CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

LORA PETSO, Petitioner, *pro se*, and ALVIN RUTLEDGE, Intervenor, v. SNOHOMISH COUNTY, Respondent.	**CPSGMHB Case No. 07-3-0006** ***CORRECTED*** **ORDER OF DISMISSAL**

I. BACKGROUND

On January 18, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Lora Petso (**Petitioner** or **Petso**), *pro se*. The matter was assigned CPSGMHB Case No. 07-3-0006, and is hereafter referred to as *Petso v. Snohomish County*. Board member Margaret Pageler is the Presiding Officer (**PO**) for this matter. Petitioner challenges Snohomish County's (**Respondent** or the County) adoption of Motion 06-546. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA** or **Act**). Concurrent with the filing of the PFR, the Petitioner filed a "Motion to Disqualify Earling."

On January 22,, 2007, the Board issued a "Notice of Hearing" (**NOH**) in the above-captioned case. The NOH set a date for a Prehearing Conference (**PHC**) and established a tentative schedule for the case. On the same date the Board issued an "Order on Motion to Disqualify Board Member Earling," denying the Petitioner's request.

On January 24, 2007, the Board received a Notice of Appearance from Deputy Prosecuting Attorney Elizabeth Anderson on behalf of Snohomish County.

On February 5, 2007, the Board received a Motion for Intervention from Alvin Rutledge, seeking to intervene on the side of Petitioner. Mr. Rutledge also submitted documents, which the Board will treat as a motion to supplement the record.

On February 12, 2007, the Board conducted the PHC at the Board's offices in Seattle. Presiding Officer Margaret Pageler conducted the conference. Board members Ed McGuire and Dave Earling were also present. Lora Petso appeared *pro se*. Elizabeth Anderson represented the Respondent. Board Law clerk Julie Taylor, Board extern Moani Russell, and potential

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Intervenor Alvin Rutledge were also present at the PHC. At the PHC, the Board received Petitioner's "Amended Petition for Review" and "Issues Restated GMA Style."

On February 12, 2007, the Board received Snohomish County's "Index to the Administrative Record" (**Index**).

On February 13, 2007, the Board issued its "Prehearing Order" (**PHO**) and "Order Granting Intervention" (**OGI**). The PHO set the final schedule and legal issues to be decided. The OGI granted permission for Mr. Alvin Rutledge (**Intervenor**) to intervene on the side of Petitioner.

On February 27, 2007, the Board received Intervenor's "Motion to Supplement the Record." (**Int. Motion to Supplement)**.

On March 5, 2007, the Board received Petitioner's "Motion to Supplement the Record." (**Petso Motion to Supplement**).

On March 6, 2007, the Board received "Snohomish County's Motion to Dismiss" (**County Motion to Dismiss**), seeking dismissal of the petition on the grounds that the claims are for matters beyond the Board's jurisdiction. The Board also received "Snohomish County's Amended Index to the Administrative Record." (**Amended Index**)

On March 13, 2007, the Board received "Intervernor's Motion to Deny County's Motion to Dismiss" (**Int. Response**).

On March 19, 2007, the Board received "Petitioner's Response to Motion to Dismiss" (**Petso Response**).

On March 21, 2007, the Board received from Respondent, "Snohomish County's Second Amended Index to the Administrative Record" (**2nd Amended Index**) and "Response to Petitioner's and Intervenor's Motions to Supplement the Record." (**County Response**)

On March 26, 2007, the Board received Petitioner's "Rebuttal of Response to Motion to Supplement the Record." (**Petso Rebuttal**).

On March 27, 2007, the Board received "Snohomish County's Reply Re: Motion to Dismiss Due to Lack of Subject Matter Jurisdiction" (**County Reply**). The Board also received "Snohomish County's Third Amended Index to the Administrative Record." (**3rd Amended Index**)

The Board did not hold a hearing on the dispositive motions.

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II. COUNTY'S MOTION TO DISMISS FOR LACK OF JURISDICTION

The Challenged Action and Legislative Context

Petitioner Petso challenges County Motion No. 06-546, which authorized the termination of an interlocal agreement (**ILA**) established in 1999 between Snohomish County (**County**), the Edmonds School District (**School District**), and the City of Edmonds (**City**). County Motion to Dismiss, Ex. 13.

On June 22, 1999, Snohomish County, the Edmonds School District, and the City of Edmonds entered into an ILA (**1999 ILA**) for the site renovation of Sherwood Park at the Old Woodway Elementary (**Woodway site**) playfield. *Id.*, Ex. 1. The purpose of the agreement was to fulfill "a need for park facilities in [the] area." *Id.*, Ex. 1. As part of the 1999 ILA, each party would fulfill certain obligations:

> (1) the School District agreed to allow City and County residents the same access to the site as given to School District residents;
> (2) the City agreed to complete part of the renovations and provide for the long-term maintenance of the ball fields; and
> (3) the County agreed to provide the City with (Five Thousand, Five Hundred dollars) $5,500 for the renovation.

Id., Ex. 1. The term of the ILA was ten years, but "it could be terminated by written agreement of the parties." *Id.* at 3, Ex. 1.

In December 2006, the ~~School District requested that the 1999 ILA be terminated, stating that all parties had complied with their obligations under the 1999 ILA. The basis for this request was that~~ **[County Council considered termination of the 1999 ILA because]** the site had been divided into two parcels – Parcel A and Parcel B – and sold [**by the School District]** in September 2006. *Id.* at 3; Ex. A1 and A2. Parcel A, the portion of the site that contained the park and the baseball fields, was sold to a private developer and Parcel B, the remainder of the site, was sold to the City of Edmonds. *Id.*

On December 13, 2006, the County Council passed Motion No. 06-546, the basis of the Petitioner's challenge, which terminated the 1999 ILA. On this same day, the County passed Motion 06-547 which authorized a new ILA (**2006 ILA**) between the County and the City of Edmonds.[1] *Id.*; Ex. 15, 16. The Petitioner did not challenge the County's action in regard to Motion 06-547.

The County moved to dismiss the present case asserting that the Board lacks subject matter jurisdiction. According to the County, Motion 06-546 is not, on its face, a comprehensive plan provision, amendment or a development regulation, and is not a *de facto* amendment.

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[1] With the 2006 ILA, adopted December 18, 2006, the County agreed to contribute $1.2 million to the City toward the cost of acquiring Parcel B. *Id.*, Ex. 16. In return, the City agreed to make the property and recreational facilities available to county residents and to provide for the long-term maintenance and future improvements of the property. *Id.*, Ex. 16.

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Applicable Law

RCW 36.70A.280(1) provides in pertinent part:

> **RCW 36.70A.280**
> **Matters subject to board review.**
>
> (1) A growth management hearings board shall hear and determine only those petitions alleging either:
>
> (a) That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW; or
>
> (b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

In *Wenatchee Sportsmen Association v. Chelan County*, 141 Wn.2d 169, 178, 4 P.3d 123 (2000) the Supreme Court clarified the jurisdiction of the Boards:

> The GMA … limits the kinds of matters that GMHBs may review: "A growth management hearings board shall hear and determine only those petitions alleging … [t]hat a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter…." RCW 36.70A.280(1)(a). Another provision of the GMA spells out in greater detail the subject matter of each petition: "All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter … must be filed within sixty days after publication…." RCW 36.70A.290(2). From the language of these GMA provisions, we conclude that unless a petition alleges that a comprehensive plan or a development regulation or amendments to either are not in compliance with the requirements of the GMA, a GMHB does not have jurisdiction to hear the petition.

141 Wn.2d at 178.

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Discussion and Analysis

Positions of the Parties

Petitioner contends that Motion No. 06-546, which terminated the 1999 ILA, is inconsistent with the Snohomish County Comprehensive Plan (**Plan**) because it authorized the abandonment of "park, open space, and public use of the property." PFR, at 2.

Snohomish County moved to dismiss the petition on grounds that the Board lacks subject matter jurisdiction because Motion No. 06-546 (1) is not on its face a comprehensive plan provision, development regulation, or an amendment and (2) is not a *de facto* amendment.

First, the County points out that the jurisdiction of the Board is narrow and is limited to actions adopting comprehensive plans, development regulations, and amendments to a plan. County Motion to Dismiss, at 5. County Reply, at 3-4. (citing RCW 36.70A.280(1)(a); *Campbell v. City of Everett (**Campbell**)*, CPSGMHB No. 06-3-0031, Order of Dismissal, (Nov. 9, 2006), at 7). According to the County, as a contract termination, Motion 06-546 does not meet this narrow definition. *Id*. at 5. In response, Intervenor Rutledge asserts that "Motion 06-546 altered and amended the County's and the Edmonds City's comprehensive plans and capital facilities plans, including both descriptive text and maps showing the Old Woodway Elementary site as a 'public' park." Int. Response, at 4.

The County goes on to argue that the Board also lacks jurisdiction because Motion 06-546 is not a *de facto* amendment. According to the County, a motion authorizing termination of an ILA is a *de facto* amendment only when (1) the property in the ILA is located within the municipality's limits or planning or zoning authority and (2) the motion to terminate an ILA is inconsistent with the municipality's comprehensive plan. County Motion to Dismiss, at 7-8. *Campbell*, No. 06-3-0031, at 7-8.

In *Campbell*, the Board found that it lacked jurisdiction to review an agreement between the City of Everett and the Tulalip Tribes pertaining to the City of Everett supplying "up to 30 million gallons a day (mgd) of water…to construct and maintain a pipe delivery for that water, and to pay $5 million toward the cost of the project." *Campbell*, No. 06-3-0031, at 3. The basis for the Board's conclusion that the agreement was not a *de facto* amendment was two-fold: (1) "the reservation is not within Snohomish County's planning jurisdiction for unincorporated areas and is simply not subject to GMA planning" and (2) "the commitment of funds implemented in [the agreement are] consistent with the Everett Comprehensive Plan." *Id.* at 8.

Petitioner contends that the County misreads *Campbell* as requiring the County to have "zoning authority over the property in order to find that [M]otion 06-546 constitutes a *de facto* amendment." Petitioner Response, at 12.

According to the Petitioner, unlike the tribal trust property in *Campbell*, the Woodway site is subject to GMA planning. *Id.* at 12. For instance, the field inventory of the County Park Plan includes the soccer field at the Woodway site. *Id.* at 11. Similarly, the Intervenor asserts that the Woodway site is designated as "park & open space" in the County's park plan, the Future Land

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Use Map (**FLUM**), and the capital facilities plan. Int. Response, at 5. Furthermore, Petitioner argues that the County has planning authority over the Woodway site, citing to the text of the County park plan which provides: "County needs to be aggressive in the preservation of park land in the urban growth areas, before it is developed for other uses." *Id.* at 12.

In reply, the County argues that it "simply does not have control over land owned by the Edmonds School District because it is not a county-owned park and it is located within the Edmonds city limits, not in unincorporated Snohomish County." County Reply, at 2 (citing *City of Tacoma, et al v. Pierce County*, CPSGMHB No. 94-3-0001, FDO, (March 4, 1994), at 10 (finding that counties configure UGAs to accommodate forecasted growth, and cities have discretion, as allocated to them by the county, in deciding how they will accommodate growth). Furthermore, as in *Campbell*, in which the City of Everett did not have the planning authority over tribal land, in the present case, the County does not have authority over the City of Edmonds' property. County Motion to Dismiss, at 8. The County also asserts that even though a city park may be listed in a County's inventory of capital facilities, this does not mean that the park is part of the County's plan. County Reply, at 5-6 (citing *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB No. 95-3-0039c, Finding Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sept. 8, 1997), at 39). In addition, the County argues that it is "not obligated to list" the city-owned site in the County inventory and may remove "non-County owned facilities from its inventory." *Id.* at 11 (citing RCW 36.70A.070(3)(a))

The County goes on to argue that, in addition to the Woodway site being out of the County's planning authority, Motion 06-546 is *consistent* with the County plan, and therefore, is not a *de facto* amendment. County Motion to Dismiss, at 8. The County states that Motion 06-546, "does not act as a road block to working with cities to create an integrated system of parks, to exploiting joint use opportunities for open space or to seeking to improve field conditions and playing capacity at existing athletic fields." County Reply, at 8-9 (citing *West Seattle Defense Fund v. City of Seattle*, CPSGMHB No. 94-3-0016, FDO, (April 4, 1995), at 27).

According to the County, Motion Nos. 06-546 and 06-547 "further the County's Comprehensive Plan goals of identifying and protecting open space, supporting cities in obtaining neighborhood parks within their UGAs and assisting in providing youth and adult athletic facilities throughout the county." County Motion to Dismiss, at 8-9. Additionally, the adoption of these motions "illustrates the County's continued pursuit of joint ventures with cities, school districts and private land developers to exploit joint use opportunities for open space and recreation, as required by Land Use Policy 10.B.3." *Id.* at 9.

However, Petitioner argues that Motion 06-546 is inconsistent with the County's comprehensive plan and park plan, and with the City of Edmonds comprehensive plan and park plan. Petitioner Response, at 11. In particular, Petitioner points to a Policy LU 10.B.3 of the County's comprehensive plan which provides: "[C]ounty shall pursue joint ventures with cities, school districts, and private land developers to exploit joint use opportunities for open space and recreation." *Id.* at 14 . Additionally, the Intervenor points out that Motion 06-546 changed the County's FLUM for the Woodway site from park and open space to single-family development. Int. Response, at 7.

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In reply, the County asserts that Motion 06-546 did not change the zoning or designation of the County's FLUM. County Reply, at 9; Index C3. The County states that "[t]he parties fail to point to a single section of the Plan that was amended as a result of Motion 06-546" and that "the Parties fail to show where on the County's [FLUM] that the designation changed." *Id.* at 8-9.

Additionally, the County points out that if the field is removed from the County's inventory, it will not conflict with the County's plan because pursuant to RCW 36.70A.070(3)(a), the County has the authority to remove "non-County owned facilities from its inventory." *Id.* at 11.

Petitioner asserts that the Court of Appeals holding in *Alexanderson, et al v. Clark County*, 135 Wn. App. 542, 144 P.3d 1219 (2006) supports Petitioner's argument that Motion 06-546 amends the County's Comprehensive Plan[2] and the Comprehensive Parks & Recreation Plan[3] and the City of Edmonds Comprehensive Plan[4] and Recreation, and Open Space Plan[5]. Petitioner Response, at 9-10. The *Alexanderson* court characterized an MOU as a *de facto* amendment of Clark County's comprehensive plan, which designated that land and zoned it for low-density use inconsistent with the Tribe's plans.[6] *Alexanderson*, at 550. According to Petitioner, like the MOU in *Alexanderson*, Motion 06-546 facilitates a use of Parcel A which is "totally contradictory to the use contemplated by the comprehensive plan" because it specifically "amends the county comprehensive plan to allow homes to be built on two full sized athletic fields and open space." *Id*. at 11, 17.

In reply, the County distinguishes *Alexanderson* on its facts. The County first argues that unlike in *Alexanderson*, in which the land in question was within Clark County's planning authority, in the present case the Woodway site is outside of the County's planning authority. County Reply, at 12. The County points out that it is the City of Edmonds, and not the County, that has planning authority over the Woodway site. *Id.* at 12. In addition, the County asserts that while the MOU in *Alexanderson* was in conflict with Clark County's Comprehensive Plan, Motion 06-546 is consistent with County's Comprehensive Plan. *Id.* at 12. See County's argument, *supra*, at 6.

In addition to the arguments that Motion 06-546 was an amendment to the County comprehensive plan or a de facto amendment, both the Petitioner and the Intervenor raise equitable and contractual arguments.

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[2] Motion 06-546 alters the "land useful for public purposes designation" and the "open space" map. Further, Motion 06-546 amends Land Use Goal 10, Identify and Protect Open Space, because it goes against the specific instruction that the "county shall pursue joint ventures with cities, school districts, and private land developers to exploit joint use opportunities for open space and recreation." LU 10.B.3. Further, Motion 06-546 goes against the requirement in LU 10.B.4 that "the county shall work with cities to create an integrated system of passive and active parks, open spaces, and trails in areas which are accessible to all residents of the county and cities, and provide for a variety of recreational activities, and contribute to neighborhood or community identity." Response, at 9.

[3] C1, Snohomish County Comprehensive Parks & Recreation Plan, Goal 8 "provide youth and adult athletic facilities throughout the County." Response, at 9.

[4] "The City of Edmonds Comprehensive plan emphasizes the role of open space in proper planning and encourages the retention of open space and development of recreational opportunities." Response, at 10.

[5] The Edmonds Park Plan "documents a shortage of 30.20 acres of open space, 21 acres of neighborhood park, 7 baseball fields and 4 soccer fields." Response, at 10.

[6] Unlike in *Campbell*, in which the land was tribal land, in *Alexanderson*, the land was county land pending a trust application.

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According to the Petitioner, even after Parcel A was purchased by a developer it was still encumbered by the 1999 ILA.[7] Petitioner Response, at 13. In addition, the 1999 ILA cannot be voluntarily terminated because the agreement had a minimum term of ten years. *Id.* at 15. Thus, the County could have kept the site open to county residents. *Id.* at 16.[8] Furthermore, Motion 06-547 does not provide a cure for the park acreage that will be lost due to the termination of the 1999 ILA because Parcel A will be developed into private homes. *Id.* at 16.

In reply, the County explains that Motion 06-546 was adopted because the Edmonds School District and the City of Edmonds wanted to terminate the 1999 ILA, and the parties had complied with their obligations under the 1999 ILA. County Reply, at 9.

Lastly, the County argues that the Board lacks jurisdiction to determine the Petitioner's and the Intervenor's equitable arguments. County Reply, at 13 (citing *City of Tacoma,* No. 94-3-0001, at 3). The County cites to arguments of the Petitioner and the Intervenor, asserting that these arguments are outside the Board's jurisdiction: (1) the 1999 ILA "was the product of a regional task force where the stated purpose was to provide recreational facilities"; (2) "some citizens opposed Motion No. 06-546"; (3) "citizens relied on the 1999 Agreement"; and (4) "the [1999] Agreement was terminated without good cause." *Id.* at 12-13.

Board Discussion

The Growth Management Hearings Boards have jurisdiction to review comprehensive plans and development regulations and amendments thereto. RCW 36.70A.280(1); *Wenatchee Sportsmen Ass'n,* 141 Wn.2d at 169. This Board has long recognized that its jurisdiction is narrow.[9] In *City of Burien v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 113 Wn. App. 375, 384-5, 53 P.3d 1028 (2002), the Court of Appeals upheld this Board's determination that it lacked jurisdiction to review an ILA between the Sea-Tac and the Port of Seattle, except to the extent the terms of that agreement were enacted as comprehensive plan or development regulations or amendments.

Is Motion 06-546 an amendment to the Snohomish County Comprehensive Plan or implementing development regulations?. On its face, the Board concludes that it is not.

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[7] SNOHOMISH COUNTY REGIONAL RECREATION TASK FORCE ILA WITH THE CITY OF EDMONDS AND EDMONDS SCHOOL DISTRICT #15 FOR THE OLD WOODWAY ELEMENTARY SITE RENOVATION AND THE TERMS, CONDITIONS, AND PROVISIONS CONTAINED THEREIN. Ex. A1, at 5, paragraph 6; Ex. A2, at 5, paragraph 6.

[8] 1999 ILA **3.2 Direction and Control**. The City and School District will perform the service under this agreement as independent contractors and not as agents, employees, or servants of the County. The City and School District specifically have the right to direct and control their own activities in providing the agreed services in accordance with the specifications set out in this agreement. *The County shall only have the right to ensure performance* (emphasis added). Ex. 1.

[9] See, e.g., *Anderson Creek v. City of Bremerton,* CPSGMHB Case No. 95-3-0053c, Order on Dispositive Motions (Oct. 18, 1995) (no jurisdiction over surplus and sale of city property); *Harless, et al v. Kitsap County,* CPSGMHB Case No. 02-3-0018c, Order on Motions (Jan 23, 2003) (Memorandum of Agreement and ULID neither amended the plan nor development regulations; board lacked subject matter jurisdiction).

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In light of the Alexanderson and Campbell opinions, is Motion 06-546 a de facto amendment to the Snohomish County Comprehensive Plan? The Board concludes that it is not.

The Court of Appeals in *Alexanderson* recently held that the Western Board had jurisdiction to review a Memorandum of Understanding (**MOU**) between Clark County and the Cowlitz Tribe. *Alexanderson*, at 550. Under the challenged MOU, Clark County would provide water service to the Tribe to facilitate development of a casino complex on rural land which the Tribe was seeking to have designated as tribal trust land. *Id*. at 544-45. The *Alexanderson* court characterized the MOU as a *de facto* amendment of Clark County's comprehensive plan, which designated that land and zoned it for low-density use inconsistent with the Tribe's plans.[10] *Id.* at 550. The court concluded that the Western Board should not have dismissed the petition on jurisdictional grounds. *Id*. at 550-51.

In *Campbell*, the Board concluded that an agreement between the Everett and the Tulalip Tribe was not a *de facto* amendment because it involved land which was tribal trust land and not within the City of Everett or its planning area, and the commitment of funds which was implemented in the agreement were consistent with the Capital Facilities Element of the Everett Comprehensive Plan. *Campbell*, No. 06-3-0031, at 8.

The present case differs from *Alexanderson* and is analogous to *Campbell*.

First, the Woodway site is not within the planning and zoning authority of unincorporated Snohomish County. In *Alexanderson*, at the time of the MOU the non-tribal lands was within Clark County's planning authority. By contrast, in *Campbell*, the tribal trust lands in the Settlement Agreement were not within the City of Everett nor within its extended planning area.

Here, the Woodway site is not within unincorporated Snohomish County and not within the County's extended planning area. The Woodway site is completely within the City of Edmonds municipal limits and planning area. Therefore, the decision to sell Parcel A of the Woodway site was not under the County's control; the Edmonds School District sold Parcel A to a private developer before Motion 06-546 was adopted. While the Woodway site is listed among the County's inventory of capital facilities, this does not necessarily give the County planning authority over a city park. The County is correct in its conclusion that even though a city park may be listed in a County's inventory of capital facilities, does not mean that a city park is part of the County's plan. County Reply, at 5-6 (citing *Bremerton/Port Gamble v. Kitsap County*, CPSGMHB No. 95-3-0039c, Finding Noncompliance and Determination of Invalidity in *Bremerton* and Order Dismissing *Port Gamble*, (Sept. 8, 1997), at 39).

Second, Motion 06-546 is consistent with the County comprehensive plan.

In the present case, Motion 06-546 was the first step in creating an ILA that furthers the goals of the County Comprehensive Plan and the County Park Plan. On the same day Motion 06-546 passed, the County adopted Motion 06-547, thereby authorizing the 2006 ILA for the "acquisition and recreational development" of Parcel B. Ex. 15. Specifically, the 2006 ILA

[10] Unlike in *Campbell*, in which the land was tribal land, in *Alexanderson*, the land was county land pending a trust application.

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commits the County to provide $1.2 million for the City's purchase of Parcel B, and in exchange, the City will make Parcel B and its recreational facilities available to county residents.

By enacting a joint venture that will allow county residents access to a community park, Motion Nos. 06-546 and 06-547 are consistent with the County's Comprehensive Plan. Specific goals of the Snohomish County Comprehensive Plan and the County Park Plan include "identifying and protecting open space, supporting cities in obtaining neighborhood parks within their Urban Growth Areas and assisting in providing youth and adult athletic facilities throughout the county. See C1 (specifically, Goal 7, 8, 8.1 and 8.2) and C2 (specifically, LU 10.B.3, 10.B.4). The Board concurs with the County that helping to fund the City's purchase of Parcel B, illustrates the County's continued pursuit of joint ventures and joint use opportunities for open space and recreation as required by Land Use Policy 10.B.3.

As the County correctly asserted, the present case differs from *Alexanderson* in several significant ways. First, *Alexanderson* involved a proposed water service extension to non-tribal land which was within the planning and zoning authority of Clark County. While the Cowlitz Tribe anticipated that the property would be granted trust status, at the time of the MOU the land was within the County's authority. Here, by contrast, the Woodway site is not within unincorporated Snohomish County nor within its extended planning area. Therefore, the Woodway site is not subject to GMA planning by the County.

Second, in *Alexanderson*, the MOU water service extension to serve Cowlitz Tribal development was directly contrary to the Clark County comprehensive plan; it would have accommodated more intense development than the uses allowed in the Clark County plan. *Id.* By contrast, in the present case, Motion 06-546 led to the adoption of Motion 06-547, in which the County authorized another ILA with the City that allows County residents recreational access to Parcel B. By providing open space and recreational facilities through a joint venture, the County is continuing to fulfill the goals of the County's Comprehensive Plan.

The County also correctly argued that the present case is analogous to *Campbell*. In *Campbell*, one basis for the Board's holding that the agreement between the City of Everett and the Tulalip Tribe was not a de facto amendment was that the property in question was tribal land; therefore, the land was outside the City of Everett's planning or zoning authority. As in *Campbell*, in this case, the Woodway site is outside of the County's planning authority. It is the City of Edmonds, not Snohomish County, that has planning authority over the Woodway site.

The Board finds and concludes that the challenged motion – Motion No. 06-546 – is not (1) a comprehensive plan or development regulation or amendment thereto, nor (2) a *de facto* amendment to the Snohomish County Comprehensive Plan. Therefore, the Board has no jurisdiction to hear the matter.

Conclusion

The Board finds and concludes that it lacks subject matter jurisdiction to review Motion 06-546. The County's Motion to Dismiss is **granted**.

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III. MOTIONS TO SUPPLEMENT

The Petitioner's and Intervenor's Motions to Supplement the Record are denied because they were not relied on in the Order of Dismissal. Documents included in the 3rd Amended Index are considered part of the record. The Board notes that exhibits A1 and A2 in the 3rd Amended Index were presented by Petitioner in Petso Motion to Supplement as #6 and #7.

CORRECTED ORDER

Based upon review of the GMA, Board's Rules of Practice and Procedure, briefing and exhibits submitted by the parties, case law and prior decisions of this Board, and having deliberated on the matter, the Board enters the following *Corrected* ORDER:

1. Snohomish County's Motion to Dismiss is **granted**.

2 The matter of *Petso v. Snohomish County*, CPSGMHB Case No. 07-3-0006, is **dismissed with prejudice**.

3 All further proceedings in this matter are **cancelled** and the matter is **closed**.

So ORDERED this 10 th day of May, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
David O. Earling
Board Member

_____
Edward G. McGuire, AICP
Board Member

_____
Margaret A. Pageler
Board Member

Note: This corrected order constitutes a final order as specified by WAC 242-02-832.

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