



3. Snohomish County's adoption of Ordinance Nos. 06-102 and 06-104, in particular, the provisions relating to the McNaughton rezones, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.070 (preamble), .070(6), .210(3)(d), and **is not guided** by GMA goals RCW 36.70A.020(1), (3), and (12).
4. The Board **remands** Ordinance Nos. 06-102 and 06-104 to Snohomish County with direction to the County to take legislative action to comply with the requirements of the GMA as set forth in this Order.
5. Snohomish County's enactment of Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114 was **clearly erroneous** and **does not comply** with the urban growth area goals and requirements of RCW 36.70A.110, .210, .020(1), and .020(12).
6. The Board **remands** Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114 to Snohomish County to take legislative action to comply with the requirements of the GMA as set forth in this Order.
7. The Board further finds and concludes that the enactment of Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114 substantially interferes with the goals and requirements of the GMA. The Board therefore enters an **order of invalidity** for Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114.

FDO, at 67.

The FDO established February 1, 2008, as the deadline for Snohomish County to take appropriate legislative action for compliance. The FDO stated:

- If the County takes the required legislative action prior to the February 1, 2008, deadline set forth in this Order, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 68.

On December 21, 2007, the Board received Snohomish County's Statement of Actions Taken to Comply with Final Decision and Order (**SATC**), with Resolution No. 07-028 and attachments and Ordinance No. 07-139. The Board also received Snohomish County's Motion for Order Rescinding Order of Invalidity, Modifying the Compliance Schedule and Setting an Accelerated Compliance Hearing. The County requested a telephonic compliance hearing.

On December 21, 2007, the Board received a letter from Jane Kiker on behalf of the City of Bothell requesting an extension of time to respond to the County's motion in view of the sudden death of Michael Weight, Bothell City Attorney, and in consideration of previously-scheduled holiday vacations for Peter Eglick and Jane Kiker. The County answered saying that it has no objection to allowing Petitioners additional time to respond to the SATC.

On December 24, 2007, the Board entered its Order Amending Compliance Schedule, and on December 27, 2007 issued a Corrected Order, extending the time for Petitioners to respond to the SATC to 27 days. On December 27, 2007, the Board received a letter from Scott Missall, City Attorney for Mill Creek, also protesting the shortened time to respond to the County's SATC and requesting additional time to respond. In view of the statutory requirement for expedited procedure to resolve findings of invalidity [RCW 36.70A.330(1), (2)], and in view of the clear-cut issues for decision, the Board did not grant a further extension.

On January 17, 2008, the Board received City of Bothell's Response to Snohomish County's Statement of Actions Taken (**Bothell Response**). The Board also received City of Mill Creek's Response to Snohomish County's Statement of Actions Taken to Comply (**Mill Creek Response**). The Board also received a letter of response from Dorothy Nesbit for Intervenor FNYJC (**FNYJC Response**). None of the other parties responded to the SATC.

On January 22, 2008, the Board received Snohomish County's Reply Re: Statement of Actions Taken to Comply (**County Reply**), with two attachments.

The Compliance Hearing was convened telephonically on January 24, 2008, at 10:00 a.m. and adjourned at 10:15 a.m. Board members Margaret Pageler, Presiding Officer, Edward McGuire, and David Earling were present, as was Board staff attorney Julie Taylor. Snohomish County was represented by Prosecuting Attorneys John Moffat and Jason Cummings. Petitioner City of Mill Creek was represented by Scott Missall. Intervenor FNYJC was represented by Dorothy Nesbitt. Petitioners City of Bothell and City of Lynnwood and Intervenors The McNaughton Group, Fairview Ministries and Scriber Creek Investments did not attend the hearing.<sup>2</sup>

## II. DISCUSSION

### **The County's Action - McNaughton/Park Ridge Chapel Rezones**

The FDO summarizes the Board's finding of non-compliance with respect to the McNaughton and Park Ridge Chapel rezones.<sup>3</sup>

The Board found that the County's actions accommodating the McNaughton proposal created an inconsistency between the Snohomish County land use plan and its transportation element. The Board concluded that the actions were contrary to the requirements of RCW 36.70A.070 (preamble), .070(6), and .210, and not guided by GMA Planning Goals 1, 3,

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<sup>2</sup> The issues of concern to City of Lynnwood and Scriber Creek Investments were dismissed in the FDO and were not before the Board in this compliance proceeding.

<sup>3</sup> These rezones applied to parcels in multiple ownership, not all owners supporting the upzones. The parcels are referred to in the briefing and FDO as McNaughton and Park Ridge Chapel properties in recognition of the primary sponsors of the upzone requests.

and 12. The Board remanded the matter for legislative action to make the land use and transportation plans consistent....

FDO, at 1-2. The County therefore had the option of revising either its transportation plan or its land use plan and regulations for the area to achieve GMA-mandated consistency.

The County chose to amend its land use plan by restoring the prior FLUM designations and zoning for the McNaughton and Park Ridge Chapel properties. SATC, at 4. On December 19, 2007, the County Council adopted Ordinance No. 07-139, which restored the prior FLUM designations of Urban Low Density Residential and prior zoning of R-5 to the properties.

The Cities of Bothell and Mill Creek acknowledge that the County's action complies with the FDO. Bothell states: "[T]he County has technically complied..." Bothell Response at 2. Mill Creek states: "[T]he County's actions as reported in the SATC technically restored the County's [prior plan and regulations]. The County's actions therefore facially conform with the requirements of the FDO." Mill Creek Response, at 2. However, the Petitioners point out that McNaughton, Park Ridge Chapel, and Fairview Ministries filed project applications during the pendency of this matter and thus "vested" their proposals for "disproportionately intense development" under the regulations that have now been repealed. Bothell Response, at 2; Mill Creek Response, at 2; FNYJC Response, at 2. These parties protest that there are still no solutions to the traffic problems in the area, which will be exacerbated by these projects. *Id.*

In its Reply, the County underscores the parties' admission that the County's action brings it into compliance with the FDO. County Reply, at 1. The County points out that the vesting of development applications under the now-repealed 2006 enactments is a matter of state law beyond the Board's jurisdiction. *Id.* at 2. As to the traffic problems, the County states that the development applications will be reviewed by the County to evaluate compliance with the County's transportation concurrency requirements and "to ensure that the development will not impact a county arterial in arrears." *Id.* at 2-3.

The Board's FDO found the County non-compliant because the adoption of higher-density zoning for the McNaughton and Park Ridge Chapel properties created an inconsistency between the land use and transportation elements of the County's comprehensive plan. The County has now repealed the higher-density zoning. The Board finds and concludes that, by adopting Ordinance No. 07-139, Snohomish County has cured the inconsistency between its transportation and land use plans with respect to the McNaughton and Park Ridge Chapel properties. The Board enters an order finding **compliance** re: Ordinance No. 07-139.

The Board notes that proponents of the various proposals apparently have filed completed applications that have vested to the extent they will be reviewed under the laws and regulations in effect at the time of filing – reflecting the current law of the state. Actual

development of the proposals is not a foregone conclusion, as the County points out (County Reply, at 2-3), but is contingent upon satisfaction of such requirements as transportation concurrency. In the FDO, the Board declined to enter a determination of invalidity for the McNaughton and Park Ridge Chapel rezones, relying on the County's assertions concerning the reach of its transportation concurrency regulations:

The Board is persuaded by the County and McNaughton's argument that *the County's concurrency regulations will prevent development in the 35<sup>th</sup>/York Road corridor until appropriate transportation improvements are identified and funded....*

The concerned parties will undoubtedly monitor the permit review process and the application of the County's concurrency requirements.

### **The County's Action – Fairview Ministries**

The FDO summarizes the Board's ruling concerning the Fairview Ministries project:

To accommodate the Fairview Ministries project – a continuous care retirement community – which required UGA expansion, Snohomish County amended its county-wide planning policies to allow UGA expansions for Level II Health and Human Services Facilities as Public/Institutional uses. The Board found this action non-complaint with the GMA scheme for contained urban growth boundaries, as provided in RCW 36.70A.110, .210, .020(1) and .020(12). The Board invalidated and remanded the action and set a schedule for compliance.

FDO, at 2.

In order to accommodate the Fairview Ministries project, the County had enacted a series of five ordinances amending its policies and development regulations and expanding the UGA – Amended Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114. In response to the FDO, on November 19, 2007, the County enacted Resolution No. 07-028. SATC, at 3, Appendix A. In that Resolution, the County recognized the legal effect of the severability and savings sections in each of the five ordinances which the Board found non-compliant and invalid. The Resolution acknowledged that the challenged provisions were invalid and no longer in effect, and that the prior provisions of the listed ordinances were revived and in effect. See SATC, Appendix A, Exhibits A through E.

The responding cities admit that the County's action "technically" achieves compliance by reversing the provisions that would allow expansions of the UGA for certain health and social service facilities.<sup>4</sup> However, the City of Mill Creek points out that the vesting of the

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<sup>4</sup> Intervenor FNYJC does not comment on this project. FNYJC Response, at 1.

application of Fairview Ministries for a senior care facility creates a large nonconforming use, inconsistent and out of character with the approved rural land use and zoning designations. Mill Creek Response, at 3.

RCW 36.70A.320(4) provides that a county or city subject to a determination of invalidity “has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of [the GMA].” Here, the County has reversed its five challenged actions which together allowed expansions of the UGA to accommodate Level II Health and Social Services Facilities and specifically adopted the UGA expansion for the Fairview Ministries project. The prior provisions of these ordinances were restored.

The Board finds and concludes that, by adopting Resolution No. 07-028 Snohomish County has cured the non-compliance of Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114 and the Fairview Ministries matter. The Board enters an order finding **compliance** re: Resolution No. 07-028. The Board further finds and concludes that the County’s action no longer substantially interferes with GMA Goals; the Board therefore **rescinds its determination of invalidity**.

The apparent vesting of project applications for the Fairview Ministries development is a matter of state law. Again, actual development is not a foregone conclusion but is contingent upon securing all the necessary permits and approvals for extension of urban services and for concurrency.

### **III. FINDING OF COMPLIANCE**

Based upon review of the September 17, 2007 Final Decision and Order, the Snohomish County Statement of Actions Taken to Comply, the responses of Petitioners City of Bothell and City of Mill Creek and Intervenor FNYJC, the Board’s review of Ordinance No. 07-139, Resolution No. 07-028 and other documents in the record, the arguments and comments offered in the briefing and at the compliance hearing, the Board finds:

- By adopting Ordinance No. 07-139 Snohomish County has complied with the goals and requirements of the GMA for consistency between the County’s transportation and land use plans, as set forth in the Board’s FDO and the GMA. The County’s action **complies** with RCW 36.70A.070(preamble), .070(6) and .210. The Board therefore enters a **Finding of Compliance** for Snohomish County Re: Ordinance No. 07-139.
- By adopting Resolution No. 07-028, Snohomish County has complied with the goals and requirements of the GMA for contained urban growth boundaries, as set forth in the Board’s FDO and the GMA. The County’s action **complies** with RCW 36.70A.110, .210, .020(1) and .020(12). The Board therefore **rescinds its determination of invalidity** and enters a **Finding of Compliance** for Snohomish County Re: Resolution No. 07-028.

#### IV. ORDER

Based upon review of the September 17, 2007 Final Decision and Order, the Snohomish County Statement of Actions Taken to Comply, the responses of Petitioners City of Bothell and City of Mill Creek and Intervenor FNYJC, the Board's review of Ordinance No. 07-139, Resolution No. 07-028 and other documents in the record, the arguments and comments offered in the briefing and at the compliance hearing, and having deliberated on the matter, the Board ORDERS:

- Snohomish County's adoption of Ordinance No. 07-139 corrects the deficiencies found in Amended Ordinance Nos. 06-102 and 06-104 and **complies** with the goals and requirements of the GMA as set forth in the Board's September 17, 2007 FDO. The Board therefore enters a **Finding of Compliance** for Snohomish County Re: Ordinance No. 07-139.
- Snohomish County's adoption of Resolution No. 07-128 corrects the deficiencies found in Ordinance Nos. 06-097, 06-111, 06-112, 06-113 and 06-114 and **complies** with the goals and requirements of the GMA as set forth in the Board's September 17, 2007 FDO. The Board therefore **rescinds its determination of invalidity** and enters a **Finding of Compliance** for Snohomish County Re: Resolution No. 07-128.
- CPSGMHB Case No. 07-3-0026c, *City of Bothell, et al v Snohomish County*, is **closed**.

So ORDERED this 25th day of January, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.<sup>5</sup>

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<sup>5</sup> Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)