

Several parties sought judicial review of the Board's FDO, and the matter proceeded through the Superior Court, Court of Appeals – Division 1, and the Supreme Court.

During the course of judicial review of the Board's FDO, the County ultimately took action to comply with the Board's FDO. On January 6, 2005, the Board issued an "Order Withdrawing the Recommendation of Gubernatorial Sanctions, Rescinding Invalidity and Finding Compliance." The 1/6/05 Order concluded that the County's adoption of Resolution 05-001

[R]emoves ambiguity or doubt as to the plan and zoning designations for the Island Crossing property. Resolution 05-001 reaffirms and retains the Rural Freeway Service and Riverway Commercial Farmland comprehensive plan designations and the Rural Freeway Commercial and Agriculture 10 map designations for the Island Crossing property.

1/6/05 Order, at 6. The Board rescinded invalidity and entered a Finding of Compliance for Snohomish County.

On October 9, 2008, the Supreme Court issued its decision in *City of Arlington et al., v. CPSGMHB, et al.*, 164 Wn.2d 786; 193 P.3d 1077 (2008). In brief, the Court reversed the findings of the Board's FDO and "remand[s] this matter to the Board for a decision consistent with the opinion of this court." *City of Arlington*, at 796.

The Supreme Court issued its Mandate to Snohomish County Superior Court on November 4, 2008; the Board's Assistant Attorney General received a copy of the Mandate on January 8, 2009, and the Mandate was forwarded to the Board on January 9, 2009.

On January 14, 2009, the Board issued a "Notice of Pre-Remand Hearing Conference" (**PRHC**) setting February 12, 2009 as the conference date to discuss necessary additional proceedings.

On February 12, 2009, the Board conducted the PRHC at the Board's offices. Board member Edward McGuire presided, Board member Margaret Pageler was present and Board member Dave Earling participated telephonically. Snohomish County was represented by John Moffat and Intervenor Dwayne Lane was represented by Todd Nichols. Robert Beatty appeared for Petitioner Futurewise [1000 Friends], Henry Lippek appeared for Petitioner Stillaguamish Flood Control District and Dorothy E. Jaffe, Assistant Attorney General, represented Petitioner CTED. Although notified, the City of Arlington, represented by Steve Peiffle, did not attend the PRHC. The conference convened at approximately 10:00 a.m. and concluded at approximately 11:15 a.m. The proceeding was recorded.

II. DISCUSSION and ORDER

Coming into the conference, the Board understood the sole question for the Board was whether the County had already taken steps to adjust its future land-use map and zoning designations in the Island Crossing area to reflect the Supreme Court's decision in the *City of Arlington* case. If so, pursuant to the remand from the Court, the Board could issue a Finding of Compliance without a remand to the County. If the County had not acted, the Board would have to remand the matter to the County to achieve compliance with the GMA consistent with the Supreme Court's decision in *City of Arlington*.

At the PRHC, the County indicated that it had not repealed Resolution No. R 05-001 (**Ex. No. 1**),² nor otherwise altered its mapping to date. However, the County explained that it had filed a lawsuit seeking an injunction and challenging the City of Arlington's pending annexation of the Island Crossing area into the corporate limits of the City, asserting that the County had to change its designations for the area prior to the annexation proceeding. The Superior Court of Snohomish County disagreed, and the Honorable Judge Ellen Fair denied the County's motions and request for injunction. *See Ex. 2.*³ The County did not appeal.

The City of Arlington annexed the Island Crossing area via Ordinance No. 1458 on November 17, 2008. *See Ex. 3.*⁴ Consequently, Snohomish County asserts that the area is now within the city limits of the City of Arlington and beyond the jurisdiction of the County and there is nothing for the County to do on remand. The County indicated that during its next Plan review cycle, it would remove the area from its maps and indicate it as being within the City of Arlington. Intervenor concurred in the County's assessment of the lack of need for a remand.

Petitioner Flood Control District urged the Board to remand the matter to the County. The District asserted that the Island Crossing area remains, or should be retained as rural, not an urban area and the County should revisit its designations. Petitioner Futurewise urged the Board to remand the matter to the County, allowing the County to take any necessary action to achieve compliance. Petitioner CTED deferred to the Board's decision on whether to remand the matter or issue a Finding of Compliance.

The Supreme Court's remand to this Board stated that the Court, "remands this matter to the Board for a decision consistent with the opinion of this Court." *City of Arlington*, at 796. Given that the Island Crossing area has been annexed by the City of Arlington and is no longer within the jurisdiction of Snohomish County, the Board concludes that a remand back to the County would be an empty act. The "urban" land in question is now the City of Arlington's to govern. Consequently, the Board issues a **Finding of**

² Resolution No. 05-001 was part of the original record in this proceeding. The County provided an additional copy of the signed ordinance to the Board at the PRHC.

³ A copy of Judge Fair's "Order on Show Cause," dated December 15, 2008, was provided at the PRHC.

⁴ A copy of the City of Arlington's "Ordinance No. 1458," dated November 17, 2008, was provided at the PRHC. The Board notes that the annexation had been proposed in 2004. No party with standing invoked the jurisdiction of the Snohomish County Boundary Review Board to review the proposed annexation before the deadline expired in 2004. Therefore it was deemed approved pursuant to RCW 36.93.100.

Compliance for Snohomish County in the matter of 1000 Friends, et al., v. Snohomish County, CPSGMHB Consolidated Case No. 03-3-0019c. This decision is consistent with the opinion of the Supreme Court and the matter is **closed**.

So ORDERED this 19th day of February, 2009.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

David O. Earling
Board Member

Concurring Opinion of Board Member Margaret Pageler

I concur with the Board's conclusion that remand to Snohomish County would be an empty act, particularly in consideration that Snohomish County is bound by Judge Fair's ruling dismissing the County's anticipatory challenge of annexation of the Island Crossing area by the City of Arlington. The Island Crossing area is within the Stillaguamish River 100-year floodplain.

The Stillaguamish Flood Control District and other Petitioners in the Board's proceedings were not parties to the Superior Court case. Unfortunately, the consequences of the ruling and of the annexation are almost certain to extend to these Petitioners and their interests, as well as to the broader interests of the State.

This Board may take official notice of notorious facts⁵ concerning the consequence of urbanization in floodplains crossed by Interstate 5. In 2007, the State incurred \$18 million in direct damages and the regional economy lost much more from flooding on the Chehalis River that closed I-5 for four days. The situation was repeated in 2009, in flooding events that closed the interstate at Chehalis, also closed interstate lanes in the Puyallup River floodplain in Fife, and severely threatened the interstate through the

⁵ WAC 242-02-760(2)

Samish River floodplain north of Burlington. Widespread media investigation identified urban development patterns, in particular, large paved lots along the freeway in the various river floodplains, as a primary risk element for freeway flooding.

In response to a legislative mandate, the University of Washington Climate Impacts Group on February 11, 2009, released the results of its Washington Climate Change Impacts Assessment.⁶ Among other findings, the scientists indicate that the magnitude of extreme precipitation events have increased in Puget Sound over the past 50 years. Projections from regional climate model simulations generally indicate continued increases in extreme rainfall magnitude by mid-century.⁷ The scientists anticipate likely increases in flood risk for the major river systems of Puget Sound over the course of the century,⁸ commenting: “One need only look at the last three years to appreciate the devastation such events can cause in Washington State.”⁹

The climate change assessment points out that “[n]onclimatic factors are likely to compound hydrologic impacts,” identifying “patterns of development” in flood plains as a major causal element.¹⁰ The report calls for “altered land-use policies ... that take into account the changing risks of extreme events.”¹¹ In calling for changed policies, the scientists state:

[D]ecisions with long-term impacts are being made every day, and today’s choices will shape tomorrow’s vulnerabilities. State and local governments regularly make decisions that have long-lasting implications for climate vulnerability, including decisions related to land-use planning and development [and] flood control. ... For example, developing property in an area that is likely to experience more flooding as a result of climate change increases the risk of flood damage to the new structures.¹²

Sadly, when floodplains along the freeway are urbanized, it is not only the new structures that are at risk, but the State’s mobility, infrastructure and economy that may be jeopardized.

Because of the nature of the Pre-remand Hearing Conference in this case, the Board does not have in its record the news articles of the January 2009 flooding of the Stillaguamish River valley or photos of the inundation of the Island Crossing area.¹³ It appears to me that paving this floodplain for automobile dealerships and other urban uses would increase the flood vulnerability of essential transportation infrastructure. However, the Board’s decision is confined to the record and the law before us, and I must concur in the outcome.

⁶ Pre-publication draft online at Washington Climate Impacts Group website – cses.washington.edu/cig.

⁷ *Washington Climate Change Impacts Assessment*, Executive Summary, at 2; chapter 11, at 12, 34.

⁸ *Id.* Executive Summary, at 13; chapter 11, at 19.

⁹ *Id.* chapter 11, at 34.

¹⁰ *Id.* at 20.

¹¹ *Id.* at 21.

¹² *Id.* at 13.

¹³ See e.g., *Seattle Times*, Jan 7, 2009, Jan 8, 2009.