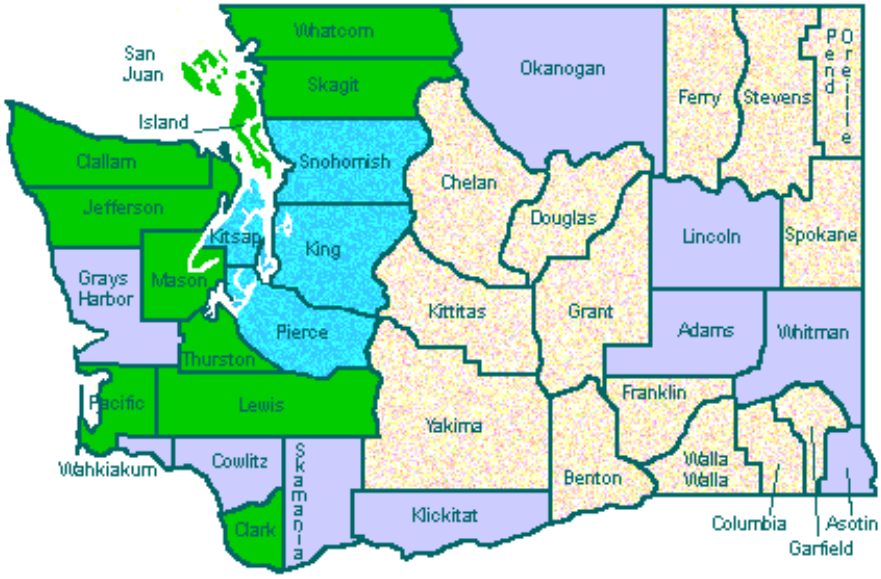
Digest of Decisions

Growth Management Hearings Board



Digest

Washington State Growth Management Hearings Board

In 1990, the Legislature enacted the Growth Management Act, RCW 36.70A so as to create a state-wide method for comprehensive land use planning that would prevent uncoordinated and unplanned growth. The Legislature subsequently established three independent Growth Management Hearings Boards – Eastern Washington, Western Washington, Central Puget Sound - and authorized that these boards "hear and determine" allegations that a city, county, or state agency has not complied with the goals and requirements of the GMA, and related provisions of the Shoreline Management Act (SMA), RCW 90.58, and the State Environmental Policy Act (SEPA), RCW 43.21C.

During the 2010 Legislative session, with Senate Bill 6214, the Legislature restructured the Growth Management Hearings Boards, eliminating the previous structure and establishing a single seven-member board to hear cases on a regional basis; this new structure became effective on July 1, 2010. **Therefore, this Digest of Decisions represents a historical synopsis by keyword of the substantive decisions issued by the Growth Management Hearings Board from July 1, 2011 onward**. The new Digest combines decisions of all three regions (Eastern, Western and Central Puget Sound). Historical synopsis of Board decisions from Eastern and Central Puget Sound issued prior to July 1, 2011 are contained in those Boards respective individual Digests of Decisions on the GMHB website.

Along with a synopsis of substantive decisions, this Digest of Decisions provides a listing of petitioners and respondents with the associated case number, a glossary of acronyms, GMA legislative history, and relevant published court cases. **Users of this Digest are reminded that decisions of the Board are subject to a court appeal and thus some of the excerpted cases may have been impacted by subsequent court and/or Board holdings. It is the responsibility of the user to research the case thoroughly prior to relying on its holdings.**

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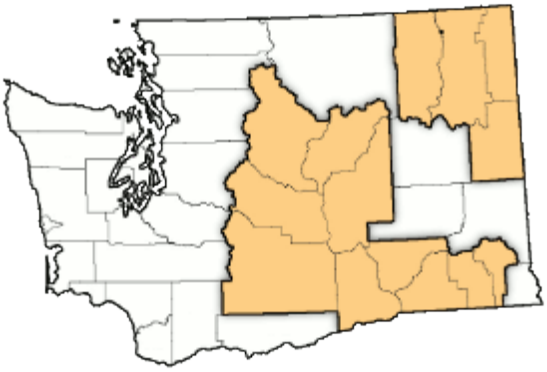

Region 1: Eastern Washington

Benton • Chelan • Columbia • Douglas • Ferry • Franklin • Garfield • Grant • Kittitas • Pend Oreille • Spokane • Stevens • Walla Walla • Yakima

Region 1: Eastern Washington Table of Cases[1]

1997 Cases

- ***Concerned Friends of Ferry County v. Ferry County,* Case No. 97-1-0018, coordinated with *Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 06-1-0003**
  Please see synopses and Key Holdings for Case No. 06-1-0003.

2001 Cases

- ***Concerned Friends of Ferry County, et al. v. Ferry County,* Case No. 01-1-0019**
  The Board concluded that Ferry County is not in compliance with the requirements of the Growth Management Act relating to the designation of Agricultural Lands of Long-Term Commercial Significance under RCW 36.70A.170, RCW 36.70A.030, RCW 36.70A.060(1)(b), and RCW 36.70A.020.

  Key Holdings: Agricultural Lands, Invalidity

2005 Cases

- ***Futurewise v. Stevens County,* Case No. 05-1-0006**
  The Board's 2006 FDO concluded Stevens County had failed to designate all of the identified habitats of Endangered, Threatened, and Sensitive (ETS) species as fish and wildlife conservation areas and failed to consider Best Available Science in designating all of the identified habitats of ETS species as fish and wildlife habitat conservation areas in establishing protections for the functions and values of critical habitat areas. The Board's decision was affirmed by the Court of Appeals. Following several compliance extensions, interim regulations to protect ETS species and associated Fish and Wildlife Habitat Conservation Areas were made permanent. The Board found Stevens County in compliance. (*Order Finding Compliance, December 14, 2011*)

2006 Cases

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 06-1-0003, coordinated with *Concerned Friends of Ferry County,* Case No. 97-1-0018**
  The Board concluded that Ferry County was not in compliance with the requirements of the Growth Management Act relating to: (1) including the Best Available Science in designating and protecting Fish and Wildlife Habitat Conservation Areas under RCW 36.70A.170, RCW 36.70A.060(2), and RCW 36.70A.172, and (2) including the Best Available Science in protecting Wetlands under RCW 36.70A.060(2) and RCW 36.70A.172.

  Key Holdings: Critical Areas

2009 Cases

- ***Citizens for Good Governance v. Walla Walla County,* Case No. 09-1-0013**

[1] For complete information on these cases, please refer to prior digests on the Board's website.

Petitioners challenged Walla Walla County's compliance efforts relating to designation and protection of Critical Aquifer Recharge Areas and the requirement to include Best Available Science. The Board found the County out of compliance regarding the GMA's requirements to designate and protect areas with a critical recharging effect on aquifers used for potable water. *(Compliance Order, April 5, 2012)*

Key Holdings: Critical Areas (Critical Aquifer Recharge Areas)

2010 Cases

- ***John Brodeur, Futurewise and Vince Panesko v. Benton County (Richland UGA),* Case No. 10-1-0001c**[2]
- ***John Brodeur, Futurewise and Vince Panesko v. Benton County (Benton City UGA),* Case No. 10-1-0002c**[3]
- ***Community Addressing Urban Sprawl Excess (CAUSE) v. Spokane County*, Case No. 10-1-0003**
- ***Futurewise v. Douglas County,* Case No. 10-1-0004**
- ***City of Wenatchee v. Chelan County,* Case No. 10-1-0005**
- ***Futurewise v. Spokane County,* Case No. 10-1-0006**
- ***Confederated Tribes and Bands of the Yakama Nation v. Yakima County*, Case No. 10-1-0007**
- ***Judy Crowder, et al v. Spokane County,* Case No. 10-1-0008**
- ***The City of Chelan v. Chelan County,* Case No. 10-1-0009**
- ***Michael Fenske, et al v. Spokane County,* Case No. 10-1-0010**
- ***Confederated Tribes and Bands of the Yakama Nation v. Yakima County*, Case No. 10-1-0011**
- ***John R. Pilcher and JRP Land, LLC v. City of Spokane,* Case No. 10-1-0012**
- ***Kittitas County Conservation, Ridge and Futurewise v. Kittitas County*, Case No. 10-1-0013**
- ***Kittitas County Conservation, Ridge and Futurewise v. Kittitas County,* Case No. 10-1-0014**

2011 Cases

- ***Kittitas County Conservation and Futurewise v. Kittitas County,* Case No. 11-1-0001**
  Petitioners challenged Kittitas County's expansion of the Thorp LAMIRD. The Board concluded the County's action failed to comply with the applicable LAMIRD requirements and created internal plan inconsistencies. In addition, the Board found Kittitas County failed to comply with the procedural requirements of SEPA. The Board first issued a partial Final Decision and Order addressing only those aspects relating to SEPA and subsequently issued an FDO on the remaining issues. The Board issued a determination of Invalidity.

  Key Holdings: Internal Consistency, Invalidity, Jurisdiction, LAMIRDs, SEPA

- ***Leon S. Savaria v. Yakima County,* Case No. 11-1-0002**

[2] Case No. 10-1-0001c is the consolidation of the issues related to Resolution 09-727 in Case No. 09-1-0015c and Case No. 10-1-0001

[3] Case No. 10-1-0002c is the consolidation of the issues related to Resolution 09-728 in Case No. 09-1-0015c and Case No. 10-1-0002

On County's dispositive motion, Board dismissed challenge to County's denial of petitioner's application to de-designate agricultural land.

Key Holdings: Agricultural Lands (Innovative Zoning), Definitions

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 11-1-0003**
  Ferry County filed a motion for summary judgment requesting dismissal of all issues. The GMHB Rules of Practice and Procedure provide that dispositive motions are permitted on a limited record "to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition." The Board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline. Accordingly, the Board deemed County's motion to be a dispositive motion analogous to a Rule 12(b)(6) motion to dismiss under the Superior Court Civil Rules.

  Key Holdings: Jurisdiction, Standing, Petition for Review, Collateral Estoppel

2012 Cases

- ***Confederated Tribes and Bands of the Yakama Nation v. Kittitas County,* Case No. 12-1-0001**

- ***Five Mile Prairie Neighborhood Association and Futurewise v. Spokane County,* Case No. 12-1-0002**

- ***Douglas County Coalition for Responsible Government, Douglas Action Committee, and Futurewise v. Douglas County,* Case No. 12-1-0003**

Region 1: Eastern Washington Digest of Decisions by Key Holdings

Agricultural Lands

- ***Concerned Friends of Ferry County, et al. v. Ferry County,* Case No. 01-1-0019:** Ferry County's designation criteria for Agricultural Lands of Long-Term Commercial Significance do not comply with the requirements in RCW 36.70A.170 and RCW 36.70A.030 because the criteria do not refer to and do not consider statutory Factor 1 (not already characterized by urban growth) or Factor 2 (primarily devoted to commercial production of 13 enumerated agricultural products). *Eighth Compliance Order, December 16, 2011, pg. 16*

Innovative Zoning

- ***Leon S. Savaria v. Yakima County,* GMHB Case No. 11-1-0002:** Board holding RCW 36.70A.177 uses the word "may," thus which innovative zoning techniques to be used is within the County's discretion. *Order Granting Motion to Dismiss, May 4, 2011, pg. 3*

Collateral Estoppel

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 11-1-0003:** Collateral estoppel, or issue preclusion, requires (1) identical issues, (2) a final judgment on the merits, (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication, and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. For collateral estoppel to apply, the issue to be precluded must have been actually litigated and necessarily determined in a prior case. Petitioners cannot present any legal briefing or arguments at the Hearing on the Merits on issues that were previously litigated and determined in prior case. *Order on Motion for Summary Judgment, December 23, 2011*, pg. 8

Critical Areas

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 06-1-0003, coordinated with *Concerned Friends of Ferry County,* Case No. 97-1-0018:** There was no substantial evidence in the record to support a County finding that Best Available Science was included in designating the following types of Fish and Wildlife Habitat Conservation Areas: (1) areas where Endangered, Threatened, and Sensitive Species have a Primary Association, and (2) Habitats and Species of Local Importance. On remand, Ferry County should provide a reasoned justification for departing from Best Available Science in designating Fish and Wildlife Habitat Conservation Areas. *Compliance Order, December 1, 2011, page 16*

Critical Aquifer Recharge Areas

- ***Citizens for Good Governance v. Walla Walla County,* Case No. 09-1-0013:** The Board remanded to the County to achieve compliance on three issues: (1) Include the Best Available Science regarding horizontal permeability underlying the airport; and determine whether or not the aquifer contamination risk at the airport satisfies the GMA's standard of being a vulnerable aquifer -- as indicated by the combined effect of land uses and hydrogeologic conditions that contribute directly or indirectly to or facilitate contamination of groundwater; (2) Determine whether or not the Shallow Gravel Aquifer is vulnerable to contamination conveyed through

Zone 2 recharge areas; and if vulnerability is found, classify/designate Zone 2 recharge areas according to whether or not the Shallow Gravel Aquifer is vulnerable to contamination from identified Zone 2 recharge areas; (3) Either amend its regulations as to aquifer contamination threats from pre-existing non-conforming uses to reflect the inclusion of Best Available Science, or provide a reasoned justification for departing from the Best Available Science as to aquifer contamination threats from pre-existing non-conforming uses within CARAs. *Compliance Order April 5, 2012, page 27*

Definitions

- ***Leon S. Savaria v. Yakima County,* Case No. 11-1-0002:** RCW 36.70A.030 provides statutory definitions of various terms used in the GMA and as such, does not prescribe GMA requirements. Thus, an alleged violation of RCW 36.70A.030 cannot by itself constitute GMA non-compliance, without coupling the definition with another section of the GMA containing a requirement. *Order Granting Motion to Dismiss, May 4, 2011, pg. 2*

Internal Consistency

- ***KCC, et al v. Kittitas County,* Case No. 11-1-0001:** The GMA provides the Comprehensive Plan (CP) "shall be an internally consistent document and all elements shall be consistent with the future land use map", that development regulations must be "consistent with and implement the CP, and any "amendment of or revision to DRs shall be consistent with and implement the CP. The amendments were found to be inconsistent with the CP as they failed to satisfy the [CP] criteria for geographic expansion . . .did not satisfy the statutory LAMIRD criteria in RCW 36.70A.070(5)(d), and because they created internal plan inconsistencies and inconsistent development regulations contrary to RCW 36.70A.130(1)(d). *FDO (Partial), July 12, 2011, pg. 16*

Invalidity

- ***KCC, et al v. Kittitas County,* Case No. 11-1-0001:** The Board concluded the County's action would substantially interfere with fulfillment of GMA Planning Goals 2 (Reduce Sprawl), 5 (Economic Development), 10 (Environment), and 11 (Citizen participation and coordination) contained in RCW 36.70A.020. Moreover, there was compelling evidence in the record indicating a high risk for project vesting in this case, which would render GMA and SEPA planning procedures as ineffectual and moot. The Board issued a Determination of Invalidity as to portions of the Ordinance. *Corrected FDO (Partial) June 13, 2011, pg. 12; FDO (Partial) July 12, 2011, pg. 17*

- ***Concerned Friends of Ferry County, et al. v. Ferry County,* Case No. 01-1-0019:** The Board's invalidity authority is limited by statute to potential invalidation of comprehensive plans and development regulations. There is no statutory authority to apply invalidity directly to land. Accordingly, the Board declined to issue a determination of invalidity as to land. *Eighth Compliance Order, December 16, 2011, pg. 18*

Jurisdiction

- ***KCC, et al v. Kittitas County,* Case No. 11-1-0001*:*** [In addressing a challenge to the Board's SEPA jurisdiction] the Board found under *Spokane County v. EWGMHB, 160 Wn. App. 274 (2011),* the Court of Appeals considered the situation where a County acts *concurrently* to amend its CP and to rezone property. In *Spokane County,* the court held such a concurrent action was a "legislative" action as distinct from a "quasi-judicial" action, and the Board has exclusive subject matter jurisdiction over "legislative" actions such as amending a CP. Applying *Spokane County* to the facts in the present case, the Board has subject matter jurisdiction since it was a legislative action to *concurrently* amend the Kittitas County CP land use map (Rural to Commercial) and to rezone property (Ag 20 to Commercial Highway. *Corrected FDO (Partial), June 13, 2011, pg. 5; FDO (Partial), July 12, 2011, pg. 5*

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 11-1-0003:** To invoke the Board's jurisdiction to review compliance with the GMA, a party with standing must comply with the statute's procedural requirements: (1) file a petition for review within 60 days after publication; (2) allege noncompliance with requirements of the GMA; and (3) include a detailed statement of issues presented for resolution by the Board.

  Rules adopted by the Board to regulate proceedings are not jurisdictional, and jurisdiction does not depend on rule compliance. Dismissal of a case for failure to comply with the Board's rules of procedure under WAC 242-03-720(2) would be warranted when that failure essentially renders the action frivolous under RCW 36.70A.290(3). *Order on Motion for Summary Judgment, December 23, 2011*, pg. 4

Limited Areas of More Intensive Rural Development (LAMIRDs)

- ***KCC, et al v. Kittitas County,* Case No. 11-1-0001:** The County's expansion Ordinance contained no specific findings of fact or conclusions of law as to whether this Type III LAMIRD Expansion was "isolated," or "small in scale," or "consistent with rural character" as set forth in RCW 36.70A.070(5)(d)(iii). There was evidence in the record to support a finding/conclusion that Ordinance 2010-014 would not be isolated and would not be small scale. *FDO (Partial), July 12, 2011, pg. 10*

Petition for Review (PFR)

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 11-1-0003:** While it may always be possible to provide even greater detail in an issue statement, there must be a balance struck between specificity and conciseness. Issue statements must give reasonable notice of the scope of the review in a single sentence but cannot present actual legal arguments as that is done through much more detailed briefing and oral argument. Even if issue statements were lacking technical details, our Supreme Court has held that public policy favors the adjudication of controversies on their merits rather than their dismissal on technical procedural grounds. *Order on Motion for Summary Judgment, December 23, 2011*, pg. 4

Standing

- ***Concerned Friends of Ferry County and David L. Robinson v. Ferry County,* Case No. 11-1-0003:** Comment letters provided reasonable notice to the County that there were concerns about the designation and conservation of all three types of resource lands in Ferry County. Therefore, Petitioners' participation before the County was reasonably related to issues presented to the Board, and Petitioners had standing. *Order on Motion for Summary Judgment, December 23, 2011*, pg. 6

State Environmental Policy Act (SEPA)

- ***KCC, et al v. Kittitas County,* Case No. 11-1-0001:** In order to adopt a pre-existing SEPA document, an agency must follow three essential steps as set forth in RCW 43.21C.034 and WAC 197-11-630: (1) determine prior action and the new action have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography; (2) take official action to adopt the pre-existing SEPA document using the adoption form substantially as in WAC 197-11-465; and (3) provide a copy of the adopted SEPA document to accompany the current proposal submitted to the decision-maker. In this case, there was no evidence in the record Kittitas County complied with any of the three legally-prescribed steps to adopt a pre-existing SEPA document. There was also no evidence in the record Kittitas County made a Threshold Determination, and the DNS Threshold Determination contains no actual information on environmental effects. *Corrected FDO (Partial), June 13, 2011, pg. 10*

Region 2: Western Washington

Clallam • Clark • Island • Jefferson • Lewis • Mason • Pacific • San Juan • Skagit • Thurston • Whatcom

Region 2: Western Washington Table of Cases

2007 Cases

- ***Dry Creek Coalition and Futurewise v. Clallam County,* Case No. 07-2-0018c**
  [The Court of Appeals remanded and directed the Board to ascertain whether or not the State provided sufficient funding for a 2002 GMA amendment requiring inclusion of parks and recreation in jurisdictions' capital facilities elements. Provision of that funding was a condition precedent to the County's compliance with the statutory amendment.] The Board concluded the County had included parks and recreation in its CFP prior to the 2002 amendment of RCW 36.70A.070(2) and, furthermore, there was no evidence in the record that state funds were appropriated and distributed to the County during the applicable time period for the specific purpose of adding parks and recreation facilities to the County's CFP element. *Determination on Remand, December 15, 2011*. The Case was dismissed by Order dated June 1, 2012 pursuant to the Board's Determination on Remand and lapse of the appeal period.

2010 Cases

- ***Caitac, et al v. Whatcom County,* Case No. 10-2-0009c[4]**
  The Board issued an order extending the case for settlement purposes.

- ***Eugene Butler and Richard Battin v. Lewis County,* Case No. 10-2-0010**
  Petitioners challenged the County's actions which were designed, in part, to potentially allow for the location of a large, regional auction facility. Petitioners argued the type, size and scale of the proposed facility would not be compatible with the rural character of Lewis County, constituted urban growth and should have been considered using the Major Industrial Development process. The Board concluded "unique, regional commercial/industrial uses", including an auction facility, could be compatible with Lewis County's rural character, did not constitute urban growth and use of the MID process was optional. *(FDO, July 22, 2010)*

  Key Holdings: LAMIRDs, Major Industrial Developments, Rural Character

- ***Skagit D06, LLC v. City of Mount Vernon,* Case No. 10-2-0011**
  In a challenge to the City of Mount Vernon's adoption of Ordinances amending the City's Comprehensive Plan and Development Regulations to require annexation before the City extends sewer service and adopting several annexation policies, the Board found these amendments neither created a moratorium on development, nor otherwise violated the GMA.

  Key Holdings: Moratoria, Housing Element (Goal 4), Economic Development (Goal 5), Property Rights Element (Goal 6), Urban Services (Extension outside UGA)

- ***Friends of the San Juans v. San Juan County,* Case No. 10-2-0012**

[4] Case No. 10-2-0009c is the consolidation of Case Nos. 10-2-0001, 10-2-0002, 10-2-0003, 10-2-0004, 10-2-0005, 10-2-0006, 10-2-0007, 10-2-0008 and 10-2-0009

The primary issue was whether San Juan County's development regulation to designate, site, and permit Essential Public Facilities (EPFs) was contrary to the Growth Management Act. San Juan County argued its three-step process for updating the comprehensive plan, shoreline master program, and development regulations for essential public facilities ensured that all three were in compliance with GMA. The Board concluded the County's regulations did not protect critical areas or natural resource lands, did not provide sufficient criteria to site EPFs, and was inconsistent with the County comprehensive plan. Lastly, the Board set a precedent by invalidating sections of the Ordinance even though Petitioners did not seek invalidation in their issue statements. (*FDO, Oct. 12, 2010*)

Key Holdings: Essential Public Facilities, Critical Areas, Invalidity, Goal 8, Goal 10, Natural Resource Lands, Evidence

- ***The Port of Shelton v. City of Shelton, et al,* Case No. 10-2-0013**
  The Port, operator of a general aviation airport, alleged the City's Comprehensive Plan and Land Use Map amendments which potentially authorized residential development in the vicinity of the airfield would be incompatible with continuing airport operations. The Board concluded, based on the Record before it, the proposed residential use would result in incompatibility as envisioned by RCW 36.70.547. The Board further found incompatible uses by their very nature have the propensity to adversely impact EPFs by interfering with their continued operation, future expansion or improvement. Internal comprehensive plan inconsistencies were also found and the Board imposed invalidity. (*FDO, Oct. 27, 2010*)

  Thereafter, a Board majority found the City had failed to achieve compliance, stating the City's compliance action was based on a fundamentally different approach to determining compatibility with the airport. The majority found the City was obligated to engage in further consultation with WSDOT and the Port in accordance with RCW 36.70.547. (*Compliance Order, July 13, 2011*) The Board's Compliance decision was reversed by the Superior Court and an Order of Dismissal was entered. (*Order of Dismissal, May 30, 2012*)

  Key Holdings: Airports, Amicus Curiae, Public Participation

- ***David Stalheim, et al v. Whatcom County,* Case No. 10-2-0016c[5]**
  Petitioners challenged Whatcom County's adoption of a comprehensive plan amendment extending the Ferndale and Birch Bay Urban Growth Areas (UGAs). The Board found in sizing the Ferndale UGA the County improperly relied both on a market supply factor and "local circumstances". The market supply factor already included and accounted for "local circumstances", resulting in an over-estimate of residential land needs and an over-sized UGA. Whatcom County failed to be guided by RCW 36.70A.020(1) and (12) as it approved the Ferndale UGA in the absence of adopted fire and sewer plans. The absence of capital facilities plans for fire and wastewater were found to be a violation of RCW 36.70A.110(3) as there were not "adequate existing public facility and service capacities to serve such development", the

[5] Case No. 10-2-0016c is the consolidation of Case Nos. 10-2-0014, 10-2-0015 and 10-2-0016

approval created an inconsistency between the UGA Reserve Criteria (Adequate Public Facilities and Services) and the Comprehensive Plan map, in violation of RCW 36.70A.070 (preamble) and, the absence of adequate capital facilities plans for fire and wastewater resulted in a violation of RCW 36.70A.070(3).

Key Holdings: Urban Growth Areas (UGAs), State Environmental Policy Act (SEPA), Urban Services

- ***City of Oak Harbor v. Island County,* Case No. 10-2-0017**
  Petitioner City of Oak Harbor challenged Island County's review of urban growth areas based on a twenty-year population forecast. The County conceded it had not met a September 28, 2008 deadline to complete this work and the Board issued an order finding non-compliance under RCW 36.70A.130. The County then achieved compliance when it adopted two ordinances completing the 2005 county-wide population projection and UGA boundary review. The ordinances updated the County's Comprehensive Plan text, future land use map, and the zoning atlas. The City of Oak Harbor filed facial objections and declared the City would file another Petition for Review challenging the County's adoption of the ordinances. The Board found the County in compliance, but it recognized that the substantive challenged actions would be brought forward through a new Petition for Review. A new Petition was filed and became Case No. 11-2-0005. The substantive matters were challenged by the City.

- ***Weyerhaeuser Company, et al v. Thurston County,* Case No. 10-2-0020c[6]**
  Quarry and mining site owners challenged County's adoption of mineral resource land designation criteria. Addressing both designation and conservation of mineral resource lands, including the appropriate time to apply newly adopted designation criteria, the Board found noncompliance in several respects and remanded. (*Amended Final Decision and Order, June 17, 2011*) The Board then found the County had achieved compliance with RCW 36.70A.172 through its inclusion of Best Available Science but had failed to achieve compliance with RCW 36.70A.170(1) and (2) as its adopted criteria: 1.) precluded dual designation of forest lands and mineral resource lands of long-term commercial significance without first determining whether they were incompatible and without ascertaining which of the incompatible natural resource lands had the greater long-term commercial significance, and; 2.) precluded dual designation of mineral resource lands of long-term commercial significance and critical areas. (*Compliance Order, July 17, 2012*)

  Key Holdings: Critical Areas, Internal Consistency, Invalidity, Jurisdiction, Mineral Resource Lands, Natural Resource Lands, Property Rights, Public Participation, Minimum Guidelines

- ***Futurewise v. Pacific County,* Case No. 10-2-0021**
  Futurewise challenged Pacific County's adoption of comprehensive plan amendments arguing the update failed to include and properly designate and conserve agricultural lands of long-term commercial significance; properly size urban growth areas; and properly designate LAMIRDs.

[6] Case No. 10-2-0020c is the consolidation of Case Nos. 10-2-0018, 10-2-0019 and 10-2-0020c

The Board found there was enough vacant, buildable land within the municipal boundaries of each of the cities to accommodate future growth. (*FDO, June 22, 2011*) The County was subsequently found in compliance. (*Compliance Order, August 8, 2012*)

Key Holdings: Amendment, Urban Growth Areas (UGAs), Market Factor

2011 Cases

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001**
  Petitioner challenged a Whatcom County ordinance establishing a six-month interim, one-time extension for land use development permits that would otherwise expire. The County challenged the Board's jurisdiction as the ordinance expired one day before the HOM. The Board held it had jurisdiction based on five Supreme Court criteria, the Ordinance failed to be guided by Goal 10 (environment), failed to protect critical areas and the environmental review of the proposal did not incorporate SEPA. The Board found inconsistency between the comprehensive plan and development regulations and remanded the matter to the County. A determination of invalidity was entered. *(FDO, Aug. 2, 2011)*

  Upon compliance, the Board determined the County addressed the findings of noncompliance and the case was closed (Compliance Order, June 21, 2012). Petitioner moved for reconsideration alleging the County failed to consider BAS or other regulations adopted since the permits were issued. Petitioner claimed permits extended by the County were still out of compliance with the GMA. The Board denied the motion finding it could not require the County to conduct BAS threshold determinations or apply other more recent development regulations to expired permits, or those set to expire. The Board expressed serious concerns about the County's actions to extend permits, but remedies for those permits were not available to the Board. *(Order Denying Motion for Reconsideration, July 17, 2012, page 4)*

  Key Holdings: Environment (Goal 10), Internal Consistency, Invalidity, Jurisdiction, Moratoria, Public Participation, SEPA, Permits

- ***C. Dean Martin v. Whatcom County,* Case No. 11-2-0002**
  Petitioner challenged Whatcom County's rezone of approximately 770 acres from R10 (Rural One Unit per 10 Acres) to R5 (Rural One Unit per 5 Acres). Petitioner alleged the rezones: failed to protect agricultural land of long term commercial significance; were inconsistent with the County's Comprehensive Plan; violated public participation provisions of the GMA; and violated SEPA. The Board upheld the rezones, determining that the R5 zone was not demonstrated to impair ALLTCS. The Board likewise failed to find public participation or SEPA violations. However, the Board found the rezones were inconsistent with County Plan Policy 2K-1 which indicated the County should "Limit land in one-hundred year floodplains to low-intensity land uses such as open space corridors or agriculture." *(FDO, July 22, 2011)*

  Key Holdings: Agricultural Lands, External Consistency, Mootness, Public Participation, SEPA

- ***Ronald N. Nilson, Friends of Mineral Lake, Roberta Church and Eugene Butler v. Lewis County,* Case No. 11-2-0003**
  Petitioners challenged comprehensive plan and development regulation amendments rezoning RCW 36.70A.170 designated natural resource forest land from a classification/designation of Forest Lands of Long Term Commercial Significance (1du/80 acres) to one of Forest Lands of Local Importance (1 du/20 acres). The Board found the County action resulted in plan and zoning map inconsistencies as similarly situated properties were classified and designated differently. Invalidity was denied. *(Final Decision and Order, August 31, 2011)*

  Respondent and Intervenor's motions for reconsideration were denied. *(Order Denying Motions for Reconsideration, October 3, 2011)*

  Key Holdings: Inconsistency, Natural Resource Lands, Settlement

- ***City of Oak Harbor v. Island County,* Case No. 11-2-0004**
  Petitioner challenged timing of comprehensive plan amendments and consistency between sub-area plans and comprehensive plans. The County responded these issues were not ripe for review and moved to dismiss the case. The Board initially considered whether granting the County's Motion would preclude subsequent jurisdiction over the County's action and whether such a ruling would bar future petitions challenging the substance of the ordinance. The Board found the County's preliminary action was merely a step toward completing work to design an urban area in Southern Whidbey Island. It concluded the challenge was premature and dismissed the case. *(Order Granting Motion to Dismiss, July 8, 2011, pages 5-6)*

  Key Holdings: Sub-Area Plans

- ***City of Oak Harbor v. Island County,* Case No. 11-2-0005**
  Petitioner City of Oak Harbor challenged Island County's amendments to population projections and urban growth area boundaries. The Board concluded the City failed to demonstrate the County's action were clearly erroneous and in violation of the GMA. *(Final Order and Decision, December 12, 2011)* Oak Harbor appealed the Board's decision to Thurston Superior Court on March 22, 2012. (Court Case No. 12-2-00032-5)

  Key Holdings: Comprehensive Plans, Public Participation, Urban Growth Areas (UGAs)

- ***City of Bellingham v. Whatcom County,* Case No. 11-2-0006**
  Bellingham requested the Board dismiss their appeal. In its motion, the City indicated the terms and conditions of a settlement agreement between itand Respondent Whatcom County had been satisfied. The Board dismissed the case. *(Order Granting Motion to Voluntarily Dismiss, June 15, 2012)*

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c**[7]
  The County adopted Comprehensive Plan and development regulation amendments pertaining to Limited Areas of More Intensive Rural Development (LAMIRDs) and rural development.

  The Board found that in revising its rural element, the County failed to include adequate measures within the Rural Element to protect rural character, its development regulations for LAMIRDs failed to provide that the development permitted in LAMIRDs would be based on the existing area or existing use as of July 1, 1990 and those provisions were found to be invalid. Some of the LAMIRDs were oversized or improperly established adjacent to a UGA and they were found to be invalid.

  The Board found the County created an inconsistency between the rural area population allocation allowed by the County's development regulations and the allocation provided for in the Comprehensive Plan, the County failed to properly coordinate with the City of Bellingham and other service providers with respect to water service and fire protection services required by the new rural land use provisions, and certain provisions were inconsistent with water quality protections for the Lake Whatcom Watershed.

  Key Holdings: Rural Character, LAMIRDs, Rural Densities, Rural Element, Interjurisdictional Coordination, Comprehensive Plan, Burden of Proof, Jurisdiction

- ***John Peranzi, Vallie Jo Fry and Tony and Isobel Cairone v. City of Olympia,* Case No. 11-2-0011**
  The Petitioners challenged the City of Olympia's adoption of an ordinance which amended development regulations to authorize a permanent "County Homeless Encampment" as a conditional use on property within the City's Light Industrial Zoning District. The Board found allowance of the homeless encampment in an industrial district was not consistent with and failed to implement the comprehensive plan. *(FDO, May 4, 2012)* During the compliance period Petitioners asserted RCW 36.70A.130(2) precluded the City from amending its Comprehensive Plan to attain compliance as they had only challenged the adopted development regulations. The City requested clarification from the Board. *(Order on Motion for Clarification, June 21, 2012)*

  Key Holdings: Compliance

2012 Cases

- ***Futurewise v. Whatcom County,* Case No. 12-2-0001**

- ***Futurewise and City of Bellingham v. Whatcom County,* Case No. 12-2-0002c**[8]

- ***Futurewise and City of Bellingham v. Whatcom County and Caitac USA Corp, Intervenor,* Case No. 12-2-0003c**[9]

[7] Case No. 11-2-0010c is the consolidation of Case Nos. 11-2-0007, 11-2-0008, 11-2-0009 and 11-2-0010
[8] Case No. 12-2-0002c is the consolidation of Case Nos. 12-2-0001 and 12-2-0002

The Board issued an order extending the case for settlement purposes.

- ***Alvin Alexanderson, Dragonslayer, Inc. and Michels Development, LLC v. City of La Center,* Case No. 12-2-0004**
  Petitioners challenged a City Resolution authorizing extension of sewer service to property on which the Cowlitz Indian Tribe proposed to build a casino resort, recreational vehicle park and other tribal facilities on 150 acres approved by the United States Department of Interior to be taken into trust on behalf of the Tribe for reservation purposes. The Board addressed a jurisdictional challenge, framing the issue as follows: Whether the Resolution has the effect of amending the City's Comprehensive Plan and/or its development regulations? The Board found the analysis of the Court in *Alexanderson v. Clark County*, 135 Wn. App. 541, dictated the Board's finding that it had jurisdiction as the Resolution constituted a *de facto* Comprehensive Plan amendment. *(Order On Dispositive Motion, May 4, 2012)* The Board subsequently dismissed the matter. *(Order of Dismissal on Stipulation, July 9, 2012)*

  Key Holdings: Comprehensive Plan

- ***Sawarne Lumber Company, Ltd. and Ferndale Town Center, LLC v. City of Ferndale,* Case No. 12-2-0005**
  See Case No. 12-2-0010c

- ***Haggen, Inc. and Briar Development Company, LLP v. City of Ferndale,* Case No. 12-2-0006c[10]**
  See Case No. 12-2-0010c

- ***Concrete Nor'West and 4M2K, LLC v. Whatcom County,* Case No. 12-2-0007**
  Petitioners challenged the County's denial of requested comprehensive plan and zoning amendments which would include Petitioners' property in a Mineral Resource Overlay, claiming the County failed to follow its comprehensive plan criteria and process for a MRL designation change.

- ***Sawarne Lumber Company, Ltd. and Ferndale Town Center, LLC v. City of Ferndale,* Case No. 12-2-0008**
  See Case No. 12-2-0010c

- ***Sawarne Lumber Company, Ltd. and Ferndale Town Center, LLC v. City of Ferndale,* Case No. 12-2-0009c[11]**
  See Case No. 12-2-0010c

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[9] Case No. 12-2-0003c is the consolidation of Case Nos. 12-2-0002c and 12-2-0003
[10] Case No. 12-2-0006c was the consolidation of Case Nos. 12-2-0005 and 12-2-0006
[11] Case No. 12-2-0009c was the consolidation of Case Nos. 12-2-0006c, 12-2-0008, and 12-2-0009

- ***Sawarne Lumber Company, Ltd. and Ferndale Town Center, LLC v. City of Ferndale,*** **Case No. 12-2-0010c**[12]

- ***Thurston County Farm Bureau v. Thurston County,*** **Case No. 12-2-0011**

- ***Governors Point Development Company, Triple R. Residential Construction, Inc., and The Sahlin Family v. Whatcom County,*** **Case No. 12-2-0012**

- ***Eric Hirst, Laura Leigh Brakke, Wendy Harris, David Stalheim, and Futurewise v. Whatcom County,*** **Case No. 12-2-0013**

- ***David Carlsen v. City of Bellingham,*** **Case No. 12-2-0014**

[12] Case No. 12-2-0010c is the final consolidation of Case Nos. 12-2-0006c, 12-2-0009c, and 12-2-0010

Region 2: Western Washington Digest of Decisions by Key Holdings

Agricultural Lands

- ***Martin v. Whatcom County*, Case No. 11-2-0002:** The County fulfilled its obligation to designate resource land including ALLTCS in 1997, and the adequacy of these designations is not before the Board. Its development regulations adopted to protect agricultural lands were upheld and those provisions both then and now applied to R5 and R10 lands meeting the criteria of the ordinance. The rezone in this case did not amend GMA compliant APO development regulations originally adopted in 1997 to protect agriculture. Those provisions apply to the area at issue when zoned R10 and they continue to apply now that the area is zoned R5. *FDO, July 22, 2011, pg. 10*

Airports

- ***Port of Shelton v. City of Shelton*, Case No. 10-2-0013:** [As to consideration of WA Department of Transportation – Aviation comments] As an agency division within the Department of Transportation, WSDOT Aviation has been granted general supervision over aeronautics in this state. It has developed specialized knowledge and thus its opinions should be given substantial weight as the Board stated in the FDO. *Order on Reconsideration, Dec. 9, 2010, pg. 8*

  [In addressing Incompatible Uses – RCW 36.70A.510; 36.70.547 - the Board stated that it] agrees that no "bright line" residential density limit should be applied within Sanderson Field's Zone 6, or to any other airport's safety zones for that matter … a "one size does not fit all"; rather, the individual facts applicable to an airport, proposed uses in that airport's vicinity, and the record developed in each case are determinative. *FDO, Oct. 27, 2010, pg. 10*

  RCW 36.70.547 requires cities and counties to "discourage the siting of incompatible uses." The term "incompatible" was not defined by the Legislature, but its common meaning refers to something that cannot subsist with something else. In terms of land uses and airport operations, the Board sees two types of potential incompatibility: those which arise or are created by impacts of the land use itself on airport operations and those which may arise or be created by the operation of the airport and affect surrounding uses. An example of land uses which could affect airport operations, including aircraft safety, would be the height or location of buildings, transmission lines, and the like. An example of airport activities which could negatively impact adjacent land uses is excessive noise. *FDO, Oct. 27, 2010, pgs. 12-13*

  It is not the role of this Board to determine at what specific DNL sound level compatibility with the continued operation of Sanderson Field would occur in relationship to the Property. However, it is appropriate for the Board to observe and find that incompatibility, as envisioned by RCW 36.70.547 and as applied to the Property on the Record before the Board, is a sound level below that which is harmful to human health... Consequently, the Board finds that the 65 DNL level cannot be considered to be per se compatible with residential uses of two units per gross acre on the Property. *FDO, Oct. 27, 2010, pgs. 19-20*

  The Board can only conclude from the Record that the 65 DNL sound level is that which is

harmful to human health. Sound levels resulting in negative impacts to human health are greater than those that would result in incompatibility as envisioned by RCW 36.70.547. That conclusion is reached after reviewing the entire record and determining there is a lack of substantial evidence to support the City's conclusion regarding compatibility. *FDO, Oct. 27, 2010, pgs. 21-22*

Amendment

- ***Futurewise v. Pacific County,* Case No. 10-2-0021:** While Petitioner took the position that, because the County adopted the amendments to its Comprehensive Plan by repealing and replacing the prior Plan in its entirety, all aspects of the newly adopted plan are subject to challenge the Board found that this would be elevating form over substance, as the revisions adopted by Resolution No. 2010-036 were relatively few in number and a new Plan was adopted for purposes of administrative efficiency. *FDO, June 22, 2011, pg. 5*

  The update was intended, and served, as the County's mandated Comprehensive Plan update as required by RCW 36.70A.130. The County had not amended its designation of, or policies and regulatory standards pertaining to, Agricultural Lands of Long Term commercial Significance (ALLTCS) after the initial adoption of Pacific County Ordinance No. 147 in 1987, and the adoption of the initial GMA Pacific County Comprehensive Plan in 1998. A party may challenge a county's failure to revise a comprehensive plan only with respect to those provisions that are directly affected by new or recently amended GMA provision. But an annual update "creates no 'open season' for challenges previously decided or time-barred." Therefore, the scope of permissible challenges in this appeal was limited to those areas amended by the County or affected by new or recently amended GMA provisions. *FDO, June 22, 2011, pg. 5*

  Where there have been no changes in the Plan that adopt new classification criteria but at most, the amendments recited the statutory requirements of RCW 36.70A.170 and *make reference* to WAC 365-190-050 which contains language pertaining to the designation of ALLTCS, such references cannot be read as adopting new designation standards. *FDO, June 22, 2011, pgs. 9-10*

Amicus Curiae

- ***Port of Shelton v. City of Shelton*, Case No. 10-2-0013:** [Amicus] argument shall be limited solely to the issues before the Board in this proceeding. That is, the Board will only consider the legal arguments raised by [Amicus] as they relate to the issues now before the Board, not argument related to issues beyond the record. *Order Granting Status as Amicus Curiae, Sept. 9, 2010*

Burden of Proof

- ***Governors Point Development Company, et al v. Whatcom County, Case No. 11-2-0010c:*** [In considering measures to protect rural character] the County asserts it need not respond to academic studies which may not be germane to local circumstances. The Board finds it need not consider non-local studies but cannot ignore current [site-specific] authoritative reports in

the record [concluding petitioners carried their burden of proof with multiple current local reports.] *FDO, January 9, 2012, pg. 43.*

Compliance

- ***John Peranzi, Vallie Jo Fry and Tony and Isobel Cairone v. City of Olympia,* Case No. 11-2-0011:** [In response to the argument RCW 36.70A.130(2)(b) did not provide the City with an exemption from the requirement of once-a-year comprehensive plan amendments, the Board found the City was not precluded from amending its comprehensive plan to achieve compliance as that exception applied only to comprehensive plan amendments, not development regulations] The exception was provided by the Legislature to avoid the conundrum the City would face if the Board's order found comprehensive plan violations. If the Board had done so, the exception would allow the City to achieve compliance within the time allotted by the Board pursuant to RCW 36.70A.300(3). In this instance, the violation did not involve challenges to comprehensive plan provisions but rather to development regulations. Therefore, the Legislature needed to provide no exception. *Order on Motion for Clarification, June 21, 2012, pgs. 3, 4*

Comprehensive Plan

- ***City of Oak Harbor v. Island County,* Case No. 11-2-0005:** The Board held the County did not need to change its planning horizon because the County had an unforeseen six-year delay due to appeals of its SEPA process. Re-setting the time period would alter data collection and the need to comply with GMA deadlines. The Board held the County was not required to expand its urban growth boundary because it had analyzed population projections, had conducted a market factor analysis and land capacity analysis before making its decision. After the analysis the County decided to expand the UGA by 18 acres instead of 180 acres as requested by the City of Oak Harbor. In regards to the market factor analysis, the Board agreed the County laid out a clear rationale and used its discretion to reject a 126% market factor analysis because this percentage was larger than past MFAs accepted by the Board. *(Final Decision and Order, December 12, 2011*, pages 8-12; 32-43*)*

- ***Governors Point Development Company et al. v. Whatcom County*, Case No. 11-2-0010c**: The *Kittitas County* case does not result in a mandate that every isolated Comprehensive Plan policy must be devoid of conditional language and contain only directional provisions but, instead, the Comprehensive Plan must be considered in its entirety to determine if there is compliance with the GMA. The word "should" is appropriate *so long as* the Comprehensive Plan provides a framework that ensures compliance with the GMA and provides measures by which a jurisdiction will be held accountable. *FDO, January 9, 2012*, pg. 29

- ***Alvin Alexanderson, Dragonslayer, Inc. and Michels Development, LLC v. City of La Center,* Case No. 12-2-0004:** The Board concludes that because the Resolution explicitly provides for sewer service in violation of the Comprehensive Plan's annexation requirement, the Resolution constitutes a *de facto* Comprehensive Plan amendment. As the *Alexanderson* Court stated: "What was previously forbidden is now allowed" and, for the Board to find to the contrary would be "to exalt form over function". *Order on Dispositive Motion, May 4, 2012*, pg. 13

Critical Areas

- ***Friends of the San Juans v. San Juan County*, Case 10-2-0012:** When the County used a conditional use permit process, subject to hearing examiner review, the Board concluded that the hearing examiner may impose "reasonable" conditions of approval that do not render the EPF impractical. The Board has decided numerous cases giving discretion to an administrator. In this case, however, the Board decided the hearing examiner did not have clear guidance about what would constitute "reasonable" conditions for an EPF. Without clearer guidance about what constitutes "reasonable", and without requirements to fully mitigate impacts, the Board found the County's regulation on siting EPFs in critical areas lacked guidance on mitigation, Best Available Science, and failed to protect critical area functions and values. Critical areas are the "natural infrastructure" and the foundation of a landscape and cannot be overruled or "trumped" by siting EPFs. *FDO, Oct. 12, 2010, pg. 24*

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c**: WAC 365-190-040(7) provides that the " . . . designation process may result in critical area designations that overlay . . . natural resource land classifications" and that " . . . if a critical area designation overlies a natural resource land designation, both designations apply". Additionally, WAC 365-190-020(7) provides " . . . that critical areas designations overlay other land uses including designated natural resource lands. For example, if both critical area and natural resource land use designations apply to a given parcel or a portion of a parcel, both or all designations must be made". Precluding designation of mineral resource sites that contain CARA 1, class I or 2 wetlands (and their buffers), certain habitat and species areas (and their buffers), as well as 100 year floodplains and geologically sensitive areas, may in fact be justifiable. However, the record fails to provide that justification. *AFDO, June 17, 2011, pg. 29*

  [The challenged action, which precluded the designation of Mineral Resource Land within certain critical areas affects critical areas regulation. RCW 36.70A.172 mandates the application of BAS when "protecting critical areas," but the County failed to utilize BAS.] *AFDO, June 17, 2011, pg. 51*

  The Board conclude[d] that the exclusionary criteria designed to protect critical areas included in the Resolution's Comprehensive Plan violate RCW 36.70A.170's mandate to designate MRL of long term commercial significance and critical areas and the WAC Minimum Guidelines which provide that if such designations overlap, both designations apply. *(Compliance Order, July 17, 2012)* pg. 26

Economic Development (Goal 5)

- ***Skagit D06 v. Skagit County*, Case No. 10-2-0011:** The Board does not find a policy that delays extension of sewer service to the periphery of the UGA until annexation violates Goal 5. *FDO, August 4, 2010, pg. 14*

Environment (Goal 10)

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** [The Board considered a six-month interim, one-time extension ordinance for land use development permits that would otherwise expire.] Applications to be renewed under the Ordinance dated from the 1990's into early 2000. The Board found the Ordinance allowed out-of-date development standards to stay in effect without applying the critical areas assessment required by the County's current codes [which incorporate RCW 36.70A.172 requirements for Best Available Science in both the CAO and SMP]. The Board found the . . . Ordinance failed to protect critical areas. Finally, the Board found the County was not guided by GMA Goal 10 due to its failure to incorporate BAS. *FDO, Aug. 2, 2011, pg. 12*

Essential Public Facilities (EPFs)

- ***Friends of the San Juans v. San Juan County*, Case 10-2-0012:** The GMA definition section does not define EPFs. Rather, in RCW 36.70A.200, the Legislature created parameters for EPFs that are "those facilities that are typically difficult to site". This GMA provision provides a non-exclusive listing of types of facilities that can be EPFs – airports, state education facilities and state/regional transportation facilities [RCW 47.06.140], state/local correctional facilities, solid waste handling facilities, and in-patient facilities. Further guidance on how to identify and site EPFs is in WAC 365-196-550. *FDO, Oct. 12, 2010, pg. 8*

Evidence

- ***Friends of the San Juans v. San Juan County*, Case 10-2-0012:** Because the Board's review is limited to the record before the County during the decision making process, the Board does not generally permit supplementation of the record with exhibits produced after the adoption of the challenged ordinance. *Order on Motion to Supplement, July 8, 2010, pg. 2*

External Consistency

- ***Martin v. Whatcom County*, Case No. 11-2-0002:** In analyzing whether there is a lack of consistency between a plan provision and a development regulation, arising to a violation of the GMA, this Board has held that such a violation results if the development regulations preclude attainment of planning goals and policies. Here, County staff correctly concluded that: "Rezoning the subject areas to R(5) would provide for a greater intensity of land use and further subdivisions where divisions are currently prohibited. Rezoning these properties would be in direct conflict with Policy 2K-1." The Board agrees that, at least as to the 92 of the 770 acres rezoned that are in the floodplain, a doubling of the density *encourages* development in the floodplain and directly conflicts with the policy to limit land in one-hundred year floodplains to low-intensity uses such as open space corridors or agriculture. The County argues that in areas outside of UGAs that are not suitable for agricultural or other resource land designation, such as this area in Birch Bay, the only remaining use is rural zoning, and both the R5 and R10 zones allow for the same low intensity uses. *FDO, July 22, 2011, pg. 17*

Goals

Goal 8: Natural resource industries (*See* ***Natural Resource Lands***)

- ***Friends of the San Juans v. San Juan County*, Case 10-2-0012:** The Board determined the County substantially interfered with Goal 8 because natural resource lands would be developed for an EPF and would thereby convert that land to a non-resource use. The natural resource land would thus not be available for agricultural and forestry. The lack of any siting limitations to conserve the most productive land and prevent conflicting uses also adversely impacts the continued operation of the natural resource industry. If invalidity is not imposed regarding Goal 8, San Juan County could allow development which has the potential for foreclosing the proper application of the GMA's natural resource lands and critical areas provisions. *FDO, Oct. 12, 2010, pg. 37*

Goal 10: Environment (*See* ***Environment***)

- ***Friends of the San Juans v. San Juan County*, Case 10-2-0012:** Substantial interference with Goal 10 resulted because the development of an EPF is not required to fully mitigate for its impacts, thereby allowing environmental degradation. By permitting EPFs in areas which serve important environmental functions, these functions would be lost if the area is developed. If invalidity is not imposed regarding Goal 10, San Juan County could allow development which has the potential for foreclosing the proper application of the GMA's natural resource lands and critical areas provisions. *FDO, Oct. 12, 2010, pg. 37*

Housing Element (Goal 4)

- ***Skagit D06 v. Skagit County*, Case No. 10-2-0011:** Goal 4 seeks to ensure not only housing affordable to all economic sectors but also a variety of residential densities and types. The Board does not find that refusing to extend sewer service to an area outside the city limits thwarts Goal 4. Properties on the periphery of the UGA may not be developed until late in the 20 year planning period, but, once sewer is extended, more intensive levels of development can occur. *FDO, Aug. 4, 2010, pg.13*

Inconsistency

- ***Nilson et al v. Lewis County,* Case No. 11-2-0003:** . . . an inconsistent interpretation of [a] Comprehensive Plan and LCC phrase . . . , in and of itself, is not an issue within the Board's jurisdiction. The Board's jurisdictional purview is limited to consideration of the results of such an "inconsistent" interpretation. Has that interpretation, for example, resulted in an internal Comprehensive Plan (which includes the Comprehensive Plan Land Use Map) inconsistency in violation of RCW 36.70A.070 (preamble)?" (*Final Decision and Order, August 31, 2011*) pg. 15

  [An inconsistent interpretation of designation criteria resulted] in " . . . an inconsistent Comprehensive Plan Land Use Map and an inconsistent zoning map, in violation of RCW 36.70A.070 (preamble) and RCW 36.70A.130(1)(d) [as] . . . similarly situated properties [were] designated and zoned differently on both the Comprehensive Plan Land Use Map and the zoning map. (*Final Decision and Order, August 31, 2011*) pg. 20

Interjurisdictional Coordination

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c:** In designation of LAMIRDs, the GMA [RCW 36.70A.070(5)(d)(iv)] requires a County to "address the ability to provide public facilities and services…" When a County's land use plans rely on other agencies as providers of public services, those agency plans must be consulted. The County should ascertain "that the service provider should have the capacity to make adequate service available to the area. *FDO, January 9, 2012, pg. 141*

Internal Consistency

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c:** [In dismissing claims based on 36.70A.070, the Board held this statute does not support a challenge to development regulations.] RCW 36.70A.070 requires the internal consistency of comprehensive plan policies, not consistency between a comprehensive plan and development regulations. *AFDO, June 17, 2011, pgs. 14-15*

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** [The Board considered a six-month interim, one-time extension ordinance for land use development permits that would otherwise expire.] The Board found an inconsistency between Comprehensive Plan Action Item 58,… which requires the County to amend its CAO consistent with RCW 36.70A.172 (the BAS application requirement) to preserve or enhance anadromous fisheries, [and] the Ordinance, which included amendments to the CAO, [but] was adopted without application of BAS. *FDO, Aug. 2, 2011, pg. 17*

Invalidity

- **Friends of the San Juans v. San Juan County, Case 10-2-0012:** The Board overruled its long-standing precedent that a petitioner needed to present invalidity as an issue statement within its Petition for Review. The Board concluded invalidity is a remedy. Nothing in the GMA obligates a Petitioner to frame invalidity as an issue. In overruling prior holdings, the Board does not discount the foundation for the Board's historic position in regards to invalidity as articulated in *Citizens for Mt. Vernon* - the burden of demonstrating the challenged action substantially interferes with the fulfillment of the GMA's goals is still on the Petitioner. Therefore, although the Board will prospectively no longer require invalidity to be set forth as an issue within a PFR, this Board does require that a petitioner expressly request invalidity as a form of relief within the PFR and support that request within the briefing. *FDO, Oct. 12, 2010, pgs. 34, 35*

- ***Weyerhaeuser, et al v. Thurston County*, Case No. 10-2-0020c**: [In denying a Determination of Invalidity, the Board stated] Invalidity is a discretionary remedy available to the Board when it determines the continued validity of the challenged legislative enactment would substantially interfere with the fulfillment of the GMA goals. Although the Board concluded Thurston County's actions were not guided by Goal 8, this does not inevitably equate to substantial interference. Nothing was presented to the Board that during the pendency of the compliance

period, mineral lands of long-term significance would be adversely impacted so as to result in a permanent loss of those minerals for future extraction thereby substantially interfering with the maintenance and enhancement of the industry. In addition, nothing was presented to the Board that the demand for mineral resources in and from Thurston County could not be satisfied by the mines currently in operation until such a time as the County adopts compliant legislation … *the basis of Weyerhaeuser's arguments results in the County's actions substantially interfering with the fulfillment of Weyerhaeuser's business goals, not the GMA's. *AFDO, June 17, 2011, pg. 60-61*

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** The Board concluded the County violated RCW 36.70A.060(2) and RCW 36.70A.480 as the Ordinance failed to incorporate Best Available Science and failed to comply with RCW 43.21C.030 (2). . . [Board invalidated the Ordinance based on Goal 10.] *FDO, Aug. 2, 2011, pg. 27*

Jurisdiction

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c**: RCW 36.70.430 is a provision of the [Planning Enabling Act] PEA. … The Board has not been granted jurisdiction to determine compliance with the PEA. *AFDO, June 17, 2011, pg. 9*

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** [In addressing a challenge to the Board's jurisdiction based on expiration of an interim ordinance which purported to remain in effect until March 1, 2012 notwithstanding the fact it "expired" on June 19, 2011] the Board found under the *Westerman* test the appeal was not moot: since the ordinance modified development regulations [it]was of a "public nature"; the decision provided future guidance to public officers in local jurisdictions who may be considering adopting temporary measures with extended effectiveness dates and the situation may recur if the County decided to extend the "one-time economic hardship" ordinance; there was a genuine level of adverseness; the Ordinance was no longer in effect (but the policy was still being implemented) [and] absent exercise of the Board's jurisdiction, the issue would "escape review." *FDO, Aug. 2, 2011, pg. 7*

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c:** Where Whatcom County has not chosen to be governed by the Planning Enabling Act and has not adopted the public participation requirement of the PEA [as its GMA comprehensive plan adoption process], the Board has no jurisdiction to consider allegations that Whatcom County violated the Planning Enabling Act. *FDO, January 9, 2012, pgs 21, 22*

Limited Areas of More Intensive Rural Development (LAMIRDs)

- ***Eugene Butler and Richard Battin v. Lewis County,* Case No. 10-2-0010:** Rural development is allowable throughout those areas which have been designated as rural by Lewis County as well as within LAMIRDs. However, for LAMIRDs, such development is governed, in part, by different rules. *FDO, July 22, 2010, pg. 10*

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c:** The common ownership of contiguous lands is not a statutorily established basis for inclusion of lands within a LAMIRD. *FDO, January 9, 2012, pg. 52*

  Although the GMA does not define "area", a common sense understanding of the term would lead to the conclusion that it could include a mere portion of a large parcel. Failure to use the term "area" as used throughout RCW 36.70A.070(5)(d)'s description of LAMIRDs could suggest the inclusion of a parcel, only a small portion of which met the statutory criteria for LAMIRD inclusion, resulting in an oversized LAMIRD. *FDO, January 9, 2012, pg. 55*

  In the context of the requirements of RCW 36.70A.070(5)(d)(iii), the phrase "*should be separated*" in reference to non-residential uses, fails to sufficiently ensure that certain uses in Type III LAMIRDs are isolated as required by the Act. *FDO, January 9, 2012, pg. 59*

  While it is not necessary for plan provisions that establish LAMIRDs to use the exact same words as RCW 36.70A.070(5)(d), plan provisions for establishing LAMIRDs must utilize the same *criteria* that are set out in the Act. *FDO, January 9, 2012, Pgs. 60-61*

  The fundamental problem of the County's approach is that its development regulations fail to limit LAMIRDs in the manner required by the GMA. Rather than determining the size, scale, use and intensity of uses that *existed in a particular area* to be designated as a LAMIRD, and limiting future development in the LAMIRD on that basis, the County instead allows uses [and size, scale, intensity] in a particular LAMIRD based on the zoning designation applied to a LAMIRD, regardless of whether those uses were present in that LAMIRD on July 1, 1990. *FDO, January 9, 2012, pg. 92*

  The presence of a water or sewer line on a property, without more, is not evidence of intensive rural uses. *FDO, January 9, 2012, pg. 94*

  A pre-1990 utility pipe may be considered as part of the built environment in determining a logical outer boundary for a LAMIRD, but there must be some evidence of more intensive rural uses to justify LAMIRD designation in the first place. *FDO, January 9, 2012, pgs. 94-95*

  Establishment of a LAMIRD immediately adjacent to a UGA prevents a more efficient expansion of the UGA to areas that can be readily developed at urban densities. *FDO, January 9, 2012, pg. 96*

  It is not a violation of the GMA that there are areas that the County could have designated as LAMIRDs but chose not to. LAMIRDs are a discretionary rather than mandatory designation. RCW 36.70A.070(5)(d) provides the "rural element *may allow* for limited areas of more intense rural development." Thus, a county does not violate the GMA, let alone commit clear error, by choosing not to create a LAMIRD. *FDO, January 9, 2012, pgs. 163- 164*

A county's decision not to create a LAMIRD complies with GMA's mandate to minimize and contain intensive rural development because a county prevents further intensification by holding future development at rural levels. *FDO, January 9, 2012, pg. 164*

Major Industrial Developments (MIDs)

- ***Eugene Butler and Richard Battin v. Lewis County,* Case No. 10-2-0010:** MIDs (RCW 36.70A.365, RCW 36.70A.367) are an optional, not a mandatory, planning tool under the GMA. *FDO, July 22, 2010, pg. 10*

Market Factor

- ***Futurewise v. Pacific County,* Case No. 10-2-0021:** The market supply factor is designed to account for land unavailable due to the nature of the land and its devotion to public uses, and that a further reduction for "market unavailability" amounts to a double counting of the market supply factor. *FDO, June 22, 2011, pg. 20*

Mineral Resource Lands

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c**: RCW 36.70A.170(1) mandates the designation of MRL that have long-term significance. Minerals are defined to include gravel, sand, and valuable metallic substances. MRL are not defined by the GMA; nor does the GMA clarify the phrase "long-term significance for the extraction of minerals" [although "Longterm commercial significance" is defined] *AFDO, June 17, 2011, pg. 21-22*

  The aforementioned and other GMA provisions establish the following requirements for the designation of MRL, the first five of which would similarly apply to crafting MRL designation criteria:

  1. Lands that are not already characterized by urban growth;
  2. Lands that have long-term significance for the extraction of minerals;
  3. Consideration of the land's proximity to population areas;
  4. Consideration of the possibility of more intense uses of the land;
  5. Consideration of the mineral resource lands classification guidelines adopted by the Department of Commerce;
  6. Consideration of data and information available from the Department of Natural Resources relating to mineral resource deposits. *AFDO, June 17, 2011, pg. 22*

  In considering whether forestry and mining were incompatible "uncertainty" is an insufficient basis on which to reach a conclusion that the two natural resource land designations are incompatible under WAC 365-190-040(7)(b). *AFDO, June 17, 2011, pg. 29*

  [There are] three types of natural resource lands, together with critical areas, that the GMA requires cities and counties to designate and conserve. The designation and conservation of these natural resource lands prevents the irreversible loss of such lands to development. The

importance of natural resource land designation is underscored by the fact designation of natural resource lands is the first imperative of the GMA. *AFDO, June 17, 2011, pg. 21*

[T]he Minimum Guidelines are not requirements. RCW 36.70A.170(2) clearly states the Minimum Guidelines must be "considered". The Board agrees with the County that jurisdictions are not necessarily required to follow the Minimum Guidelines. However, RCW 36.70A.050 does provide the guidelines are the "minimum guidelines" that apply to all jurisdictions while also allowing "for regional differences that exist . . ." *AFDO, June 17, 2011, pg. 22*

[N]either the County's brief nor the record explain the extent to which Thurston County applied the specified WAC factors when crafting its MRL designation criteria. Furthermore, while it is clear the County included designation criteria not specifically tied to the WAC factors, the record contains no discussion, no analysis and no rationale for departing from the Minimum Guidelines. *AFDO, June 17, 2011, pg. 27*

Basing [designation] decisions on "uncertainty" or on "unknown" results fails to provide sufficient justification for departure from the minimum guidelines, let alone the requirements of RCW 36.70A.170 to establish designation criteria that would lead to GMA compliant MRL designations. *AFDO, June 17, 2011, pg. 28*

The County's argument that it was merely "balancing" the competing goals of the GMA is without merit in the context of [the GMA mandate to designate natural resource lands. RCW 36.70A.170.] Prior to reaching a stage in the planning process which necessitates a balancing of the GMA goals, jurisdictions must first comply with GMA requirements. *AFDO, June 17, 2011, pgs. 30-31*

Minimum Guidelines

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c**: [T]he Board concludes, in light of the *Manke* and *Lewis County* decisions, that RCW 36.70A.170(2) and RCW 36.70A.050 must be read to require jurisdictions to follow the Minimum Guidelines' MRL requirements. Jurisdictions have the flexibility to assign varying weight to the factors related to long term commercial significance included in RCW 36.70A.030 and the applicable Guidelines. Jurisdictions also have the discretion to depart from other portions of the Guidelines which are merely suggestions, provided the departure provides comparable benefit. That freedom, however, does not extend to deviating from those portions of the Minimum Guidelines which are requirements. *Compliance Order, July 17, 2012, pg. 15*

  The Minimum Guidelines state that a jurisdiction *must* determine if two applicable yet overlapping natural resource designations are incompatible. *Compliance Order, July 17, 2012, pg. 16*

  [T]he County's failure to determine whether overlapping MRL and FRL designations are incompatible and, if incompatible, to determine which resource provides the greatest long-

term commercial significance, violates RCW 36.70A.170(2), WAC 365-190-020(5) and WAC 365-190-040(7)(b). *Compliance Order, July 17, 2012, pg. 19*

[T]he classification and designation of natural resource lands of long-term commercial significance, including both the criteria for doing so as well as subsequent actual designations pursuant to RCW 36.70A.170, should be based on the factors set forth in the RCW 36.70A.030(10) definition of long-term commercial significance as well as the Minimum Guidelines. It is then the function of development regulations to conserve natural resource lands (as well as the protection of critical areas). *Compliance Order, July 17, 2012, pg. 19*

Mootness

- ***Martin v. Whatcom County*, Case No. 11-2-0002:** In 1972, the Court [*In re Cross, 99 Wn.2d 373* at 377(1983)(citing *Sorenson v. Bellingham* , at 558)]adopted criteria to consider in deciding whether a matter, though moot, is of continuing and substantial public interest and thus reviewable. The three factors considered essential are: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.

  A determination of the County's compliance with repealed Policy 2DD-10 would not be of guidance to other public officers because the policy is likely to be unique to Whatcom County, and also because cities and counties are vested with great discretion in the adoption and wording of their plan policies. *FDO, July 22, 2011, pgs. 18-19*

Moratoria

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** [The Board addressed an interim ordinance which purported to remain in effect until March 1, 2012 notwithstanding the fact it "expired" on June 19, 2011] While the Ordinance stated it was in effect for only six months, it [purported] to allow permit extension requests to be filed for up to two years. If it remains effective [that long], the County was required to develop a work plan, something for which it failed to make provision. *FDO, Aug. 2, 2011, pg. 21*

- ***Skagit D06 v. Skagit County*, Case No. 10-2-0011:** A moratorium exists where a city denies a property owner the ability to submit an application for an otherwise permissible use or activity under the governing zoning even if other uses are not barred. *FDO, Aug. 4, 2010, pg. 7*

  The GMA envisions a hierarchy of development within the UGA – first in areas already characterized by urban growth which have adequate existing public facilities/services, second in areas characterized by urban growth, but that will be served by both existing and additionally needed facilities, and lastly in the remaining areas of the UGA. If a City were required to extend sewer service to every property in the unincorporated UGA, this would create chaotic, leap-frog development. *FDO, Aug. 4, 2010, pgs. 11-12*

Natural Resource Lands (Goal 8)

- ***Friends of the San Juans v. San Juan County*, Case 10-2-0012:** RCW 36.70A.200 requires San Juan County to not preclude EPFs within its borders. This does not lessen its duty in relationship to protecting natural resource lands. As with critical areas, natural resource lands must be designated using best available science. The Legislature gave clear direction that natural resource lands are a foundation around which other land uses must be adjusted. The natural resource lands functions have a priority over other functions on that land or even on adjacent lands. The Board concluded that natural resource lands were at risk because the development regulations, as adopted by San Juan County (Ordinance 2-2010), only disfavored EPFs in natural resource lands. The County did not specifically guide or limit siting EPFs to conserve land to maintain the natural resource industry that relies upon it. *FDO, Oct. 12, 2010, pgs. 30, 31*

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c:** Although the language of Goal 8 [36.70A.020(8)] makes no express reference to mineral resources, the language is non-exclusive and the mineral resource industry is indisputably a natural resource industry since its very existence relies upon the geological deposits it extracts from the land. Therefore, when considering amendments to its criteria for the designation of mineral resource lands, Thurston County's actions were to be guided by this goal – with the applicable guiding principle being the maintenance and enhancement of the industry. *AFDO, June 17, 2011, pg. 58*

  [A]ny claim … alleging a failure to adopt regulations designed to assure the conservation [of Natural Resource Lands] would more appropriately be based on RCW 36.70A.040, not RCW 36.70A.060. *AFDO, June 17, 2011, pg. 37*

  Claims alleging a failure to assure that adjacent uses do not interfere with the continued use of MRL are properly raised under RCW 36.70A.060(1) as it is the provision of the GMA which imposes the requirement. *AFDO, June 17, 2011, pg. 37-38*

  [RCW 36.70A.050] directs the Department of Community, Trade and Development (now Commerce) to adopt the Minimum Guidelines. That statute does not establish a duty with which local governments are required to comply. The duty placed on local governments in that regard arises from RCW 36.70A.170(2), the directive to consider those guidelines. *AFDO, June 17, 2011, pg. 16*

  [T]he County's failure to determine whether overlapping MRL and FRL designations are incompatible and, if incompatible, to determine which resource provides the greatest long-term commercial significance, violates RCW 36.70A.170(2), WAC 365-190-020(5) and WAC 365-190-040(7)(b). *(Compliance Order, July 17, 2012)* pg. 19

- ***Nilson et al v. Lewis County,* Case No. 11-2-0003:** [Petitioners challenged county action alleging a failure to assure the conservation of designated forest lands] The Board found claims based on RCW 36.70A.060 alleging a failure to initially adopt regulations designed to assure the

conservation of the County's forest resource lands would appropriately be based on RCW 36.70A.040, not RCW 36.70A.060. *FDO, Aug. 31, 2011, pg. 11*

Permits (Goal 7)

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** In regards to Goal 7 (Permits), the Petitioner argued the County reversed what had been "settled agreements" that permits would be reviewed against BAS contained in the CAO. The Ordinance created a mechanism by which older, vested projects could remain vested for another two years thus by-passing that public expectation. . . . The Board found the County has the ability to adopt ordinances (interim or permanent) that may contradict long-held public expectations . . . but the county legislative body is nevertheless entitled to do so when they follow the required public procedures. *FDO, Aug. 2, 2011, pg. 21*

  Petitioner claimed the County's repeal of an ordinance extending permits failed to result in compliance with the FDO because repeal failed to protect critical areas and incorporate BAS and were adopted without SEPA compliance. The Board found the County had addressed the FDO requirements, except for permits which the County extended while subject to the invalidity finding. While the County had failed to comply with Chapter 43.21C RCW (SEPA) when adopting the original Ordinance, upon compliance the County repealed the challenged ordinance. If the Board had remanded the then-repealed ordinance to the County to conduct a threshold determination, this action would not address Petitioner's concerns. Those concerns related to expired permits, or those set to expire, which were extended without application of development regulations adopted since the permits were originally issued. While the Board expressed its serious concerns regarding the County's action to extend permits without the most recent regulatory requirements, the Board had no remedy to address the impact of extended permits, rather Superior Court has exclusive jurisdiction to address "land use decisions" (RCW 36.70C.020) which includes permit extensions. While the Board appreciated Petitioner's zealous advocacy for environmental protection, the Board did not have authority to grant relief. (Order Denying Motion for Reconsideration, July 17, 2012, page 4)

Property Rights (Goal 6)

- ***Skagit D06 v. Skagit County*, Case No. 10-2-0011:** Neither a right to annexation nor to sewer extension are the types of rights the Legislature intended to be protected under Goal 6. *FDO, Aug. 4, 2010, pg.15*

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c**: [In addressing Goal 6] The property right Weyerhaeuser argues has been impacted is the use of its land for the extraction of mineral resource for off-site commercial purposes. Similarly, Segale asserts a "use of land" argument but not just for itself but for undefined land owners. The Board is well aware that the ability of a property owner to use property has been recognized as a property right, although the Board knows of no cases finding that a property owner has the right to use property for any purpose it deems fit or which would result in the greatest economic return. *AFDO, June 17, 2011, pg. 56*

[As to Goal 6 – Property Rights] Weyerhaeuser's argument … questions whether the adopted criteria, which restricted use [of mineral resource lands], were reasonably related to a legitimate governmental purpose or whether it conforms to nexus and proportionality rules. The Board has previously articulated that although Goal 6 opens with a statement related to the unconstitutional taking of property, it has no authority to determine constitutional issues. The language relied upon by Weyerhaeuser is grounded in holdings of the courts addressing constitutional issues [for which the Board lacks jurisdiction.] *AFDO, June 17, 2011, pg. 56*

Public Participation/Citizen Participation (Goal 11)

- ***Port of Shelton v. City of Shelton*, Case No. 10-2-0013:** RCW 36.70.547 requires consultation with, among others, the Aviation Division. While [Shelton] was not required to comply with the Aviation Division suggestions, the Aviation Division has a level of technical competence to be given due weight. While it was not clear error to ignore the Aviation Division's guidance, it was clear error to make decisions based on a misinterpretation of the evidence in the Record. *FDO, Oct. 27, 2010, pg. 21*

  [Petitioner asserted the City "failed to coordinate with the Aviation Division, the FAA, the Port (another municipal entity), and the community of pilots . . . to reconcile conflicts" as it "disregarded" the concerns of those entities and individuals. The Board stated] Ultimately, the GMA grants the legislative body of the jurisdiction with land-use planning authority the final decision on comprehensive plans, development regulations and amendments to them. "Ensuring coordination" as used in RCW 36.70A.020(11) and "consultation" as used in RCW 36.70. 547 do not shift the decision-making authority to others; in this instance, to the Port or WSDOT Aviation. Rather, it was incumbent upon the City to: 1) encourage public involvement in the planning process and actively consult with the entities/individuals listed in RCW 36.70.547 and; 2) substantively consider the comments it received. The Board concludes public comment was allowed, formal consultation took place, and the Record reflects the City considered the information and opinions it received. *FDO, Oct. 27, 2010, pg. 32*

- ***Weyerhaeuser, et al v Thurston County*, Case No. 10-2-0020c:** The issue clearly presented is whether or not the change from dual designation [of Forest Resource and Mineral Resource lands] to a preclusion of dual designation was within the scope of the alternatives available for public comment and therefore excused the County from providing an additional opportunity for comment under RCW 36.70A.035(2)(b)(ii). The County states that it was considering comprehensive plan and development regulation changes to its MRL designation criteria: "the scope of the proposal was the entire designation process." However, that argument would literally allow any change to the amendments proposed and presented for public hearing. It would be difficult to envision any situation where RCW 36.70A.035(2)(a) would apply … The Board simply cannot agree with that proposition. *AFDO, June 17, 2011, pgs. 9-10*

- ***Martin v. Whatcom County*, Case No. 11-2-0002:** While the Petitioner has alleged a violation of RCW 36.70A.140 in his Petition for Review, nothing in his briefing articulates how that section

was violated. This section of the GMA requires jurisdictions to establish a public participation program providing for early and continuous public participation in the development and amendment of comprehensive plans and development regulations implementing those plans. Petitioner has pointed to nothing in the record that would demonstrate that the County failed to comply with this section. If, as the County infers, Petitioner is basing his public participation challenge on the County's failure to do a parcel by parcel analysis of the rezoned area, Petitioner would need to demonstrate that such level of analysis was required by the GMA. *FDO, July 22, 2011, pgs. 11-12*

- ***City of Oak Harbor v. Island County,* Case No. 11-2-0005:** The City contested the adequacy of the County's public involvement process and consultation with the City. The Board found the County complied with all public notice and consultation requirements. An inter-jurisdictional disagreement does not mean the County violated the GMA. See pages 20-25 of the FDO. (Final Decision and Order, December 12, 2011, page 19-25)

Rural Character

- ***Eugene Butler and Richard Battin v. Lewis County,* Case No. 10-2-0010:** Rural character as envisioned by RCW 36.70A.030(15) refers to patterns of land use and development. That is, it takes a broad approach - an area wide approach - rather than a site specific one, which is evidenced by the use of words such as "patterns", "predominate", and "landscapes"... RCW 36.70A.070(5)(c), on the other hand, is more tightly focused. That section mandates the inclusion of measures within a jurisdiction's rural element that, among other things, assure the visual compatibility of rural development with the surrounding rural area. *FDO, July 22, 2010, pgs. 16-17*

  Per RCW 36.70A.011 and RCW 36.70A.070(5), [t]he GMA does not prohibit business development in rural areas … the rural element is to include provisions for rural development … and Rural Development is defined at RCW 36.70A.030(16) … the parameters for allowable rural development … include ensuring such uses are not characterized by urban growth and that they are consistent with Lewis County's rural character. *FDO, July 22, 2010, pgs. 11-12*

  The entirety of that definition [Urban Growth RCW 36.70A.030(19)] also references an incompatibility with the primary use of the land for "rural uses and rural development" [not just agricultural production]. Rural development can consist of a variety of uses. All parcels in the rural area need not be capable of producing food, fiber or mineral resources ... Consequently, the Board concludes the referenced portion of the definition of urban growth ("makes intensive use of land") does not refer necessarily to the use on a single parcel. *FDO, July 22, 2010, pgs. 12-13*

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c:** Aspirational language in a Comprehensive Plan - The *Kittitas County* case does not result in a mandate that every isolated Comprehensive Plan policy must be devoid of conditional language and contain only directional provisions but, instead, the Comprehensive Plan must be

considered in its entirety to determine if there is compliance with the GMA. The word "should" is appropriate *so long as* the Comprehensive Plan provides a framework that ensures compliance with the GMA and provides measures by which a jurisdiction will be held accountable. *FDO, January 9, 2012, pg. 30*

RCW 36.70A.070(5)(c) provides that the rural element of a comprehensive plan must contain measures to protect rural character. While development regulations may require consistency with the Comprehensive Plan for the various zoning districts, the Plan itself must clearly spell out the measures to "contain and control" development in rural designations to meet the RCW 36.70A.070(5)(c) standard. *FDO, January 9, 2012, pgs. 30, 33-34*

The Board reads the Supreme Court *Kittitas* decision as requiring that the rural element itself contain provisions ensuring that applications for rezones do not result, over time, in a uniform low-density sprawl. *FDO, January 9, 2012, pgs. 72-73*

RCW 36.70A.070(5)(c)(iv) requires "measures that apply to rural development" and protect rural character by "protecting critical areas … and surface water and ground water resources." [Measures necessary to protect surface and ground water resources in the Lake Whatcom area are clearly identified in the record, as are measures to protect the Chuckanut Wildlife Corridor.] Incorporating such measures into the Rural Element should be a straightforward task. *FDO, January 9, 2012*, pgs. 40, 44.

Rural Densities

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c:** A density overlay, potentially allowing for a small number of lots smaller than five acres in size in a total area comprising only 1.4 percent of all county rural lands, will not lead to the "inappropriate conversion of undeveloped lands into sprawling, low-density development" if contained by appropriate Comprehensive Plan rural element measures. *FDO, January 9, 2012, pg. 128*

Rural Element

- ***Governors Point Development Company, et al v. Whatcom County,* Case No. 11-2-0010c:** The GMA specifically allows counties to consider local circumstances when planning a rural element, providing that the county develops a written record explaining how the rural element harmonizes the GMA planning goals and meets GMA requirements. A "written record" need not be a discrete document. *FDO, January 9, 2012, pgs. 129-130*

Settlement

- ***Nilson et al v. Lewis County,* Case No. 11-2-0003:** [In response to a request by Petitioners for the Board to ban an intervenor from participating in settlement discussions] The Board encourages settlement efforts but views them as options to be decided upon by the parties. A decision to allow an intervenor to participate in such discussions is properly one for the

jurisdiction (or a petitioner) itself and not a decision that should either be mandated or precluded by the Board. *Order on Church/Nilson Motions, April 27, 2011, pg. 4*

State Environmental Policy Act (SEPA)

- ***Stalheim et al v. Whatcom County*, Case No. 10-2-0016c**: SEPA requires the Board to afford substantial weight to an agency's determination of the adequacy of an EIS. SEPA provides for the supplementation of existing environmental review via a Supplement EIS (SEIS). WAC 197-11-405(4) and 197-11-600 provide that a SEIS is required if there are either substantial changes that are likely to have significant adverse environmental impacts or new information is available indicating probable significant adverse impacts. A SEIS is not required if the probable adverse impacts are covered by the range of alternatives and impacts analyzed in the existing documents. *FDO, April 11, 2011*, pg.28

- ***David Stalheim v. Whatcom County,* Case No. 11-2-0001:** No SEPA Threshold Determination was completed prior to the County's adoption of the Ordinance because the County believed its action was categorically exempt. WAC 197-11-800(19) allows categorical exemptions for procedural actions, but not if they contain "substantive standards respecting…the environment." The Ordinance continued land development permits by amending the County's Zoning Code, Land Division Code, and the Critical Areas Ordinance all of which have considerable impact on and are specifically promulgated to manage impacts on the environment. Without conducting a SEPA Threshold Determination prior to adoption of the Ordinance, the Board found the County failed to comply with RCW 43.21C.030(2). *FDO, Aug. 2, 2011, pg. 25*

- ***Martin v. Whatcom County*, Case No. 11-2-0002:** To meet his burden of proof, Petitioner must present actual evidence of probable, significant, adverse impacts resulting from the proposed action. Petitioner points to no evidence in the record establishing the environmental impacts of Ordinance 2010-065 rise to a level of significance. Absent such evidence in the record, there is no basis for the Board to find the County's issuance of the DNS in error. *FDO, July 22, 2011, pg. 14*

Sub-Area Plans

- ***City of Oak Harbor v. Island County,* Case No. 11-2-0004:** Island County's Comprehensive Plan must be updated by 2016 according to a schedule established in RCW 36.70A.130(5)(b). In this case, the County action was "preliminary approval" of a sub-area plan which would be incorporated into the County's next update to its Comprehensive Plan. The Board found the County's preliminary approval of a sub-area plan would not bar future petitioners from appealing the County's final action to the Board. The Board did not agree with Petitioner City of Oak Harbor's contention that the County sought to avoid Board review by piece-meal adoption of comprehensive plan amendments. The Board dismissed the case as the issues were not ripe for review. *Order Granting Motion to Dismiss, July 8, 2011*, pages 5-6

Urban Growth Areas (UGAs)

- ***Stalheim et al v. Whatcom County*, Case No. 10-2-0016c:** In sizing a UGA, a County may not rely on both on a market supply factor and "local circumstances". As the market supply factor already includes and accounts for "local circumstances", the County thereby over-estimated its residential lands needs and over-sized the Ferndale UGA. *FDO, April 11, 2011, pg.16*

  Where, as here, the County has chosen to use a market supply factor in its analysis, by so doing it has thereby considered local circumstances. It may not add additional land beyond what that analysis suggests, in the interests of other local circumstances. *FDO, April 11, 2011, pg.16*

- ***Futurewise v. Pacific County,* Case No. 10-2-0021:** [In addressing the County's consideration of land unavailable due to wetlands/slopes, parks, roads and market unavailability, the Board stated] However, once these reductions have been applied Pacific County cannot attempt to justify excessive acreage utilizing the same factors; it cannot reduce its acreage once by the Land Capacity Analysis and then again by claiming some land is not usable due to local circumstances. This amounts to a "double counting" for which the Board has previously found non-compliance with the GMA's mandates. *FDO, June 22, 2011*, pg. 19

- ***City of Oak Harbor v. Island County,* Case No. 11-2-0005:** It is within the discretion of the County to set the UGA boundaries despite requests from a city to expand those boundaries. (Final Decision and Order, December 12, 2011, page 32-43)

Urban Services

- ***Stalheim et al v. Whatcom County*, Case No. 10-2-0016c:** Under the GMA urban growth is to occur in areas where adequate public facilities and services exist. The existence of draft plans is not sufficient to demonstrate compliance with the GMA in this regard. *FDO, April 11, 2011, pg. 35*

Extension Outside UGA

- ***Skagit D06 v. Skagit County*, Case No. 10-2-0011:** The Board disagrees with Petitioner's allegation that *Yakima County Fire Protection District 12 v. City of Yakima* stands for the proposition that the City, as the exclusive provider of sewer, has a duty to provide this service to properties outside city limits. In *Yakima*, the Court held that "Under RCW 35.67.310, which provides that a city "*may* permit connections with any of its sewers . . . from property beyond its limits", the City has authority to provide service outside its borders. (Italics ours.) The use of "may" in RCW 35.67.310 supports the City's argument that the power granted by RCW 35.67.310 is discretionary and that the City is not bound to provide sewer service to persons residing outside its boundaries." The *Yakima* Court recognized an exception to this "no duty" rule in circumstances where a city "holds itself out" as willing to supply sewer or water service to an area or where a city is the exclusive supplier of sewer or water service in a region extending beyond the borders of the city. *FDO, Aug. 4, 2010, pg. 21*

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2007 Cases

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 REMAND]**
  On remand from the Court of Appeals, 156 Wn. App 743 (July 7, 2010), the Board reviewed the challenges to Kitsap County's 2006 Plan Update based on current local circumstances without assumption of a bright-line rule for minimum urban densities. The Board found local circumstances did not support the County's down-zoning of minimum densities in its UGAs. The Board concluded the down-zoning and resultant UGA expansion created inconsistencies with the comprehensive plan, did not comply with RCW 36.70A.110, and was not guided by GMA Goals 1 and 2. As directed by the Court, the Board also addressed issues in the County's land capacity analysis, finding double-dipping in critical areas discounts and determining 4 du/ac was not an appropriate uniform capacity multiplier. Invalidity was denied. The matter was remanded on a one-year compliance schedule. The August 17, 2007 FDO was reversed to the extent inconsistent with this order. *(FDO on Remand, Aug. 31, 2011)*

  Key Holdings: External Consistency, Housing Element, Internal Consistency, Land Capacity Analysis, Public Participation, Reasonable Measures, Urban Density, UGA Size

2010 Cases

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c[13]**
  Three sets of petitioners challenged various amendments to Pierce County's comprehensive plan, including specific UGA expansions, UGA expansion criteria, and electronic billboards in a rural area. The cases were consolidated and proponents of two of the amendments intervened. One issue was segregated for settlement and resolved. *(Order of Dismissal [Re: FW 3], Aug. 4, 2010)* The Board dismissed some of the challenges but found two County amendments expanding the UGA were non-compliant and two amendments were inconsistent with rural character as identified in County sub-area plans. *(FDO Aug. 2, 2010)* Intervenor Merriman's motion for reconsideration was denied. *(Order Denying Reconsideration, Aug. 25, 2010)*.The County repealed the non-compliant provisions and the Board entered a finding of compliance. (*Order Finding Compliance, Jan. 18, 2011)*

  Key Holdings: Service, Intervention, Petition for Review, Rural Element, UGA Size, UGA Location, Amendment, Legislative Findings

- ***Janet Wold, et al v. City of Poulsbo,* Case No. 10-3-0005c[14]**
  Two citizens filed pro se challenges to the City of Poulsbo's comprehensive plan update raising numerous issues, including public participation, environment and critical areas, natural resource lands, urban growth and population, buildable lands analysis, inter-jurisdictional consistency and coordination, capital facilities, and economic development. The Board found

[13] Case No. 10-3-0003c is the consolidation of Case Nos. 10-3-0001, 10-3-0002 and 10-3-0003.
[14] Case No. 10-3-0005c is the consolidation of Case Nos. 10-3-0004 and 10-3-0005.

the City's action complied with the GMA and dismissed the petitions. *(FDO Aug. 9, 2010)* Reconsideration was denied. *(Order Denying Reconsideration, Sept. 3, 2010)*

Key Holdings: Participation Standing, Forest Lands, Sequencing, Land Use Powers, Interjurisdictional Coordination, Open Space, Public Participation

- ***Downtown Emergency Service Center v. City of Tukwila,* Case No. 10-3-0006**[15]
  When the proponent of an essential public facility found a site for the facility in another city, it stipulated to a dismissal of its challenge to Tukwila's moratorium on permit applications. (*Order of Dismissal, July 16, 2010*)

- ***James Halmo, et al v. Pierce County,* Case No. 10-3-0007**
  Pierce County adopted development regulations to implement a comprehensive plan amendment allowing electronic billboards in the Graham rural area (*see* Case No. 10-3-0003c). The County repealed the regulation and the parties stipulated to a dismissal. *(Order of Dismissal, Dec. 8, 2010)*

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008**
  A property owner challenged Tukwila's zoning code amendments related to Crisis Diversion Facilities and Crisis Diversion Interim Services Facilities, which all agreed were an Essential Public Facility (EPF) under the GMA. Prior to the amendments, such facilities could have been located in eight of Tukwila's manufacturing and commercial zones, subject to an unclassified use permit. However, after invoking two moratoriums, Tukwila limited the siting of these facilities to a portion of a single zoning district. The Board ruled the City's action precluded the siting of an EPF. *(Final Decision and Order, Jan. 4, 2011) Board reversed by King County Superior Court 11-2-05739-9; appeal pending.*

  Key Holdings: Supplemental Evidence, Essential Public Facilities, Goal 7, Invalidity, Compliance, Deference

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Case No. 10-3-0011c,**[16] **coordinated with *City of Shoreline, et al v. Snohomish County,* Case No. 09-3-0013c**
  Two municipalities and a citizen group challenged the County's comprehensive plan amendments creating an Urban Center at Point Wells. The cases were consolidated as *Shoreline III*, Case No. 09-3-0013c, and the property owner intervened. Subsequently the County adopted development regulations for the Point Wells Urban Center. The same petitioners filed additional challenges, which were consolidated as *Shoreline IV*, Case No. 10-3-0011c. The cases were coordinated for hearing. In its *Final Decision and Order, (Corrected FDO, May 17, 2011)* the Board found non-compliance with the GMA and SEPA, issued a determination of invalidity,

[15] Case No. 10-3-0006 was coordinated with Case No. 09-3-0014
[16] Case No. 10-3-0011c is the consolidation of Case Nos. 10-3-0009, 10-3-0010 and 10-3-0011.

and provided an extended compliance period because of the complexity of the matters to be resolved.

Key Holdings: Supplemental Evidence, SEPA Standing, Notice, Public Participation, Internal Consistency, Interjurisdictional Coordination, Countywide Planning Policies, Sequencing, Transformation of Governance, Goal 3, Goal 11, Goal 12, SEPA, Compliance, Invalidity, Reconsideration

- ***Davidson Serles v. City of Kirkland,* Case No. 10-3-0012,[17] coordinated with *Davidson Serles v. City of Kirkland,* Case No. 09-3-0007c**
  Adjacent owners of two commercial properties in downtown Kirkland challenged the City's comprehensive plan and development regulations allowing a commercial redevelopment. The cases were consolidated as Case No. 09-3-0007c**,** and the project proponent intervened. In its *Final Decision and Order (Oct. 5, 2009)*, the Board found noncompliance with respect to (1) lack of off-site alternatives in the SEPA review for a non-project action and (2) failure to amend the CFP and Transportation Element of the comp plan to include all of the transportation improvements required by the proposal. The City subsequently revised its SEPA analysis, CFP and transportation plan, adopting new ordinances for compliance. Petitioners objected to a finding of compliance and also filed a new PFR – **Case No. 10-3-0012.** The matters were coordinated for Board ruling. *Finding of Compliance Case No. 09-3-0007c and Final Decision and Order Case No. 10-3-0012, (Feb. 2, 2011)*. Related proceedings largely affirm the Board: *Davidson Serles & Assocs. et al v. CPSGMHB*, 159 Wn.App. 148 (Dec. 27, 2010); *Davidson Serles & Assocs. v. City of Kirkland*, 159 Wn.App. 616 (Jan. 24, 2011).

  Key Holdings: Compliance, Supplemental Evidence, SEPA, Transportation Element

- ***Andrew Cainion v. City of Bainbridge Island,* Case No. 10-3-0013**
  A property owner applied to the City to amend the land use designation of his land and make textual amendments to two comprehensive plan policies. On the City's dispositive motion, the Board dismissed the matter for lack of jurisdiction. *Order on Motion to Dismiss (Jan. 7, 2011)*. Reconsideration was denied. *Order Denying Reconsideration (Jan. 26, 2011)*

  Key Holdings: Timeliness, Subject Matter Jurisdiction

- ***Toward Responsible Development, et al v. City of Black Diamond,* Case No. 10-3-0014**
  [Note: Board's order rescinded.] A citizen group challenged the City's approval of ordinances furthering a Master Planned Development. The developer intervened. On cross-motions to determine the Board's jurisdiction, the Board ruled it had jurisdiction and the Intervenor appealed. *Order on Motions, Feb. 15, 2011*. The Board issued a *Certificate of Appealability (April 21, 2011)* as to the jurisdictional question and an *Order Denying Certificate of Appealability (May 17, 2011)* as to invalidity. Petitioners' motion for Invalidity based on new information was denied. *Order on Motion for Invalidity Based on New Information (June 20, 2011)* Reversed as to

[17] Case No. 10-3-0012 was coordinated with Case No. 09-3-0007c

jurisdiction, *B.D.Lawson Partners v CPSGMHB,* 165 Wn.App 677 (2011), *rev. denied* (April 2012), and remanded for rescission of Board order. *Order of Dismissal (August 20, 2012)*

Key Holdings: Petition for Review, Jurisdiction, Invalidity

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0015**
  A neighborhood organization challenged Pierce County's repeal of the "no net loss" language in a community plan that protected rural lands. The Board determined the matter fell within the limited exception to concurrent annual review allowed by RCW 36.70A.130(2)(b) and dismissed the petition. *Final Decision and Order (May 18, 2011)*

  Key Holdings: Goals, Abandoned Issues, Compliance, Amendment

2011 Cases

- ***Fleishmann's Industrial Park, LLC v. City of Sumner,* Case No. 11-3-0001**
  A property owner challenged the City of Sumner's comprehensive plan amendment which excluded petitioner's property from the Manufacturing Industrial Center (MIC) zone. The Board found the SEPA review inadequate and remanded. *Final Decision and Order (July 6, 2011)*. *Order Finding Compliance (June 1, 2012)*

  Key Holdings: SEPA, Economic Development, Goals, Property Rights

- ***Overton & Associates LP, et al v. Kitsap County,* Case No. 11-3-0003c[18]**
  Timber and land companies filed two challenges to Kitsap County's amendment of the Rural and Resource Land chapter of its comprehensive plan. The cases were consolidated and settlement extensions were granted. The parties settled the matter and the Board issued a dismissal. *Order of Dismissal (Oct. 10, 2011)*

- ***Chestine Edgar, et al v. City of Burien,* Case No. 11-3-0004**
  Residents near Lake Burien challenged the City of Burien's denial of amendments to land use designation which they had requested to protect Lake Burien. The challenge was dismissed, the Board finding in essence the petition challenged a land use designation enacted in 1999. *Order on Motions (May 12, 2011)*. Reconsideration was denied. *Order Denying Reconsideration (June 7, 2011)*

  Key Holdings: Jurisdiction

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 11-3-0005**
  A property owner in the manufacturing industrial district challenged the City of Tukwila's renewal of a moratorium on development permit applications in the district, asserting the moratorium precluded the siting of an essential public facility. The PFR was dismissed, the

[18] Case No. 11-3-0003c is the consolidation of Case Nos. 11-3-0002 and 11-3-0003.

Board finding the petition challenged denial of a permit application which was not within the Board's subject matter jurisdiction. *Order on Motions (May 6, 2011)*

Key Holdings: Jurisdiction, APA Standing

- ***Douglas Tooley v. City of Seattle,* Case No. 11-3-0006**
  A pro se petitioner challenged the SEIS for the Alaska Way Viaduct Replacement Project. The Board dismissed the matter *sua sponte* on the grounds that there was no final action ripe for review, as the Final EIS had not yet been issued. *Order of Dismissal (April 1, 2011)*. Petitioner's motion for reconsideration based on misdirected mailed notice was denied. *Order Denying Reconsideration (May 9, 2011)*

  Key Holdings: Jurisdiction

- ***BSRE Point Wells, LP v. City of Shoreline,* Case No. 11-3-0007**
  The proposed developer of Point Wells challenged the City's adoption of an emergency amendment to its comprehensive plan that would restrict traffic on Richmond Beach Drive, the access road to Point Wells. The parties were granted extensions for settlement purposes and the matter is pending.

- ***Douglas L. Tooley v. Christine Gregoire, et al,* Case No. 11-3-0008**
  A pro se petitioner challenged the Governor and Seattle City Mayor and Council President alleging that the FEIS for the Alaska Way Viaduct Replacement Project failed to comply with SEPA and the GMA. All parties filed dispositive motions. The Board determined it lacks subject matter jurisdiction because the SEPA challenge did not identify and challenge a specific governmental action. The Board also determined the Petitioner lacked standing to assert a SEPA claim. The matter was dismissed. Pageler issued a partial dissent, arguing the matter should have been dismissed based on defective service. *Order on Dispositive Motions, November 8, 2011*

  Key Holdings: SEPA, *De facto* Amendment, SEPA Standing

- ***City of Kenmore v. City of Brier,* Case No. 11-3-0009**
  Kenmore challenged Brier's adoption of Critical Areas regulations as inconsistent with Kenmore's Comprehensive Plan and regulations to protect salmon habitat. After extensions for settlement purposes, Kenmore withdrew its appeal and the case was dismissed. *Order of Dismissal (August 3, 2012)*

- ***Support the Ordinances and Plan (STOP) v. City of Kirkland,* Case No. 11-3-0010**
  STOP, a neighborhood association, challenged Kirkland's failure to adopt development regulations to implement its comprehensive plan designation for Commercial-Residential Market areas. Potala Village Kirkland LLC, a property owner with pending development

application, intervened. The Petitioners withdrew their appeal and the case was dismissed. *Order of Dismissal (Jan 23, 2012)*

- ***Friends of Pierce County, Tahoma Audubon Society, American Farmland Trust, PCC Farmland Trust and Futurewise v. Pierce County,* Case No. 11-3-0011**
  See Case No. 12-3-0002c

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie,* Case No. 11-3-0012**
  The City adopted pre-annexation zoning for a portion of its UGA and approved a pre-annexation agreement for operation of an outdoor driving school. Concerned citizens appealed and the owner and operator intervened. Responding to the City's dispositive motion, the Board found petitioners substantially complied with the service requirements (WAC 242-03-230). The Board determined the pre-annexation agreement was a de facto comprehensive plan amendment within the Board's jurisdiction. *Order on Motions (March 8, 2012)*. Ruling on the merits, the Board rejected petitioners' challenge to the sufficiency of the SEPA DNSs. The Board remanded the pre-annexation agreement for action consistent with the comprehensive plan and for submittal to Commerce pursuant to RCW 36.70A.106. *Final Decision and Order (May 8, 2012)*; *Order Finding Compliance (September 12, 2012)*

  Key Holdings: Service, *De facto Amendment*, Evidence (Supplemental Evidence and Exhibits), Commerce, Department of, Standing (SEPA), SEPA

2012 Cases

- ***City of Bonney Lake v. Pierce County,* Case No. 12-3-0001**

- ***Marilyn K. Sanders, James L. Halmo, William J. Rehberg, George F. Wearn, Bryson V. Ahlers, and William E. Gilpin v. Pierce County,* Case No. 12-3-0002c[19]**
  Pierce County amended its comprehensive plan to de-designate agricultural resource lands and expand a UGA to allow commercial development. Environmental and farm support groups appealed, and a network of farm interest organizations filed as amicus. The City of Bonney Lake also appealed, but its dispute was settled and dismissed. The City of Sumner, the developer, and Forterra, a conservancy organization, intervened on behalf of the County. The Board found the County's action failed to comply with criteria in the County's code, but noted a conservation agreement among the parties, if strengthened, showed promise of meeting the Commerce minimum guidelines.

  The County also adopted amendments requested by school districts. Pro se petitioners appealed and school districts intervened in support of the County. The Board found the County's allowance of electronic billboards in certain urban communities was within its discretion but remanded an amendment allowing a multi-school complex in the rural area.

[19] Case No. 12-3-0002c is the consolidation of Case Nos. 11-3-0011, 12-3-0001, and 12-3-0002.

Key Holdings: Agricultural Lands, Agricultural Lands (Innovative Techniques), Amendment, Burden of Proof, Critical Areas (Geologically Hazardous Areas), Deference, Internal Consistency, Minimum Guidelines, Regional Planning, Rural Element, UGA Size

- ***William M. Palmer, Kitsap Alliance of Property Owners, and Jack Hamilton v. Kitsap County, et al.,* Case No. 12-3-0003**
  Petitioners challenge the County's ordinance adopting amendments to its Countywide Planning Policies. The matter was dismissed on the County's dispositive motion. *Order of Dismissal, February 27, 2012*

  Key Holdings: Standing, Respondent, Countywide Planning Policies

- ***Elizabeth Mooney and Janet Hays v. City of Kenmore and Department of Ecology,* Case No. 12-3-0004**
  Petitioners challenge the adoption of an update to the City of Kenmore's Shoreline Master Program for failing to adequately protect the shoreline in light of new information pertaining to contaminants. The matter is pending.

- ***Potala Village Kirkland, LLC, Lobsang Dargey and Tamara Agassi Dargey v. The City of Kirkland,* Case No. 12-3-0005**
  Petitioners challenge the City's extension of a moratorium. The matter is pending.

- ***Rita Hagwell, Janet Wold, and Molly Chamberlin Lee v. City of Poulsbo,* Case No. 12-3-0006**
  Petitioners challenge the adoption of the Urban Paths of Poulsbo Plan. The matter is pending.

- ***Lowell Anderson, Jeffrey Rodgers, Douglas Hamar, Chad McCammon and Bob Martin v. City of Monroe,* Case No. 12-3-0007**
  Petitioners challenge the City's adoption of a comprehensive plan amendment for the East Gateway area. The matter is pending.

- ***Snohomish County Farm Bureau v. Snohomish County and Washington State Department of Ecology,* Case No. 12-3-0008**
  Petitioners challenge the County's Shoreline Master Program update for failing to protect agricultural lands. The matter is pending.

- ***Pacific Coast Shellfish Growers Association v. Snohomish County and Washington State Department of Ecology,* Case No. 12-3-0009**
  Petitioners challenge provisions concerning aquaculture in the County's Shoreline Master Program update. The parties were granted an extension for settlement purposes.

Region 3: Central Puget Sound Digest of Decisions by Key Holdings

Abandoned Issues

- ***North Clover Creek, et al v Pierce County*, Case No. 10-3-0015:** [An issue was abandoned when] other than repeating these statutes in the statement of Legal Issue 3, petitioners have made no argument tied to these provisions. WAC 242-02-570(1) provides in part "Failure to brief an issue shall constitute abandonment of the unbriefed issue." An issue is briefed when legal argument is provided. It is not enough to simply cite the statutory provision in the statement of the legal issue. *FDO (May 18, 2011), pg. 11*

Agricultural Lands

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The GMA emphasis is broader than conservation of individual parcels of agricultural land on a site-specific basis. Rather, in order to preserve or foster the agricultural economy, as mandated by RCW 36.70A.020(8), .060, .120, and WAC 365-190-050(5), a county-wide or agricultural-area process is required. .. [T]he area-wide assessment of de-designation impacts is to *precede* designation amendments, not follow them, according to the process required in WAC 365-190-040(10)(b). *FDO (July 9, 2012), at 32-33*

  The WAC designation amendment process stipulates that de-designation should be based on an error, change in circumstances, new information, or a change in population growth rates. This rule recognizes the certainty that is required for long-term resource conservation. [Citing *Clark County:* "Without such deference to the original designation, there is no land use plan, merely a series of quixotic regulations."] *FDO (July 9, 2012)*, at 33-34

  If mere UGA adjacency justifies de-designation of ARL lands, … continued loss of fertile farmland is inevitable. This expansion of the UGA followed by its urbanization will lead to the identical argument being made to justify further expansion as the land abutting the expanded UGA – east, west, and south – will then be adjacent to urban growth. *FDO (July 9, 2012), pg. 51.*

  Petitioners have carried their burden of showing the potential for further incursions on the viability of the agricultural industry, through isolation of ARL lands adjacent to the [expanded] UGA and the continued conversion of prime agricultural land close to metropolitan markets. *FDO (July 9, 2012), pg. 57*

  [Reviewing de-designation of agricultural resource lands, the Board assessed each of the designation criteria in the County's comprehensive plan and the minimum guidelines.] *FDO (July 9, 2012), pg. 34-49*

Innovative Techniques

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** Forterra contends the only way to ensure agriculture survives economically in an urbanizing region is through purchase of development rights or conservation easements. Forterra champions a plan for a "green wall" of protected agricultural lands around the Sumner UGA. … Forterra's concept of a

4:1 ratio of permanent protection over de-designated acreage coupled with a "green wall" of protected agricultural lands around the Sumner UGA appears to the Board to be a promising approach to potentially further the GMA's fundamental policies to discourage urban sprawl and to protect resource lands. However, the challenge is to evaluate this concept under the GMA standards for de-designation and within the regional framework to assess whether the long-term *economic viability* of the agricultural industry is maintained and enhanced. *FDO (July 9, 2012), pg. 50, 53*

Amendment

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** [Challenge to a comprehensive plan amendment was timely and within the Board's jurisdiction when County amendment of its UGA expansion criteria was not narrowly limited to TDR implementation.] The T-6 Amendment was not part of a required update but was a policy initiative which considered an array of changes to the County's UGA criteria and process. With this initiative, the County essentially reopened the consideration of its UGA Expansion Criteria for public input and amendment. In the context of this expansive review, in part to accommodate absorption of farm lands, compliance with the UGA requirements for protection of agricultural lands was clearly on the table. *FDO (August 2, 2010), pgs. 36-37*

- ***North Clover Creek, et al v. Pierce County*, Case No. 10-3-0015:** [The County's action] was well within the scope of the limited exception to concurrent annual review provided by RCW 36.70A.130(2)(b). [The challenged action was an amendment to the comprehensive plan, was adopted with appropriate public participation, and was adopted to resolve an appeal to the Board.] *FDO (May 18, 2011), pg. 6*

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The Board recognizes the disappointment of citizens who have relied on a county or city promise to "establish a process" or engage in some future planning exercise. However, unless the adopted plan provides a fixed date or mandate for that promise, the Board seldom finds a violation…. The Graham Plan may have intended a more focused de-designation analysis and process for RF lands, but there is no mandatory obligation that provides a basis for the Board to look beyond the plain language of [the County Code]. … [Similarly], Staff working documents and representations to community groups do not constitute enforceable adoptions or amendments of plans and regulations. *FDO (July 9, 2012), pg. 110-111*

Burden of Proof

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The City argues Petitioners cannot meet their burden of demonstrating non-compliance simply by alleging that "it is unclear." Here, however, the Friends (and the City's EIS) have provided information of an imminent water capacity shortfall in meeting peak demand. The Comprehensive Plan requires "documentation" of adequate capacity, and the City's possible solutions were not persuasive to the County staff that analyzed the City's Water System Plan. [Footnote: the burden of production "must shift at some point such that the respondent must refute the evidence

proffered by the petitioner."] Under its Comprehensive Plan criteria, the County must have documentation of service capacity before it can approve a UGA expansion. Given the high stakes and long time periods required to secure new water sources or water rights, the Board finds the City's response falls short of the required "documentation." *FDO (July 9, 2012), pg. 76-77, and fn. 213*

Commerce, Department of

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie, Case No. 11-3-0012:*** The provisions of RCW 36.70A.106 are mandatory and submission of a proposed comprehensive plan amendment to Commerce is "an unambiguous requirement of the statute." Even if there is no other violation to be corrected, non-compliance with Section 106 requires a remand to the City or County. *FDO (May 8, 2012), pgs. 11-12*

Compliance

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008:** While cities and counties are allowed some choice in how they comply with mandates of the statute and orders of the Board, [the City's] choices [for an elaborate process] here extend and exacerbate the very violations at issue: preclusion of siting an essential public facility and extending an unpredictable permit process. [One month extension granted.] *Order on Limited Extension of Compliance Schedule (April 11, 2011)*, pg. 3

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** The Board finds the present case presents unusual complexity, as compliance is likely to require negotiation of interlocal agreements and commitments from regional transportation and other service providers, in addition to revision of SEPA analysis. The Board therefore sets a one-year compliance schedule [RCW 36.70A.300(3)(b)]. *Corrected FDO (May 17, 2011)*, pg. 71

- ***Davidson Serles v. City of Kirkland,* Coordinated Case Nos. 10-3-0012 and 09-3-0007c:** The Petitioners have additional and overlapping objections to [the compliance ordinances] which they have articulated in a new petition for review. While the Board believes all questions of compliance with [SEPA and the GMA Transportation Element requirements] might have been more appropriately raised and resolved in the compliance proceedings, the filing of a new PFR allowed for more thorough review and analysis. *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pgs. 10 and 13

- ***North Clover Creek, et al v Pierce County*, Case No. 10-3-0015:** Nothing in the statute requires a county to limit its compliance response to the most narrow revisions that could resolve the matter. Indeed, the Board has long held that a city or county has various options in most cases for complying with a Board finding of non-compliance. A city may, within its discretion, choose to do more than the minimum necessary to comply with an order of the Board. The Board seldom restricts the jurisdiction to the narrowest compliance option, except where more

complex strategies extend delays that frustrate fulfillment of GMA goals. *FDO (May 18, 2011), pg. 16*

Countywide Planning Policies (CPPs)

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** Woodway does not allege inconsistency with CPPs or that a CPP has been violated. There is no inter-local agreement between Snohomish County and Woodway giving the Town a deciding voice as to redevelopment of Point Wells. [Although the County's Point Wells designation is "starkly different" from the scenarios in Woodway's plan,] Woodway has not demonstrated the county's action violates the CPPS which constitute the framework for consistency between a county and its cities. *Corrected FDO (May 17, 2011)*, pg. 33

- ***William Palmer, et al v. Kitsap County and KRCC,* Case No. 12-3-0003:** The GMA does not provide for public challenge to CPPs. Only cities or the governor may appeal a CPP to the [GMHB]; citizens may not appeal…. Because RCW 36.70A.210(6) is specific to CPPs, Petitioners cannot resort to other provisions of the GMA in an effort to obtain standing. *Order of Dismissal (February 27, 2012), pg. 5-6*

Critical Areas

Geologically Hazardous Areas

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** There is no GMA directive that prohibits development [in a lahar or liquefaction zone] because of geological risks. While hazard areas are defined as areas that are *not suited to development* consistent with public health and safety, the GMA definition by itself does not impose an independent duty upon the County to protect life and property by prohibiting development…. The Board notes in the case of flood risks, the Legislature has defined the 100-year floodplain as mapped by FEMA as setting the bounds for more intensive development. No such bounds have been legislated into the GMA for other geological hazards. *FDO (July 9, 2012), pg. 98, 103*

De Facto Amendment

- ***Douglas Tooley v. Governor Gregoire, City of Seattle, et al.,* Case No. 11-3-0008:** The Board has consistently rejected challenges to city or county resolutions or ordinances that do not adopt plans but simply constitute part of the decision process [citing cases]. … Neither proposing a project for consideration under SEPA nor issuing an FEIS that analyzes the environmental consequences of a proposed project has the effect of requiring that action or altering land use. Thus, the FEIS cannot be construed as a de facto plan amendment sufficient to provide [GMHB] jurisdiction. *Order on Dispositive Motions (November 8, 2011), at 10, 12.*

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie, Case No. 11-3-0012:*** The Board finds a direct conflict between the City's comprehensive plan annexation policies – requiring an annexation implementation plan prior to approval of a proposed annexation – and the Resolution 1115 agreement to annex first and "defer applying the comprehensive plan

annexation policies." Resolution 1115 is a de facto amendment of the Snoqualmie Comprehensive Plan annexation policies. *Order on Motions (March 8, 2012) pgs. 12-13*

Deference

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008:** While the Board must defer to the City, the Board must find credible evidence in the record to support that deference. Here the City's restrictive zoning is simply not supported by substantial evidence indicating that siting a crisis diversion facility in the limited area is practicable. *FDO (January 4, 2011)*, pg. 21

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The Board has found no analysis of evacuation feasibility [for a UGA expansion proposal in a lahar zone]. However, it defies credulity to suppose a major suburban shopping complex, 650 homes, and a regional YMCA could be notified, evacuated, and reach higher ground in an hour. That said, it is not the Board's prerogative to substitute its judgment for that of the County officials. *FDO (July 9, 2012), pg. 103*

  The Board notes there is no GMA protection for "urban character." None of the GMA planning goals, definitions, or mandatory comprehensive plan elements addresses signage. From a GMA perspective, urban sign design policy and regulation is fully within the discretion of local elected officials. *FDO (July 9, 2012), pg. 134*

Economic Development (Goal 5)

- ***Fleishmann's Industrial Park LLC v. City of Sumner,* Case No. 11-3-0001:** [City did not violate Goal 5 when it retained heavy industrial zoning for the property but excluded it from the Manufacturing/Industrial Center.] *FDO, July 6, 2011, pg. 25*

Essential Public Facilities (EPFs)

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008:** If [the City's] process were found to comply with the GMA requirement for identifying and siting EPFs[,] any local jurisdiction, upon information that a previously-unidentified EPF was likely to locate in its boundaries, could declare a moratorium on project applications and undertake restrictive zoning to ensure that the selected site was no longer available. Such a process would soon undermine the GMA requirement not to preclude the siting of EPFs. *FDO (January 4, 2011)*, pg. 15

  A jurisdiction renders the siting of an EPF impracticable when, in response to an inquiry about a permit for a particular location allowed under its current zoning, the jurisdiction imposes a moratorium on permit applications while it amends its zoning to restrict such EPFs to a location other than the proponent's chosen site. Such a process does not comply with the GMA mandate of "a process for identifying and siting" EPFs [RCW 36.70A.200(1)]. *FDO (January 4, 2011)*, pgs. 16-17

  [The City's designated zoning restricted crisis diversion facilities to limited area where just 7 properties, which may or may not have been viable sites, were identified as on the market. The

project proponent, after reviewing the restrictive zoning, located a site in another city.] While the Board must defer to the City, the Board must find credible evidence in the record to support that deference. Here the City's restrictive zoning is simply not supported by substantial evidence indicating that siting a crisis diversion facility in the limited area is practicable. The City's limited zoning rendered siting the facility impracticable and precludes siting an EPF in violation of RCW 36.70A.200(5). *FDO (January 4, 2011)*, pg. 21

Evidence (Supplemental Evidence and Exhibits)

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008:** [In allowing documents related to actions prior to moratoriums that were the subject of the *DESC* cases, the Board stated] The Board considers the controversy between the City and Sleeping Tiger prior to enactment of the moratorium to be relevant to the issue of essential-public-facility preclusion. Whether or not these particular documents were presented to the City Council in its deliberations, it defies credulity to suppose that the City staff failed to inform the Mayor and Council of DESC's use of the RiverSide Residences [Sleeping Tiger's property] and of the zoning dispute and hearing examiner appeal. The Board finds the proffered documents are part of the City's record of the events that triggered the moratorium on siting crisis diversion facilities, resulting eventually in Ordinance 2287. *Order on Motions to Supplement (October 4, 2010), pg. 3*

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** [Aerial maps produced subsequent to the challenged action and annotated by Petitioners were admitted.] The Board views the aerial maps as illustrative exhibits, depicting areas of the County that are familiar to County decision-makers, and annotated with information readily available from public sources [viz – acreage and traffic counts]. These exhibits were not part of the paper file or content of meetings that informed the Council's adoption of the challenged ordinances. However, if relevant, they may assist the Board in understanding matters that were undoubtedly known to County officials. [As to the traffic counts,] the City asserts that the carrying capacity of roadways accessing the County's Urban Centers is necessary to a determination of whether urban services can be provided to serve the zoned densities. The Board agrees that the information appears to be "necessary or of substantial assistance." *Order on Motions to Supplement (Jan. 14, 2011), pg. 3*

  [Petitioners requested that the Board conduct a site visit. The Board declined.] The paper record and supplemental documents – aerial photographs, topographical maps – appear to provide the additional area-specific information necessary to the Board's decision of the issues in this case. *Order on Motions to Supplement (Jan. 14, 2011)*, pg. 8

- ***Davidson Serles v. City of Kirkland,* Coordinated Case Nos. 10-3-0012 and 09-3-0007c:** [Petitioners contended changes in design of the project required additional SEPA analysis. Prior to the Board's hearing, the Design Review Board issued its decision.] The Board here only reviews the narrow question of whether the 2010 SEPA review was flawed because it failed to describe and analyze significant changes in the design of the proposal. The Board finds the supplemental documents proffered by Touchstone are "necessary or of substantial assistance"

in deciding this question, though they were produced subsequent to the challenged action. The Board reasons that a significant amendment or major modification of the adopted design guidelines might arguably constitute new information for purposes of SEPA analysis. These documents are therefore admitted. *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pgs. 18-19

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie, Case No. 11-3-0012:*** The Board has no authority over the public records request process. Parties to Board proceedings who request documents under the Public Disclosure Act do so for their own purposes. However, if the disclosure provides information that is necessary or of substantial assistance to the Board's decision, a motion to supplement is appropriate. *Order on Motions (March 8, 2012), pg. 16*

External Consistency

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** No fact-specific local circumstances have been offered to demonstrate any incompatibility between the County's prior 5 du/ac minimums in its residential low designations and the corresponding residential low minimums in the associated cities – Poulsbo's 4 du/ac RL, Port Orchard's 4.5 du/ac, or Bremerton's 5 du/ac LDR minimums. *FDO on Remand (Aug. 31, 2011), pg. 24*

Forest Lands

- ***Janet Wold, et al v City of Poulsbo,* Case No. 10-3-0005c:** The Board points out the difference between GMA designation of natural resource lands and current use classification for tax purposes. The GMA requires counties to designate forest lands, mineral lands, and agricultural lands of long-term commercial significance. These lands are to be protected from urban development and from sprawl. … [Within the UGA or a city] there may be property owners who want to keep a woodlot or pasture or berry farm rather than develop at urban densities. The current use classification allows temporary tax breaks in return for a ten-year commitment for such uses. Current use classification is not the same as a GMA designation of natural resource lands of long-term commercial significance. *Order on Motions to Supplement the Record (May 11, 2010), pg. 12*. [The notice-to-title protections of the GMA do not apply.] *FDO (August 9, 2010), pgs. 38-40*

Goals

- ***North Clover Creek, et al v Pierce County*, Case No. 10-3-0015:** [The County's motion to dismiss a legal issue challenging consistency with a GMA Goal] misreads the statute and case law. RCW 36.70A.290(2) gives the Board jurisdiction to decide petitions challenging "compliance with the goals and requirements" of the GMA. Except where a specific GMA requirement may set up a conflict with a GMA goal, the Board must review challenged actions "in light of the goals" as well as the requirements of the Act. [RCW 36.70A.320(3)] While the Board seldom finds a GMA violation based on a Planning Goal viewed in isolation from a statutory requirement, the Board is mandated to assess the County's action in light of both the goals and requirements of the Act. [Citing *Suquamish v Kitsap County.*] *FDO (May 18, 2011), pg. 10*

- ***Fleishmann's Industrial Park, LLC v. City of Sumner,* Case No. 11-3-0001:** [Board reviewed consistency with GMA goals independent of a mandatory GMA requirement, citing *LIHI v City of Lakewood,* 119 Wn.App. 110 (2003).] *FDO, July 6, 2011, pgs. 21-22*

Goal 3: Transportation (*See Transportation*)

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** [The County's redesignation and development regulations ordinances for Point Wells do not provide efficient multi-modal transportation, are not based on regional priorities, and are not coordinated with city comprehensive plans.] *Corrected FDO (May 17, 2011)*, pg. 48

Goal 7: Permits (*See Permits*)

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008:** When the City learned of the proponent's interest in siting crisis diversion services on petitioner's property, the City launched an ad hoc process starting with moratoriums and resulting in changed zoning regulations. There was no way for [the proponent or property owner] to know what the process would be, how long it would take, or what requirements or restrictions might ultimately be imposed. In connection with EPF siting, such action by a city "results in an unfair and unpredictable permitting process contrary to [GMA Goal 7]." *FDO (January 4, 2011)*, pg. 24

Goal 11: Citizen Participation and coordination (*See* ***Public Participation/Citizen Participation***)

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** Goal 11 is primarily concerned with the planning process, calling for citizen participation and interjurisdictional coordination. [T]he Goal uses the word "ensure" [to] give greater emphasis to the coordination clause of the Goal – "*ensure* coordination between communities and jurisdictions to reconcile conflicts." However, Petitioners' attempt to turn "ensure" into a requirement that all interjurisdictional conflicts be successfully resolved is not supported by any authority. Indeed, giving individual jurisdictions and communities a veto power over adjacent zoning is contrary to the presumption of validity that the statute grants to local GMA enactments. Rather, the Board reads the second half of Goal 11 as requiring a planning city or county to make active outreach to affected communities and jurisdictions in the interest of coordination and conflict-resolution. The County's process in the case before us clearly allowed communities such as the Richmond Beach neighborhood and the adjacent municipalities of Shoreline and Woodway to provide input and seek solutions. *Corrected FDO (May 17, 2011), pg. 50*

Goal 12: Public facilities and services (*See Public Facilities & Services*)

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** The development regulations enacted by the County for the Point Wells Urban Center do not adopt a sufficient plan for infrastructure and services [as required within the GMA's 20-year horizon for coordinated land use and

infrastructure planning]. Rather, the regulations establish a *process* for developing urban services commitments concurrently with approving project permit applications. … *Corrected FDO (May 17, 2011)*

BSRE asserts that its promises to fund the building of [required infrastructure] stand in for the governmental commitment required by the GMA. BSRE and the County assert the facilities and services will be available when development is available for occupancy, as set forth in Goal 12. While the Board assumes good faith on the part of the County (and BSRE), good faith is not a substitute for identifying and providing for needed infrastructure and public services. "Trust us" is not a GMA plan. *Corrected FDO (May 17, 2011), pgs. 44-45*

Housing Element (Goal 4)

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** Nothing in the record before the Board suggests that increasing the number of quarter-acre lots for single-family housing provides for a special need of a particular segment of the community. … The Board is not persuaded that additional large-lot urban zoning is called for by any local circumstance related to availability of varied housing types. … The record does not support the County's assertion that reduced UL/UC densities broaden housing options or increase affordable housing. Nevertheless, the Board recognizes the 2006 Plan Update included other actions clearly guided by GMA Goal 4 – Housing [noting provision for new mixed use zoning, increase of maximum densities in Urban High and Commercial designations, and target that 25% of new dwellings be multi-family]. *FDO on Remand (Aug. 31, 2011), pgs. 45-46*

Interjurisdictional Coordination

- ***Janet Wold, et al v City of Poulsbo,* Case No. 10-3-0005c:** The GMA promotes coordinated planning among cities and counties. For a county and its cities to develop an inter-jurisdictional agreement concerning a land capacity methodology is consistent with the coordination contemplated by RCW 36.70A.210. Here the City joined in a negotiated agreement with other cities and Kitsap County to develop a uniform methodology for land capacity analysis. [The City's use of the methodology for its LCA] does not cede its land-use powers to the County. *FDO (August 9, 2010), pg. 54*

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** RCW 36.70A.100 requires coordination and consistency of the *adopted comprehensive plans* of adjacent jurisdictions. This section does not reference development regulations. Amendments to development regulations are not properly the subject of a Section .100 challenge [citing cases]. *Corrected FDO (May 17, 2011), pg. 28*

  The requirement of inter-jurisdictional coordination and consistency is a fundamental GMA objective. It is reflected in legislative findings stating "citizens, communities, local governments and the private sector [should] cooperate and coordinate" in land use planning [RCW 36.70A.010]. GMA Planning Goal 11 calls for cities and counties to "ensure coordination between communities and jurisdictions to reconcile conflicts" in developing their plans [RCW

36.70A.020(11)]. GMA requirements for adoption of County-wide Planning Policies (CPPs) are designed to provide a framework for city-county coordination [RCW 36.70A.210(1)]. The mandate of "coordination and consistency" in RCW 36.70A.100 must be construed in this context. *Corrected FDO (May 17, 2011), pg. 28*

The requirement for inter-jurisdictional coordination and consistency in RCW 36.70A.100 does not require Snohomish County to adopt land use designations or zoning regulations in the unincorporated UGA that are the same as or approved by an adjacent municipality. Inter-jurisdictional consistency does not give one municipality a veto over the plans of its neighbor. *Corrected FDO (May 17, 2011), pg. 36*

In the unique circumstances of this case, the County's action does not comply with RCW 36.70A.100. Here, substantial evidence in the record demonstrates the Point Wells Urban Center redesignation makes Shoreline's plan non-compliant with the GMA, as Shoreline has no plans or funding for the necessary road projects to maintain the level of service standards which it has adopted pursuant to GMA mandates…. The GMA requires capital facilities and transportation planning *at the same time* as land use designations. Where, as here, the capital planning of necessity involves adjacent jurisdictions, RCW 36.70A.100 mandates that the plans of those jurisdictions be consistent [referencing "interlocal agreements or other secure commitments" that can be incorporated in planning documents.] *Corrected FDO (May 17, 2011), pgs. 36-37*

Internal Consistency

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** The County had launched a serious and effective effort to increase the rate and density of development in its urban rather than rural areas - an effort reflected throughout the 2006 Plan Update. Lowering the UL/UC minimum density created an internal inconsistency in the Plan. *FDO on Remand (Aug. 31, 2011), pg. 34*

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** Amendments to development regulations are not properly subject to a challenge based on RCW 36.70A.070 [citing cases]. Consistency of development regulations with comprehensive plans is mandated in other GMA provisions. [RCW 36.70A.130(1) and .040.] *Corrected FDO (May 17, 2011), pg. 12*

  [The Board defers to the County's construction of its comprehensive plan language on Urban Center locational criteria but, considering the criteria in the context of the comprehensive plan Urban Centers policies, including PSRC Vision 2040 principles, concludes the designation of Point Wells as an urban center is internally inconsistent with the County's comprehensive plan land use policies.] *Corrected FDO (May 17, 2011), pgs. 14-15, 22*

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The GMA requires consistency among the elements of a comprehensive plan, including sub-area plans. A

framework for consistency is provided by countywide planning policies, and in the Central Puget Sound region, multi-county planning policies. A comprehensive plan amendment must meet these consistency requirements. [Citing RCW 36.0A.070 (preamble), .080(2), .130(1)(d), .210(1), .100, .210(7).] *FDO (July 9, 2012), pg. 105*

Intervention

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** The Board has long recognized that the GMA petition system differs from other kinds of land use lawsuits. The Board is charged with determining only whether governments have complied with the GMA. In reviewing a petition challenging a comprehensive plan amendment, the Board does not assume any direct authority over landowners or individual parcels. For this reason, there is no requirement that the petition be served on anyone other than the responsible city, county, or state agency. However, intervention is liberally granted to affected property owners and neighbors. *Order on Motions (April 27, 2010), pg. 4*

Invalidity

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 10-3-0008:** [A determination of invalidity was entered based on Goal 7 – Permits.] The Board determined that the City's failure to act consistently with the process for siting EPFs set forth in its Comprehensive Plan, followed by its subsequent revisions to its development regulations, resulted in a permit process that is not timely, fair, or predictable. The continued validity of [the ordinance] would continue to frustrate timeliness and predictability. *FDO (January 4, 2011)*, pgs. 25-26

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** GMA Goals 1, 3, and 12 are linked in their call for coordinated planning that ensures urban growth is efficiently served by multimodal transportation and other urban services. [Board determined the Urban Center designation for an isolated area substantially interfered with Goals 1, 3, and 12, and imposed invalidity.] *Corrected FDO (May 17, 2011)*, pgs. 72-73

- ***Toward Responsible Development, et al v. City of Black Diamond,* Case No. 10-3-0014:** [I]nvalidity is a discretionary remedy available to the Board when a city or county takes action which not only fails to comply with the GMA but substantially interferes with the goals of the Act. The GMA [RCW 36.70A.302[1]] requires that invalidity be determined on a case-by-case basis. [Citing *Davidson Serles v Kirkland*: "The board's statutory authority to invalidate actions … is not mandatory and certainly is not absolute."] *Order Denying Certificate of Appealability (May 17, 2011), pgs. 4, 6*

  Generally, when the Board issues a final decision and that decision is appealed, the Board no longer retains jurisdiction over the appealed issue, except for compliance actions where no stay has been issued. [Absent authorization from the superior court, the Board declines to rule on petitioners' motion for invalidity as to which an appeal is pending.] *Order on Motion for Invalidity Based on New Information (June 20, 2011), pgs. 6-7*

Jurisdiction (Subject Matter Jurisdiction)

- ***Andrew Cainion v. City of Bainbridge Island*, Case No. 10-3-0013:** The Board may review the denial of a comp plan amendment when by such a denial the jurisdiction fails to fulfill an express explicit mandate either from the GMA or the City's own comprehensive plan. … The Board can find nothing in the record or in the Comp Plan itself that gives a clear mandate and/or definitive timeline [to complete the Special Area Planning Process]. [Thus the Comp Plan] establishes no duty upon which the alleged GMA violations could be founded. *Order on Motion to Dismiss (January 7, 2011)*, pgs. 2-3

- ***Toward Responsible Development, et al v. City of Black Diamond,* Case No. 10-3-0014:** [On reversal by the Court of Appeals, the Board's finding of jurisdiction is reversed and its *Order on Motions (Feb. 15, 2011)* is rescinded. *(Order of Dismissal (August 21 , 2012)*

  The GMA is predicated on coordinated planning for urban growth and the necessary urban infrastructure and services under an open legislative process. It is in the public interest to have a prompt resolution of the dividing line between comprehensive GMA planning [within the jurisdiction of Board review] and the types of land use matters that may be decided by the City in a non-GMA quasi-judicial process. *Certificate of Appealability (Apr. 21, 2011), pg. 4*

- ***Chestine Edgar, et al v. City of Burien*, Case No. 11-3-0004:** [While the PFR was filed within 60 days of the City's denial of their proposed down-zoning amendment,] it is clear the Petitioners are directly challenging the Moderate Density land use designation for the Lake Burien area, a legislative action that occurred in 1999. … The PFR, in challenging a 1999 land use designation, is untimely. *Order on Motions, May 12, 2011, pgs. 4-5*

  The Board has repeatedly affirmed that an amendment offered and rejected by the legislative body is generally not appealable to the Board except in limited situations [not applicable here.] *Order on Motions, May 12, 2011, pg. 8*

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 11-3-0005:** [In this case] it is the City's interpretation and application of the moratorium to a site-specific project permit that underlies Sleeping Tiger's challenge … and it the processing of the permit that it seeks in redress. The Board cannot review applications for project permits; that is the province of the superior court under a LUPA appeal, which Sleeping Tiger currently has pending in King County Superior Court. *Order on Motions, May 6, 2011, pg. 9*

- ***Douglas Tooley v. City of Seattle,* Case No. 11-3-0006:** [The Board dismissed a challenge to the Alaska Way Viaduct Replacement SEIS *sua sponte* on the grounds that there was no final action ripe for review, as the Final EIS had not yet been issued.] *Order of Dismissal, April 1, 2011*

Land Capacity Analysis

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** [T]he land capacity analysis is intended to provide the information needed to right-size the UGA to accommodate a projected population. As the GMA Guidelines explain: "The land capacity analysis is a comparison between the collective effects of all development regulations operating on development and the assumed densities established in the land use element." [WAC 365-196-325(2)(a)] Thus, to determine future development capacity, the Guidelines advise looking not solely to the minimum density in each zone, but to the "collective effect of all development regulations." [T]his underscores the Court's insistence on a review of local circumstances – what is actually happening on the ground. *FDO on Remand (Aug. 31, 2011), pgs. 55-56*

  [The Board finds] use of 4 du/ac as a capacity multiplier in the LCA is not supported by local circumstances, first, as it ignores the range of densities allowed in each designation and the trend to higher achieved densities in the UL/UC, and second, as it applies a capacity number lower than the minimums in UGAs associated with all but the smallest of its cities. *FDO on Remand (Aug. 31, 2011), pg. 58*

  In Kitsap County, the UR designation is a very-low density urban designation in lands where a high-degree of environmentally critical areas (more than 50%) is a constraint on capacity for development. Permitted densities are just 1-5 du/ac. In addition to using the much lower density when calculating the capacity of constrained lands, the County's land capacity analysis (LCA) also subtracts mapped critical areas from the available land supply in all urban designations. In the UR lands, because wetlands, unstable slopes, and the like are already excluded from the calculation, the unusually low density is actually applied only to the "high and dry" remainder which is not constrained. The result is that the LCA discounts land capacity twice for environmental protection, resulting in UGAs which are oversized for the forecast growth. … [T]he County's application of a [very-low density] zoning minimum to the LCA formulation after critical areas are already discounted is a "double-dip" that understates the actual capacity for development of UR-designated lands. *FDO on Remand (Aug. 31, 2011), pgs. 50-51*

Land Use Powers

- ***Janet Wold, et al v City of Poulsbo,* Case No. 10-3-0005c:** For a County and its cities to develop an inter-jurisdictional agreement concerning a land capacity methodology is consistent with the coordination contemplated by RCW 36.70A.210. [The City's use of the methodology for its LCA] does not cede its land-use powers to the County. *FDO (August 9, 2010), pg. 54*

Legislative Findings

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** Although legislative findings do not create independent obligations, they may provide important assistance to the Board and the parties in interpreting and applying the mandates of the statute. Thus the Board looks to Section .011 for guidance in the analysis of [legal issues concerning rural character, but] allegations of non-compliance with Section .011 are dismissed. *FDO (August 2, 2010), pg. 8*

Minimum Guidelines

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The Minimum Guidelines provide specific rules for amending natural resource designations. WAC 365-190-040(10)(b) sets forth the *process* for reviewing natural resource designations. First, a parcel-by-parcel approach is prohibited. Second, designation amendments should be based on changed circumstances, an error in designation, new information, or a change in population growth rates. Pursuant to RCW 36.70A.050(3), the WAC 365-190 guidelines promulgated by the Department of Commerce "shall be minimum guidelines that apply to all jurisdictions." The courts have now clarified that these guidelines must be followed. *FDO (July 9, 2012), at 30-31*

Notice

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** A proposal may be modified during the course of public debate without necessarily requiring publication of a new notice …The text of Amendment 2A was provided to the public and the County received public comment [including from petitioners] prior to the close of its public hearing. [No violation of GMA notice and public participation requirements for Amendment 2A]. *Order on Dispositive Motions (Jan. 18, 2011)*, pg. 18.

Open Space/Parks and Recreation (Goal 9)

- ***Janet Wold, et al v City of Poulsbo,* Case No. 10-3-0005c:** The Board notes the overlapping values of the designations for open space, habitat, and critical area buffers. For example, 'open space corridors' can serve a variety of purposes such as 'recreation, wildlife habitat, trails, and connection of critical areas.' [RCW 36.70A.160] Petitioners have not shown that a Comprehensive Plan map which simply aggregates various kinds of open spaces, from parks to trails to protected habitat, somehow diminishes or merges the different regulatory or access regulations that may apply. *FDO (August 9, 2010), pg. 33*

Petition for Review

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** [A petition will not be dismissed because of alleged misstatements of fact.] The Intervenors' objections have been addressed and fully remedied. The Board has restated the legal issues. [One issue was withdrawn and another reference to intervenors was deleted in the restated legal issues.] *Order on Motions (April 27, 2010), pg. 7*

- ***Toward Responsible Development, et al v. City of Black Diamond,* Case No. 10-3-0014:** RCW 36.70A.290's requirement for a petitioner to articulate its issues within 60 days prohibits the addition of issues beyond the statutory appeal period. Refinement and/or clarification of the issues can occur after the appeal period has elapsed, however, for the Board to allow new previously-unarticulated issues to be presented would simply amount to a PFR becoming an issue "placeholder" contrary to .290's requirement for a "detailed statement of the issues." *Order on Motion to Amend Prehearing Order (Jan. 18, 2011), pg. 3*

Property Rights (Goal 6)

- ***Fleishmann's Industrial Park LLC v. City of Sumner,* Case No. 11-3-0001:** To prevail on a Goal 6 challenge, petitioner must prove the City's action was both arbitrary and discriminatory. Fleishmann's has demonstrated the action was discriminatory [its property was the only heavy industrial land excluded from the MIC, although it adjoins the MIC on two sides], but has not met its burden of demonstrating the action was arbitrary [as a staff report provides rationale]. *FDO, July 6, 2011, pg. 28*

Public Participation/Citizen Participation (Goal 11)

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** [C]itizen comments supporting the lowered urban minimums do not articulate how that would further the GMA requirements and County Plan policies of (1) directing the bulk of growth to urban areas and (2) differentiating urban from rural areas to reduce sprawl and protect rural character. Moreover, the written record of citizen comment does not provide any specific information about neighborhood character that would support a whole-sale down-zoning. Therefore [citing *Kittitas County,* Supreme Court Case No. 84187-0], the Board finds the record of community input fails to identify current local circumstances to support lowering UL/UC minimum densities. *FDO on Remand (Aug. 31, 2011), pgs. 20-21*

- ***Janet Wold, et al v City of Poulsbo,* Case No. 10-3-0005c:** The Board finds that while the City erred at the beginning of the public participation process by not establishing a public participation plan for the duration of the development and passage of the Comprehensive Plan, it took corrective action at the beginning of Phase 2 with the passage of Resolution 2009-3 implementing a public participation plan [thus curing the non-compliance]. *FDO (August 9, 2010), pg. 16*

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** *Burrows* and other Board decisions establish that requirements for effective notice and fair public process do not mandate that the final language of the ordinance be available for public comment before it can be adopted. Rather, when a proposal is amended after the public process is closed, the Board must determine whether it was "within the scope of alternatives available for public comment," [RCW 36.70A.035(2)] or whether a new notice and opportunity for comment is required. … [Reviewing the record] the Board is not persuaded the [challenged] amendments are beyond the scope of alternatives the public had an opportunity to review. *Order on Dispositive Motions (Jan. 18, 2011)*, pgs. 20, 22

Reasonable Measures

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** The GMA requires a County to enact "reasonable measures" likely to increase the rate and density of growth in the urban areas "in lieu of expanding the UGA." Accordingly, Kitsap's 2006 Plan Update contains a significant commitment to Reasonable Measures. The Board [finds]

reduction of minimum densities in 70% of the UGA, with concomitant UGA expansion, is inconsistent with the Plan's reasonable-measures goals and policies. *FDO on Remand (Aug. 31, 2011), pg. 29*

Reconsideration

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** [Board declined to reconsider dismissal of legal issue referencing incorrect GMA subsection.] There were several opportunities for Petitioners to revise and hone their legal issue statements. More importantly, preparation of the Prehearing Brief necessarily entails reviewing and arguing the statutory basis for each legal issue. Petitioners had this additional opportunity to discover and correct the error [but the statutory analysis was limited to a single sentence.] *Order on Motions for Reconsideration (May 17, 2011), pg. 3*

Regional Planning

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** PSRC's multi-county planning process is the means by which local elected officials in the four-county metropolitan [Central Puget Sound] region articulate the "regional differences" which the GMA seeks to recognize…. Coordination and consistency among the metropolitan counties sharing common borders and related regional issues [see RCW 36.70A.100] is provided in the GMA through the provision for multi-county planning policies. Multicounty planning policies, like countywide planning policies, provide a "framework [that] shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100." *FDO (July 9, 2012), pg. 10-11, 117*

  MPPs and CPPs cannot be ignored, particularly when their provisions are directive. …[Neither the cited MPPs] nor the cited CPPs can be read as an absolute prohibition of de-designation of ARL lands, in view of the designation amendment provisions in the Commerce minimum guidelines, County Policies, and case law. However, when weighing the ARL designation factors, the MPPs require a Central Puget Sound county – and the CPPs require Pierce County – to put a heavy thumb on the balance scale in favor of continued designation for prime farmland. *FDO (July 9, 2012), pg. 60*.

Respondent

- ***William Palmer, et al v. Kitsap County and KRCC*, Case No. 12-3-0003:** Kitsap Regional Coordinating Council is a forum for county/city collaboration in developing countywide planning policies and coordinating land use matters. KRCC is not an entity subject to challenge before the Board. *Order of Dismissal (February 27, 2012) at 4-5*

Rural Element

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** Pierce County, in adopting the Graham Plan, has defined rural character for the Graham area. The GMA acknowledges the importance of local circumstances, and thus allowing each rural community to develop its unique vision of rural lifestyle, as Pierce County does through its community plans, is an

appropriate way to implement the requirement for a rural element in the County Comprehensive Plan. *FDO (August 2, 2010), pg. 55*

The Board has had few opportunities to assess the Rural Element requirements for preserving "visual landscapes" and assuring "visual compatibility." In the present case [the Community Plan] gives definition to the visual elements of the rural character it seeks to preserve. *FDO (August 2, 2010), pg. 57*

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** The Board finds the County has assumed responsibility for ensuring school facility locations are consistent with the County's growth plans. The Multi-county Planning Policies, the 2009 Countywide Planning Policies, and the [applicable sub-area plans], require the County to engage with school districts in planning for school locations; it is not enough to say the County will impose conditions on a school district's subsequent permit application. [Rezone to accommodate multi-school campus in the rural area remanded to County.] *FDO (July 9, 2012), pg. 122*

Sequencing/Tiering

- ***Janet Wold, et al v City of Poulsbo,* Case No. 10-3-0005c:** The City has undertaken a significant initiative for redevelopment in the heart of the City and has adopted or is planning other measures for first-tier infill. For development farther out in the annexed areas, while the City's plan relies largely on private developers for sewer system extensions, …the City has competent plans to provide urban infrastructure throughout the annexed areas in the 20-year planning horizon. In short, staged growth as advocated by Petitioners may well be a more prudent strategy, but it is not a GMA requirement so long as infrastructure concurrency is achieved. *FDO (August 9. 2010), pg. 61*

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** It is well settled that the phased location of urban growth in RCW 36.70A.110(3) is advisory, not mandatory, as indicated by the word "should" rather than "shall." This statutory provision "*recommends* where urban growth should be located and who should provide governmental services to those areas." [Citing *Spokane County v. City of Spokane* and Board cases.]The Board has indicated growth phasing is an option which is available to address the need for infrastructure concurrency, but is not a mandate. *Corrected FDO (May 17, 2011)*, pgs. 38-39

Service

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** The Board has long recognized that the GMA petition system differs from other kinds of land use lawsuits. The Board is charged with determining only whether governments have complied with the GMA. In reviewing a petition challenging a comprehensive plan amendment, the Board does not assume any direct authority over landowners or individual parcels. For this reason, there is no requirement that the petition be served on anyone other than the responsible city, county, or

state agency. However, intervention is liberally granted to affected property owners and neighbors. *Order on Motions (April 27, 2010), pg. 4*

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie, Case No. 11-3-0012:*** Petitioners' failure of strict compliance [with WAC 242-03-230(2)] was occasioned by the unscheduled closure of City Hall. By diligent and prompt efforts to complete service, Petitioners substantially complied. *Order on Motions (March 8, 2012), pg. 6*

Standing

APA Standing

- ***Sleeping Tiger, LLC v. City of Tukwila,* Case No. 11-3-0005:** [While petitioner had not participated in the public process related to the City's enactment of the moratorium, the petitioner sufficiently demonstrated APA standing where its application for an unclassified use permit was denied due to the moratorium.] *Order on Motions, May 6, 2011, pg. 7*

Participation Standing

- ***Janet Wold, et al v. City of Poulsbo,* Case No. 10-3-0005c:** Testimony in a public process does not need to spell out all of the Petitioners' legal theories, only apprize the City Council of the subject matter of the concern. The City was aware that Petitioners objected to the density standards on which the City was basing its plan. Petitioners are entitled to spell out additional legal bases for why they think the densities are noncompliant. *Order on Dispositive Motions (May 11, 2010), pg. 19*

- ***William Palmer, et al v Kitsap County and KRCC,* Case No. 12-3-0003:** The GMA does not provide for public challenge to CPPs. Only cities or the governor may appeal a CPP to the [GMHB]; citizens may not appeal…. Because RCW 36.70A.210(6) is specific to CPPs, Petitioners cannot resort to other provisions of the GMA in an effort to obtain standing. *Order of Dismissal (February 27, 2012), pg. 5-6*

SEPA Standing

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** One of SEPA's purposes is to ensure complete disclosure of the environmental consequences of a proposed action before a decision is taken. Participation and objection to the environmental analysis is therefore a prerequisite to review of agency SEPA compliance. … Pursuant to WAC 197-11-545(2) such lack of comment "shall be construed as lack of objection to the environmental analysis." [Board dismisses SEPA challenge of one of the Petitioners.] *Order on Dispositive Motions (Jan. 18, 2011)*, pgs. 6-7

  [Prior] Board decisions stating "Failure to allege SEPA standing in the PFR is grounds for the Board to discuss a SEPA claim" [must be read in context]. In each case, the Board looked beyond the statement of standing in the petition for review and assessed whether the

petitioner met the standing requirement adopted by the Board for SEPA cases. *Order on Dispositive Motions (Jan. 18, 2011)*, pg. 7

The Central Board's long-held position on SEPA standing is based on the statutory provisions in the State Environmental Policy act which define the basis for appeal of a SEPA determination. RCW 43.21C.075(4), the controlling provision in SEPA regarding standing to challenge environmental review [ ] provides "… a person aggrieved by an agency action has the right to judicial appeal …" The Washington appellate courts have clarified the reach of the language. A "person aggrieved" who seeks judicial review of a SEPA determination must meet a two-part test to establish standing – the *Trepanier* test. *Order on Dispositive Motions (Jan. 18, 2011)*, pgs. 8-9

The rezone to Urban Center includes separate and distinct development standards adopted for Point Wells alone, in essence vesting densities which will directly impact Shoreline as the adjacent provider of urban services. … The City of Shoreline claims [ ] a direct impact on its planning and funding of transportation infrastructure, parks and other public services. Under the GMA, a county's amendment of its comprehensive plan and development regulations may create immediate obligations for an adjoining city to plan consistently, preparing the necessary infrastructure and service capacity. The Board finds the harms alleged by the City constitute injury-in-fact. *Order on Dispositive Motions (Jan. 18, 2011)*, pgs. 10-12

[In a Concurring Opinion, Board Member Roehl would apply a different analysis to standing to pursue SEPA claims.] It is only when a petitioner relies on APA standing [RCW 36.70A.280(2)(d)] that the Board would appropriately apply the requirements of RCW 34.05.530, statutory conditions originating in federal case law incorporating the "zone of interest" and "injury in fact" requirements. *Order on Dispositive Motions (Jan. 18, 2011)*, pg. 26

[County argued the City of Shoreline was foreclosed from objecting to lack of SEPA alternatives by not raising the issue during the EIS scoping process.] As additional authority, the County cites *Department of Transportation v Public Citizen*, 541 U.S. 752 (2004). [Reviewing *Public Citizen* on the County's motion for reconsideration, the Board concluded the Petitioner's challenge was not foreclosed.] *Order on Motions for Reconsideration (May 17, 2011), pg. 7*

- ***Douglas Tooley v. Governor Gregoire, City of Seattle, et al.,* Case No. 11-3-0008:** By failing to submit timely comment on SEPA documents, Petitioner lacks participation standing for his SEPA challenge [citing WAC 197-11-545(2)]. *Order on Dispositive Motions (November 8, 2011), at 21.*

  By failing to allege injury in fact that falls within the SEPA zone of interests, Petitioner lacks standing to challenge a SEPA determination. The Board concludes it lacks statutory jurisdiction because Petitioner lacks standing to challenge the FEIS. *Order on Dispositive Motions (November 8, 2011), at 22.*

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie, Case No. 11-3-0012:*** The Board reads the SEPA comment provisions of WAC 197-11-545(2) as a component of exhaustion of

administrative remedies. Where public comment is a citizen's primary access to the administrative process, appropriate issues must first be raised before the agency [but citizens do not have to raise technical legal issues.] *FDO (May 8, 2012), pg. 16*

State Environmental Policy Act (SEPA)

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** Analysis of alternatives is central in nonproject SEPA review [citing WAC 197-11-442(2) (4)]. [While SEPA provides more flexible review for nonproject actions,] the "bookend" analysis of no-action and proposed-action in the present case fails to provide any information to allow decisions that might "approximate the proposal's objectives at a lower environmental cost" [WAC 197-11-786]. *Corrected FDO (May 17, 2011)*, pgs. 56-58

- ***Davidson Serles v. City of Kirkland,* Coordinated Case Nos. 10-3-0012 and 09-3-0007c:** Having reviewed the alternatives analyzed in the 2010 FSEIS, the Board finds the City has satisfied the SEPA requirement to review reasonable alternatives, including off-site alternatives. [T]he parties have not cited, and the Board has not found, any authority requiring an alternative that is smaller or intermediate in size, only that alternatives have lower environmental cost. In the proper case, this requirement may be met by off-site alternatives that spread the proposed development across a larger footprint. *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pg. 9

  [The City's EIS alternatives were all based on the square footage of the mega-project which petitioners opposed. However, the FSEIS broke out the impacts related to development on the project site only, thus providing alternatives with lesser or differing environmental impacts.] In short, the City decision-makers had the information they needed to select a less intense alternative on the Parkplace site or even to choose to forego additional development off-site and to plan for development on the Parkplace site alone at one of the lesser intensities….The 2010 SEPA review, with its expanded number of alternatives and subset analysis for the Parkplace site only, provided City Council members with ample information for a reasoned decision among alternatives having different and lesser environmental impacts. *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pg. 17

  [Petitioners contended changes in design of the project required additional SEPA analysis. Prior to the Board's hearing, the Design Review Board issued its decision.]The Design Review Board Decision demonstrates: the adopted design guidelines for Parkplace were not changed, no "major modification" to the guidelines was proposed, and the four "minor modifications" allowed were each ruled to be "consistent with the intent of the guideline and result[ing] in superior design" and "not result[ing] in any substantial detrimental effect on nearby properties or the neighborhood." On this record the Board cannot find there was a substantial change to the project that should have been noted and analyzed in the environmental review. *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pg. 19

- ***Fleishmann's Industrial Park, LLC v. City of Sumner,* Case No. 11-3-0001:** Industrial uses have potentially very different impacts from high-density mixed-use residential/commercial developments; but differing impacts are not identified or assessed in the DEIS. [Case was remanded for SEPA review.] *FDO, July 6, 2011, pg. 16*

  The Board understands adoption or denial of map amendments studied in an EIS may require changes to comprehensive plan text to ensure consistency. Where alternatives have been robustly analyzed and mitigation measures assessed, resulting text amendments may need no further scrutiny. Unfortunately, in this case, [DEIS] analysis of the proposal was far too sketchy to support an un-analyzed text amendment. *FDO, July 6, 2011, pg. 20*

- ***Douglas Tooley v. Governor Gregoire, City of Seattle, et al.,* Case No. 11-3-0008:** The Board lacks jurisdiction to determine SEPA compliance except as it is tied directly to "adoption" or "amendment of a GMA or SMA plan or regulation [citing RCW 36.70A.280(3), .300(1), (3) (a) and (b)]. All SEPA appeals must appeal "a specific governmental action" together with the SEPA document or lack thereof [citing RCW 43.21C.075(1), (2), and (6)]. In the present case, Petitioner has not identified any final action by the City or State that constitutes adoption or amendment of a GMA plan or development regulation. *Order on Dispositive Motions (November 8, 2011), at 8-9.*

  Petitioner contends it is widely known the City and State finalized their intentions for the Viaduct replacement prior to issuance of the FEIS. However, the intentions of elected officials and other governmental personnel do not trigger the basis for an appeal; rather, some formal action must be taken that is binding on the local government or state agency. *Order on Dispositive Motions (November 8, 2011), at 15.*

- ***Your Snoqualmie Valley, et al. v. City of Snoqualmie, Case No. 11-3-0012:*** [Noting that annexations are specifically exempted from SEPA review, the Board found] the SEPA official appropriately limited her review of the impacts of the Pre-annexation Zoning ordinance to a comparison of the impacts of allowed uses under the King County zoning as conditioned by its P-suffix with the impacts of allowed uses under the City zones as conditioned by City regulations and plan requirements. *FDO (May 8, 2012), pg. 23*

  The task of the threshold determination under SEPA is to compare existing conditions with a proposal. Here the baseline is the unmitigated DirtFish operation and the proposal adopts agreed restrictions. "The agency's task is to analyze the proposal's impacts against existing uses." *FDO (May 8, 2012), pg. 32*

Timeliness

- ***Andrew Cainion v. City of Bainbridge Island*, Case No. 10-3-0013:** Cainion disagrees with the original designation [of his land] but did not challenge that designation when originally enacted and cannot now challenge that designation collaterally by challenging the City's denial of Cainion's proposed amendment. The GMA's statutory appeal period expressly prohibits such an appeal. *Order on Motion to Dismiss (January 7, 2011)*, pg. 4

Transformation of Governance

- ***City of Shoreline, Town of Woodway and Save Richmond Beach, Inc. v. Snohomish County,* Coordinated Case Nos. 09-3-0013c and 10-3-0011c:** RCW 36.70A.110(4) does not impose a mandate. It provides: "*In general*, cities are the units of government *most appropriate* to provide urban services." Petitioners have cited no authority for asserting the County is required to designate a city to provide urban services as a condition for a comprehensive plan amendment in the urban area. *Corrected FDO (May 17, 2011)*

Transportation Element

- ***Davidson Serles v. City of Kirkland,* Coordinated Case Nos. 10-3-0012 and 09-3-0007c:** [The City] amended the Capital Facilities Plan and the Transportation Element of the City's Comprehensive Plan to include and identify funding sources for all the improvements called for in the Planned Action Ordinance for the Touchstone project for a ten-year period, thereby curing the deficiencies identified in the FDO. [The City's compliance ordinance] meets the consistency requirements of RCW 36.70A.070 (preamble), .070(3), and .070(6) because it includes all necessary capital improvements and provides a "multi-year financing plan based on the [10-year transportation] needs identified in the comprehensive plan." *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pg. 13

  Petitioners argue that [RCW 36.70A.070(6)(a)(iv)] requirement (A) - analysis of funding capability to judge needs against probable funding resources –entails more than simple identification of funding sources and projected dollar amounts for each source […but…] must address "the range of revenue reasonably expected, the assumptions and variables for the projected sums and the level of certainty for the projections." According to the Guideline [WAC 365-196-430(2)(k)(iv)], "analysis of funding capability" means determination of revenues "reasonably expected" based on existing sources and "a realistic estimate" of any new funding source. Many jurisdictions, including Kirkland, undoubtedly undertake a much more sophisticated financial forecast and risk assessment in their annual CFP reviews, but the Board does not find that the GMA requires the Comprehensive Plan transportation element to contain ranges, assumptions and variables, and levels of certainty for transportation funding sources. *Finding of Compliance Case No. 09-3-0007c and FDO Case No. 10-3-0012 (Feb. 2, 2011)*, pgs. 21-23

Urban Density

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** [The 2006 Plan Update] acknowledges a historic local development pattern that failed to direct urban growth to urban areas, failed to distinguish urban from rural lands, and failed to provide for efficient urban services. In this context … the "current local circumstance" which determines the "appropriate urban density" in Kitsap County's unincorporated UGAs must begin with recognition of recent on-the-ground progress achieved by the County in implementing the UGA goals for compact urban development and reduction of sprawl. …[T]his trend of actual and increasing residential densities above 5 du/ac is the local circumstance which, in the absence of

reliance on an urban bright line, indicates the appropriate urban density for Kitsap's unincorporated UGAs. As the remand states [156 Wn.App. at 780], the Board is to focus on local circumstances at this time, recognizing changes to land usage or population. *FDO on Remand (Aug. 31, 2011), pgs. 16-17*

[W]hile Petitioners' academic studies and articles about the costs of sprawl and the efficiency of compact urban development do not prove that Kitsap must adopt a particular level of urban density, the County's capital facilities process in the case before us demonstrates the "on-the-ground" cost of planning to serve, and serving, a significant extension of lower-density urban development [with urban sewer systems]. *FDO on Remand (Aug. 31, 2011), pg. 42*

Urban Growth Areas (UGAs)

UGA Location

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** [Pierce County's Comprehensive Plan Policy – UGA Expansion Criteria – was not required to contain a policy prohibiting inclusion of agricultural lands in the UGA: agricultural lands are protected by other GMA imperatives.] *FDO (August 2, 2010), pgs. 39-40*

  [The subarea plan] calls for a clear distinction between urban and rural areas. Logical boundaries are an important determinant of such distinctions. [Deviation from arterial as UGA boundary was inconsistent with plan]. *FDO (August 2, 2010), pg. 15*

UGA Size

- ***Suquamish Tribe, et al v. Kitsap County,* Case No. 07-3-0019c [2011 Remand]:** [T]he County's reduction of minimum densities in the bulk of its residential UGAs forced the County to designate larger UGAs than would have been needed with its existing density range…. The result was a plan that allowed "inappropriate conversion" of rural land into low-density residential development. The County's reduction of [urban] densities and resultant UGA expansion was inconsistent with the compact urban growth and anti-sprawl provisions of GMA Goals 1 and 2. *FDO on Remand (Aug. 31, 2011), pg. 38*

- ***North Clover Creek, et al v. Pierce County,* Case No. 10-3-0003c:** In recognition of excess UGA capacity, the County has adopted Comprehensive Plan policies to forestall further urban sprawl [allowing companion applications to remove and add land to the UGA.] The [subarea] plan also has policies allowing UGA boundary adjustments while preventing sprawl [allowing a 'land swap' so long as there is no net loss of rural separator land.] The Amendment with companion applications makes a size-neutral and capacity-neutral boundary adjustment. *FDO (August 2, 2010), pg. 15*

  Board decisions have wrestled with the question of whether land that has better characteristics for a desired economic purpose can be added to a UGA that is already oversized. In each of these cases, the antisprawl/UGA sizing requirements of the GMA trump the economic development goals of the local jurisdiction. If the Town or County find that they have not

planned adequately for all the non-residential needs of the UGA, the remedy is re-designation of excess residential land for industrial or other uses, not incremental expansion of the UGA. *FDO (August 2, 2010), pg. 46*

There is simply no evidence in the record indicating need for more urban land in this area. With the UGA already substantially oversized, even marginal expansions violate the GMA requirement of RCW 36.70A.110(2) to size UGAs to accommodate forecasted growth and the GMA goal to reduce sprawl. [Citing *Thurston County* holding that "a UGA designation cannot exceed the amount of land necessary to accommodate the urban growth projected by OFM, plus a reasonable market factor."] *FDO (August 2, 2010), pg. 23*

- ***Friends of Pierce County, et al. v Pierce County,* Case No. 12-3-0002c:** In Pierce County there is already a well-documented county-wide "oversupply" of employment capacity. So the supply already exceeds the demand, even beyond the 25% market factor. County action further increasing the capacity (land supply) in one city on an ad hoc basis without a corresponding action decreasing capacity (land supply) somewhere else has the net effect of increasing the county-wide supply of employment capacity when there has been no increase in demand – OFM allocation. *FDO (July 9, 2012), pg. 71*

Appendix A: Glossary of Acronyms

ADU	Accessory Dwelling Units
AMIRD	Areas of More Intense Rural Development
APA	Administrative Procedures Act
ARA	Aquifer Recharge Areas
BAS	Best Available Science
BMP	Best Management Practice
BOCC	Board of County Commissioners
CA	Critical Area
CAO	Critical Areas Ordinance
CARA	Critical Aquifer Recharge Area
CFE	Capital Facilities Element
CO	Compliance Order
CP	Comprehensive Plan
CPP	Countywide Planning Policy
CTED	Community, Trade & Economic Development, Department of
DOE	Department of Ecology
DNS	Determination of Nonsignificance
DR	Development Regulation
EIS	Environmental Impact Statement
EPF	Essential Public Facility
FCC	Fully Contained Community
FDO	Final Decision and Order
FEIS	Final Environmental Impact Statement
FFA	Frequently Flooded Area
FWH	Fish and Wildlife Habitat Conservation Areas (FWHCA)
GHA	Geologically Hazardous Area
GMA, Act	Growth Management Act
GMHB	Growth Management Hearings Board
HMP	Habitat Management Plan
ILA	Interlocal Agreement
ILB	Industrial Land Bank
IUGA	Interim Urban Growth Area
LAMIRD	Limited Areas of More Intensive Rural Development
LCA	Land Capacity Analysis
LOS	Level of Service
LUPP	Lands Useful for Public Purposes
MCPP	Multi-County Planning Policies
MPR	Master Planned Resort
MO	Motion Order
NRL, RL	Natural Resource Land, Resource Land
OFM	Office of Financial Management
PFR	Petition for Review

PHS	WA Dept. of Fisheries and Wildlife Priority Species and Habitat Manual
PUD	Planned Unit Development
RAID	Rural Areas of Intense Development
RO	Reconsideration Order
SCS	Soil Conservation Service
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMP	Shoreline Master Program
TDR	Transfer of Development Rights
TMZ	Trafic Management Zone
UGA	Urban Growth Area