

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

THE McNAUGHTON GROUP, LLC,)	
)	Case No. 06-3-0027
Petitioner,)	
)	<i>(McNaughton)</i>
v.)	
)	
SNOHOMISH COUNTY,)	ORDER ON MOTIONS
)	
Respondent,)	
)	
and)	
)	
CAMWEST DEVELOPMENT, INC.,)	
)	
Intervenor)	
)	

I. BACKGROUND

On August 2, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from The McNaughton Group, LLC. (**Petitioner** or **McNaughton**). The matter was assigned Case No. 06-3-0027, and is hereafter referred to as *McNaughton v. Snohomish County*. Board member Margaret Pageler is the Presiding Officer for this matter. Petitioner challenges Snohomish County’s (**Respondent** or **County**) adoption of Ordinance No. 06-053, “Revising the Southwest Urban Growth Area and Amending Ordinance No. 03-061,” and Ordinance No. 06-054, “Adopting Zoning Map Amendments Implementing Changes to the Future Land Use Map Adopted by Ordinance No. 06-053” (together, **CamWest Settlement Ordinances**). The basis for the challenge is non-compliance with various provisions of the Growth Management Act (**GMA or Act**) and the State Environmental Policy Act (**SEPA**).

On August 7, 2006, the Board issued a Notice of Hearing, setting a date for Prehearing conference and a tentative schedule for this case.

The Prehearing Conference was convened on September 5, 2006. On September 7, 2006, the Board issued its Prehearing Order and Order Granting Intervention. The Prehearing Order (**PHO**) granted the request of CamWest Development Inc. (**CamWest**) to intervene, set forth the Legal Issues to be decided, and established a final schedule, including a schedule for motions.

Related Facts

This appeal arises in the context of a prior appeal to the Board. By a Petition for Review filed March 20, 2006, later amended on April 4, 2006, CamWest challenged Snohomish County Amended Ordinance Nos. 05-069 and 05-090. These ordinances were part of the County's ten-year-update (TYU) of its comprehensive plan, urban growth area (UGA) designations, and development regulations. The two challenged ordinances updated the land use element of the County's comprehensive plan and adopted zoning map amendments to implement the FLUM. Through adoption of the ordinances, the County effectively declined to make any changes to the boundary of the Southwest UGA. Property owners and project proponents who had sought SW UGA boundary changes were put on the 2006 Docket for consideration in the County's next annual comprehensive plan review cycle.

The Board initially consolidated the CamWest PFR with two prior-filed appeals which challenged other components of the County's TYU enactments. *Pilchuk Audubon et al. v. Snohomish County*, CPSGMHB Case No. 06-3-0015c. However, because CamWest and the County indicated they were engaged in settlement negotiations [Index 19], on April 10, 2006, the Board segregated the CamWest appeal and assigned it Case No. 06-3-0018. Index 20. The County settled CamWest's appeal by adopting Ordinances 06-053 and 06-054 (Camwest Settlement Ordinances). These ordinances revised the boundaries of the SW UGA and adopted zoning map amendments to the future land use map for the area of the SW UGA affected by the newly revised UGA boundaries.

On July 21, 2006, the Board received a letter from CamWest indicating that its dispute with the County had been settled, withdrawing its appeal, and requesting an order of dismissal without prejudice. On July 25, 2006, the Board issued its Order of Dismissal in Case No. 06-3-0018.

Motions

On September 25, 2006, the Board received the following motions:

- The McNaughton Group's Motion to Supplement the Record (**McNaughton Motion to Supplement**), with two attachments: a February 23, 2006 memorandum and a July 24, 2006 SEPA notice
- The McNaughton Group's Dispositive Motion on Legal Issues 3 and 5 (**McNaughton Dispositive Motion**)
- Intervenor CamWest's Dispositive Motion (**CamWest Dispositive Motion**) and Declaration of Wendy Clement
- Respondent Snohomish County's Dispositive Motion (**County Dispositive Motion**) with 7 exhibits

On September 26, 2006, the Board received Snohomish County's Amended Index to the Administrative Record, which added a number of documents at the request of Intervenor CamWest.¹

On October 9, 2006, the Board received the following responses:

- Snohomish County's Response to the McNaughton Group's Motion to Supplement the Record (**County Response – Supplement**)
- Intervenor CamWest's Opposition to McNaughton's Motion to Supplement the Record (**CamWest Response – Supplement**)
- The McNaughton Group's Response to Snohomish County's and CamWest Development, Inc.'s Dispositive Motions (**McNaughton Response – Dispositive Motions**)
- Intervenor CamWest's Response to McNaughton's Dispositive Motion (**CamWest Response – McNaughton Motion**)
- Snohomish County's Response to CamWest's Dispositive Motion (**County Response – Camwest Motion**)
- Snohomish County's Response to the McNaughton Group's Dispositive Motion (**County Response – McNaughton Motion**)

On October 16, 2006, the Board received:

- The McNaughton Group's Reply re Motion to Supplement the Record (**McNaughton Reply – Supplement**)
- CamWest's Rebuttal to McNaughton's and Snohomish County's Responses to Dispositive Motion (**CamWest Rebuttal**)
- The McNaughton Group's Reply re Dispositive Motion on Legal Issues 3 and 5 – (**McNaughton Reply – Dispositive Motion**)
- Snohomish County's Reply re Dispositive Motions (**County Reply – Dispositive Motions**)

II. MOTION TO SUPPLEMENT THE RECORD

Petitioner McNaughton moves to supplement the record with two additional documents:

- February 23, 2006, staff memorandum to Snohomish County Council regarding the Preliminary 2006 Docket [**Memo**]
- July 24, 2006, SEPA "Notice of Determination of Significance" regarding projects on the 2006 Docket [**Notice**]

Applicable Law

RCW 36.70A.290(4) provides:

The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the

¹ See McNaughton Reply – supplement, at 5, and Attachment.

board determines that such *additional evidence would be necessary or of substantial assistance to the board in reaching its decision.*

(Emphasis added).

Discussion

Petitioner seeks to supplement the record with two County staff documents concerning various proposals for development that would necessitate expansion of the Southwest UGA. These proposals, including McNaughton's and CamWest's, were rejected by the County in enacting its Ten-Year UGA update. Instead, they were placed on the Docket for concurrent consideration in 2006. But for CamWest's GMA challenge and the subsequent Settlement Agreement, CamWest's proposal would have been considered in the 2006 annual cycle. Both the Memo and Notice which McNaughton seeks to add to the record were generated by County staff in connection with the 2006 Docket process, not the Ten-Year-Update or the consideration of the CamWest Settlement Ordinances.

Petitioner contends that the Memo and Notice are necessary or will be of substantial assistance to the Board in its decision. McNaughton Motion to Supplement, at 2. Petitioner argues that, without information generated in the 2006 Docket proceeding, "the Board is forced to review the challenged action in isolation and out of context." *Id.* With respect to the Notice, while Petitioner acknowledges it is dated subsequent to the adoption of the challenged ordinances, Petitioner asserts that it "is evidence of the County's disparate treatment of similarly situated parties with respect to SEPA issues, which was unknown to McNaughton until after the County had already passed Ordinances 06-053 and 06-054." *Id.* at 3.

Snohomish County objects to both documents because they were generated by County staff in connection with the annual docketing process and thus, the County asserts, were unrelated to the Ordinances settling the CamWest appeal. County Response to Supplement, at 1. The County states that the policies governing the County's annual Docket process differ from those applicable to the Ten Year Review. Because the Memo evaluated the various UGA proposals under different policies than those applicable in settling CamWest's appeal, inclusion of the Memo may create confusion, according to the County. *Id.* at 4. Further, the Notice, also created in connection with the 2006 Docket, was not issued until after the CamWest Settlement Ordinances were enacted, and therefore by definition was not relied on by the County in the action it took. *Id.*

Intervenor CamWest also opposes the requested supplementation, adding that if these two documents are added to the record, other documents relevant to the 2006 Docket will need to be added as well, as "the Memo by itself is incomplete and misleading." CamWest Response to Supplement, at 3.

McNaughton's rebuttal contends that its appeal of the ordinances "implicates both Snohomish County's Ten Year Update process – because the subject ordinances were adopted purportedly to settle an appeal by CamWest of the TYU – and the 2006

Snohomish County Docket – because CamWest’s proposal was removed from the 2006 Docket and considered outside the County’s annual concurrent review process.”
McNaughton Reply – Supplement, at 1-2.

The Board concurs with Petitioner. The CamWest Settlement Ordinances implicate both the TYU, which as enacted on December 21, 2005, deferred decision on a number of proposals including both CamWest’s and McNaughton’s, and the 2006 Docket, which consists of proposals that were rejected as part of the TYU, including the CamWest proposal allowed by the present ordinances. One fundamental issue before the Board in this appeal is whether the County’s adoption of Ordinances 06-053 and 06-054 is to be evaluated and processed in the context and under the standards of the preceeding action – the ten-year-update of urban growth areas – or in the context of concurrent UGA applications – the 2006 Docket process. The Board is capable of distinguishing the planning policies and procedures applicable to these processes.

Conclusion

The Board finds, as noted in the summary table below, that the exhibits with which Petitioner seeks to supplement the record may be necessary or of substantial assistance to the Board in reaching its decision. The documents are **admitted**, and are given the supplemental exhibit numbers below.

Proposed Exhibit: Documents	Ruling
A. Preliminary 2006 Docket – Memorandum from Planning Director Craig Ladiser to Snohomish County Council, February 23, 2006	<i>Admitted – Supplemental Exhibit No. 1</i>
B. Notice of Determination of Significance and Adoption of Existing Environmental Documents, July 24, 2006	<i>Admitted – Supplemental Exhibit No. 2</i>

III. MOTIONS TO DECIDE OR DISMISS LEGAL ISSUES²

Each of the parties to this matter seeks summary decision of various matters.

- Petitioner asks the Board to decide Legal Issue 3 – Isolated Review – and Legal Issue 5 – Consistency with CPPs - as a matter of law and to enter an order of

² McNaughton’s Legal Issues, as established in the PHO, are attached as Appendix A. For convenience, the Legal Issues are referred to as follows:

- Legal Issue 1 – Public Participation
- Legal Issue 2 – Notice to CTED
- Legal Issue 3 – Isolated review
- Legal Issue 4 – Conformity with Comprehensive Plan
- Legal Issue 5 – Consistency with Countywide Planning Policies (CPPs)
- Legal Issue 6 – Consistency with Comprehensive Plan Policies
- Legal Issue 7 – Arbitrary and discriminatory treatment
- Legal Issue 8 – SEPA
- Legal Issue 9 - Invalidity

invalidity – Legal Issue 9. The McNaughton Group’s Dispositive Motion on Legal Issues 3 and 5 (**McNaughton Dispositive Motion**)

- Snohomish County moves to dismiss Legal Issues 1, 2, and 8 for lack of standing and Legal Issues 3 and 7 as a matter of law. Respondent Snohomish County’s Dispositive Motion (**County Dispositive Motion**)
- CamWest moves to dismiss the challenge to Ordinance 06-054 for lack of Board jurisdiction. CamWest also seeks dismissal of all issues except Legal Issue 5 – Consistency with CPPs – for lack of standing. Further, CamWest seeks dismissal of Legal Issues 3 and 7 as a matter of law. Intervenor CamWest’s Dispositive Motion (**CamWest Dispositive Motion**)

The Board addresses (A) the jurisdictional question raised by CamWest concerning Ordinance 06-054, then (B) participation standing, (C) SEPA standing, (D) “Isolated Review,” and finally the requests for summary disposition of (E) Legal Issues 5 and 9, and (F) Legal Issue 7.

A. Motion to Dismiss Challenge to Ordinance 06-054 for Lack of Subject-Matter Jurisdiction

The CamWest Settlement Ordinances challenged by Petitioner McNaughton are Ordinance No. 06-053, “Revising the Southwest Urban Growth Area and Amending Ordinance No. 03-061,” and Ordinance No. 06-054, “Adopting Zoning Map Amendments Implementing Changes to the Future Land Use Map Adopted by Ordinance No. 06-053,” which was adopted concurrently. Intervenor CamWest moves to dismiss the challenge to Ordinance No. 06-054 on the grounds that it is not a development regulation within the scope of the Board’s substantive jurisdiction but is a “site-specific rezone.” CamWest Dispositive Motion at 2.

Discussion

CamWest argues that because Ordinance 06-054 rezoned “only CamWest’s site,” it was a site-specific action subject to LUPA procedures. *Id.*, *see also*, CamWest Rebuttal, at 3-10.

In response, McNaughton points out that Ordinance 06-054 on its face states eight times that it implements an “area-wide rezone.”³ McNaughton Response to Dispositive Motions, at 19-25. McNaughton comments: “Although Ordinance 06-054 superficially appears only to affect CamWest, the Ordinance shifts property in and out of the SW UGA and creates a conservation area, which clearly affects the entire UGA.” *Id.* at 25.

Snohomish County also disagrees with CamWest’s claim that the Board lacks jurisdiction over Ordinance 06-054. The County explains:

³ See Ordinance 06-054, Sections 1.B.1; 1.B.3; D; 1.I; 2.A; 2.d; 2.E; and 5.

The Board lacks jurisdiction over site-specific rezones to implement an existing comprehensive plan, such as was the case in *Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842 (2002), and *Woods v. Kittitas County*, 130 Wn. App. 573, 123 P.3d 883 (2005), cited in CamWest’s Motion. However, where a site-specific rezone implements a comprehensive plan amendment adopted simultaneously with the rezone, the rezone does not meet the definition of a “project permit” under RCW 36.70B.020(4).

County Response - CamWest Motion, at 2.

The Board concurs with the County. Ordinance 06-054, the rezone ordinance, was adopted concurrently with and to implement Ordinance 06-053, the comprehensive plan amendment. The Ordinance shifts land in and out of the UGA, affecting the entire UGA area, beyond the scope of any individual parcel or property.⁴ Additionally, Ordinance 06-054 was expressly billed as an area-wide (not site-specific) rezone and expressly adopted in a legislative (as opposed to quasi-judicial) process.⁵ See citations to the record in McNaughton Response, at 20-21. The County’s published “Notice of Action” for Ordinance 06-054 specifies that any challenge must be brought before the Board, provides the 60-day filing deadline, and states the statutory requirements for GMA standing. Notice of Action, Paragraph 1, McNaughton PFR Attachment. Further, inasmuch as these Ordinances were adopted in implementation of a negotiated settlement between Snohomish County and Intervenor CamWest, CamWest’s repudiation of the wording of the Rezone Ordinance is not well taken.

Conclusion on Subject-Matter Jurisdiction

The Board finds and concludes that it has jurisdiction over the challenge to Snohomish County Ordinance 06-054, which implements an area-wide rezone to be consistent with a concurrently-enacted amendment of the Comprehensive Plan and County UGA. Intervenor CamWest’s motion to dismiss the challenge to Ordinance 06-054 as beyond the jurisdiction of the Board is **denied**.

⁴ The Notice of Action describes the Ordinance as “involv[ing] a reconfiguration of the UGA boundary that will expand the Southwest UGA by 36 acres and retract the UGA by 20 acres for a new UGA expansion of 16 acres.” Notice of Action, Paragraph 3, McNaughton PFR Attachment.

⁵ McNaughton also cites to the following in the County record for Ordinance 06-054:

Addendum No. 1 to TYU Final EIS for the CamWest proposal (Index 22, at 6) :

Adoption of the proposed amendments to the Snohomish County GMA Comprehensive Plan Future Land Use Map and implementing area-wide rezones are non-project (i.e., programmatic) actions. Adoption of such amendments is defined as an action that is broader than a single site-specific development project and involves decisions on policies and/or plans. An addendum to an EIS for a non-project action does not require site-specific analysis.

Notice of Enactment of Ordinance 06-054 (Index 123, at 2) :

Section 5 adopts area-wide rezones, described as follows, and specifically depicted in a map attached

B. Motions to Dismiss for Lack of Participation Standing

Intervenor CamWest moves to dismiss all but one of McNaughton's legal issues for lack of participation standing. CamWest Dispositive Motion at 6-14. Snohomish County moves to dismiss Legal Issues 1 and 2 on the same grounds. County Dispositive Motion at 3-4.

Applicable Law

RCW 36.70A.280(2) governs the standing requirements for appearing before the Boards, it provides, in relevant part:

A petition may be filed only by: . . . (b) *a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested.*

(Emphasis supplied).

In *Wells v. Western Washington Growth Management Hearings Board (Wells)*, 100 Wn. App. 657, 999 P.2d 405 (2000), the Court of Appeals clarified that, to establish participation standing under the GMA, a person must show that his or her participation before the jurisdiction was reasonably related to the person's issue as presented to the Board.

The *Wells* holding has been codified in RCW 36.70A.280(4):

(4) 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.

Discussion

The parties agree that McNaughton participated in Snohomish County's public process for adoption of Ordinances 06-053 and 06-054. McNaughton's attorney submitted a five-page letter on July 17, 2006 [Index 37], followed by an email message [Index 41] and a personal appearance at the County Council's July 19, 2006, public hearing on the Ordinances.⁶ The County contends that McNaughton never raised the issues of defective public process or failure to notify CTED – Legal Issues 1 and 2 – and these issues must be dismissed. County Dispositive Motion, at 3-4. CamWest asserts that McNaughton's letter failed to raise any of the GMA violations alleged in the PFR except the issue of isolated review (Legal Issue 3), which McNaughton later repudiated, and the issue of consistency with the CPPs (Legal Issue 5). CamWest Dispositive Motion at 6-14.

⁶ Transcript of portion of July 19, 2006, Snohomish County Council meeting, Exhibit A to Declaration of Wendy Clement. CamWest Dispositive Motion.

CamWest's theory is that participation standing is allowed only with respect to legal issues expressly raised by a petitioner during the public process. CamWest parses the text of the July 17, 2006 McNaughton letter to assert that none of the legal issues (except 3 and 5) was effectively presented. *Id.*, also CamWest Rebuttal, at 11-18. McNaughton points to the language of its letter and contends that it contains reference to each of the topics later articulated as legal issues in its PFR. McNaughton Response - Dispositive Motions, at 2-12.

CamWest mistakes the nature and scope of participation standing. RCW 36.70A.280(2)(b) states that "a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested" may file a petition for review of a GMA decision. In 2003, the Legislature amended RCW 36.70A.280 by adding subsection (4) which requires a petitioner to establish standing by showing that his participation before the county or city was reasonably related to his issues presented to the Board. See 2003 Wash. Laws ch. 332 (attached to McNaughton Response - Dispositive Motions). This addition to the statute codified the Court of Appeals decision in *Wells*, *supra*, where the court held that participation standing is not issue-specific: "our conclusion [is] that the Legislature did not intend petitioners to raise specific legal issues during the local government planning process." *Wells*, 100 Wn. App. at 672. The *Wells* court held that a "matter," as intended by RCW 36.70A.280(2)(b), is not the equivalent of an "issue." *Id.* at 671. The court acknowledged that "all three growth management hearings boards have consistently rejected a requirement of issue-specific standing." *Id.* The *Wells* court noted that the 1996 Legislature rejected a proposed amendment that would have required petitioners to raise "issues" rather than "matters" before the local government. The *Wells* court concluded that "matter" in RCW 36.70A.280(2)(b) refers to a broad "subject or topic of concern or controversy." *Id.* at 672-3. The court said: "it would be unrealistic given the time and resource constraints inherent in the planning process to require each individual petitioner to demonstrate to the growth management hearings board that he or she raised a specific legal issue before the board can consider it." *Id.* at 674. The enactment of RCW 36.70A.280(4) incorporated the *Wells* holding into the GMA.

Here, during the County's public process, McNaughton clearly indicated its opposition to the two ordinances which amended the Comprehensive Plan to implement the CamWest Settlement Agreement. McNaughton's five-page letter raised concerns about the County's allegedly flawed procedure, special treatment of CamWest outside the docketing process, the likelihood of CamWest's project vesting before updated critical areas regulations, and inconsistency with the County's planning policies. In its participation before the County Council, McNaughton was not required to detail the alleged deficiencies or articulate its legal theories.

The Board addressed a similar issue in *Hensley v. Snohomish County (Hensley VI)*, CPSGMHB Case No. 03-3-0009c, Order on Motions (May 19, 2003). During Snohomish County's consideration of the Verbarende amendment, Ms. Hensley testified that the amendment failed to comply with certain GMA requirements concerning LAMIRDs [RCW 36.70A.070(5)]. Ms. Hensley's subsequent petition for review to the Board also charged that, in addition to non-compliance with the LAMIRD criteria, the Verbarende

amendment did not comply with other provisions of the GMA. The County (and Verbarendse as Intervenor) moved to dismiss all Ms. Hensley’s legal issues other than the LAMIRD question for lack of participation standing. The Board ruled in favor of Ms. Hensley. The Board said:

Simply stated, the issue before the Board is whether by raising concerns about the Verbarendse amendment before the County Council, Petitioner Hensley established, in her own right, GMA participation standing to challenge that amendment for compliance with provisions of the GMA other than RCW 36.70A.070(5). In other words, were Hensley’s concerns with the Verbarendse amendment reasonably related to the GMA noncompliance issues presented to the Board? The Board concludes they were.

Neither the County nor Verbarendse dispute that Hensley voiced her opposition to the Verbarendse amendment before the County Council. In the Board’s *Alpine* decision⁷ the Board stated,

“To have meaningful public participation and avoid ‘blind-siding’ local governments, members of the public must explain their land use planning concern to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA.”

Alpine, at 7-8.

Here, when Hensley’s appeal was filed, the County was not “blind-sided.” It is undisputed that the County was clearly on notice and aware that Hensley had concerns and opposed the Verbarendse amendment before it acted. The County, acting within its authority, nonetheless adopted the amendment. Further, the County was not “blind-sided” to the fact that the GMA requires Plan amendments to be: guided by the goals of the Act; internally consistent with other elements; consistent with the CPPs; and conduct its planning activities consistently with its Plan. These GMA requirements apply to each and every amendment a jurisdiction chooses to adopt. These requirements were not new to the County. The Board concludes that Petitioner Hensley, by voicing her concerns regarding the Verbarendse amendment, satisfied the GMA participation standing requirement. Hensley’s opposition to the Verbarendse amendment before the County Council is reasonably related to the challenges presented to the Board. ...

Hensley VI, at 11-12.

In the present case, the Board finds and concludes that McNaughton’s letter, subsequent email, and presence at the County Council hearing on the CamWest Settlement Ordinances put Snohomish County reasonably on notice regarding McNaughton’s

⁷ *Alpine v. Kitsap County (Alpine)*, CPSGMHB Case No. 98-3-0032c coordinated with 95-3-0039c, Order on Dispositive Motions, (Oct. 7, 1998).

objections to the process and substance of the ordinances. Petitioner was not required to frame its legal theories before the County Council in order to preserve the right to challenge compliance with various provisions of the GMA in its PFR.

Conclusions Regarding GMA Participation Standing

Petitioner McNaughton, by registering its concerns regarding the CamWest Settlement Ordinances, satisfied the GMA participation standing requirement. McNaughton's participation before the County Council gave notice of its opposition to the procedure undertaken in adoption of the ordinances and to the substance of the ordinances and was reasonably related to the challenges presented to the Board in McNaughton's PFR. The County's motion to dismiss Petitioner for lack of GMA participation standing on Legal Issues 1 and 2, and CamWest's motion to dismiss for lack of participation standing on all Legal Issues except No. 5 are **denied**.

C. Motion To Dismiss SEPA Challenge

The Prehearing Order states Legal Issue No. 8 as follows:

Legal Issue 8 - SEPA

Did the County violate the requirements of the State Environmental Policy Act ("SEPA"), RCW 43.21C.010 et seq., and its implementing regulations, WAC 197-11-010 et seq., when the County only required an Addendum to the EIS for the CamWest Proposal, rather than requiring a supplemental EIS?

Snohomish County and CamWest each move to dismiss McNaughton's SEPA claim on the grounds that the PFR neither alleges nor demonstrates that Petitioner meets the Board's stringent test for SEPA standing.⁸ County Dispositive Motion, at 5-7; CamWest Dispositive Motion, at 14-17.

Applicable Law

The two-part SEPA standing test used by this Board is as follows:

First, the plaintiff's supposedly endangered interest must be arguably *within the zone of interests protected by SEPA*. *Second*, the plaintiff must *allege an injury in fact*; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her *specific and perceptible harm*. The plaintiff who alleges a *threatened injury* rather than an existing injury must also show that the injury will be "*immediate, concrete, and specific*"; a conjectural or hypothetical injury will not confer standing.

⁸ The County and CamWest each also contend that McNaughton lacks participation standing with respect to alleged SEPA violations, as the issues were never raised by McNaughton in the County's process. County Dispositive Motion, at 5-6; CamWest Dispositive Motion, at 12g.

MBA/Brink v. Pierce County, CPSGMHB No. 02-3-0010, Order on Motion to Dismiss SEPA Claims (Oct. 21, 2002) (emphasis in original, internal citations omitted).

The stricter requirements for SEPA standing arise in part from the importance of availing oneself of administrative remedies in the SEPA scheme. SEPA contains a requirement for exhaustion of administrative remedies: “[I]f an agency has an appeal procedure, such [aggrieved] person shall, prior to seeking any judicial review, use such procedure if any procedure is available, unless expressly provided otherwise by state statute.” RCW 43.21C.075(4).

Discussion

McNaughton’s PFR is silent with respect to SEPA standing; the claimed basis for standing is GMA participation standing. PFR, at 9. The narrative of the PFR contains a single paragraph related to SEPA: Petitioner states that the County issued an addendum and did not require a supplemental EIS for CamWest’s proposal while it required a supplemental EIS for 8 other properties in the 2006 Docket. PFR, at 5 (n).

The County contends that McNaughton has neither participation standing nor SEPA standing on Legal Issue 8. County Dispositive Motion, at 6. The County argues that McNaughton has not shown that its interests are within the zone of interest protected by SEPA and not alleged an injury in fact but only speculative harm. *Id.*

CamWest Agrees with the County: McNaughton failed to allege SEPA standing, failed to participate with respect to SEPA issues, and fails to meet the Board’s two-part test for SEPA standing. CamWest Dispositive Motion, at 14-15.

McNaughton replies that its June 17, 2006, letter “discussed in detail the environmental impact that the CamWest proposal would have on the SW UGA.” McNaughton Response – Dispositive Motions, at 10. McNaughton claims that its interest is in “the informed expansion of the SW UGA, which is within SEPA’s zone of interests.” *Id.* at 15. Further, McNaughton states that it was unreasonable to expect McNaughton to have made more specific SEPA objections before the County adopted the Camwest Settlement Ordinances, because McNaughton did not know until five days after passage of the ordinances that the County would impose a different and more rigorous SEPA analysis on McNaughton and other SW UGA project proponents on the 2006 Docket. *Id.* at 10-11. This differential requirement, McNaughton contends, is an injury-in-fact. *Id.*

In reply, the County notes that McNaughton still fails to squarely address the Board’s two-part test but merely “identifies general language in its [June 17,2006] letter that does not address any environmental concerns it may have had” about the CamWest Settlement Ordinances. County Response – Dispositive Motions, at 7. CamWest in rebuttal argues that there is no basis for McNaughton’s proposition that requiring a supplemental EIS for 2006 Docket projects while allowing an EIS addendum for CamWest is a “specific and perceptible harm, let alone an immediate, concrete and specific injury” to McNaughton. CamWest Rebuttal, at 19-20.

The Board finds that Petitioner, at the outset, failed to allege or demonstrate SEPA standing in its PFR. In response to dispositive motions from the County and CamWest, Petitioner could point to nothing in its PFR or its record of participation establishing the elements of SEPA standing.

As the first part of the Board's test for SEPA standing, "the plaintiff's supposedly endangered interest must be arguably within the zone of interests protected by SEPA." *MBA/Brink, supra*. McNaughton states that its interest is in "the informed expansion of the SW UGA, which is within SEPA's zone of interests." If so, it might have sought to appeal the addendum to the EIS as inadequate. In any event, it should not now be protesting the requirement of an SEIS for its own proposal. McNaughton's real concern seems to be the possible competitive disadvantage to 2006 Docket applicants who are subject to stricter environmental scrutiny and stricter critical areas regulations than CamWest.⁹

The Board has recently commented on SEPA's zone of interests.

The Washington Supreme Court has defined the "zone of interests" protected by SEPA:

SEPA is concerned with 'broad questions of environmental impact, identification of unavoidable adverse environmental effects, choices between long and short term environmental uses, and identification of the commitment of environmental resources.'

Kucera v. Washington State Department of Transportation, 140 Wn.2d 200, 212-213, 995 P.2d 63 (2000),¹⁰ quoting *Snohomish County Property Rights Alliance v. Snohomish County (Property Rights Alliance)*, 76 Wn.App. 44, 52-53, 882 P.2d 807, (1994).

Economic interests are not within the "zone of interests" protected or regulated by SEPA. *Harris v. Pierce County*, 84 Wn. App. 222, 231, 928 P.2d 1111 (1996).¹¹ Purely economic interests include "the protection of individual property rights, property values, property taxes, [and] restrictions on the use of property." *Property Rights Alliance*, 76 Wn. App. at 52 (1994). Merely being a "resident, property owner and taxpayer" or a party "active in seeking full public participation in the planning procedure" is insufficient for SEPA standing. *Id.*

⁹ These allegations may be relevant to other arguments in this case; the Board's ruling on Legal Issue 8 does not preclude Petitioner from raising the disparate procedural requirements in connection with Legal Issue 7 or other issues.

¹⁰ Kucera had standing to allege SEPA non-compliance in WSDOT's failure to review the fast-ferry's impacts on the shoreline where the threatened injury was not merely the damage to the Kuceras' waterfront property but environmental damage to shorelines of the state.

¹¹ Harris and Citizen's Against the Trail were denied SEPA standing: their "only interest alleged is economic: owning property that could be condemned." And the injury – condemnation – depends on subsequent project design and thus is speculative.

Hood Canal Environmental Council, et al, v. Kitsap County, CPSGMHB Case No. 06-3-0012c, Order on Motions (May 8, 2006), at 7-8.

As to the second prong of the Board’s SEPA-standing test, the injury alleged by McNaughton is the requirement to prepare a supplemental EIS. “McNaughton was damaged because the County ... burden[ed] McNaughton and others with proposals on the 2006 Docket to prepare a full supplemental EIS.” McNaughton Response – Dispositive Motions, at 14. The Board declines to hold that a party is damaged by the requirement for thorough environmental review. The Board notes that McNaughton claims that its *interest* here is in fully-informed analysis of the UGA but that its *injury-in-fact* is that it must undergo such analysis for its own proposal.¹²

McNaughton has failed to demonstrate that it has standing to bring its challenge under SEPA. The Board finds and concludes that McNaughton lacks standing to pursue SEPA claims, and Legal Issue No. 8 is **dismissed**.

Conclusions Regarding SEPA Standing

The Board finds and concludes that Petitioner does not have standing to bring a claim under SEPA. Snohomish County’s Dispositive Motion on Legal Issue No. 8 is **granted**. Intervenor CamWest’s Dispositive Motion on Legal Issue No. 8 is **granted**. Legal Issue No. 8 is **dismissed with prejudice**.

D. Motions for Summary Determination of Legal Issue 3 – “Isolated Review”

The Prehearing Order states Legal Issue No. 3 as follows:

Legal Issue 3 - Isolated Review of Proposed Amendments to the Comprehensive Plan

Did the County violate the requirements of the GMA, specifically RCW 36.70A.130(2)(b): (a) when the Council selectively “revisited” the TYU for the purpose of settling a Growth Management Hearings Board appeal; and (b) when, in response to an appeal challenging the Ordinance adopted by the Council to implement the TYU (Ordinance 05-069), the Council selectively “revisited” only a portion of the entire TYU to amend the boundaries of the SW UGA for one developer’s benefit without revisiting any of the other proposals considered as part of the TYU?

Petitioner McNaughton moves for summary decision of this issue in its favor as a matter of law. McNaughton Dispositive Motion, at 2-5. Snohomish County and Intervenor CamWest each file dispositive motions on this issue. County Dispositive Motion, at 3-14; CamWest Dispositive Motion, at 22.

¹² A case might perhaps be made of injury-in-fact to SEPA interests where a tract of land has been changed from rural to urban use without appropriate environmental analysis or updated critical-areas protection, but that is not the case McNaughton has sought to make.

Applicable Law

RCW 36.70A.280(2) provides as follows:

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city *no more frequently than once every year....* Amendments may be considered more frequently than once per year under the following circumstances [not applicable here] ...:

(b) Except as otherwise provided in (a) of this subsection, *all proposals shall be considered by the governing body concurrently* so the cumulative effect of the various proposals can be ascertained. *However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter* whenever an emergency exists or *to resolve an appeal of a comprehensive plan filed with a growth management hearings board* or with the court.

Emphasis added.

Discussion

Petitioner's Legal Issue 3 is at the crux of this challenge. McNaughton, CamWest, and other property owners/developers sought to have their lands included in the Snohomish County Southwest UGA as the County undertook the GMA-required ten-year-update of its Comprehensive Plan and development regulations in 2005. The County chose not to adjust the Southwest UGA in its ten-year-update but to consider the various proposals as part of its Docket for the 2006 concurrent review. CamWest challenged the Snohomish County Comprehensive Plan update in an action before this Board which was subsequently settled, voluntarily withdrawn, and dismissed. *CamWest IV v. Snohomish County*, CPSGMHB Case No. 06-3-0018, Order of Dismissal (July 25, 2006).¹³ The settlement agreement called for the County to take the actions legislatively adopted as Ordinances 06-053 and 06-054.

The dispositive question before the Board on the parties' cross-motions is how RCW 36.70A.130(2)(b)'s limited exception to concurrent annual review of comprehensive plan amendments "*to resolve an appeal of a comprehensive plan filed with a growth management hearings board*" applies to the facts in this case.

McNaughton argues that the "narrow procedural exemption to annual concurrent review" was enacted to reconcile the annual concurrent review requirement of RCW 36.70A.130(2) with the 180-day deadline for compliance with orders of the Board in

¹³ The Board does not review settlement agreements for GMA compliance, but challenges to ordinances adopted to implement such agreements may lie within the Board's jurisdiction.

RCW 36.70A.300. McNaughton Dispositive Motion, at 3-4. McNaughton cites several Board decisions which discuss or apply the exemption in the context of Board remand orders. *Gawenka v. City of Bremerton*, CPSGMHB Case No. 02-3-0003, Final Decision and Order (July 29, 2002); *Town of Friday Harbor v. San Juan County*, WWGMHB Case No. 99-2-0010c, Order on Rescission of Invalidity and Compliance/Invalidity (Nov. 30, 2000). McNaughton contends that annual concurrent review can *only* be by-passed when the Board has entered an order of non-compliance in a challenged matter, has remanded the matter, and the city or county takes action outside of its annual review cycle to comply with the Board's order. *Id.* "The appeal exception does not permit the County to adopt the subject ordinances without a board or court order." *McNaughton Response – Dispositive Motions, at 16.*

Snohomish County's dispositive motion urges the Board to dismiss Legal Issue No. 3 because the plain language of RCW 36.70A.130(2)(b) provides an exception to the once-per-year limitation on amendment of comprehensive plans "to resolve an appeal before a growth management hearings board." County Dispositive Motion at 11. The County lays out the relevant facts. Snohomish County enacted its Comprehensive Plan Ten-Year Update in December, 2005, under a series of concurrently-adopted ordinances. CamWest filed a timely Petition for Review challenging Amended Ordinance Nos. 05-069, 05-090, and 05-141. The County and CamWest discussed settlement and reached settlement prior to the hearing in the case. The settlement agreement involved the County's adoption of Ordinance No. 06-053 (revising the boundaries of the Southwest UGA) and No. 06-054 (adopting zoning map amendments to implement the changes to the future land use map for the area of the SW UGA affected by the newly revised UGA boundaries.) *Id.* at 9-10. Because these ordinances were enacted to settle CamWest's appeal before the Board, the County asserts, they were not subject to the annual concurrent review restriction. *Id.*

The County cites two decisions from the Western Washington Growth Management Hearings Board: *Kathleen Heikkila v. City of Winlock and Cardinal FG Company*, WWGMHB Case No. 04-2-0020c, Final Decision and Order (Apr. 15, 2005), at 19 ("Under the GMA, amendments to resolve an appeal to a growth management hearings board may be adopted, with appropriate public participation, at any time"); *Achen v. City of Battle Ground*, WWGMHB Case No. 99-2-0040, Final Decision and Order (May 16, 2000) ("Ordinance #99-030 was adopted in an attempt to settle an appeal of a CP filed with this Board; therefore adoption of Ordinance #99-030 does come under the exception of RCW 36.70A.130(2)(b)....")

CamWest makes the same argument as the County. According to CamWest, the plain language of the statute applies to the current facts and thus the County properly made an exception to concurrent annual review in adopting Ordinance Nos. 06-053 and 06-054 in order to resolve CamWest's appeal before the Board. *CamWest Response – McNaughton Motion, at 2-8.*

The Board concurs with the County. The statutory exemption applies when an appeal has been filed before the Board and subsequent city/county action is taken that resolves the appeal. Here, Camwest had an appeal pending before the Board, a settlement agreement

was reached, and the County took legislative action in an effort to resolve the pending appeal – adopting Ordinance Nos. 06-053 and 06-054). Subsequently, CamWest withdrew its appeal before the Board and the Board dismissed the appeal: the appeal was resolved. *CamWest IV v. Snohomish County*, CPSGMHB Case No. 06-3-0018, Order of Dismissal (July 25, 2006). The language of the statute cannot be read to apply the exemption *only* when a matter is remanded subject to a Board order. McNaughton’s motion for judgment on the merits on Legal Issue No. 3 is **denied**; the County’s and CamWest’s dispositive motions to dismiss Legal Issue No. 3 are **granted**.

McNaughton points out the mischief that is possible if the exemption is construed in such a way that proponents can achieve isolated consideration of development applications by simply filing GMA challenges and negotiating settlements behind closed doors and in isolation from consideration of cumulative impacts. McNaughton Dispositive Motion, at 8-9. As McNaughton sees it:

The message is: “Don’t worry if you didn’t get your amendment during the annual amendment cycle or the TYU, or if your amendment doesn’t meet the substantive CPP requirements. Simply file an appeal and ‘settle’ with the city or county, and the city or county will adopt your amendment without the potential obstacles of substantive CPP compliance or subsequent concurrent review in the following annual review cycle.”

Id. at 9. McNaughton points out that this interpretation encourages the filing of appeals and weakens the integrity of the appeals process. *Id.*

The Board agrees with McNaughton that there is a risk of abuse and of instances of the kind of zoning-by-deal-making that the GMA was enacted to avoid; but if this loophole has unintended consequences, correction is up to the Legislature. The Board notes that there are two statutory boundaries to the appeal exemption of RCW 36.70A.130(2)(b): “*after appropriate public participation* a county or city may adopt amendments or revisions to its comprehensive plan *that conform with this chapter* to resolve an appeal ... filed with a growth management hearings board” County action taken outside the annual concurrent review in order to resolve an appeal must not only actually resolve the pending matter (i.e., result in a dismissal) but must involve appropriate public process and must conform with the GMA.

Conclusion Regarding Legal Issue No. 3

The Board finds and concludes that Ordinances No. 06-053 and 06-054 were enacted to resolve an appeal filed with this Board and thus were within the exemption to concurrent annual review provided in RCW 36.70A.130(2)(b). Petitioner McNaughton’s Dispositive Motion on Legal Issue No. 3 is **denied**. Snohomish County’s Dispositive Motion on Legal Issue No. 3 is **granted**. Intervenor CamWest’s Dispositive Motion on Legal Issue No. 3 is **granted**. Legal Issue No. 3 is **dismissed with prejudice**.

E. Motions for Summary Review of Legal Issue Nos. 5 and 9

The Board's Prehearing Order states Legal Issue Nos. 5 and 9 as follows:

Legal Issue 5 - Consistency with Countywide Planning Policies

Did the County violate the requirements of the GMA, specifically RCW 36.70A.210(1), and the County's own CPPs that were effective as of July 19, 2006: (a) when the County expanded the boundaries of the SW UGA by improperly "re-visiting" a portion of the TYU to settle a legally-questionable Growth Management Hearings Board appeal (CPP UG-14d condition 2 – the "TYU Exception"); (b) when the County expanded the boundaries of the SW UGA without showing the requisite compliance with CPP provisions other than the TYU Exception (CPP UG- 14); and (c) when the County expanded the SW UGA to include irregular boundaries, rather than identifiable physical boundaries (CPP UG-1)?

Legal Issue 9 - Invalidity

Did the County substantially interfere with the fulfillment of the goals of the GMA, specifically RCW 36.70A.020(1), (2), (6), and (11), such that the Subject Ordinances should be deemed wholly invalid?

Discussion

McNaughton moves for summary determination of Legal Issue 5, alleging inconsistency between the requirements in the County CPPs and the County's adoption of the CamWest Settlement Ordinances. McNaughton Dispositive Motion, at 6-8. McNaughton also argues that the ordinances are "egregious and substantially interfere with the fulfillment of the goals of the GMA," requiring an order of invalidity (Legal Issue 9). *Id.* at 9, 10. McNaughton asserts that "the subject ordinances allow a single interested party to 'skip the line' and vest its projects prior to consideration of all other interested parties' proposals to amend the county's comprehensive plan [and] even if the amendment does not satisfy substantive CPP requirements." *Id.* at 10.

The County objects to McNaughton's motion, saying that Legal Issue 5 shouldn't be decided summarily because it raises "a substantive issue that cannot be decided without a comprehensive review of the record." County Response – McNaughton Motion, at 7-9. The County argues that the request for an order of invalidity (Legal Issue 9) at the dispositive motion stage is premature. *Id.* at 10-11.

Intervenor CamWest provides point-by-point opposition to McNaughton's arguments. CamWest Response – McNaughton Motion, at 9-16.

The Board concurs with the County with respect to Legal Issues 5 and 9. Legal Issues 5 (compliance with CPPs) and 9 (invalidity) go to the merits of the case, requiring a review of the record as well as the law. The Board will not decide these issues summarily.

Conclusion Regarding Legal Issues 5 and 9

McNaughton's Dispositive Motion on Legal Issue No. 5 and request for an order of invalidity (Legal Issue No. 9) is **denied**. Legal Issues 5 and 9 are **reserved** for briefing and hearing on the merits. The parties may incorporate by reference portions of briefs filed in the present motions as applicable.

F. Motions to Dismiss Legal Issue No. 7 – Arbitrary and Capricious

The Board's Prehearing Order states Legal Issue No. 7 as follows:

Legal Issue 7 – Arbitrary and Discriminatory Action

Did the County violate the requirements of the GMA, specifically RCW 36.70A.020(6): (a) when the County chose to selectively "re-visit" the TYU and amend the boundaries of the SW UGA to accommodate one developer's proposal – the CamWest Proposal – while failing to "re-visit" other proposals considered but rejected by the Council as part of the TYU; (b) when the County chose to selectively "re-visit" the TYU and amend the boundaries of the SW UGA to allow one proposal – the CamWest Proposal – the opportunity to vest prior to the update of the County's critical areas regulations, while all other UGA proposals, if approved by the Council in November or December 2006, will not likely have the opportunity to become vested until after the critical areas regulations have been updated; and (c) when the County chose to selectively "re-visit" only one proposal – the CamWest Proposal – out of the entire selection of proposals that were considered in the TYU in response to the CamWest Appeal, which challenged the Council ordinance adopting the TYU as a whole?

Applicable Law

RCW 36.70A.020(6) provides the GMA planning goal concerning protection of 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.

Discussion

Both Snohomish County and Intervenor CamWest move for dismissal of Legal Issue No. 7. Snohomish County argues that its action in adopting the CamWest Settlement Ordinances out of sequence with concurrent annual review was expressly permitted under RCW 36.70A.130(2)(b); therefore, by definition, it could not have been arbitrary. County Dispositive Motion, at 13-14. CamWest states that a challenge with respect to Planning Goal 6 involves "the property rights of landowners." CamWest asserts that McNaughton has no cognizable property rights here and therefore there are no grounds for this challenge. CamWest Dispositive Motion, at 17-18.

McNaughton responds that the County's action was arbitrary because "it reviewed one proposal in isolation and without any examination of compliance with county CPPs," and the County discriminated against all other property owners who had filed proposals in the 2006 Docket. McNaughton Response – Dispositive Motions, at 26.

When reviewing a claim based on the GMA's property rights goal, the Board asks four questions: (1) whether the Board has jurisdiction to consider the challenge;¹⁴ (2) whether the local government took landowner rights into consideration in its procedure, (3) whether the challenged action was arbitrary, and (4) whether the challenged action was discriminatory. *Maxine Keesling v. King County (Keesling III)*, CPSGMHB Case No. 05-3-0001, Final Decision and Order (July 5, 2005), at 23.

The County asks for a ruling that ordinances adopted to effectuate settlement of an appeal are not arbitrary, as a matter of law, because RCW 36.70A.130(2)(b) allows such action. However, the Board has noted that Section 130(2)(b) still requires "appropriate public participation" and "conform[ity] with this chapter" – two issues which McNaughton's PFR has placed in dispute. The Board declines to dismiss Issue 7 on the County's motion.

CamWest asks the Board for a ruling that a Goal 6 challenge may not be brought by a Petitioner who does not have landowner rights in the land at issue in the challenged ordinance. The Board reads the GMA as allowing citizens to appeal and to intervene in appeals – including asserting Goal 6 challenges - regardless of constitutionally-defined property interests in the matter in dispute. The Board declines to dismiss Issue 7 on CamWest's motion.

Conclusion Regarding Legal Issue No. 7 – Arbitrary and Discriminatory

Snohomish County's Dispositive Motion to dismiss Legal Issue No. 7 is **denied**. CamWest's Dispositive Motion to dismiss Legal Issue No. 7 is **denied**. The issue is **reserved** for briefing and hearing on the merits.

VI. ORDER

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

1. The Board finds that the documents with which Petitioner seeks to supplement the record may be necessary or of substantial assistance to the Board in reaching its decision. McNaughton's Motion to Supplement the Record is **granted**.
2. The Board finds and concludes that it has jurisdiction over the challenge to Snohomish County Ordinance 06-054, which amends the zoning of land at issue in an adjustment to the County's UGA enacted concurrently in Ordinance 06-053.

¹⁴ The Board lacks jurisdiction to consider constitutional "takings" questions.

Intervenor CamWest's motion to dismiss the challenge to Ordinance 06-054 as beyond the jurisdiction of the Board is **denied**.

3. The Board finds and concludes that Petitioner has standing pursuant to RCW 36.70A.280(2)(b) to assert all legal issues except Legal Issue No. 8 – SEPA. The County's motion to dismiss Petitioner for lack of GMA participation standing on Legal Issues 1 and 2, and CamWest's motion to dismiss for lack of participation standing on all Legal Issues except No. 5 are **denied**.
4. The Board finds and concludes that Petitioner lacks standing to bring a claim under SEPA. Snohomish County's Dispositive Motion on Legal Issue No. 8 – SEPA standing - is **granted**. Intervenor CamWest's Dispositive Motion on Legal Issue No. 8 – SEPA standing - is **granted**. Legal Issue No. 8 is **dismissed**.
5. The Board finds and concludes that Ordinances No. 06-053 and 06-054 were enacted to resolve an appeal filed with this Board and resolved the appeal, and thus were within the exception to concurrent annual review provided in RCW 36.70A.130(2)(b). Petitioner McNaughton's Dispositive Motion on Legal Issue No. 3 is **denied**. Snohomish County's Dispositive Motion on Legal Issue No. 3 is **granted**. Intervenor CamWest's Dispositive Motion on Legal Issue No. 3 is **granted**. Legal Issue No. 3 is **dismissed with prejudice**.
6. McNaughton's Dispositive Motion on Legal Issue No. 5 and request for an order of invalidity (Legal Issue No. 9) is **denied**. Legal Issue Nos. 5 and 7 are **reserved** for briefing and hearing on the merits.
7. Snohomish County's Dispositive Motion to dismiss Legal Issue No. 7 is **denied**. CamWest's Dispositive Motion to dismiss Legal Issue No. 7 is **denied**. Legal Issue No. 7 is **reserved** for briefing and hearing on the merits.

So ORDERED this 30th day of October, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Legal Issues Presented for Decision in CPSGMHB Case No. 06-3-0027

Public Participation

1. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.020(11)*, *RCW 36.70A.140*, and the County's adopted public participation process, when the Council considered and adopted significant substantive changes to the FLUM for the SW UGA without providing Petitioner or the general public meaningful opportunity to review and comment on the proposed changes, or following its own internal participation procedures?

Notice to CTED

2. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.106* when the Council adopted amendments to the Snohomish County Comprehensive Plan (in the form of an amended FLUM for the SW UGA) without giving 60 days prior notice to the Department of Community, Trade, and Economic Development?

Isolated Review of Proposed Amendments to the Comprehensive Plan

3. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.130(2)(b)*: (a) when the Council selectively "revisited" the TYU for the purpose of settling a Growth Management Hearings Board appeal; and (b) when, in response to an appeal challenging the Ordinance adopted by the Council to implement the TYU (Ordinance 05-069), the Council selectively "revisited" only a portion of the entire TYU to amend the boundaries of the SW UGA for one developer's benefit without revisiting any of the other proposals considered as part of the TYU?

Conformity of County's Action with the Comprehensive Plan

4. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.120*, when it modified UGA boundaries out of conformity with its comprehensive plan in order to settle a Growth Management Hearings Board appeal of questionable legal merit?

Consistency with Countywide Planning Policies

5. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.210(1)*, and the County's own CPPs that were effective as of July 19, 2006: (a) when the County expanded the boundaries of the SW UGA by improperly "re-visiting" a portion of the TYU to settle a legally-questionable Growth Management Hearings Board appeal (CPP UG-14d condition 2 – the "TYU Exception"); (b) when the County expanded the boundaries of the SW UGA without showing the requisite compliance with CPP provisions other than the TYU Exception (CPP UG- 14); and (c) when the County expanded the SW UGA to include irregular boundaries, rather than identifiable physical boundaries (CPP UG-1)?

Consistency with County Comprehensive Plan

6. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.070* when it expanded the boundaries of the SW UGA inconsistent with Comprehensive Plan Policies LU 1.A.5, LU 1.A.9, LU 1.A.10, LU 1.A.11, and LU 1.C.1?

Arbitrary and Discriminatory Action

7. Did the County violate the requirements of the GMA, specifically *RCW 36.70A.020(6)*: (a) when the County chose to selectively “re-visit” the TYU and amend the boundaries of the SW UGA to accommodate one developer’s proposal – the CamWest Proposal – while failing to “re-visit” other proposals considered but rejected by the Council as part of the TYU; (b) when the County chose to selectively “re-visit” the TYU and amend the boundaries of the SW UGA to allow one proposal – the CamWest Proposal -- the opportunity to vest prior to the update of the County’s critical areas regulations, while all other UGA proposals, if approved by the Council in November or December 2006, will not likely have the opportunity to become vested until after the critical areas regulations have been updated; and (c) when the County chose to selectively “re-visit” only one proposal – the CamWest Proposal – out of the entire selection of proposals that were considered in the TYU in response to the CamWest Appeal, which challenged the Council ordinance adopting the TYU as a whole?

SEPA

8. Did the County violate the requirements of the State Environmental Policy Act (“*SEPA*”), *RCW 43.21C.010 et seq.*, and its implementing regulations, *WAC 197-11-010 et seq.*, when the County only required an Addendum to the EIS for the CamWest Proposal, rather than requiring a supplemental EIS?

Invalidity

9. Did the County substantially interfere with the fulfillment of the goals of the GMA, specifically *RCW 36.70A.020(1), (2), (6), and (11)*,¹⁵ such that the Subject Ordinances should be deemed wholly invalid?

¹⁵ In this case, unbriefed elements of Issue 9 will be deemed abandoned.