3B – .070; 6) Issue 2A - BAS; 7) Issue 2B – Goals and
18 Consistency; 8) Issue 1 – Notice and Public Participation; and finally 9) Summary.
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21 **1. Ordinance No. 05-127, the Development Agreement, Board Subject Matter Jurisdiction:**

22 Ordinance No. 05-127 is entitled, “RELATING TO THE APPROVAL OF A DEVELOPMENT
23 AGREEMENT WITH KING COUNTY FOR ITS BRIGHTWATER WASTEWATER
24 TREATMENT FACILITIES” The question for the Board is whether it has jurisdiction to
25 review the development agreement with King County regarding the “Brightwater” wastewater
26 treatment project?
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29 The County argues that the Board’s jurisdiction is limited by RCW 36.70A.280(1) to review of
30 comprehensive plans, development regulations and amendments thereto, not project proposals or
31 project related ordinances such as Ordinance No. 05-127. County Motion – Dismiss, at 3.
32 Project related decisions, such as the development agreement, are appealable to court under the
33 land use petition act, not to the Boards pursuant to chapter 36.70A RCW. *Id.* at 4. The County
34 cites to prior decisions of this Board indicating it has no jurisdiction to review such project
35 decisions.⁹ *Id.*
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39 King County supports Snohomish County’s position and refers to a Court of Appeals decision
40 discussing the Board’s jurisdiction in relation to development agreements. *See* King County
41 Joinder, at 2-3. King County provides the following quotation:
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44 Unlike development *regulations*, which the Board has express jurisdiction to
45 review under RCW 36.70A.280(1), development *agreements* are individual
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49 ⁹ The County cites to: *Hanson v. King County*, CPSGMHB Case No. 98-3-0015c, Order Granting Dispositive
50 Motions, (Sep. 28, 1998); *Petersville Road Area Residents v. Kitsap County*, CPSGNHB Case No. 00-3-0013, Order
on Motions, (Oct. 23, 2000) and *City of Burien v. City of SeaTac*, CPSGMHB Case No. 98-3-0010, (Aug. 10, 1998).

1 agreements between cities and property owners regarding the development, use,
2 and mitigation of the development of a specific piece of property:
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4 A local government may enter into a development agreement with a person
5 having ownership or control of real property within its jurisdiction. . . . A
6 development agreement must set forth the development standards and other
7 provisions that shall apply to and govern and vest the development, use, and
8 the mitigation of the development of real property for the duration specified in
9 the agreement. A development agreement shall be consistent with applicable
10 development regulations adopted by a local government planning under
11 chapter 36.70A. RCW.
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14 While “development agreements” must be consistent with the development
15 regulations adopted under the GMA, a challenge to a development agreement
16 does not involve the city’s compliance with the GMA “but rather involves the
17 effect of the comprehensive plan on specific land use decisions. The Board
18 does not have jurisdiction over these types of issues. . . .” *Citizens for Mount*
19 *Vernon v. City of Mount Vernon*, 133 Wash.2d 861, 868, 947 P.2d 1208
20 (1997). *See also Wenatchee Sportsmen Ass’n*, 141 Wash.2d at 179, 4 P.3d 123
21 (explaining that a ‘site specific rezone is not a development regulation under
22 the GMA, and hence . . . a GMHB does not have jurisdiction to hear a petition
23 that does not involve a comprehensive plan or development regulation under
24 the GMA’).”
25

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27 *City of Burien v. Central Puget Sound Growth Management Hearings Board*, 113 Wn.App. 375,
28 385 (fn. 11), 53 P.3d 1028 (2002). Therefore, King County urges, the Board must dismiss the
29 challenge to the Brightwater Ordinance – No. 05-127. King County Joinder, at 3.
30

31 Petitioners do not squarely address the motion as presented by the County. Instead they
32 acknowledge that the other Ordinances [05-121, 05-122 and 05-126] are development
33 regulations that apply to the development agreement, and were passed prior to Ordinance No. 05-
34 127. However, Petitioners claim it was difficult to follow the County’s process and keep track of
35 the development regulation changes and variances to code requirements brought about by the
36 development agreement. Petitioners also assert that RCW 36.70A.470¹⁰ gives the Board
37 authority to review the development agreement. Petitioner Response – Dismiss, at 9-11.
38
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40 The Board agrees with both Snohomish and King County on this question. The Boards and the
41 Courts have made it clear that the Boards do not have jurisdiction to review project decisions,
42 including development agreements for projects, such as the one at issue here. Therefore, the
43 County’s Motion is **granted**; the Board **dismisses with prejudice** all challenges to Ordinance
44 No. 05-127.
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49 ¹⁰ RCW 36.70A.470 sets forth procedures for identifying possible Plan or development regulation deficiencies, and
50 subsequent amendments, stemming from project review conducted under chapter 36.70B RCW. Project review
decisions made pursuant to chapter 36.70B RCW are appealed pursuant to LUPA – chapter 36.70C RCW.

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2. GMA Standing:

RCW 36.70A.280(2) affords “participation standing” to “a person who has participated orally or in writing before the county or city regarding the matter on which review is being requested.” RCW 36.70A.280(4) explains, “To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person’s issue as presented to the board.”

The County asserts that: 1) None of the Petitioners provided comment on Ordinance No. 05-121; 2) Only Petitioner Dixon commented on Ordinance No. 05-122; and 3) None of the Petitioners provided comment on Ordinance No. 05-126;¹¹ and 4) Petitioner Farris did not comment on any of the Ordinances. County Motion – Dismiss, at 4-11.

Petitioners counter that they provided written comment and oral testimony on all the issues surrounding the Brightwater settlement agreement and therefore have standing. Petitioners Response – Dismiss, at 1-11.

In reply, the County suggests that comments received on October 17, 2005 on the Odor Ordinance were not part of the record since that Ordinance was not before the Council at that meeting. County Reply – Dismiss, at 11.

The Board has admitted, as a supplemental exhibit 1, the County news release, dated October 10, 2005, entitled “Brightwater Settlement Agreement set for action October 17.” This news release indicates that the County Council “is expected to *take action on Monday, October 17th on a motion to authorize the County executive to sign the settlement agreement.*” The news release states, “*The [settlement] agreement spells out significant community mitigation, a public review process, a binding site plan, and critical regulations for seismic and odor standards that King County must meet.*” Supp. Ex. 1, at 1; (emphasis supplied). The news release continues, “The motion will be up for action on Monday the 17th at 1:30 p.m. and public comment will be allowed. The ordinance approving the development agreement will be subject to a later public hearing. . .”

The news release suggests that there will be several steps and perhaps several legislative actions involved in resolving the wastewater facility; but it is not clear what comment is being solicited for the October 17, 2005 meeting. The news release summarizes and highlights many of the features of the settlement agreement, including the odor and seismic standards included. It is not unreasonable to expect that the public would view this news release as an invitation to comment on various aspects of the agreement – either in writing or orally. This is what these Petitioners did.

¹¹ The County also asserts that none of the Petitioners provided comment on Ordinance No. 05-127; however, the Board need not address this question since it has dismissed the challenge to Ordinance No. 05-127 for lack of subject matter jurisdiction.

1 Exhibits A-2, B-2, C-14 and D-10; and Supplemental Exhibits 3, 5, 6, 7, 8 establish that SKEA,¹²
2 Dixon and Farris clearly made their concerns known to the County regarding the settlement
3 agreement and its contents. They provided meaningful comment on a complex, multifaceted
4 issue, that ultimately involved the four [now three] challenged Ordinances. It is highly unlikely
5 that the County felt it was blindsided when these Petitioners brought their appeal of the
6 challenged Ordinances to the Board. These Petitioners have established GMA standing and the
7 County's Motion to dismiss for lack of standing is **denied**.
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10 **3. SEPA Standing:**

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12 The County argues that Petitioners have asserted SEPA standing in their PFR, yet have provided
13 no basis for their alleged standing, nor have they alleged any SEPA compliance issues. County
14 Motion – Dismiss, at 9-11. Petitioners do not respond to this argument. *See* Petitioner Response
15 – Dismiss, at 1-19. The Board notes that there are no allegations of noncompliance with SEPA
16 in the adoption of any of the challenged ordinances. *See* 3/13/06 PHO, Section IX, at 7-9.
17 Therefore, the County's Motion to Dismiss is unnecessary since the question of SEPA
18 compliance is not before the Board in this matter.
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21 **4. Issue 3C¹³ - CPPs:**

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23 The County asserts that there is nothing in the GMA sections relating to County-wide Planning
24 Policies (**CPPs**) that requires the County to adopt a CPP related to the subject matter of any of
25 the challenged ordinances. County Motion – Dismiss, at 20. Petitioners agree, and voluntarily
26 withdraw their challenge as stated in Legal Issue 3C. Petitioner Response – Dismiss, at 19.
27 Therefore, the County's Motion is **granted**; Legal Issue 3C is **dismissed with prejudice**.
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42 ¹² Dixon and Grey are Board members of SKEA. *See* Supp. Ex. 6 and 7.

43 ¹³ The Board's 3/13/06 PHO states Legal Issue 3C as:

44 3(C) The County has violated its duties with Ordinances 05-121, 05-122, 05-126 and 05-127 pertaining to
45 RCW 36.70A.040(3)(a), RCW 36.70A.100, RCW 36.70A.210 and RCW 36.70A.215 by failing to adopt
46 county-wide planning policies that would and could coordinate or collaborate such planning within the
47 county and with adjacent cities and counties that share common issues. *See* PFR, at 4.

48 *[The Board characterizes Issue Three C as: Did the County fail to comply with the coordination provisions*
49 *of RCW 36.70A.040(3)(a), .100, .210 and .215 when it adopted the Odor, Seismic, EPF and DA*
50 *Ordinances?]*

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5. Issue 3B¹⁴ - .070:

RCW 36.70A.070 sets forth the mandatory elements of comprehensive plans. It provides in relevant part:

The *comprehensive plan* of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop *the comprehensive plan*. The *plan* shall be an internally consistent document and all elements shall be consistent with the future land use map. A *comprehensive plan* shall be adopted and amended with public participation as provided in RCW 36.70A.140. [The section then goes on to set forth the requirements for each required element of a comprehensive plan.]

(Emphasis supplied).

The County argues that the provisions of RCW 36.70A.070 pertain to comprehensive plans, not development regulations, such as the ordinances challenged here. Therefore the County asks that all references to RCW 36.70A.070 be deleted from Legal Issue 3B. County Motion – Dismiss, at 19.

In response Petitioners argue that development regulations must be consistent with and implement the comprehensive plan, citing RCW 36.70A.040, but Petitioners do not address what .070 requires of the County as it pertains to development regulations. Petitioner Response – Dismiss, at 18-19.

In reply the County does not dispute that the GMA requires that development regulations must be consistent with and implement the plan, but continues to assert that RCW 36.70A.070 does not contain this requirement. Therefore, reference to this GMA provision should be deleted and dismissed. County Reply – Dismiss, at 20.

The Board agrees with the County; RCW 36.70A.070 sets forth the requirements for comprehensive plans and does not apply to development regulations, such as those challenged here. Therefore, the County's Motion is **granted**, and reference to RCW 36.70A.070 is **stricken** from Legal Issue 3B. However, what remains of Legal Issue 3B is the assertion that the Odor, Seismic and EPF Ordinances are not consistent with and do not implement the County's Plan.

¹⁴ The Board's 3/13/06 PHO states Legal Issue 3B as:

(B) Ordinances 05-121, 05-122, 05-126 and 05-127 violate RCW 36.70A.070 in its entirety including the necessary requirements of the preamble and those pertaining to capital facilities and utilities. Under RCW 36.70A.070 as well as RCW 36.70A.040 the ordinances as development regulations must be consistent with each other and useful in a broad focal point. See PFR, at 4.

[The Board characterizes **Issue Three B** as: Did the County fail to comply with the comprehensive plan and consistency requirements of RCW 36.70A.070 and .040 when it adopted the Odor, Seismic, EPF and DA Ordinances?]

1 This question is redundant to the .040 challenge in Legal Issue 3A. Therefore, the Board **strikes**
2 Legal Issue 3B in its entirety, and expects Petitioners to make this argument within Legal Issue
3 3A.
4

5
6 **6. Issue 2A¹⁵ - BAS:**

7 Issue 2A alleges noncompliance with the GMA's critical areas requirements, namely, the use of
8 best available science for the identification, designation and protection of the function and value
9 of those critical areas defined in the Act. See RCW 36.70A.170. .060 and .172.

10
11 The County asserts that the Odor Ordinance (05-121) and the EPF Ordinance (05-126) are not
12 critical areas regulations; therefore the noted GMA provisions do not apply.¹⁶ The County states
13 that Ordinance No. 05-121 regulates "nuisance odors from new wastewater treatment facilities . .
14 . which have the potential to generate emissions of hydrogen sulfide or ammonia. . . . [the Odor
15 Ordinance] is not a critical areas ordinance." County Motion – Dismiss, at 14-15. Likewise, the
16 County claims the EPF Ordinance (05-126) pertains to the County's "procedural requirements
17 for how proposals for essential public facilities will be considered." *Id.* at 17-18. The County
18 notes that previously essential public facilities were processed through a conditional use process.
19 But now, with the enactment of Ordinance No. 05-126, the review process relies upon a
20 development agreement for mitigation of project impacts. Again the County contends that this
21 Ordinance is not a critical areas regulation subject to the specified provisions of the GMA. *Id.*
22

23
24 However, the County acknowledges that the Seismic Ordinance (05-122), or at least portions of
25 it, are subject to the Act's critical areas requirements. The County asks that the challenge to this
26 Ordinance be limited to Section 2, not the other Sections of the Ordinance. County Motion –
27 Dismiss, at 14-17.
28

29
30 Petitioners do not respond to the County's assertion that the Odor Ordinance is not subject to the
31 critical areas provisions of the GMA, but do assert that the Seismic and EPF Ordinances are
32 subject to the critical areas requirements. Petitioner Response – Dismiss, at 14-17. Regarding
33 the EPF Ordinance, Petitioners suggest that through the development agreement process the
34 "County could potentially modify its critical areas regulations in such a way that an essential
35 public facility would no longer need to comply." *Id.* at 17.
36

37 ¹⁵ The Board's 3/13/06 PHO states Legal Issue 2A as:

38
39 (A) The County has violated State Law, Best Available Science (**BAS**) RCW 36.70A.172 and RCW
40 36.70A.060(2), RCW 36.70A.170 for ordinances 05-121 and 05-122 dealing with Seismic Areas and Odor.
41 The BAS regarding 05-126 and 05-127 is the lack of such information that should have been used when
42 formulating information for permitting requirements based on ordinances that have not been tested or
43 scientifically proved in Puget Sound. The ordinances do not protect the function and values as well as the
44 public where necessary to protect critical areas and areas of human habitation. See PFR, at 3.

45 *[The Board characterizes **Issue Two A** as: Did the County fail to comply with the critical area provisions*
46 *of RCW 36.70A.060(2), .170 and .172 when it adopted the Odor, Seismic, EPF and DA Ordinances?]*
47

48
49 ¹⁶ The County also asserted that these provisions do not apply to the DA Ordinance (05-127); however, the Board
50 has already **dismissed** Ordinance No. 05-127 from this proceeding and it need not be discussed in relation to this
issue.

1
2 In reply, the County reasserts its arguments and notes that the GMA prohibits the County from
3 precluding EPFs, so it is possible that an EPF could be sited without complying with all the
4 County's critical areas regulations. County Reply – Dismiss, at 16-20.
5

6 The Board agrees with the County regarding the Odor Ordinance – 05-121. Odor does not fit
7 within the GMA's definition of critical areas (*See* RCW 36.70A.030(5)), nor has the County
8 defined it as such. The County's Motion to **strike** reference to Ordinance No. 05-121 from
9 Legal Issue 2A is **granted**.
10

11 The EPF Ordinance, 05-126, changes the method by which essential public facilities are sited,
12 mitigated, and permitted. The change from the use of a conditional use permit to a negotiated
13 development agreement is a change in the procedures used for EPFs. The GMA's critical areas
14 requirements are not applicable to this action. The County's Motion to **strike** reference to
15 Ordinance No. 05-126 from Legal Issue 2A is **granted**.
16

17 The parties do not dispute that the Seismic Ordinance falls within the gambit of the GMA's
18 critical areas requirements, so this Ordinance (05-122) will remain the focus of this Legal Issue.
19 The Board is mindful of the County's request to limit Petitioners' challenge to Section 2;
20 however, at this time, without further briefing on the issue, the Board declines the County's
21 suggestion.
22

23 The County's Motion regarding Ordinance Nos. 05-121 and 05-126 is **granted**; reference to
24 these Ordinances is **stricken** from Legal Issue 2A. Ordinance No. 05-122, in its entirety,
25 remains part of Legal Issue 2A.
26

27
28 **7. Issue 2B – Goals and Consistency:**
29

30 Issue 2B was originally stated as a challenge to the Odor Ordinance – 05-121. However,
31 Petitioners "clarified" Legal Issue 2B and reformulated it to address all four ordinances and
32 address consistency. The 3/13/06 PHO shows the original and reformulated Legal Issue 2B:
33

34
35 (B) ~~The County has violated its duty under RCW 36.70A.020 and RCW 36.70A.040 and~~
36 ~~violated Best Available Science RCW 36.70A.172 for ordinance 05-121 dealing with~~
37 ~~Odor. The ordinance does not adhere to the Snohomish County Comprehensive Plan as~~
38 ~~required by RCW 36.70A.040. See PFR, at 3. Did the County fail to comply with the~~
39 ~~goals, consistency and BAS provisions of RCW 36.70A.020(10), .040 and .172 and the~~
40 ~~Natural Environment [NE 1.B.2, 1.D, 1.D.4, 1.D.5, 3.A, 3.A.1 through A.5, 3.E.2, 3.E.3,~~
41 ~~3.E.4, 3.I, and 8.B.7], Capital Facilities [CF 1.A.1, 2.A.1, and 12.A.2], and Utility [UT~~
42 ~~1.B, 3, and 3.A] policies of the Comprehensive Plan when it adopted the Odor, Seismic,~~
43 ~~EPF and DA Ordinances? See 3/13/06 Clarification, at 2.¹⁷~~
44

45 *[The Board characterizes **Issue Two B** as: Did the County fail to comply with the goals,*
46 *consistency (policies noted) and BAS provisions of RCW 36.70A.020(10), .040 and .172*
47 *when it adopted the Odor, Seismic, EPF and DA Ordinance?]*
48

49
50 ¹⁷ The Board notes that all four ordinances are within the scope of the PFR and the revision of Issue 2B to specify all
four ordinances is not beyond the scope of the PFR.

1 This restated Legal Issue, no longer is limited to Ordinance No. 05-121; instead it asserts
2 noncompliance with the environmental goal, apparently the consistency provisions of .040
3 [development regulations must implement the plan] and BAS.
4

5 Although the focus of this issue has changed from its original formulation in the PFR; in
6 briefing, the parties seemed to believe the issues were still similar and lumped Legal Issues 2A
7 and 2B together. The briefing argued whether the Ordinances were critical areas regulations
8 subject to specified GMA provisions. This was the gist of the briefing and no argument was
9 offered on the other GMA provisions [.020(10) and .040] mentioned in this Legal Issue. See
10 County Motion – Dismiss, at 14-18; Petitioner Response – Dismiss, at 14-18; and County Reply
11 – Dismiss, at 16-20. The Board has already determined, *supra*, that .172 only applies to
12 Ordinance No. 05-122; consequently the remaining reference to .172 in Legal Issue 2B, is
13 redundant and will be stricken.
14

15
16 Additionally, the Board notes that Legal Issue 2B, without reference to BAS or .172, now
17 appears to mirror Legal issue 3A, except for reference to Goal 10. Consequently, the Board
18 **strikes** Legal Issue 2B in its entirety and **modifies** Legal Issue 3A to include reference to Goal
19 10. Thus, the County’s Motion is **granted** in part and **denied** in part with respect to Legal Issue
20 2B.
21

22
23 **8. Issue 1- Notice and Public Participation:**
24

25 The County moves to dismiss Petitioners’ challenge to its notice and public participation process.
26 County Motion – Dismiss, at 11-14. To support its request the County attaches copies of the
27 published notices, and affidavits of publication, for Ordinance Nos. 05-121, 05-122, 05-126 and
28 copies of the mailing list used for Ordinance Nos. 05-121 and 05-122. See Exs. A-3, A-4, A-5,
29 B-3, B-4, B-5, C-7, C-8, C-9, C-10, D-25, D-26, D-27, and D-28.
30

31 In response, Petitioners’ argue that the County actions were “emergency” actions and while the
32 County provided the bare minimum for notice it did not encourage public participation.
33 Petitioners state, “Notice and public participation are related, but not married. Above all, Goal
34 11 of the Act is explicit that citizen participation and involvement should be encouraged rather
35 than discouraged.” Petitioners Response – Dismiss, at 14.
36

37
38 The evidence provided by the County clearly demonstrates that the published notice for all
39 ordinances and mailed notice for Ordinance Nos. 05-121 and 05-122 were “reasonably
40 calculated to provide notice to property owners and other affected and interested individuals . . .
41 and organizations of proposed amendments to . . . development regulations.” RCW 36.70A.035
42 and .035(b), (c), and (e). Therefore, the County’s motion related to the notice challenge
43 [compliance with RCW 36.70A.035] in Legal Issue 1 is **granted**. Reference to RCW
44 36.70A.035 will be **stricken** from the Issue.
45

46
47 However, the Board declines to rule on compliance with Goal 11 or .140’s public participation
48 requirements at this time. These issues may be more fully briefed, with supporting exhibits, and
49 will be decided in the Board’s final decision and order, following the hearing on the merits.
50 Thus, the County’s Motion to Dismiss Legal Issue 1 is **granted** in part, and **denied** in part.

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9. Summary:

- Challenges to the Development Agreement [Ordinance No. 05-127] are dismissed.
- The Petitioners have established GMA participation standing.
- Three Legal Issues [no sub-issues] remain in this proceeding [*See Appendix B*], limited as follows:
 - Legal Issue 1 only challenges the opportunity for public participation (.140 and .020(11) on the Odor, Seismic and EPF Process Ordinances..
 - Legal Issue 2 only challenges the Seismic Ordinance’s compliance with the GMA’s critical areas provisions.
 - Legal Issue 3 still alleges inconsistency between Plan provisions and the Odor, Seismic and EPF Process Ordinance, and has been modified to reference to Goal 10.

IV. ORDER

23 Based on review of the Petition for Review, the motions, responses, and replies, and materials
24 submitted by the parties, the GMA, Board Rules of Practice and Procedure, and prior decisions
25 of this Board and the court, the Board enters the following ORDER:
26

- 27
1. The Motion by SKEA to supplement the record is **granted** in part and **denied** in part as shown in the summary table, *supra*.
 2. The Board does not have subject matter jurisdiction to review project decisions, including development agreements on such projects. The County’s Motion to dismiss Petitioners’ challenge to Ordinance No. 05-127 is **granted**. The Board **dismisses with prejudice**, all challenges to Ordinance No. 05-127 in each of the Legal Issues.
 3. These Petitioners provided meaningful comment on a complex, multifaceted issue, that ultimately involved the four [now three] challenged Ordinances. It is highly unlikely that the County felt it was blindsided when these Petitioners brought their appeal of the challenged Ordinances to the Board. These Petitioners have established GMA standing and the County’s Motion to dismiss for lack of standing is **denied**.
 4. There are no allegations of noncompliance with SEPA in the adoption of any of the challenged ordinances. The County’s Motion to Dismiss is *unnecessary* since the question of *SEPA compliance is not before the Board* in this matter.
 5. Petitioner has withdrawn Legal Issue 3C. The County’s Motion to dismiss Legal Issue 3C is **granted**. Legal Issue 3C is **dismissed with prejudice**.
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50

- 1 6. RCW 36.70A.070 sets forth the requirements for comprehensive plans and does
2 not apply to development regulations, such as those challenged here. The
3 County's Motion is **granted**, reference to RCW 36.70A.070 is **stricken** from
4 Legal Issue 3B. Further, the Board **strikes** Legal Issue 3B in its entirety, allowing
5 Petitioners to argue whether the Ordinances are consistent with, and implement
6 the Plan within Legal Issue 3A.
7
- 8
9 7. Neither Ordinance No. 05-121 (Odor) nor Ordinance No. 05-126 (EPF Process)
10 are subject to specified GMA critical areas requirements. The County's Motion
11 regarding Ordinance Nos. 05-121 and 05-126 is **granted**, reference to these
12 Ordinances is **stricken** from Legal Issue 2A. Ordinance No. 05-122 (Seismic), in
13 its entirety, remains part of Legal Issue 2A.
14
- 15 8. The Board notes that Legal Issue 2B, without reference to BAS or .172, now
16 appears to mirror Legal issue 3A, except for reference to Goal 10. Consequently,
17 the Board **strikes** Legal Issue 2B in its entirety and **modifies** Legal Issue 3A to
18 include reference to Goal 10. Thus, the County's Motion is **granted** in part and
19 **denied** in part with respect to Legal Issue 2B.
20
- 21
22 9. The County's motion related to the notice challenge [compliance with RCW
23 36.70A.035] in Legal Issue 1 is **granted**. Reference to RCW 36.70A.035 will be
24 **stricken** from the Issue. However, the Board declines to rule on compliance with
25 Goal 11 or .140's public participation requirements at this time. These issues may
26 be more fully briefed, with supporting exhibits, and will be decided in the Board's
27 final decision and order, following the hearing on the merits. Thus, the County's
28 Motion to Dismiss Legal Issue 1 is **granted** in part, and **denied** in part.
29

30 So ORDERED this 25th day of May, 2006.
31

32 CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD
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40 Bruce C. Laing, FAICP
41 Board Member
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Edward G. McGuire, AICP
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Margaret A. Pageler
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APPENDIX A

Legal Issue or Portions of Legal Issues Remaining in CPSGMHB Case No. 06-3-0005

The Legal Issues noted below show the dismissed or stricken portions, and revised portions of the Legal Issues resulting from this Order in highlighted ~~strike out~~ or highlighted underlining. The listed Legal Issues [and ordinances] are those that remain before the Board. A clean copy of the Legal Issues is shown in Appendix B.

Issue One: ~~Notice and~~ Public Participation

1. The ordinances 05-121, 05-122, 05-126 ~~and 05-127~~ all thwart GMA's public participation process. The County has violated planning goal RCW 36.70A.020(11) by not providing adequate citizen participation in their planning process and not ensuring that all jurisdictions and communities were adequately involved in this planning process. ~~The County adopted 05-121 and 05-122 without adequate public notice to the public on October 17, 2005 and then held public hearings on December 7, 2005. Notices were poorly provided and in some cases incorrect dates were given or changed. This is very misleading to the public process when notice provisions under RCW 36.70A.035 are barely taken and inadequate to give any interested person time in which to understand the issues let alone provide comments back to the County.~~ The County has provided over the years public participation for its development regulations and comprehensive plan as required by RCW 36.70A.140. However, in the case of these ~~four~~ [sic three] ordinances, the County's process was null and void or avoided completely as Petitioners will show, thus violating RCW 36.70A.140. See PFR, at 2-3.

*[The Board characterizes **Issue One** as: Did Snohomish County (the **County**) fail to comply with the ~~notice and~~ public participation provisions of RCW 36.70A.020(11), .035 and .140, when it adopted Ordinance Nos. 05-121 (Odor), 05-122 (Seismic), and 05-126 (Essential Public Facility Procedures -EPF) ~~and 05-127 (Development Agreement Approval -DA)?]~~*

Issue Two: Best Available Science

2. (A) The County has violated State Law, Best Available Science (**BAS**) RCW 36.70A.172 and RCW 36.70A.060(2), RCW 36.70A.170 for ordinances ~~05-121 and 05-122~~ dealing with Seismic Areas ~~and Odor~~. The BAS regarding ~~05-126 and 05-127~~ is the lack of such ~~information that should have been used when formulating information for permitting requirements based on ordinances that have not been tested or scientifically proved in Puget Sound.~~ The ordinances ~~does~~ not protect the function and values as well as the public where necessary to protect critical areas and areas of human habitation. See PFR, at 3.

*[The Board characterizes **Issue Two A** as: Did the County fail to comply with the critical area provisions of RCW 36.70A.060(2), .170 and .172 when it adopted the ~~Odor, Seismic, EPF and DA {05-127}~~ Ordinances?]*

1 ~~(C) Did the County fail to comply with the goals, consistency and BAS provisions of~~
2 ~~RCW 36.70A.020(10), .040 and .172 and the Natural Environment [NE 1.B.2, 1.D,~~
3 ~~1.D.4, 1.D.5, 3.A, 3.A.1 through A.5, 3.E.2, 3.E.3, 3.E.4, 3.I, and 8.B.7], Capital~~
4 ~~Facilities [CF 1.A.1, 2.A.1, and 12.A.2], and Utility [UT 1.B, 3, and 3.A] policies of~~
5 ~~the Comprehensive Plan when it adopted the Odor, Seismic, EPF and DA [05-127]~~
6 ~~Ordinances? See 3/13/06 Clarification, at 2.~~
7

8
9 ~~[The Board characterizes **Issue Two B** as: Did the County fail to comply with the goals,~~
10 ~~consistency (policies noted) and BAS provisions of RCW 36.70A.020(10), .040 and .172~~
11 ~~when it adopted the Odor, Seismic, EPF and DA [05-127] Ordinance?]~~
12

13 **Issue Three: Consistency**

- 14
15 3. (A) Did the County fail to comply with the update and consistency provisions of RCW
16 36.70A.130(1)(c), .060, .040(3) and (4), 020(10) and the Natural Environment [NE 1.B.2,
- 17 1.D, 1.D.4, 1.D.5, 3.A, 3.A.1 through A.5, 3.E.2, 3.E.3, 3.E.4, 3.I, and 8.B.7], Capital
18 Facilities [CF 1.A.1, 2.A.1, and 12.A.2], and Utility [UT 1.B, 3, and 3.A] policies of the
19 Comprehensive Plan when it adopted the Odor, Seismic, and EPF and DA [05-127]
20 Ordinances? See 3/13/06 Clarification, at 3.
21

22 ~~[The Board characterizes **Issue Three A** as: Did the County fail to comply with the~~
23 ~~update and consistency (policies noted) provisions of RCW 36.70A.130(1)(c), .060 and~~
24 ~~.040(3) and (4), .020(10) when it adopted the Odor, Seismic and EPF DA [05-127]~~
25 ~~Ordinances?]~~
26

27 ~~(B) Ordinances 05-121, 05-122, 05-126 and 05-127 violate RCW 36.70A.070 in its~~
28 ~~entirety including the necessary requirements of the preamble and those pertaining to~~
29 ~~capital facilities and utilities. Under RCW 36.70A.070 as well as RCW 36.70A.040 the~~
30 ~~ordinances as development regulations must be consistent with each other and useful in a~~
31 ~~broad focal point? See PFR, at 4.~~
32

33
34 ~~[The Board characterizes **Issue Three B** as: Did the County fail to comply with the~~
35 ~~comprehensive plan and consistency requirements of RCW 36.70A.070 and .040 when it~~
36 ~~adopted the Odor, Seismic, EPF and DA [05-127] Ordinances?]~~
37

38 ~~© The County has violated its duties with Ordinances 05-121, 05-122, 05-126 and 05-~~
39 ~~127 pertaining to RCW 36.70A.040(3)(a), RCW 36.70A.100, RCW 36.70A.210 and~~
40 ~~RCW 36.70A.215 by failing to adopt county wide planning policies that would and could~~
41 ~~coordinate or collaborate such planning within the county and with adjacent cities and~~
42 ~~counties that share common issues. See PFR, at 4.~~
43

44 ~~[The Board characterizes **Issue Three C** as: Did the County fail to comply with the~~
45 ~~coordination provisions of RCW 36.70A.040(3)(a), .100, .210 and .215 when it adopted~~
46 ~~the Odor, Seismic, EPF and DA [05-127] Ordinances?]~~
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APPENDIX B

Clean copy of the Legal Issues as Revised by this Order

Issue One: Public Participation

1. The ordinances 05-121, 05-122, 05-126 all thwart GMA’s public participation process. The County has violated planning goal RCW 36.70A.020(11) by not providing adequate citizen participation in their planning process and not ensuring that all jurisdictions and communities were adequately involved in this planning process. The County has provided over the years public participation for its development regulations and comprehensive plan as required by RCW 36.70A.140. However, in the case of these three ordinances, the County’s process was null and void or avoided completely as Petitioners will show, thus violating RCW 36.70A.140. See PFR, at 2-3.

[The Board characterizes Issue One as: Did Snohomish County (the County) fail to comply with the public participation provisions of RCW 36.70A.020(11) and .140, when it adopted Ordinance Nos. 05-121 (Odor), 05-122 (Seismic), and 05-126 (Essential Public Facility Procedures -EPF)?]

Issue Two: Best Available Science

2. (A) The County has violated State Law, Best Available Science (BAS) RCW 36.70A.172 and RCW 36.70A.060(2), RCW 36.70A.170. The ordinance [05-122] does not protect the function and values as well as the public where necessary to protect critical areas and areas of human habitation. See PFR, at 3.

[The Board characterizes Issue Two A as: Did the County fail to comply with the critical area provisions of RCW 36.70A.060(2), .170 and .172 when it adopted the Seismic Ordinance?]

Issue Three: Consistency

3. (A) Did the County fail to comply with the update and consistency provisions of RCW 36.70A.130(1)(c), .060, .040(3) and (4), 020(10) and the Natural Environment [NE 1.B.2, 1.D, 1.D.4, 1.D.5, 3.A, 3.A.1 through A.5, 3.E.2, 3.E.3, 3.E.4, 3.I, and 8.B.7], Capital Facilities [CF 1.A.1, 2.A.1, and 12.A.2], and Utility [UT 1.B, 3, and 3.A] policies of the Comprehensive Plan when it adopted the Odor, Seismic, and EPF Ordinances? See 3/13/06 Clarification, at 3.

[The Board characterizes Issue Three A as: Did the County fail to comply with the update and consistency (policies noted) provisions of RCW 36.70A.130(1)(c), .060 and .040(3) and (4), .020(10) when it adopted the Odor, Seismic and EPF Ordinances?]